pollutants based on changing ambient conditions. This issue was also discussed in the October 29, 1999 proposal (64 FR 58472). You should read that discussion and the comments that we received in response to that proposal.

VIII. Requirements for Refiners, Importers, and Fuel Distributors

A. Compliance and Enforcement

1. Overview

The proposed rule would create a national, industry-wide sulfur cap standard for highway diesel fuel of 15 ppm. This standard could be enforced through sampling and testing at all points in the distribution system, combined with inspection of fuel delivery records and other commercial documents. The compliance requirements of this proposed rule would thus be very similar to the current diesel sulfur rule, except that the sulfur standard would be substantially more stringent.[169] Since the 15 ppm cap would be the maximum acceptable sulfur level at the retail level, pipelines might set more stringent refiner specifications to account for test variability and contamination. See section VIII.A.2 for a discussion of the refinery level standard and enforcement testing.

Under the proposed rule, all parties in the distribution system would continue to be subject to the current diesel fuel requirements and prohibitions concerning aromatics and cetane (40 CFR 80.29(a)). Furthermore, until the proposed implementation dates, all of the requirements and prohibitions of the presently effective diesel fuel control rule will remain in effect with the limited modification concerning sulfur test methods as discussed in section VIII.A.4.

Diesel fuel not covered by today's proposed rule includes that used for off-highway mobile source purposes such as aircraft, off-road machinery and equipment, locomotives, boats and marine vessels, and for stationary source purposes such as utilities (electrical power generation), portable generators, air compressors, steam boilers, etc. Also excluded is highway diesel fuel exported for sale outside the United States and its territories, and that specified for research and development subject to certain restrictions. Today's proposal would allow the use of used motor oil in pre-2007 model year and specially certified 2007 and later model year highway engines subject to certain restrictions (see section VIII.A.3.b).

[169] 40 CFR 80.29–80.30.

It should be noted that, while this preamble uses the common vernacular ''highway diesel fuel,'' the terminology used in the proposed regulations refers to ''motor vehicle diesel fuel'' in order to be consistent with the definitions and authorities under the Clean Air Act (see sections 202(a), 211(c), and 216(2)). The definition of ''motor vehicle diesel fuel'' clarifies that nonroad engines and nonroad vehicles are not motor vehicles or motor vehicle engines. This is intended to clarify the definition. Diesel fuel that is available for use by both motor vehicles and engines and nonroad vehicles and engines would be treated as motor vehicle diesel fuel and still subject to the low sulfur diesel standard. For example, a diesel fuel pump used by nonroad equipment and motor vehicles must carry diesel fuel meeting the low sulfur diesel fuel requirements for motor vehicles.

2. What Are the Requirements for Refiners and Importers?

a. General Requirements

The sulfur sensitivity of emission controls on model year 2007 and later vehicles requires that the sulfur content of diesel fuel at the retail pump must not exceed 15 ppm (see section III). Thus, the proposed rule would require refiners and importers, and all other parties in the distribution system, to comply with the industry-wide sulfur cap standard of 15 ppm for all highway diesel fuel, unless specifically exempted (see sections VIII.A.6 and 7).

Under the proposed approach, there would be no published enforcement test tolerance. If an enforcement test tolerance were allowed, a more stringent refinery level sulfur standard would be required to ensure the proposed 15 ppm retail level cap is attained. We expect that the diesel fuel refining and distribution industry would establish appropriate upstream commercial specifications to ensure the 15 ppm standard is met downstream. These parties are in the best position to determine what the refinery level commercial specifications need to be, and they are in control of the means to achieve those specifications. Further, they may take advantage of improvements over time in testing precision and contamination prevention measures to adjust their operations to minimize costs. However, we recognize that because of concerns about test variability and contamination in the fuel distribution system, pipelines may set sulfur specifications that would be more stringent than the regulatory standard.[170]

As discussed below, we are not proposing that refiners or importers engage in mandatory sampling and testing of every batch of diesel fuel they produce or import under the proposed industry-wide sulfur cap program. However, if some approach is finalized other than what has been proposed, then every-batch testing by refiners and importers, and associated recordkeeping and reporting requirements, may be necessary.

b. Dyes and Markers

Under the federal tax code requirements and the current EPA diesel fuel rule, diesel fuel intended for highway use can generally be distinguished by its color from fuel intended for off-highway use.[171] The current EPA diesel fuel regulations, at 40 CFR 80.29(b), provides that any diesel fuel that does not show visible evidence of dye solvent red 164 (which has a characteristic red color in fuel) is considered to be available for use as diesel highway fuel and is subject to the requirements and prohibitions associated with diesel highway fuel. However, under the tax code, highway diesel fuel sold for certain tax exempt uses may also be dyed red. Therefore, some red-dyed diesel fuel is legal highway fuel under the EPA diesel fuel rule.

