

oil, into the fuel delivery systems of nonroad equipment engines manufactured in model year 2011 and later. The only exception to this would be where the engine was explicitly certified to the emission standard with used motor oil added and the oil was added in a manner consistent with the certification.

#### 4. Use of Kerosene in Diesel Fuel

As we discussed in the highway diesel final rule, kerosene is commonly added to diesel fuel to reduce fuel viscosity in cold weather (see 66 FR 5120, January 18, 2001). This proposal would not limit this practice with regard to 500 ppm NRLM diesel fuel. However the resulting blend would still be subject to the 500 ppm sulfur standard. Consistent with the highway diesel fuel rule, kerosene that is used, intended for use, or made available for use as, or for blending with, 15 ppm sulfur nonroad diesel fuel would itself be required to meet the 15 ppm standard starting June 1, 2010 and must be itself classified as "nonroad diesel fuel" unless it was already classified as "motor vehicle diesel fuel." This classification as nonroad diesel fuel use could be made by the kerosene fuel's refiner or could be made by a downstream party at the point when that party chooses to use the kerosene in its possession for use as nonroad diesel fuel subject to the 15 ppm sulfur standard.

To help ensure that only distillates that comply with the proposed 15 ppm nonroad diesel fuel standard are blended into 15 ppm nonroad diesel fuel, this proposal would require that kerosene meeting the 15 ppm standard and distributed by the transferring party for use in nonroad equipment engines must be accompanied by PTDs accurately stating that the product meets the 15 ppm sulfur standard. (See Section VIII.E.7, below.)

As a general matter, any party who would blend kerosene, or any blendstock, into nonroad diesel fuel, or who would produce nonroad diesel fuel by mixing blendstocks, would be a refiner and would be subject to the requirements and prohibitions applicable to refiners under the proposed rule. However, under this proposal, in deference to the longstanding and widespread practice of blending kerosene into diesel fuel at downstream locations, downstream parties who only blend kerosene into nonroad diesel fuel will not be subject to the requirements applicable to other refiners, provided that they do not alter the fuel in any other way. This activity

is treated the same way under the final highway diesel rule.

In order to ensure the continued compliance of 15 ppm fuel with the 15 ppm standard, downstream parties choosing to blend kerosene into 15 ppm nonroad diesel fuel would be required to either have a PTD for that kerosene indicating compliance with the 15 ppm standard, or to have test results for the kerosene establishing such compliance. Further, downstream parties choosing to blend kerosene into 15 ppm nonroad diesel fuel would be entitled to the 2 ppm adjustment factor discussed above for both the kerosene and the diesel fuel into which it is blended at downstream locations, provided that the kerosene had been transferred to the party with a PTD indicating compliance with that standard. Sulfur test results from downstream locations of parties who do not have such a PTD for their kerosene will not be subject to this adjustment factor, either for the kerosene itself, or for the nonroad diesel fuel into which it is blended.

Any party who causes the sulfur content of nonroad diesel fuel subject to the 15 ppm sulfur standard to exceed 15 ppm by blending kerosene into nonroad diesel fuel, or by using high sulfur kerosene as nonroad diesel fuel, would be subject to liability for violating the sulfur standard. Similarly, parties who cause the sulfur level of nonroad diesel fuel subject to the 500 ppm nonroad diesel fuel to exceed that standard by blending kerosene into the fuel, would also be subject to liability.

The proposed rule would not require refiners or importers of kerosene to produce or import kerosene meeting the 15 ppm sulfur standard. However, we believe that refiners will produce low sulfur kerosene in the same refinery processes that they use to produce low sulfur diesel fuel, and that the market will drive supply of low sulfur kerosene for those areas where, and during those seasons when, the product is needed for blending with nonroad, as well as highway, diesel fuel. We request comments regarding this proposed provision.

#### 5. Use of Diesel Fuel Additives

Diesel fuel additives include lubricity improvers, corrosion inhibitors, cold-operability improvers, and static dissipaters. Use of such additives is distinguished from the use of kerosene by the low concentrations at which they are used and their relatively more complex chemistry.<sup>323</sup> The suitability of

diesel fuel additives for use in diesel fuel meeting a 500 ppm sulfur specification has been well established due to the existence of 500 ppm highway diesel fuel in the marketplace since 1993. The suitability of additives for use in 15 ppm diesel fuel was addressed in the highway diesel program, which requires highway diesel fuel to meet a 15 ppm sulfur standard beginning in 2006. Our review of data submitted by additive and fuel manufacturers to comply with EPA's Fuel and Fuel Additive Registration requirements indicates that additives to meet every purpose, including static dissipation, are currently in common use which meet a 15 ppm cap on sulfur content.<sup>324</sup> Since such low-sulfur additives are currently in use side-by-side with high-sulfur additives, it is reasonable to conclude that there is not a significant difference in their cost. The ability of industry to provide low-sulfur additives is supported by the fact that diesel fuel meeting a 10 ppm cap on sulfur content has been marketed in Sweden for some time and is beginning to be marketed in other countries such as Germany. Fifteen ppm diesel fuel is also being made available to a number of centrally fueled fleets across the U.S.

Even if not yet available for certain purposes, we believe that it is reasonable to assume that low-sulfur additives will become available before the 15 ppm sulfur standard for highway diesel fuel becomes effective in 2006. This will be well in advance of the proposed 2010 implementation date for a 15 ppm sulfur standard on nonroad diesel fuel.

As discussed in section V of today's preamble, we expect that reducing the sulfur content of NRLM diesel fuel to meet proposed sulfur standards would not have a disproportionate impact on fuel lubricity compared to the reduction in lubricity associated with desulfurizing highway diesel fuel. We have no reason to expect that this situation would be any different with respect to the potential impact on nonroad diesel fuel properties other than fuel lubricity which might require the use of additives such as cold flow, and susceptibility to static build up. Consequently, our estimate of the increase in additive use that would

formulated polymers and other complex chemical components. Kerosene is used at much higher concentrations, expressed in volume percent. Unlike diesel fuel additives, kerosene is a narrow distillation fraction of the range of hydrocarbons normally contained in diesel fuel.

<sup>324</sup> See Chapter IV.D. of the RIA for the highway diesel fuel rule for more information on diesel fuel additives, EPA Air docket A-99-06, docket item V-B-01. Also See 40 CFR part 79.

<sup>323</sup> Diesel fuel additives are used at concentrations commonly expressed in parts per million. Diesel fuel additives can include specially-