

Small Entity Compliance Guide for “Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engines and Vehicles Standards and Highway Diesel Fuel Sulfur Control Requirements”

(40 CFR Parts 69, 80, and 86
January 18, 2001)

**Small Entity Compliance Guide for “Control of Air
Pollution from New Motor Vehicles: Heavy-Duty
Engines and Vehicles Standards and Highway
Diesel Fuel Sulfur Control Requirements”**

(40 CFR Parts 69, 80, and 86 January 18, 2001)

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NOTICE

This guide was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Public Law 104-121. The statements in this document are intended solely to aid regulated entities in complying with the published national regulation "Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicles Standards and Highway Diesel Fuel Sulfur Control Requirements” (40 CFR Parts 69, 80, and 86 January 18, 2001).

Final authority rests with the regulation and this guide is not intended to replace, and may not cover all parts of, the regulation. However, in any civil or administrative action against a small business, small government, or small non-profit organization for violation of any parts of the aforementioned regulation, the content of this guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. EPA may decide to revise this guide without public notice to reflect changes in EPA’s approach to implementing Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicles Standards and Highway Diesel Fuel Sulfur Control Requirements or to clarify and update text. To determine whether EPA has revised this guide and/or to obtain copies, contact EPA’s Anne Pastorkovich at (202) 564-8987, pastorkovich.anne-marie@epa.gov or Tia Sutton at (734) 214-4018, sutton.tia@epa.gov.

Acronyms used throughout this guide:

NAICS	North American Industry Classification System
PADD	Petroleum Administration Districts for Defense
Panel	(see <i>SBAR Panel</i>)
ppm	Parts per million
PTD	Product transfer document
SBA	Small Business Administration
SBAR Panel	Small Business Advocacy Review Panel
SBREFA	Small Business Regulatory Enforcement Fairness Act
SIC	Standard Industrial Classification
TCO	Temporary Compliance Option

1.0 Introduction

This document is published by the Environmental Protection Agency (EPA) as our official compliance guide for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996. Before you begin using the guide you should know that the information on which this guide is based was compiled and published on January 18, 2001. EPA is continually improving and upgrading its rules, policies, compliance programs, and outreach efforts. You can determine whether EPA has revised or supplemented the information in this guide by checking the 2007 Heavy-duty Engine and Vehicle home page: <http://www.epa.gov/otaq/diesel.htm> for the rule, any technical amendments, and related information.

Pollution emitted by diesel engines contributes greatly to our nation's continuing air quality problems. Therefore, we established a comprehensive national control program that will regulate the heavy-duty vehicle and its fuel as a single system. This program will reduce particulate matter and oxides of nitrogen emissions from heavy-duty engines by 90 percent and 95 percent, respectively. As part of this program, new emission standards will begin to take effect in model year 2007, and will apply to heavy-duty highway engines and vehicles. The new emissions standards are based on the use of high efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, we are significantly reducing the level of sulfur in highway diesel fuel. The new sulfur standards for highway diesel fuel will begin to take effect in 2006. We estimate that when fully implemented the sulfur reduction requirement will increase the cost of producing and distributing diesel fuel by about five cents per gallon.

The program provides substantial flexibility, especially for small refiners to reduce their hardship in complying with the standards. If you have been approved by the EPA as a "small refiner", we encourage you to continue to contact EPA with any questions or concerns (see contact information in section 5, below).

1.1 Who should use this guide?

This guide is mainly for those refiners of highway diesel fuel that qualify as small refiners under the small business size standards as stated in the rulemaking. If you are not sure whether or not you qualify as a small refiner, please refer to section 2 of this guide for the criteria.

The Small Business Regulatory Enforcement Act (SBREFA) requires the EPA to prepare a Small Entity Compliance Guide to help small businesses comply with the regulation. The regulation has hardship flexibility provisions specific to small refiners, and this guide should help to clarify those provisions.

1.2 How can I obtain a complete copy of the rule?

A complete copy of the rule can be found in the Federal Register, Vol. 66, No. 12, p. 5002 (published on January 18, 2001). The rule is also located on the 2007 Heavy-duty Engine and Vehicle home page: <http://www.epa.gov/otaq/diesel.htm>.

