

iii. Combined Impact of Highway and NRLM Baselines

These baselines, as with the proposed non-highway baseline, are set on the basis of a percentage of production. Therefore, as a refinery's overall production of diesel fuel rises and falls, the required volume of each grade of

fuel will also rise and fall. Thus, the baselines are flexible enough to respond to changes in a refinery's market or situation. Furthermore, a nationwide credit trading program for 500 ppm NRLM fuel could be put in place, allowing refineries further flexibility to change production in response to consumer demand. To add additional

flexibility we could allow for some deficit carry-over of NRLM credits. Finally, a refinery could always avoid use of the baselines entirely by dyeing or marking their fuel and ensuring that it is only used in appropriate end-uses.

The combined effect of the highway baseline and NRLM baseline is shown in Table IV-3.

TABLE IV-3—COMBINED IMPACT OF THE HIGHWAY AND NRLM BASELINES FOR JUNE 1, 2007—MAY 31, 2010

Sulfur level	Percentage requirement
15 ppm	> or = 80% x (highway baseline) or;
15+500 ppm	> or = 80% x All undyed diesel fuel (whichever is less)
	> or = (highway baseline) + (NRLM baseline)(100% highway baseline) or;
	= All fuel without a marker and segregated through to the end-user

An example will help to explain the use of these baselines. Assume a refinery in PADD 3 produces 100,000,000 gallons of diesel fuel and heating oil per year from 2003-5, 60 percent of which is undyed. Its highway baseline would thus be 60 percent of its total diesel fuel and heating oil production. Its NRLM baseline, assigned by EPA from Table IV-2, would be 42 percent applied to the remaining 40 percent of total distillate, or 16.8 percent of total distillate. If the refinery then continues to produce a total of 100,000,000 gallons of diesel fuel in 2008, 60,000,000 gallons would be required to meet the highway 80/20 standards, *i.e.*, 48,000,000 at 15 ppm and 12,000,000 at 500 ppm. An additional 16.8 percent, or 16,800,000 gallons would be required to meet the 500 ppm NRLM standard, for a total required 500 ppm production of 28,800,000 gallons. Its remaining 23,200,000 gallons of production could remain uncontrolled and could be sold as heating oil or high sulfur NRLM. If the refiner reduced this 23,200,000 gallons to 500 ppm it would then earn credits that could be sold to another refiner.

b. Locomotive and Marine Baseline for 2010

The proposed non-highway baseline percentage approach described above relies on a marker to distinguish locomotive and marine diesel fuel from nonroad diesel fuel after June 1, 2010. Just as in the alternative above, a baseline for locomotive and marine fuel could be used in lieu of a marker. The 2010 locomotive and marine baseline would be established by EPA and used in the same manner as described above for the NRLM baseline in 2007. Possible locomotive and marine baselines are

shown in Table IV-2. The advantage of this baseline approach over the proposed approach is that it allows for the fungible distribution of 500 ppm locomotive and marine fuel with 500 ppm nonroad fuel produced through the credit and hardship provisions. As a result, this approach would allow for greater flexibility in using the diesel fuel credit and hardship provisions. The disadvantage, however, is that refiners wishing to produce locomotive and marine fuel in quantities larger than their baseline would have to purchase credits from other refiners.

It may be possible for each refiner and importer to track the use of its diesel fuel to determine what percentage was used by railroads and marine vessels. This information could then be used in lieu of the PADD average values shown in Table IV-2. However, this approach would have to be taken by every refinery and importer to avoid double counting. Any new refineries or importers would still be assigned a locomotive and marine baseline from Table IV-2. Tracking diesel fuel use in this instance could be feasible, since the number of railroads and marine terminals is relatively small. We request comment on this alternative approach and details of how such an approach could be implemented.

c. Designate and Track Volumes in 2007

One main benefit of the proposed non-highway baseline approach is to allow 500 ppm highway and 500 ppm NRLM diesel fuel to be fungibly distributed while still ensuring achievement of the benefits of the highway program. In developing the proposal, several refiners recommended another possible approach, referred to here as the "designate and track" approach. It was suggested as a

replacement for the proposed non-highway baseline approach. After further discussion, a modified designate and track approach was also described as an alternative for refiners to choose from, in addition to the baseline and dye alternatives. We discuss both of these designate and track approaches below.

We invite comment on these designate and track approaches. However, we are not proposing them for a number of reasons as discussed in more detail below. We are concerned that such an approach could reduce the volume of 15 ppm fuel required to be produced under the highway program, eroding environmental benefits and calling into question availability of 15 ppm highway fuel. This concern is compounded by serious concerns with respect to the workability and enforceability of such a program, particularly if it is a replacement for the baseline approach. We are also concerned that such an approach would place too much burden on the many entities, including many small entities, in the distribution system. Unlike the situation with the existing highway diesel program, the downstream parties, not the refiners, would be liable if insufficient 15 ppm highway diesel fuel was produced and distributed. Finally, these concerns would appear to be reduced if the designate and track approach were to be allowed as a choice for refiners. However, it may then be of such limited usefulness that it is of little value and only adds program complexity. We are interested in comments describing how these concerns could be addressed in order to implement such an approach.