

another in the distribution system. Each party in the system would better be able to identify which type of fuel it is dealing with and could more effectively ensure that they were meeting the proposed requirements of the program. This in turn would help ensure that misfueling of sulfur sensitive engines does not occur and that the program would otherwise result in the needed emission reductions.

Except for transfers to truck carriers, retailers and wholesale purchaser-consumers, this proposal would allow use of product codes to convey the information. We believe that more explicit language on PTDs to these parties is necessary since employees of such parties are less likely to be aware of the meaning of product codes. PTDs would not be required for transfers of product into nonroad, locomotive, or marine equipment at retail outlets or wholesale purchaser-consumer facilities.

a. The Period From June 1, 2007 through May 31, 2010

During the first years of the program, unique PTDs would be required to distinguish the types of fuel that could be produced and sold and any restrictions on its use³⁴¹:

- Undyed 500 ppm fuel.
- Undyed 15 ppm fuel.
- Dyed 500 ppm fuel (not for use in highway vehicles).
- Dyed 15 ppm fuel (not for use in highway vehicles).
- Dyed high-sulfur fuel (not for use in highway vehicles or certain nonroad engines).
- Marked heating oil (not for use in NRLM equipment or highway vehicles).

b. The Period from June 1, 2010 through May 31, 2014

Beginning June 1, 2010, unique PTDs would be required to distinguish the types of fuel that could be produced and sold during this period:

- Undyed 15 ppm.
- Dyed 15 ppm fuel (not for use in highway vehicles).
- Dyed 500 ppm fuel (not for use in model year 2011 and later nonroad engines, or highway vehicles).
- Marked 500 ppm locomotive and marine fuel (not for use in nonroad equipment or highway vehicles).
- Heating oil (not for use in NRLM equipment or highway vehicles).

c. The Period After May 31, 2014

Beginning June 1, 2014, unique PTDs would be required to distinguish

remaining types of fuel that could be produced and sold during this period.

- Undyed 15 ppm fuel.
- Dyed 15 ppm fuel (not for use in highway vehicles).
- 500 ppm locomotive and marine fuel (not for use in nonroad equipment or highway vehicles).
- Heating oil (not for use in highway vehicles or NRLM equipment).

d. Kerosene and Other Distillates To Reduce Viscosity

To assure that downstream parties can determine the sulfur level of kerosene or other distillates that may be distributed for use for blending into 15 ppm highway or NRLM diesel fuel, e.g. to reduce viscosity in cold weather, this proposal would require that PTDs identify distillates specifically distributed for such use as meeting the 15 ppm standard.

e. Exported Fuel

Consistent with other fuels rules, NRLM diesel fuel to be exported from the U.S. would not be required to meet the sulfur content requirements of the proposed regulations. For example, where a refiner designates a batch of diesel fuel for export, and can demonstrate through commercial documents that the fuel was exported, that volume would not be used in calculating compliance with applicable baselines. Product transfer documents accompanying the transfer of custody or title to such fuel at each point in the distribution system would be required to state that the fuel is for export only and may not be used in the United States.

f. Additives

This proposal would require that PTDs for additives for use in nonroad diesel fuel state whether the additive complies with the 15 ppm sulfur standard. Like the highway diesel rule, this proposal would allow the sale of additives, for use by fuel terminals or other parties in the diesel fuel distribution system, that have a sulfur content greater than 15 ppm under specified conditions.

Under this proposal for additives that have a sulfur content not exceeding 15 ppm, the PTD would state: "The sulfur content of this additive does not exceed 15 ppm." For additives that have a sulfur content exceeding 15 ppm, the additive manufacturer's PTD, and PTDs accompanying all subsequent transfers, would provide: a warning that the additive's sulfur content exceeds 15 ppm; the maximum sulfur content of the additive; the maximum recommended concentration for use of the additive in

diesel fuel, stated as gallon of additive per gallon of diesel fuel; and the increase in sulfur concentration of the fuel the additive will cause when used at the maximum recommended concentration.

We are also proposing provisions for additives sold to owner/operators for use in diesel powered nonroad equipment. This is because of the concern that additives designed for engines not requiring 15 ppm sulfur content fuel, such as locomotives or marine engines, could accidentally be introduced into nonroad engines if they have no label stating appropriate use. Under this proposal, end user additives for use in highway or NRLM diesel engines would be required to be accompanied by information that states that the additive either: complies with the 15 ppm sulfur content requirements or that it has a sulfur content exceeding 15 ppm and is not for use in model year 2011 or later nonroad diesel equipment. We believe this information is necessary for end users to determine if an additive is appropriate for nonroad equipment use.

8. Recordkeeping Requirements

Under the highway rule, refiners that produce or importers that import highway diesel fuel must maintain the following records for each batch of diesel fuel produced or imported) The batch designations; the applicable sulfur content standard; whether the fuel is dyed or undyed; whether the fuel is marked or unmarked; the batch volumes; whether the fuel was dyed or undyed, and sampling and testing records. The refiner or importer would also be required to maintain records regarding credit generation, use, transfer, purchase, or termination, separately for highway and nonroad credit programs.

We propose that these requirements from the highway rule be applied to all nonroad, locomotive, and marine diesel fuel subject to this rule as well.

9. Record Retention

This proposal would adopt a retention period of 5 years for all records required to be kept by the rule. This is the same period of time required in other fuels rules, and it coincides with the applicable statute of limitations. We believe that for other reasons, most parties in the distribution system would maintain some or all of these records for this length of time even without the requirement.

This retention period would apply to PTDs, records of any test results performed by any regulated party for quality assurance purposes or otherwise

³⁴¹ Note that for each time period discussed in this subsection, we expect few if any areas would be supplied with all the potential types of fuel listed.