1.3 How do I use this guide?

The guide is organized as follows:

1. Introduction and general information
2. Description of entities that are subject to the rule; criteria for qualifying as a small refiner
3. Overview of the regulatory requirements
4. Small refiner-specific provisions and timeline for compliance with the regulation
5. Recordkeeping and reporting requirements
6. Contact information for further assistance

2.0 Entities Subject to the Rule

2.1 Refiners subject to the heavy-duty highway regulations

Table 1, below, lists the NAICS and SIC codes of those entities subject to the rule:

Table 1. NAICS and SIC Codes		
<i>Industry</i>	<i>NAICS^a Codes</i>	<i>SIC^b Codes</i>
Petroleum Refiners	324110	2911
Refined Petroleum Pipelines	486910	4613
Petroleum Marketers and Distributors	422710, 422720	5171, 5172
Other Terminal: Special Warehousing and Storage	493110, 493190	4226
Fuel Oil Dealers	454311	5983
Petroleum Retailers	447110, 447190	5541

a. NAICS = North American Industrial Classification System

b. SIC = Standard Industrial Classification

Petroleum refiners producing diesel for heavy-duty highway vehicles and certain distributors and marketers of diesel fuel will be affected by the heavy-duty highway regulations. The following section discusses the small entities directly affected by the rulemaking (the parties which this guide will mainly apply to).

2.2 Criteria for qualification as a small refiner

Although most refining companies are not considered small businesses, several refining companies were identified that do appear to qualify under the applicable Small Business Administration (SBA) definition of a small entity. In addition, this rule may affect diesel fuel distributors and marketers - of which several thousand appear to be small businesses. Nevertheless, the rule contained no special provisions for these entities, as their regulatory burden was limited to properly labeling and marketing of the 15 ppm fuel, and not intentionally downgrading insufficient volumes. Table 2 below lists the small business size standards SBA has established for each type of economic activity under the SIC and NAICS systems. In this table, all of the industry categories listed below the "Petroleum Refiners" category have some role in either distributing and/or marketing highway diesel fuel.

Table 2. Small Business Size Standards for Entities in the Fuel Industry			
Industry	NAICS ^a Codes	SIC ^b Codes	Defined by SBA as Small Business if:
Petroleum Refiners ^c	324110	2911	≤ 1500 employees corporate-wide
Refined Petroleum Pipelines	486910	4613	≤ 1500 employees corporate-wide
Petroleum Marketers and Distributors	422710, 422720	5171, 5172	≤ 100 employees corporate-wide
Other Terminal: Special Warehousing and Storage	493110, 493190	4226	≤ \$18.5M annually for the parent corporation
Fuel Oil Dealers	454311	5983	≤ \$9M annually for the parent corporation
Petroleum Retailers	447110, 447190	5541	≤ \$6.5M annually for the parent corporation

a. NAICS = North American Industrial Classification System

b. SIC = Standard Industrial Classification

c. Petroleum refiners are the only sector of the fuels industry where small businesses that are directly affected by the rule will be adversely affected, however small business criteria for all sectors are listed for the reader's information

Who is eligible?

Under this rule, the only small entities that may be significantly impacted are small refiners, since they will have to invest in desulfurization technology to produce low sulfur highway diesel fuel. The criteria for consideration as a small business is listed in the table above. In addition to the information in the table, the following criteria must also be met for entities to receive highway diesel small refiner relief:

- process diesel fuel from crude
- employ an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 1999, to January 1, 2000 (*application date- December 31, 2001*);
- have an average crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1999 (*application date- December 31, 2001*), and;

Refiners who acquired a refinery after January 1, 2000, or reactivated a refinery that was shutdown or was non-operational between January 1, 1999 and January 1, 2000 (80.551(c) (1) (ii) (*application date- June 1, 2003*)) status will be judged under the employment and crude oil capacity criteria based on the most recent 12 consecutive months of data unless we conclude from the data provided by the refiner that another period of time is more appropriate.

Who is not eligible?

The following are not eligible for consideration as a small business under the rule:

- refiners of refineries built or started up after January 1, 2000;
- refiners who previously qualified as small refiners and who subsequently exceed the employee or crude oil capacity criteria as a result of a merger with a non-small entity, or acquisition of or by another entity;
- refiners who produce highway diesel fuel other than by processing crude oil through refinery processing units, or who cease production of diesel fuel from crude oil, and;
- any refiner whose status changes will comply with the 15 ppm-sulfur standard beginning January 1 of the calendar year following the disqualifying event.