Diesel fuel for off-highway use would continue to be dyed red under today's proposal, except in Alaska (see section VI.C). We do not believe that any additional dye requirement is needed to enhance compliance or enforcement effectiveness of the proposed rule.

3. What Requirements Apply Downstream?

a. General Requirements

Due to the adverse effects of diesel fuel containing more than 15 ppm sulfur on model year 2007 and later vehicles, as discussed in section III, diesel fuel at all levels of the distribution system would be required to meet the 15 ppm standard. The proposed rule would stagger the implementation dates for compliance with the standard, based on a facility's position in the distribution system as a refiner, distributor, or retailer. As with other fuels programs, EPA enforcement personnel would sample and test for compliance with

[170] See section IV.D. regarding the anticipated sulfur level at the refinery gate necessary to accommodate variability in production, variability in the proposed sulfur measurement procedure (discussed in detail in section VII.A.), and contamination in the distribution system.

[171] See section 4082 of the Internal Revenue Code.

this downstream standard at all points in the distribution system. Under the proposed presumptive liability scheme, if a violation is found at any point in the distribution system, all parties in the distribution system for the fuel in violation are responsible unless they can establish a defense. See section VIII.A.8 regarding liability, penalty and defense provisions.

Under the proposed diesel sulfur program, it is imperative that distribution systems segregate highway diesel fuel from high sulfur distillate products such as home heating oil and nonroad diesel fuel. The sulfur content of those products is frequently as high as 3,000 ppm. Our concern extends to potential misfueling at retail outlets and wholesale purchaser-consumer facilities, even if segregation of the different grades of diesel fuel has been maintained in the distribution system.

Misfueling model year 2007 and later diesel vehicles with higher sulfur fuel could severely damage their emission controls and cause driveability problems. In order to discourage accidental misfueling of highway vehicles with higher sulfur distillates such as nonroad diesel fuel we are proposing that these fuel pumps be labeled. The proposed rule would require that retailers and wholesale purchaser-consumers selling or dispensing nonroad diesel fuel or other high sulfur distillates in addition to highway diesel fuel must label any dispensers of this higher sulfur fuel. The label would have to indicate that the fuel is high sulfur and state that the fuel is illegal for use in motor vehicles.

All parties in the distribution system would be subject to prohibitions against selling, transporting, storing, or introducing or causing or allowing the introduction of diesel fuel having a sulfur content exceeding 15 ppm into highway diesel vehicles. Certain product transfer document (PTD) information requirements would apply to all parties in the distribution system. See section VIII.A.5.

b. Use of Used Motor Oil in Diesel-Fueled New Technology Vehicles

We are aware of the practice of disposing of used motor oil by blending it with diesel fuel for use as fuel in diesel vehicles. Such practices range from dumping used motor oil directly into the vehicle fuel tank, to dumping it into the fuel storage tanks, to blending small amounts of motor oil from the vehicle crank case into the fuel system as the vehicle is being operated. To the extent such practices could cause vehicles to exceed their emissions standards, the person blending the oil, or causing or permitting such blending, could be considered to be rendering emission controls inoperative in violation of section 203 of the CAA and potentially liable for a civil penalty.[172]

With today's proposal our concerns with this practice are increased considerably. Today's formulations of motor oil contain very high levels of sulfur. Depending on how the oil is blended, it could increase the sulfur content of the fuel burned in the vehicle by as much as 200 ppm. As discussed elsewhere in this notice, we believe this practice would render inoperative not only the emission control technology on the vehicle, but potentially render the vehicle undriveable as well. Therefore, in today's notice we are proposing to prohibit any person from introducing or causing or allowing the introduction of used motor oil, or diesel fuel containing used motor oil, into the fuel delivery systems of vehicles manufactured in model year 2007 and later. The only exception to this would be where the engine is explicitly certified to the emission standard with oil added, the oil is added in a manner consistent with the certification, and the sulfur level of the oil is representative of commercially available oils. Today's proposal would not change existing requirements regarding the use of used motor oil in pre-2007 model year engines. However, the proposal would prevent the addition of used oil to diesel fuel prior to its introduction into the vehicle fuel tank. We request comment on this proposal, and in particular on whether an additional constraint can or should be placed on the sulfur content of motor oil to preclude the possibility that vehicle exhaust emission control technology would not be adversely impacted should used motor oil be added to a vehicle's fuel tank.

