

volumes of undyed diesel fuel handled which are eventually dyed and which are sold undyed?

(8) What would be the cost associated with the tracking, record keeping and reporting?

(9) Could the industry utilize independent auditors to simplify EPA's enforcement oversight?

(10) Could refiners feasibly be responsible to ensure the necessary volumes are dyed downstream at the terminal rather than placing the responsibility and liability with the fuel distributors?

(11) What changes could be made to the program to avoid losing the benefits of the highway program (e.g., avoid loss in production of 15 ppm attributable to the spillover volume)?

#### ii. Designate and Track as a Refiner's Option in Addition to the Baseline Approach

Several refiners indicated that the designate and track approach should be considered as an option in addition to the baseline approach. Including the designate and track approach as a refiner's option, however, would significantly alter the design and implications of the approach.

With such an approach, no longer could compliance be determined simply on the basis of whether a terminal dyed at least as much volume of diesel fuel as the volume received designated as NRLM 500 ppm fuel, since the dyed diesel fuel could have been produced under either the non-highway baseline approach or the designate and track approach. In a situation where volumes produced under the designate and track approach are fungibly distributed with volumes produced under the baseline approach, there is no clear way to identify whether dyed volumes have been accurately reconciled under the designate and track approach, risking significant loss in the benefits expected from the highway program.

For example, assume a terminal receives a certain volume of undyed diesel fuel and 30% of it was originally designated by the refinery as NRLM under the designate and track approach. The remaining 70% would have been produced by refineries using the non-highway baseline approach. Some significant portion of the 70% produced by refineries under the baseline approach would have been produced subject to the 500 ppm standard for the NRLM market, not the standards for highway market, and produced with the expectation that it could later be dyed at the terminal. If the terminal dyes only 30% of the entire volume it receives, there is every expectation that some or

even all of that 30% could have been produced by refineries using the baseline approach, and should not be counted towards the volume reconciliation under the designate and track approach. If all of the 30% of dyed diesel fuel was produced by refineries using the baseline approach, then the terminal would have effectively sold into the highway market all of the fuel received as NRLM under the designate and track approach.

Thus, in order to allow for volumes to be reconciled using such an approach, we concluded that fuel distributors would have to track which refinery or importer the fuel came from and how they disposed of the fuel for that refinery or importer, in addition to whether it was NRLM or highway. Thus, allowing the designate and track approach as a refiner's option would add one more layer of complexity to the tracking, recordkeeping, and reporting.

The following example explains how the approach could work in theory. Over the course of a year, a terminal receives 6 million gallons of 500 ppm diesel fuel identified as baseline fuel from refinery A, 2 million gallons of 500 ppm diesel fuel designated as "designate and track" NRLM fuel from refinery B, and 2 million gallons of 500 ppm diesel fuel designated as "designate and track" highway fuel from refinery B. At the end of the year, the terminal would have had to have dyed at least 2 million gallons of the fuel it received from refinery B and delivered it to or on behalf of that refinery as dyed NRLM. (If they do not deliver the fuel back to the entity that designated the fuel, then the dyed fuel could have been baseline fuel from refinery A, and we could not enforce the dyeing of the designate and track fuel volume from refinery B.) The terminal would need to do this separately for each refinery or importer from which it received designate and track diesel fuel.

Based on the above discussion, we believe that in order to have an enforceable program, only those refineries and importers who maintain ownership of the fuel all the way through the pipeline and terminal could take advantage of the option to designate and track their fuel. This could be a very small subset of refiners since they would have to maintain ownership of all of their NRLM diesel fuel distributed through all of its distribution pathways to the point where the fuel is dyed. If this were a very small subset, then it would raise questions as to whether the flexibility of this approach would be worth the added program and enforcement complexity.

Since the pipelines and terminals in this situation are basically providing a service to these refineries and importers, transporting their fuel and dyeing it for them, a different responsibility and liability scheme could be considered. Instead of the fuel distributors being solely responsible for recordkeeping and reporting to the Agency and liable for any violations, it might be possible to leave this burden with the refiner. The refiner could be responsible for ensuring that they took delivery from a terminal of at least as much dyed NRLM diesel fuel as they sent undyed NRLM to that terminal from their refinery gate. The refiner would be responsible for collecting and maintaining the records from the various points in the distribution system to demonstrate compliance and to submit an annual report demonstrating compliance. At the same time EPA would have to be able to verify the refiner's report and as a result, fuel distributors may still have to maintain records.

For the baseline approach to exist simultaneously with the designate and track approach, a refinery or importer would have to choose which approach to utilize and maintain that approach. We could consider allowing the refinery to change approaches on a year to year basis, as with the baseline and dye alternatives.

EPA requests comment on the designate and track approach as a refinery's option and whether it could be enforced as described above. EPA specifically requests comment on:

(1) The advantages and disadvantages of placing the recordkeeping, reporting, and liability burden on the refinery of the designate and track approach if it is an option along with baseline approach;

(2) If this responsibility were not place on the refiners, what level of voluntary participation would occur among fuel distributors (e.g., pipelines and terminals) and how might EPA structure a viable enforcement oversight program;

(3) What level of voluntary refinery participation would occur and whether it warrants the added program complexity;

(4) The extent to which this approach might reduce 15 ppm highway diesel production (i.e., reduced spillover to non-highway markets)

(5) What would be the cost associated with the tracking, record keeping and reporting?