How do I determine the total number of employees/crude oil capacity?

In determining its total number of employees and crude oil capacity, a refiner must include the number of employees and crude oil capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners. We define a subsidiary of a company to mean any subsidiary in which the company has a 50 percent or greater ownership interest.

However, refiners owned and controlled by an Alaska Regional or Village Corporation organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1626), are also eligible for small refiner status, based only on the refiner's employees and crude oil capacity. (This exclusion was incorporated into the small refiner provisions of the highway diesel rule by the nonroad diesel rule (Federal Register, Vol. 69, No. 124, p. 38958 (published on June 29, 2004).)

3.0 What Does the Regulation Require?

3.1 General refiner requirements

The rule specifies that beginning June 1, 2006, refiners must begin producing highway diesel fuel that meets a maximum sulfur standard of 15 parts per million (ppm). All 2007 and later model year diesel-fueled vehicles must be refueled with this new low sulfur diesel fuel.

3.2 Small refiner-specific requirements

Are there regulatory options specifically for small refiners?

There are specific provisions for small refiners. These were developed due to the fact that during the SBREFA process and throughout the development of the rule, some small refiners indicated that they will have greater hardship than larger refiners in complying with the highway diesel sulfur standard. These small refiners noted such factors as limited operational flexibility, lack of access to alternate crude oil feedstocks, limited availability of new sulfur reduction equipment, poorer economies of scale, and difficulty in raising capital to finance projects. Based on these discussions and analyses, the SBAR Panel (including EPA) agreed that small refiners would likely experience a significant and disproportionate financial hardship in reaching the objectives of the diesel fuel sulfur program. However, the Panel also noted that the burden imposed upon the small refiners by the sulfur requirements varied from refiner to refiner and could not be alleviated with a single provision. In addition, the small refiners strongly supported having multiple compliance options. Therefore, three regulatory flexibility options were offered to decrease the burden on small refiners in complying with the rule, these options are discussed in detail in Section 4 of this guide.

3.3 Requirements for downstream parties

I am a downstream entity, how does this rule affect me?

The highway diesel fuel rule contains certain downstream compliance and enforcement provisions, for all entities in the diesel fuel distribution system downstream of the refinery gate.

- Distributors

Under the rule, distributors and retailers may choose to handle 500 ppm diesel fuel, 15 ppm diesel fuel, or both (as permitted under the temporary compliance option and small refiner hardship provisions detailed above). However, distributors and marketers will have to segregate 15 ppm highway diesel fuel from other distillates just as they do today with 500 ppm diesel fuel. Retailers and wholesale purchaser-consumers will be responsible for ensuring that only 15 ppm highway diesel fuel is sold for use in model year 2007 and later

heavy-duty onroad vehicles. Under the temporary compliance option and small refiner hardship provisions, where two grades of highway diesel fuel will be allowed for the initial years of the program, some distributors and marketers may voluntarily decide (presumably based on economics) to add tankage or make additional modifications to accommodate two grades of highway diesel fuel.

- Distributors, Retailers, and Wholesale Purchaser-Consumers

The highway diesel fuel rule also includes a product downgrading restriction that is designed to discourage the intentional downgrading of 15 ppm diesel fuel to 500 ppm diesel fuel in the distribution system during the initial years of the program when the optional compliance provision is in effect. Any significant downgrading could result in lack of 15 ppm fuel availability in some parts of the country. The retailers and wholesale purchaser-consumers that are subject to this provision are those that offer for sale, or use, only 500 ppm diesel but not 15 ppm diesel. Under this restriction, the volume of 15 ppm fuel that may be downgraded to 500 ppm highway diesel fuel at each facility in the distribution system (downstream of the refinery gate) is limited to 20 percent on an annual basis. (The downgrading restriction applies only to 15 ppm downgraded to 500 ppm highway diesel fuel, 15 ppm downgraded to nonroad diesel fuel will not count against a party's downgrade volume.) Each party in the distribution system subject to this provision will be required to meet this requirement separately, based on the amount of 15 ppm fuel it receives and transfers/sells to the next party (or end user, in the case of retailers and wholesale purchaser-consumers) on an annual basis.