c. Use of Kerosene and Other Additives in Diesel Fuel

We are aware that kerosene is commonly added to diesel fuel to reduce fuel viscosity in cold weather. Other additives are added to diesel fuel for various purposes, including viscosity, lubricity, and pour point. We are not proposing to limit this practice. However under today's proposal, additives used in highway diesel fuel would be required to meet the same 15 ppm standard proposed for highway diesel fuel. To help ensure this, we are proposing that kerosene or other additives meeting the 15 ppm standard, and distributed for use in motor vehicles would be required to be accompanied by PTDs accurately stating that the additive meets the 15 ppm standard. As an alternative for such additives sold in cans or other containers, the required sulfur content identification could be posted on the container itself. This identification would be necessary to allow downstream parties to be able to determine if additives such as kerosene meet the required 15 ppm sulfur limit. Any party who blends high sulfur additives into highway diesel fuel, uses such additives as highway diesel fuel, or who causes highway diesel fuel to exceed the standard due to the addition of kerosene or other additives, would be subject to liability for violating the rule. We are requesting comment on this proposal and any alternative that would inform transferees of diesel fuel additives of the appropriateness of their use in highway diesel fuel.

We are not proposing that refiners or importers of kerosene or other additives which could be used in highway diesel fuel, would have an affirmative duty to produce additives that meet the proposed 15 ppm sulfur standard. This is because we believe that refiners will produce low sulfur kerosene, for example, in the same refinery processes that produce low sulfur diesel fuel, and that the market will drive supply of low sulfur kerosene for those areas and seasons where the product is needed for blending with highway diesel fuel. We request comment on whether there should be an affirmative requirement for refiners or terminals to supply low sulfur kerosene or whether all number one kerosene should be required to meet the 15 ppm sulfur standard.

We also request comment on whether additives not meeting the 15 ppm sulfur cap should be allowed to be added to diesel fuel downstream in de minimis amounts, and if so, how such a program could be structured to ensure that the additives would not cause the 15 ppm sulfur cap to be exceeded. In addition we request comment on whether any regulatory constraint at all need be placed on the sulfur level of diesel additives, and whether instead the liability mechanisms contained in this proposal are sufficient to protect against downstream parties adding additives to diesel fuel that would cause the fuel delivered to consumers to exceed the cap.

4. What Are the Proposed Testing and Sampling Methods and Requirements?

a. Testing Requirements and Test Methods

We do not believe an every-batch testing requirement for refiners and

[172] Section 203(a)(3) of the Act, 42 U.S.C. 7522(a)(3).

importers is necessary under the proposed rule. This is primarily because refiners will likely voluntarily test every batch of fuel produced to ensure it meets the 15 ppm sulfur standard, and because pipeline operators will require test results before agreeing to ship low sulfur highway diesel fuel. However, we are proposing to designate a test method that would be used as the benchmark for all compliance testing. We are requesting comment on whether every-batch testing should be required in light of the requirement (discussed in section VIII.A.5) for refiners to issue PTDs stating that the product meets the applicable sulfur standard.

We propose to designate ASTM D 2622–98 with the minor modification discussed below as the benchmark test method for quantifying the sulfur content of diesel fuel for compliance determination. We are also proposing that this test method would be the benchmark method to determine compliance under the current sulfur control regulations. This method is an updated version of the designated method under the current highway diesel fuel rule. This test method is currently in wide use by refiners and laboratories both for gasoline and diesel testing. This method does not currently include test repeatability or reproducibility information for diesel fuel having a sulfur content below 60 ppm.[173] Nevertheless, in EPA's review of the test method, we believe that when applied to low sulfur diesel fuel with the proposed modification, the method has acceptable precision at sulfur levels below 15 ppm.

