

We are also concerned about potential misfueling of engines requiring 15 ppm fuel at retail or wholesale purchaser-consumer facilities as defined under this proposal, or other end-user facilities, even when segregation of 15 ppm fuel from the higher-sulfur grades of diesel fuel has been maintained in the distribution system. Thus, downstream compliance and enforcement provisions of the proposed rule are aimed at both preventing contamination of nonroad diesel fuel subject to the 15 ppm sulfur standard and preventing misfueling of new nonroad equipment.

As proposed in Section IV above, small refiners would be able to continue to produce 500 ppm nonroad fuel, until June 1, 2014. Other refiners could also produce fuel under the 500 ppm nonroad standard, through the use of credits, but only until June 1, 2012. In either case, we are proposing that during this period the 500 ppm fuel must be segregated from 15 ppm nonroad fuel throughout the distribution system, including the end user. We are also proposing that refiners and importers wishing to distribute 500 ppm nonroad diesel fuel during this period be required to petition the Agency for approval of a plan demonstrating the segregation of such fuel. The plan would also be required to include a quality assurance program that would ensure that the 500 ppm fuel would not cause fuel subject to the 15 ppm standard to be contaminated, and to ensure that model year 2011 and later nonroad diesel engines would not be misfueled.

As discussed in section IV above, we propose that during this period, locomotive and marine fuel be segregated using the same marker as was used for heating oil before June 1, 2010. During this time, heating oil would not be marked but would be segregated based on its sulfur content, since no other fuel could exceed 500 ppm.

#### c. After May 31, 2014

After all regulatory flexibilities have expired, the three remaining fuels (15 ppm highway and nonroad fuel, 500 ppm locomotive and marine fuel, and heating oil) would be segregated based on their sulfur content and identifying information on product transfer documents.

## 2. Diesel Fuel Pump Labeling To Discourage Misfueling

For any multiple-fuel program like the two-step program proposed today, we believe that the clear labeling of nonroad diesel fuel pumps would be vital so that end users could readily distinguish between the several grades of fuel that may be available at fueling

facilities, and properly fuel their nonroad equipment. Section VII above describes the labels that manufacturers would be required to place on model year 2011 and later nonroad equipment, and information that would be provided to nonroad equipment owners. Today's proposal includes requirements for labeling fuel pump stands at retail facilities, including bulk plants or portable fuel storage facilities used as a fueling facility, and wholesale purchaser-consumer facilities.

To help prevent misfueling of nonroad, locomotive and marine engines, and to thus assure the environmental benefits of the program are realized, we are proposing pump labeling requirements similar to those adopted in the highway diesel rule (40 CFR 80.570). These labels would apply to diesel fuel dyed for tax purposes, and thus generally could not be used in highway vehicles. The proposed fuel pump dispenser labeling requirements would supersede the non-highway labeling requirement established by the highway diesel rule on June 1, 2007. These pump dispenser labeling requirements are discussed separately for each of four time periods: Beginning June 1, 2006, June 1, 2007–August 31, 2010; September 1, 2010–August 31, 2014; and September 1, 2014 forward.

We are also proposing to amend the pump dispenser labeling language in the highway diesel regulations for consistency with this proposal. Because the highway diesel rule prohibits highway diesel fuel with sulfur levels above 500 ppm, the highway diesel rule and this proposal have different meanings for the terms “low sulfur” and “high sulfur”, and the highway diesel rule does not use the term “ultra low-sulfur.” Further, because the highway diesel rule did not need to categorize the different uses of non-highway diesel fuel, the highway diesel rule and this proposal have different meanings for the term “nonroad”.<sup>321</sup> The proposed amendments to the highway pump dispenser labeling language are to avoid confusion at the fuel pumps caused by labels with terms that would otherwise have different meanings depending on whether the pump dispenser is

<sup>321</sup> In the highway diesel rule, the term “high-sulfur” means diesel fuel with a sulfur level greater than 15 ppm, whereas in this proposal it means diesel fuel with a sulfur level greater than 500 ppm. In the highway diesel rule, the term “low-sulfur” means diesel fuel with a sulfur level of no greater than 15 ppm, whereas in this proposal it means diesel fuel with a sulfur level of no greater than 500 ppm. In addition, the term “nonroad” as used in the highway diesel rule means “non-highway” (i.e., all fuel that is not highway fuel), but the term “nonroad” as used in this proposal excludes locomotive diesel, marine diesel and heating oil.

designated to dispense highway or non-highway diesel fuel. We are also proposing to add effective dates to each paragraph of the labeling provisions of the highway diesel rule for consistency with the additional pump labeling sections of this proposal, and to distinguish the non-highway labeling requirement effective June 1, 2006 under the highway diesel rule from the non-highway labeling requirements of this proposal effective 2007.

#### a. Pump Labeling Requirements for 2006

We propose to amend the pump dispenser labeling language of the highway diesel rule for consistency with this proposal, and to avoid confusion at the fuel pumps caused by labels with terms that would otherwise have different meanings depending on whether the pump dispenser is dispensing highway or non-highway diesel fuel.

For pumps dispensing highway diesel fuel subject to the 500 ppm sulfur standard of § 80.520(c), we propose that the label read as follows:

### **LOW-SULFUR HIGHWAY DIESEL FUEL (500 ppm Maximum)**

#### **WARNING**

May damage model year 2007 and later highway vehicles and engines.

Federal Law *prohibits* use in these vehicles

For pumps dispensing highway diesel fuel subject to the 15 ppm sulfur standard of § 80.520(a)(1), we propose that the label read as follows:

### **ULTRA LOW-SULFUR HIGHWAY DIESEL FUEL (15 ppm Maximum)**

Recommended for use in all diesel vehicles and engines.

*Required* for model year 2007 and later highway diesel vehicles and engines.

For pumps dispensing diesel fuel for non-highway equipment that does not meet the standards for motor vehicle diesel fuel, we propose that the label read as follows:

### **NON-HIGHWAY DIESEL FUEL (May Exceed 500 ppm Sulfur)**

#### **WARNING**

May damage or destroy highway engines and their emission controls.

Federal Law *prohibits* use in any highway vehicle or engine

#### b. Pump Labeling Requirements for 2007–2010

As discussed in section IV of the preamble, between June 1, 2007 and August 31, 2010, this proposal would