The downgrading provision should, however, have no meaningful burden on downstream entities. It is only intended to protect against intentional downgrading and is not intended to constrain any normal business operations. In addition, it will not require the addition of any new recordkeeping or reporting requirements beyond those required of the rest of the program.

4.0 Provisions for Small Refiners

What are the regulatory options that are available to small refiners?

Refiners that seek and are granted small refiner status may choose from the following three options under the highway diesel sulfur program.

- *500 ppm Option.* A small refiner may delay meeting the 15 ppm sulfur standard for up to 4 years.

The 500 ppm Option is available for any refiner that qualifies as a small refiner, and would allow such refiners to continue to produce and sell diesel fuel meeting the (current) 500 ppm sulfur standard for four additional years- through May 31, 2010. This is provided that such refiners supply information showing that sufficient alternate sources of 15 ppm diesel fuel in their market area will exist for fueling new heavy-duty highway vehicles. Under this option, small refiners could supply current 500 ppm highway diesel fuel to any markets for use only in vehicles with older (pre- 2007) technology during this four year period.

This 500 ppm option for small refiners is similar to the option provided to all refiners through the TCO in that it allows a refiner to continue to produce and sell current 500 ppm fuel for a period of time. However, this option differs from the broader TCO in that small refiners could produce and sell 100 percent of their highway fuel at 500 ppm without needing to buy credits. Under the broader program, refiners would need to buy credits in order to produce any volume of 500 ppm fuel over 20 percent of their total highway diesel production.

- *Small Refiner Credit Option.* A small refiner that chooses to produce 15 ppm fuel early- prior to 2010- may generate and sell credits to other refiners under the broader diesel temporary compliance option.

To encourage all refiners to produce 15 ppm sulfur as early and in as many geographic areas as possible, we included a regulatory option that would offer incentives to those small refiners producing 15 ppm fuel on time (i.e., 2006, when non-small refiners are required to comply with the standard). As an incentive for small refiners to invest in desulfurization capacity, those that choose to produce 15 ppm fuel earlier than required could generate credits for each gallon of diesel fuel produced that meets the 15 ppm standard. The small refiner may then sell these credits to other refiners for use in the broader diesel fuel program. Under this option, credits may be generated based on the volume of any diesel fuel meeting the 15 ppm standard. Since a small refiner has no requirement to produce 15 ppm fuel under this option, any volume of fuel it produced at or below 15 ppm sulfur will qualify for generating credits. The small refiner could sell its remaining highway diesel fuel under the 500 ppm option above.

- *Diesel/Gasoline Compliance Date Option.* A small refiner that is also subject to the

Tier 2/Gasoline sulfur program may extend the duration of its applicable interim gasoline standards for up to three years, if it also produces 95 percent or more of its highway diesel fuel at 15 ppm sulfur beginning June 1, 2006.

The Tier 2/Gasoline Sulfur program included a special provision that applies for refiners that qualify as small refiners (40 CFR Part 80, Subpart H). Under that program, each small refiner is assigned an interim gasoline sulfur standard for each of its refineries. The interim standard for each refinery is established based on the baseline sulfur level of that refinery. The gasoline interim program lasts from 2004 through 2007, and the refiner can apply for an extension of up to two years. After the interim program expires, small refiners need to produce the same low sulfur gasoline as other refiners.

The highway diesel sulfur program will be taking effect in the same time frame as the small refiner interim program for gasoline sulfur. To avoid having to make simultaneous investments in both gasoline and diesel fuel desulfurization, small refiners may extend the duration of their gasoline sulfur interim standards and thus potentially postpone some (or all) of the needed gasoline desulfurization investments to provide resources to work to achieve the diesel sulfur standards on time in 2006.