We have had success in improving the precision of the ASTM D 2622–98 procedure in measuring low levels of diesel fuel sulfur through a simple modification of the calibration method. This modification includes two small changes. The first is the substitution of a measurement blank that more closely resembles the boiling point range and density of diesel fuel. The second is a change to the calibration line to ensure that it goes through zero. This modification is detailed in the proposed regulatory text. Using this modification, we have had success in the correlation of test results with industry laboratories on samples with sulfur content in the range of 1 to 20 ppm. We will continue to investigate the proposed modification to the ASTM D 2622–98 procedure. Based on current information, we believe that lab-to-lab reproducibility can be limited to a maximum of +/−4 ppm at sulfur levels in the 1–20 ppm range. We do not anticipate that this modification will add appreciably to the cost of sulfur testing.

We are requesting comments on performance data for diesel fuel analysis using ASTM D 2622 at sulfur levels below 60 ppm, on additional modifications to the procedure which might be needed to limit variability, and on the cost of such modifications. Specifically, comment is requested on whether only end-window type scanning instruments should be used because additional variability is introduced through the use side-window type instruments.[174] If the use of side-window type scanning instruments must be disallowed, comment is requested on the extent such instruments are used and on the cost of changing them to an end-window configuration.

While we are proposing to designate the modified ASTM D 2622–98 procedure as the designated test method, we do not believe that such designation should preclude regulated parties from using alternative methods that afford them sufficient confidence that they are demonstrably in compliance. Therefore, we are proposing that alternative methods may be used for quality assurance purposes provided that the proper correlation is established between the alternative method and the benchmark method.[175] Since EPA enforcement testing would be conducted using the modified ASTM D 2622 procedure, parties would need to have considerable confidence in any alternative methods they may use. We believe that for quality assurance testing, an approach that could provide more flexibility and potentially save costs for industry would be to allow other appropriate ASTM test methods, so long as they are conducted properly and the results correlate to the designated method. Although these test results could be used by the government to demonstrate noncompliance, this should not be a substantial concern since any test result that demonstrates noncompliance should lead to appropriate action on the part of the regulated party, as would a test result from the use of the designated method. We seek comment on this approach.

EPA's proposed designation of the modified ASTM D 2622–98 procedure is based on a review of currently available methods. Should superior methods be developed in the future, EPA will certainly consider an orderly process of redesignation to take advantage of newer technologies.

One commenter to the ANPRM stated that ASTM D 2622 may not be suitable for determining the sulfur content of biodiesel. We request comment on whether ASTM D 2622–98 is appropriate for determining the sulfur content of biodiesel, or mixtures of biodiesel and conventional diesel fuel, and if not, what test methods are appropriate, and any data supporting these conclusions.

We are also proposing a test method for the determination of sulfur in motor oil, since that may be relevant if any engine manufacturers choose to certify engines with the addition of motor oil to the fuel. The test method we are proposing is ASTM D 4927–96, Standard Test Methods for Elemental Analysis of Lubricant and Additive Components—Barium, Calcium, Phosphorus, Sulfur, and Zinc by Wavelength-Dispersive Fluorescence Spectroscopy. This method uses the same apparatus as D 2622–998, but includes specific methodology to compensate for interferences caused by the additives present in motor oil. We request comment on this test method.

b. Sampling Methods

We are proposing the use of sampling methods that were proposed for use in the Tier 2/gasoline sulfur rule.[176] These proposed sampling methods are ASTM D 4057–95 (manual sampling) and D 4177–95 (automatic sampling from pipelines/in-line blending). We are proposing to require the use of these ASTM methods instead of the methods currently provided in 40 CFR part 80, appendix G, for determining compliance under both the newly proposed 15 ppm sulfur standard, and the 500 ppm standard currently in place. That is because the proposed methods have been updated by ASTM, and the

[173] Repeatability is defined by ASTM as the difference between two test results, obtained by the same operator with the same apparatus under constant operating conditions on identical test material, that would, in the long run, in the normal and correct operation of the test method, be exceeded only in one case in twenty. Reproducibility is defined by ASTM as the difference between two single and independent results obtained by different operators working in different laboratories on identical test materials that would, in the long run, in the normal and correct operation of the test method, be exceeded only in one case in twenty.

[174] Side-window vs end-window refers to the location of the sample cup.

