

4. Applying for a Non-Highway Distillate Baseline Percentage

As discussed in section IV above, we are proposing that refiners or importers wishing to fungibly distribute highway and NRLM fuel from any refinery or import facility apply to EPA for a non-highway baseline percentage for each such refinery or facility. Refiners or importers would provide EPA with data to quantify its annual average production or importation of distillate that was dyed for use in any non-highway application for each year during the period from January 1, 2003 through December 31, 2005. Specifically, this data would consist of the following for each batch of diesel fuel during this period:

- The date the refiner finished production of the batch
- The volume of the batch
- Whether the fuel in the batch was dyed

We propose that applications for non-highway baselines be submitted to EPA by February 28, 2006. We would act on these baselines by June 1, 2006, in time for the refiner or importer to earn early credits if they wished.

5. Pre-Compliance Reports

We believe that an early general understanding of the progress of the refining industry in complying with the proposed requirements would be valuable to both the affected industries and EPA. As with the highway diesel program, we propose that each refiner and importer provide annual reports on the progress of and plans for each of their refineries or import facilities. These pre-compliance reports would be required by June 1 of each year beginning in 2005 and continuing up through 2010, or until the entity produced or imported any 15 ppm nonroad fuel, whichever is later.

EPA would maintain the confidentiality of information submitted in pre-compliance reports to the full extent authorized by law. We would report generalized summaries of this data following the receipt of the pre-compliance reports. We recognize that plans may change for many refiners or importers as the compliance dates approach. Thus, submission of the report would not impose an obligation to follow through on plans projected in the pre-compliance reports.

Pre-compliance reports could, at the discretion of the refiner/importer, be submitted in conjunction with the annual compliance reports proposed below and/or the pre-compliance and annual compliance reports required under the highway diesel program, so

long as all information required in all reports is clearly provided.

In their pre-compliance reports, refiners and importers would need to include the following information:

- Any changes in their basic corporate or facility information since registration.
- Estimates of the volumes (in gallons) of each sulfur grade of highway and non-highway fuel produced (or imported) at each refinery (or facility). These volume estimates would be provided both for fuel produced from crude oil, as well as any fuel produced from other sources.
- For entities expecting to participate in the credit program, estimates of numbers of credits to be earned and/or used.
- Information regarding engineering plans such as design and construction, the status of obtaining any necessary permits, and capital commitments for making the necessary modifications to produce low sulfur nonroad diesel fuel, and actual construction progress.
- The pre-compliance reports in 2006 and later years must provide an update of the progress in each of these areas.

6. Annual Compliance Reports and Batch Reports for Refiners and Importers

After the nonroad diesel sulfur requirements begin on June 1, 2007, refiners and importers would be required to submit annual compliance reports for each refinery that demonstrated compliance with the proposed requirements. If a refiner produces 15 ppm or 500 ppm fuel early under the credit provisions, its annual compliance reporting requirement would begin on June 1 following the beginning of the early fuel production. These reporting requirements would sunset after all flexibility provisions end (i.e., 2012 for non-small refiners and 2014 for small refiners). Annual compliance reports would be due on August 31 of the year.

A refiner's (for each refinery) or importer's annual compliance report would include the following information:

- Report demonstrating compliance with the applicable sulfur content requirements using the non-highway baseline percentage approach or demonstrating compliance using an alternative compliance option *e.g.*, a small refiner option or the option to dye all nonroad, locomotive/marine diesel fuel at the refinery, as applicable.
- Report on the generation, use, transfer and retirement of diesel sulfur credits. Credit transfer information would include the identification of the

number of credits obtained from, or transferred to, each entity. Reports would also show the credit balance at the start of the period, and the balance at the end of the period. NRLM or nonroad diesel sulfur credit information would be required to be stated separately from highway diesel credit information since the 2 credit programs would be treated separately.

- Batch reports for each batch produced or imported providing information regarding volume, sulfur level, cetane/aromatics standard compliance and whether the fuel was dyed and/or marked. The certification that fuel was marked with the specified chemical marker at the refinery or import facility would apply to heating oil for the period June 1, 2007 through June 1, 2010 and to locomotive and marine fuel for the period June 1, 2010 through June 1, 2014.

- For a small refiner that elects to produce 15 ppm nonroad diesel fuel by June 1, 2006 and therefore is eligible for a limited relaxation in its interim small refiner gasoline sulfur standards, the annual reports would also include specific information on gasoline sulfur levels and progress toward highway and nonroad diesel desulfurization.

7. Product Transfer Documents (PTDs)

Today we are proposing that refiners and importers must provide information on commercial PTDs that would identify diesel fuel distributed for use in nonroad, locomotive, or marine equipment or motor vehicles, as appropriate, and state which sulfur standard the fuel is subject to. PTDs must state whether NRLM fuel complies with the 500 ppm sulfur standard or the 15 ppm sulfur standard. This would continue to be necessary even after 2010, since locomotive and marine engines could still use 500 ppm diesel fuel after all nonroad equipment would have to use 15 ppm fuel. Until all highway fuel sulfur content must meet the 15 ppm sulfur standard in 2010, it would be necessary for PTDs to indicate if 500 ppm fuel is dyed or undyed, and in all cases, PTDs would need to indicate if 15 ppm fuel is dyed or undyed, so that its appropriate use can be determined by transferees. Moreover, some nonroad diesel fuel, such as segregated small refiner fuel, could exceed the 15 ppm standard until as late as August 31, 2014; however, it could only be used in model year 2010 and earlier nonroad diesel engines.

We believe this additional information on commercial PTDs is necessary because of the importance of keeping the several sulfur grades and uses of diesel fuel separate from one