Specifically, this option provides that a small refiner can receive a three-year extension of a refinery's interim gasoline standard, until January 1, 2011, if two criteria are met: 1) both gasoline and diesel fuel are produced at a refinery and compliance with the 15 ppm diesel fuel sulfur standard is met by June 1, 2006 for at least 95 percent of the highway diesel production at that same refinery, and 2) a minimum volume of 15 ppm fuel is produced at that refinery that is at least 85 percent of the average volume of highway diesel fuel that was produced at that refinery during calendar years 1998 and 1999. A minimum volume requirement of 85 percent was established to prevent the Diesel/Gasoline Compliance Date option from applying in situations where a refiner changes its refinery product slate to produce very little highway diesel fuel—even though this production is at a 15 ppm sulfur level—and yet receives an extension of its interim gasoline sulfur standard.

In addition, the Tier 2/Gasoline Sulfur program included a general hardship provision that refiners could apply for. (A similar provision was included in the upcoming nonroad diesel program as well). Depending on the nature of its hardship, a small refiner applying for this general hardship provision under the gasoline program could be granted a “tailor-made” interim gasoline sulfur program different from the “default” program established in the rule. If the small refiner were then to be covered by the highway diesel fuel requirements and chose this Diesel/Gasoline Compliance Date option, we would allow the refiner an extension of its special interim program for gasoline (as established under the general hardship provision) for three years beyond the scheduled end date (but no later than December 31, 2010) as long as the 15 ppm highway diesel fuel standard is met in 2006.

The program for nonroad diesel fuel is similar, however refiners will be afforded an extension in their highway diesel sulfur standards in exchange for on time production of 15 ppm

sulfur nonroad diesel fuel.

Can any of the regulatory options be used in conjunction with another option?

Since a small refiner must produce essentially all of its highway diesel as 15 ppm under the Diesel/Gasoline Compliance Date option, that option is not compatible with either the 500 ppm option or the Small Refiner Credit option. So, a refiner that chooses the Diesel/Gasoline Compliance Date option may not choose either of the other two options. However, the 500 ppm option and the Small Refiner Credit option are compatible with each other, so a small refiner can choose either or both of these options.

How does a small refiner apply for a diesel fuel volume baseline?

The following equation can be used to determine a refinery's motor vehicle diesel fuel volume baseline:

$$V_{base} = \frac{\sum_{i=1}^n (V_i)}{\frac{m}{12}}$$

Where:

- V_{base} = Volume baseline value
- V_i = Volume of motor vehicle diesel fuel batch I
- n = Total number of batches of motor vehicle diesel fuel produced for U.S. use during January 1, 1998 through December 31, 1999
- i = Individual batch of motor vehicle diesel fuel produced during January 1, 1998 through December 31, 1999.
- m = Number of months in the baseline period (24 except in the case of startup or reactivation)

5.0 Recordkeeping and Reporting Requirements

What are the recordkeeping and reporting requirements associated with the rule?

- Requirements for small refiners

Under the regulatory flexibility options for small refiners, these entities may be subject to new reporting and recordkeeping requirements to help ensure compliance with the options and the integrity of 15 ppm diesel fuel as it moves from the refinery gate to the retail outlet. These requirements are listed below in Table 3.

» Registration Reports

Refiners that are either currently producing or supplying highway diesel fuel, or that expect to do so by June 1, 2006, must register with EPA.

» Pre-Compliance Reports

All refiners (including small refiners) and importers must report their progress toward compliance with the highway diesel fuel sulfur standards to EPA. These pre-compliance reports are due June 1 of every year from 2003 through 2005. EPA will present generalized data from the reports each year on a PADD basis in annual summary reports following the receipt of the year's pre-compliance reports (we will maintain the confidentiality of information submitted in pre-compliance reports).¹ EPA will not hold refiners liable if their actual actions deviate from these reports- as we fully expect that refiners' plans may change- therefore, the rule requires that the reports be updated annually through 2005.

» Annual Compliance Reports

When the highway diesel sulfur requirements begin on June 1, 2006, refiners and importers will be required to submit annual reports that demonstrate compliance with the requirements of the rule. The first annual compliance report, for the period of June 1, 2006 through December 31, 2006, will be due by the end of February 2007. The reports will be required annually through February 2011 (after the end of the extended interim low sulfur gasoline program for small refiners on December 30, 2010).

