

averaging, banking, and trading of credits under the highway rule. That approach was rejected in the highway rule due to the negative impact it would have on the nationwide availability of 15 ppm highway diesel fuel. For the same reason we are not proposing to allow nationwide aggregation of the non-highway baselines. However, in the highway rule, we do allow credit trading within certain credit trading areas (CTAs). We seek comment on allowing the aggregation of non-highway baselines within the same CTA and how such aggregation could be accomplished. We also seek comment on whether a trading program could be established that allowed for refiners with only one refinery within a CTA to benefit from similar flexibility, and whether some reasonable restrictions on refiners who aggregate baselines are needed to protect the integrity of the highway program.

EPA requests comments on the provisions described above for establishing the non-highway baseline percentage for each refinery and importer. We also request comment on any alternative provisions that could be used to accomplish the objectives discussed above.

iv. Diesel Sulfur Credit Banking, and Trading Provisions for 2007

This proposal includes provisions for refiners and importers to generate early credits for production of 500 ppm NRLM fuel prior to June 1, 2007. This will provide implementation flexibility at the start of the 500 ppm NRLM standard in 2007. These credits would be tradeable and could be used to delay compliance with either the 500 ppm NRLM standard in 2007 or the 15 ppm nonroad standard in 2010. The proposed banking and trading provisions would allow an individual refinery to purchase credits and delay compliance. This would allow for a somewhat smoother transition at the start of the program, with some refineries complying early, others on time, and others a little later. Nevertheless, on average the overall benefits of the program would be obtained or perhaps increased, and some environmental benefits could be achieved earlier than expected. Perhaps the most advantageous use of these credit provisions, however, might be for individual refineries to utilize available credits to permit the continued sale of otherwise off-spec product during the start up of the program when they are still adjusting their operations for consistent production to the new sulfur standards.

Credit Generation

We propose two ways to generate credits that can be used to allow for high sulfur NRLM fuel to be produced after June 1, 2007. First, we propose that a refinery or importer can generate credit for early production of NRLM diesel fuel to the 500 standard from June 1, 2006, through May 31, 2007. Credits would be calculated either using the non-highway baseline approach or by counting 500 ppm NRLM dyed at the refinery gate. Refiners that chose to establish their non-highway baseline using the June 1, 2006–May 31, 2007, baseline period would be precluded from generating any early credits using the non-highway baseline approach. Second, under the small refiner hardship provisions described below in subsection C, small refiners could generate credits for any production of NRLM fuel to the 500 ppm standard from June 1, 2007, through May 31, 2010. In either case, credits could be banked for future use, or traded to any other refinery or importer nationwide. For early credits and small refinery credits generated using the non-highway baseline approach, these credits would be calculated according to the following formula:

High-Sulfur NRLM credits ²⁴⁵ = (15 ppm production volume + 500 ppm production volume) — (100% — non-highway baseline percentage) * (total #1 and #2 distillate production excluding jet fuel and exported fuel).

Early credits or small refinery credits generated using the dye option would be calculated using the following formula: High-Sulfur NRLM credits = 500 ppm production volume dyed at the refinery gate.

If the excess production was 15 ppm fuel instead of 500 ppm fuel, the refiner would of course still have the option of using it to generate 500 ppm highway credits under the existing highway diesel provisions. Credit could not be earned under both programs.

Credit Use

There would be two ways in which refiners could use high-sulfur NRLM credits. First, we propose that these credits could be used during the period from June 1, 2007–May 31, 2010, to continue to produce high sulfur NRLM diesel fuel. Any high sulfur NRLM fuel produced, however, would have to be dyed red at the refinery gate, kept

segregated from other fuels in the distribution system, and tracked through the use of unique codes on product transfer documents.

Only at the point in the distribution system where NRLM fuel has been dyed to IRS specifications for excise tax purposes (e.g., after a terminal or bulk plant) do we propose that high sulfur and 500 ppm sulfur NRLM fuels could be commingled. Such commingling will not diminish the PM and SO₃ emission reductions or other benefits associated with the 500 ppm sulfur standard. However, in order to ensure that owners of nonroad equipment can be confident in knowing whether the fuel being purchased meets the 500 ppm cap, the PTD and labels for any commingled fuel will have to indicate that the sulfur level exceeds 500 ppm. This is particularly a concern for some 2008 and later model year equipment that may need to run on 500 ppm or lower sulfur fuel in order to achieve the emission benefits in-use of the standards proposed today, as discussed in section III.

In most cases we anticipate that the distribution costs associated with segregating such a small volume product will prevent high-sulfur NRLM from being carried in the fungible distribution system. As a result, we anticipate that only those refineries that have their own segregated distribution system could continue to produce solely high sulfur NRLM fuel after June 1, 2007. Since there are few refineries set up to accomplish this, our expectation is that the most likely manner in which refiners will be able to use high-sulfur NRLM credits will be through sales made directly from their on-site fuel rack or co-located terminal. Nevertheless, in order to have confidence that refiners are making the transition to 500 ppm for NRLM uses, we seek comment on whether caps on the use of credits would be necessary. In particular, we seek comment on placing a cap on the use of credits at 25 percent of its non-highway baseline, less marked heating oil, beginning June 1, 2008.

The second way in which refiners and importer could use high-sulfur NRLM credits is by banking them for use during the June 1, 2010–May 31, 2012, period. During this period they could continue producing 500 ppm fuel subject to the usage restrictions that apply during that period, as discussed in subsection B.2.b.ii below. This use of high-sulfur credits would provide a cost-effective environmental benefit, since credits generated from the reduction of sulfur levels from high sulfur to 500 ppm would be used to

²⁴⁵ For the purposes of this proposal, the credits are labeled on the basis of their use in order to follow the convention used in the highway rule. A high-sulfur credit is generated through the production of one gallon of 500 ppm NRLM fuel and allows the production of one gallon of high sulfur NRLM fuel.