

(1) Maintain the benefits and program integrity of the highway diesel fuel program;

(2) Achieve the greatest reduction in sulfate PM and sulfur dioxide emissions from nonroad, locomotive, and marine diesel engines as early as practicable;

(3) Provide for a smooth transition of the nonroad diesel fuel pool to 15 ppm sulfur;

(4) Ensure that 15 ppm sulfur diesel fuel is produced and distributed widely for use in all 2011 and later model year nonroad engines;

(5) Enable the efficient distribution of all diesel fuels; and

(6) Ensure that the program's requirements are enforceable and verifiable.

As described below, we believe the proposed fuel program achieves these principles.

The remainder of this section is organized as follows:

(A) The fuel standards proposed today,

(B) The design and structure of the fuel program,

(C) Special hardship provisions proposed for small refiners and refiners facing particularly difficult circumstances,

(D) Special provisions proposed for fuel sold in the State of Alaska and U.S. Territories,

(E) The affect of the proposed program on state diesel fuel control programs,

(F) The technological feasibility of the production and distribution of 500 ppm and 15 ppm sulfur nonroad, locomotive and marine diesel fuel,

(G) The impact of the program on other fuel properties and specialty fuels, and

(H) The need for some refiners to obtain air permits for their desulfurization equipment.

Analyses supporting the design of these provisions can be found in chapter V and VII of the Draft RIA for today's action. Section VIII of this preamble provides a discussion of the compliance and enforcement provisions affecting diesel fuel and additional explanation of various elements of the proposed program.

A. Proposed Nonroad, Locomotive and Marine Diesel Fuel Quality Standards

The following paragraphs describe the requirements, standards, and deadlines that apply to refiners, importers, and distributors of nonroad, locomotive and marine (NRLM) diesel fuel and the options available to all refiners.

1. What Fuel Is Covered by This Proposal?

The proposed standards generally cover all the diesel fuel that is used in

mobile applications but is not already covered by the previous standards for highway diesel fuel. This fuel is defined primarily by the type of engine which it is used to power: nonroad, locomotive, and marine diesel engines. These fuels typically include:

(1) Any number 1 and 2 distillate fuels used, intended for use, or made available for use in nonroad, locomotive or marine diesel engines,

(2) Any number 1 distillate fuel (e.g., kerosene) added to such number 2 diesel fuel, e.g., to improve its cold flow properties, and

(3) Any other fuel used in or blended with diesel fuel for use in nonroad, locomotive, or marine diesel engines that has comparable chemical and physical characteristics.

Primary examples of fuels under (1) would be those meeting ASTM D975 or D396 specifications for grades number 1-D and number 2-D or ASTM DMX and DMA specifications, if used in the engines mentioned above. Primary examples under (3) would be certain specialty fuels grades such as JP-5, JP-8, and F76 if used in nonroad, locomotive, or marine equipment for which a national security exemption has not been approved (*See* section VIII.A.2) and non-distillate fuels such as biodiesel.

This proposal would not apply to:

(1) Number 1 distillate fuel used to power jet aircraft,

(2) Number 1 or number 2 distillate fuel used for other purposes, such as to power stationary diesel engines or for heating,

(3) Number 4 and 6 fuels (e.g., bunker or residual fuels, IFO Heavy Fuel Oil Grades 30 and higher, ASTM DMB and DMC fuels), and

(4) Any fuel used to power equipment for which a national security exemption has been approved (*see* section VIII.A.2).

The proposed program would reduce the sulfur in all diesel fuel likely used in mobile off-highway equipment and achieve very significant short and long-term environmental benefits. States, not the Agency, have responsibility for any fuel sulfur specifications for heating oil, so this fuel would not be covered by this proposal.²³¹ However, we do propose a number of provisions, as described below, that would ensure that heating

²³¹ For the purposes of this proposal, the term heating oil refers to any number 1 or number 2 distillate other than jet fuel and diesel fuel used in highway, nonroad, locomotive, or marine applications. For example, heating oil includes fuel which is suitable for use in furnaces, boilers, stationary diesel engines and similar applications and is commonly or commercially known or sold as heating oil, fuel oil, and other similar trade names.

oil would not be used in nonroad, locomotive, or marine applications.

As in the recent highway diesel rule, in those cases where the same batch of kerosene is distributed for two purposes (e.g., as kerosene to be used for heating and to improve the cold flow of number 2 nonroad diesel fuel), that batch of kerosene would have to meet the standards being proposed today for nonroad diesel fuel. However, an alternative compliance approach would be to produce and distribute two distinct kerosene fuels. In our example above, one batch would meet the proposed sulfur standards and could be blended into number 2 NRLM diesel fuel. The other batch would only have to meet any applicable specifications for heating oil.

2. Standards and Deadlines for Refiners, Importers, and Fuel Distributors

The proposed fuel program consists of a two-step program to reduce the sulfur content of nonroad diesel fuel. By doing so, the program would allow the refining industry to smoothly transition the sulfur content from its current uncontrolled levels down to the very stringent 15 ppm level. By beginning with an initial step down to 500 ppm, we can start to achieve significant emission reductions and associated health and welfare benefits from the current fleet of equipment as soon as possible. While we considered and are seeking comment on a one-step approach of going directly to 15 ppm in 2008, as discussed in section VI, we believe that on balance the advantages of the proposed two-step approach outweigh those of a single step.

The specific proposed deadlines for meeting the 500 and 15 ppm sulfur standards would not apply to refineries covered by special hardship provisions for small refiners. In addition, a different schedule would apply for any refineries approved under the proposed general hardship provisions. All of these hardship provisions are described below in section IV.C.

a. The First Step to 500 ppm

Under this proposal NRLM diesel fuel produced by refiners or imported into the U.S. would be required to meet a 500 ppm sulfur standard beginning June 1, 2007. Refiners and importers could comply by either producing such fuel at or below 500 ppm, or could comply by obtaining credits as discussed in Section B below.

We believe that the proposed level of 500 ppm is appropriate for several reasons. This 500 ppm level is consistent with current highway diesel fuel, a grade which may remain for