» Product Transfer Documents

¹ The Summary and Analysis Reports of the 2003 and 2004 Highway Diesel Pre-compliance Reports are located at: <http://www.epa.gov/otaq/regs/hd2007/420r04014.pdf>

Refiners and importers will be required to provide information on commercial Product Transfer Documents (PTDs) that identify diesel fuel distributed for use in motor vehicles and state that the fuel complies with the 15 ppm sulfur standard. In addition, PTDs will also be required to identify any diesel fuel having a sulfur content of 500 ppm and must state that its use in motor vehicles is limited to pre-2007 motor vehicles. PTDs must also include the volume of fuel delivered (for each grade, 15 ppm and 500 ppm). With the exception of transfers to truck carriers, retailers and wholesale purchaser-consumers, product codes may be used to convey the information (more explicit language on PTDs to these parties is necessary since employees of such parties are less likely to be aware of the meaning of product codes). PTDs are not required for transfers of product into motor vehicles at retail outlets or wholesale purchaser-consumer facilities. Lastly, PTDs must identify whether or not distillates meet the 15 ppm standards, and must identify tax-exempt highway fuel.

Since the rule also allows for the production and sale of 500 ppm sulfur diesel fuel for use in pre-2007 model year vehicles, there are specific requirements for PTDs regarding additives. These requirements are listed in detail in Table 3, below.

» Recordkeeping Requirements

Refiners that produce (or importers that import) both 500 ppm highway diesel fuel and 15 ppm highway diesel fuel under the Temporary Compliance Option (TCO) or any hardship program (i.e., small refiner relief provisions), or that produce only 15 ppm sulfur content diesel fuel and that wish to generate credits (including early credits), must maintain records for each batch of highway diesel fuel produced, the batch designations, and the batch volumes. The refiner must maintain records regarding credit generation, use, transfer, purchase, or termination. Recordkeeping information that must be kept is listed in detail in Table 3. This information must be kept by refinery (separately by refinery and PADD of import for foreign refiners) and by PADD for importers.

Table 3. Recordkeeping and Reporting Requirements	
Registration Requirements	
	Corporate name and address of the refiner or importer and any parent companies and a contact person
	Name and address of all refineries or import facilities (including, for importers, the port of entry and PADD)
	Contact person
	Location of records
	Business activity (refiner or importer)
	Capacity of each refinery in barrels of crude oil per calendar day
	For import facilities, the same information as required for each refinery under § 80.76(c) must be provided for each import facility
	Highway diesel fuel refineries, and importers importing such fuel, must provide information required under § 80.76 [registration requirements for refiners and importers] if such registration information has not been provided in the requirements detailed above (§ 80.597)
<i>Additional information required for small refiners:</i>	Application for small refiner relief, including average number of employees for all pay periods from 1/1/99 to 1/1/00 for the company, all parent companies, and all subsidiaries or joint ventures
	Which small refiner option(s) the refiner expects to use at each refinery
Pre-Compliance Reports²	
	Any changes in the basic corporate or facility information since registration
	- Estimates of the average daily volumes (in gallons) of each sulfur grade of highway diesel fuel produced (or imported) at each refinery or import facility, for fuel produced from crude as well as the volumes of each grade of highway diesel fuel produced from other resources; this information must be provided for the following periods: » 6/1/2006 – 12/31/2006 » 1/1/2007– 12/31/2007 » 1/1/2008 – 12/31/2008 » 1/1/2009 – 12/31/2009 » 1/1/2010 – 5/31/2010
	Estimates of numbers of credits to be earned and/or used (for entities expecting to participate in the credit program)

² The pre-compliance reporting requirements do not apply to refineries subject to the provisions of § 80.513 (transmix facilities).

