

small refiner and refiner hardship provisions);

- Reporting requirements;
- Exemptions from the program; and
- Provisions concerning liability, defenses, and penalties for noncompliance.

A. Fuel Covered and Not Covered by this Proposal

1. Covered Fuel

As discussed in section IV.A.1 above, this proposed standards generally cover all the diesel fuel that is intended or likely to be used in nonroad, locomotive, and marine (NRLM) applications that is not already covered by the standards for highway diesel fuel. For the purposes of this preamble, this fuel is defined primarily by the type of engine which it is used to power: land-based nonroad, locomotive, and marine diesel engines.

2. Special Fuel Provisions and Exemptions

Section IV.A.1 above also describes several types of petroleum distillate that are not covered by this proposal, including jet fuel and heating oil. In addition, the next paragraphs discuss several provisions and exemptions for nonroad diesel fuel that we propose to apply in special circumstances.

a. Fuel Used in Military Applications

We propose to treat NRLM diesel fuel used in military applications in the same manner as the recent highway diesel rule. We propose to define NRLM diesel fuel so that JP-5 and JP-8 military fuel that is used or intended for use in NRLM diesel engines would be subject to all of the requirements applicable to NRLM diesel fuel. However, we also propose to exempt JP-5 and JP-8 fuels from the proposed diesel fuel content and other requirements in certain circumstances. First, these fuels would be exempt if they were used in tactical military equipment that have a national security exemption. Due to national security considerations, EPA's existing regulations allow the military to request and receive national security exemptions (NSE) for their NRLM diesel engines from emissions regulations if the operational requirements for such engines warrant such an exemption. This proposal would not change these provisions. Second, these fuels would also be exempt if they were used in tactical military equipment that is not covered by a national security exemption but for national security reasons, needs to be fueled on the same fuel as motor vehicles or nonroad equipment with a national security

exemption such as the need to be ready for immediate deployment overseas. Use of JP-5 and JP-8 fuel not meeting the proposed NRLM diesel fuel standards in a NRLM diesel engine other than the tactical military equipment described above would be prohibited under today's rule.

EPA and the Department of Defense will develop a process to address the tactical nonroad equipment to be covered by the diesel fuel exemption. Based on data provided by the Department of Defense to date in the context of implementing a similar exemption provision in the highway program, EPA believes that providing an exemption for JP-5 and JP-8 fuel used in tactical nonroad equipment would not have any significant environmental impact.

b. Fuel Used in Research and Development

This proposed rule would permit parties to request an exemption from the sulfur or other standards for NRLM diesel fuel used for research, development and testing purposes ("R & D exemption"). We recognize that there may be legitimate research programs that require the use of diesel fuel with higher sulfur levels than allowed under this proposed rule. As a result, this proposal contains provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling, or dispensing NRLM diesel fuel that exceeds the standards, where such diesel fuel is necessary to conduct a research, development, or testing program.

Under the proposed rule, parties seeking an R & D exemption would be required to submit an application for exemption to EPA that describes the purpose and scope of the program, and the reasons why higher-sulfur diesel fuel is necessary. Upon presentation of the required information, an exemption could be granted at the discretion of the Administrator, with the condition that EPA could withdraw the exemption in the event the Agency determines the exemption is not justified. In addition, an exemption based on false or inaccurate information could be considered void ab initio. Fuel subject to an exemption would be exempt from certain provisions of this proposed rule, including the sulfur standards, provided certain requirements are met. These requirements include the segregation of the exempt fuel from non-exempt NRLM and highway diesel fuel, identification of the exempt fuel on product transfer documents, pump labeling, and where appropriate, the replacement, repair, or removal from service of emission

systems damaged by the use of the high sulfur fuel.

c. Fuel Used in Racing Equipment

This proposed rule would provide no exemption from the sulfur or other content standard and other requirements of the proposal for diesel fuel used in racing. Under certain conditions, racing vehicles would not be considered nonroad vehicles. *See*, for example, 40 CFR 89.2, definition of "nonroad vehicle". The fuel used by such racing vehicles would not necessarily be considered nonroad diesel fuel. However, we believe that there is a realistic chance that such fuel also could be used in NRLM equipment, and therefore, should be considered NRLM diesel fuel. During the highway diesel rulemaking, we received no comments supporting the need for an exemption for racing fuel. We are not aware of any advantage for racing vehicles or racing equipment to use fuel having higher sulfur levels than are required by this proposed rule, and we are concerned about the potential for misfueling of nonroad equipment and motor vehicles that could result from having a high sulfur (*e.g.*, 3,400 ppm) fuel for vehicle or nonroad equipment available in the marketplace. Consequently, as was the case with the highway diesel rule, this proposal does not provide an exemption from the nonroad diesel fuel requirements for fuel used in racing vehicles or equipment.

d. Fuel for Export

Fuel produced for export, and that is actually exported for use in a foreign country, would be exempt from the fuel content standards and other requirements of this proposed rule, such as the non-highway baseline provisions. Such fuel would be considered as intended for use in the U.S. and subject to the proposed standards unless it was designated by the refiner as for export only and product transfer documents stated that the fuel was for export only. Fuel intended for export would need to be segregated from all fuel intended for use in the U.S., and distributing or dispensing such fuel for domestic use would be illegal.

B. Additional Requirements for Refiners and Importers

The primary requirements proposed today for refiners and importers are discussed in Section IV above. In that section, we discuss the general structure of the compliance and enforcement provisions applicable to refiners and importers, including fuel content standards, baseline provisions, and credit provisions. In this subsection, we discuss several additional requirements