	- Information on project schedule by quarter of known or projected completion date; this information should be stated in terms of the five project phases set out in EPA's June 2002 Highway Diesel Progress Review report, these phases are: (1) Strategic Planning (2) Planning and Front-end Engineering (3) Detailed Engineering and Permitting (4) Procurement and Construction (5) Commissioning and Start-up
	Information on the selected technology for compliance (conventional hydrotreating vs. other technologies, revamp of existing structures vs. grassroots)
	Information on whether or not capital commitments have been, or are projected to be, made
	The 2004 and 2005 pre-compliance reports must contain updates on all of the above reporting requirements
<i>Additional information required for small refiners:</i>	Requirements for the small refiner options– <u>500 ppm Option-</u> the refiner must make a showing that sufficient sources of 15 ppm fuel will likely exist in the area; if after 2003 the sources of 15 ppm fuel decrease, the pre-compliance reports for 2004 and/or 2005 must identify this change and include a supplementary showing that the sources of 15 ppm fuel are still sufficient <u>Small Refiner Credit Option-</u> the requirement for this option is the same as that for the 500 ppm Option, with the additional requirement that the refiner also report on any credits it expects to generate and sell <u>Diesel/Gasoline Compliance Date Option-</u> the refiner must provide information showing that diesel desulfurization plans are on track; the refiner also needs to reasonably show that it will be in a position by June 1, 2006 to produce 100 percent of its highway diesel fuel at 15 ppm sulfur at a volume at least 85 percent of its baseline highway diesel volume
	Refineries with an approved application under § 80.552(c) [highway diesel small refiners with an approved application to receive an extension of the duration of its small refiner gasoline sulfur standards], must demonstrate that its highway diesel fuel will be at 15 ppm sulfur, and will meet the volume requirements of § 80.553(e) [the volume of 15 ppm fuel produced must meet or exceed 92% of the baseline volume from 6/1/06 to 6/30/07, and 85% thereafter], by June 1, 2006
<i>Additional information required for GPA refiners:</i>	Refiners/importers approved under § 80.540 (GPA refiners) must demonstrate that 95% of their highway diesel fuel will be at 15 ppm sulfur, and meet the volume requirements of § 80.540(e) [the volume of 15 ppm fuel produced must meet or exceed 92% of the baseline volume from 6/1/06 to 6/30/07, and 85% thereafter], by June 1, 2006
Compliance Reports (Information must be included for each refinery)	
	The volumes of 15 ppm and 500 ppm sulfur highway diesel fuel produced from crude oil during the compliance period, as well as the volumes of each grade of highway diesel fuel produced from other sources

	The number of credits, if any, used to demonstrate compliance with the 80 percent requirement for 15 ppm sulfur fuel, and their source(s)
	The number of credits, if any, generated
	<i>Additional information required for the small refiner options:</i> <u>500 ppm Option</u>- small refiners need to show that the volume of highway diesel fuel they produce meeting the 500 ppm sulfur standard meets the lesser of the following values: (1) 105 percent of the average highway diesel volume produced in calendar years 1998 and 1999, or (2) the average highway diesel volume produced from crude oil in calendar years 2004 and 2005 <u>Small Refiner Credit Option</u>- same as requirements for the 500 ppm Option <u>Diesel/Gasoline Compliance Date Option</u>- refiner must, in each annual compliance report, confirm that it continues to produce 100 percent of its highway diesel fuel at 15 ppm sulfur and that its highway diesel volume continues to be at least 85 percent of its baseline volume
PTDs	
	Must include the names and addresses of the transferor and transferee
	Must include the date and location of the fuel or distillate at the time of transfer
	Must include the volume of fuel delivered for each grade (15 ppm and 500 ppm)
	Must state the sulfur level of the fuel being transferred (in the case of fuel greater than 15 ppm, it must be stated as such and must also clearly state that its use in motor vehicles is limited to pre-2007 motor vehicles)
	Must identify distillates as meeting the 15 ppm standard
	Dyed, tax-exempt highway diesel fuel must be identified
	May also need to specify on PTDs for certain fuels: “This is high sulfur diesel fuel for use only in Guam, American Samoa, or the Northern Mariana Islands.”; “This diesel fuel is for export use only.”; “This diesel fuel is for research, development, or testing purposes only.”; or, “This diesel fuel is for use on diesel highway vehicles [or nonroad equipment] under an EPA-approved national security exemption only.”
	<i>Additional requirements for additives:</i> - for additives that have a sulfur content of 15 ppm or less, the PTD must state: “The sulfur content of this diesel fuel additive does not exceed 15 ppm.” - for additives that may have a sulfur content exceeding 15 ppm, the additive manufacturer’s PTD, and PTDs accompanying all subsequent transfers, must provide: a warning that the additive’s sulfur content exceeds 15 ppm; the maximum sulfur content of the additive; the appropriate amount of additive to blend to highway diesel fuel, stated as gallon of additive per gallon of diesel fuel; and the increase in sulfur concentration of the fuel the additive will cause when used at the specified concentration
Recordkeeping Requirements	

	• All applicable contracts or other commercial documents that establish each transfer of credits (PTDs)
	• The total volume of highway diesel fuel produced or imported
	• The total volume of highway diesel fuel produced or imported meeting the 500 ppm sulfur standard
	• The total volume of highway diesel fuel produced or imported meeting the 15 ppm sulfur standard
	• A statement of the baseline volume and whether the volume of 15 ppm fuel produced or imported is at least equal to 85 percent of the baseline volume
	• The percentage of highway diesel fuel produced or imported meeting the 15 ppm sulfur standard before inclusion of credits
	• The volume of 15 ppm highway diesel fuel represented by credits
	• The percentage of 15 ppm highway diesel fuel produced or imported that is represented by credits
	• The number of credits in the refinery's or importer's possession at the beginning of the compliance period, separately by early credits and all other credits
	• The number of credits generated during the compliance period
	• The number of credits used, separately by early credits and all other credits
	• If any credits were obtained from or transferred to other parties, for each other party, its name, its EPA refiner or importer registration number, and the number of credits obtained from or transferred to the other party, provided separately for early credits and all other credits
	• The percentage of compliance with the 15 ppm motor vehicle diesel 80 percent volume requirement by use of credits (provided separately for early credits and all other credits)
	• The number of credits that will carry over to the next averaging period, provided separately for early credits and all other credits
	• Records regarding test results, including mandatory quality assurance tests
	• Actions taken or to be taken, if any, to stop the sale or distribution of fuel not found to be in compliance with the highway diesel sulfur standards
	• Must have a record designating the batch of fuel as meeting either the 500 ppm or 15 ppm sulfur standard

- Requirements for downstream parties

There are no new reporting requirements for small diesel marketers or distributors. Consistent with other fuel programs, however, the rule does impose new record keeping requirements for these entities, specifically PTDs that track transfers of diesel fuel. Such transfer

records are currently maintained by most parties for business and/or tax reasons. Information on commercial PTDs identifying diesel fuel distributed for use in motor vehicles and stating that the fuel is compliant with the 15 ppm sulfur standard must be provided. PTDs must also identify any 500 ppm fuel and state that the fuel's use in motor vehicles is restricted to pre-2007 motor vehicles. Lastly, PTDs must include the volume of each fuel grade (15 ppm and 500 ppm) delivered.

The retention period for all records required to be kept by the rule is 5 years. This is the same period of time required in other fuels rules, and it coincides with the applicable statute of limitations. This retention period applies to PTDs and records of any test results performed by any regulated party for quality assurance purposes or otherwise (along with supporting documentation such as date of sampling and testing, batch number, tank number, and volume of product). Business records regarding actions taken in response to any violations discovered are also required to be maintained for 5 years.

6.0 For More Information

Who can I contact if I have questions or need further assistance?

- General questions about small refiner relief:
Larry Haslett- (202) 343-9728, haslett.larry@epa.gov
Anne Pastorkovich- (202) 564-8987, pastorkovich.anne-marie@epa.gov
Tia Sutton- (734) 214-4018, sutton.tia@epa.gov
- Compliance/enforcement questions:
Erv Pickell- (303) 236-9506, pickell.erv@epa.gov
- Recordkeeping/reporting questions:
John Weihrauch- (202) 343-9477, weihrauch.john@epa.gov

Where can I find rulemaking documents?

- A complete copy of the rule can be found on the 2007 Heavy-duty Engine and Vehicle home page:
» Preamble: <http://www.epa.gov/otaq/diesel.htm#hd2007>
» Regulations: <http://www.epa.gov/otaq/regs/hd2007/frm/frdslpre.pdf>
<http://www.epa.gov/otaq/regs/hd2007/frm/frdslreg.pdf>
- The Summary and Analysis of both the 2004 and 2003 pre-compliance reports can be found at:
<http://www.epa.gov/otaq/regs/hd2007/420r04014.pdf>
- Information on the diesel workshops, and the Diesel Fuel Questions and Answers Document can be found at:
<http://www.epa.gov/cleandiesel>
☛ in the blue menu bar on the left side of the main Clean Diesel page, select the option “Compliance Help” to be directed to these items