[175] EPA is preparing to propose, in another action, a set of criteria by which alternative methods for measuring fuel parameters may be evaluated and controlled in practice. We are not proposing to prescribe these criteria and statistical quality control methods in this rulemaking, but suggest that their use will enhance the credibility of measurements made with alternative methods and offered in situations where testing is necessary to establish a defense.

[176] 64 FR 26004, at 26098 (May 13, 1999). These methods are also proposed for use under the RFG and CG rules. See 62 FR 37337 (July 11, 1997).

updates have provided clarification and have eliminated certain requirements that are not necessary for sampling petroleum products such as diesel fuel.

5. What Are the Proposed Recordkeeping Requirements?

We are proposing that refiners and importers provide information on commercial PTDs that identify diesel fuel for highway use and that it complies with the 15 ppm sulfur standard (unless exempted). We believe this additional information on commercial PTDs is necessary because of the importance of avoiding commingling of high sulfur distillate products with highway diesel fuel. It is proposed that all parties in the distribution chain, from the refiner or importer to the retailer or wholesale purchaser-consumer would be required to retain copies of these PTDs for a period of 5 years. 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 such records for this length of time even without the requirement.

We are proposing that the current diesel rule's PTD requirement regarding the identification of dyed, tax-exempt highway diesel fuel would be retained. This provision is useful for wholesale purchaser-consumers who need to know that the tax exempt highway diesel fuel is appropriate for highway use despite the presence of red dye. We are also proposing that product codes may be used to convey the information required to be included in PTD's, for all parties except for transfers to truck carriers, retailers or wholesale purchaser-consumers. This provision is consistent with other fuel programs. However, we are seeking comment on also allowing product codes to be used for transfers to truck carriers, retailers or wholesale purchaser-consumers.

We are proposing that records of any test results performed by any regulated party for quality assurance purposes or otherwise, must be maintained for 5 years, along with supporting documentation such as date of sampling and testing, batch number, tank number, and volume of product. Also, business records regarding actions taken in response to any violations discovered would be required to be maintained.

As noted above, we are also proposing that commercial PTDs for kerosene or other products sold for blending into highway diesel fuel must indicate that the product meets the 15 ppm federal sulfur standard for use in diesel motor vehicles. We believe that such PTDs are already a part of normal business practices and therefore such a requirement would add little if any burden. We invite comment on this proposal.

Given the importance of avoiding highway diesel fuel sulfur contamination under today's proposed rule, we are also concerned that additional measures may be needed to assure off-highway distillates are not commingled with, or used as, highway diesel fuel. Such high sulfur products could easily raise the sulfur level of low sulfur highway diesel fuel, and damage emission controls on new vehicles and cause driveability problems. Therefore, we request comment on whether shipment of distillate products such as nonroad diesel fuel and home heating oil should be required to be accompanied by PTDs stating that the products do not meet highway diesel standards and are illegal for use in highway vehicles.

6. Are There Any Proposed Exemptions Under This Subpart?

We are proposing to exempt from the sulfur requirements diesel fuel used for research, development, and testing purposes. We recognize that there may be legitimate research programs that require the use of diesel fuel with higher sulfur levels than allowed under today's proposed rule. As a result, today's proposal contains provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling, or dispensing diesel fuel that exceeds the standards, where such diesel fuel is necessary to conduct a research, development, or testing program.

Under the proposal, parties would be required to submit to EPA an application for exemption that would describe the purpose and scope of the program and the reasons why the use of the higher-sulfur diesel fuel is necessary. Upon presentation of the required information, the exemption would be granted at the discretion of the Administrator, with the condition that EPA could withdraw the exemption ab initio in the event the Agency determines the exemption is not justified. Fuel subject to this exemption would be exempt from the other provisions of this subpart, provided certain requirements are met. These requirements include such conditions as the segregation of the exempt fuel from non-exempt highway diesel fuel, identification of the exempt fuel on product transfer documents, and the replacement, repair, or removal from service of emission systems damaged by the use of the high sulfur fuel.

We believe that the proposal includes the least onerous requirements for industry that also would ensure that higher-sulfur diesel fuel would be used only for legitimate research purposes. We request comment on these proposed provisions.

We are requesting comment on the need to provide an exemption from the sulfur content and other requirements of this proposal for diesel fuel used in racing vehicles. We see no advantage to racing vehicles for having fuel with higher sulfur levels (or lower cetane or higher aromatic levels) than would be required by today's proposal. Conversely, we are concerned about the potential for misfueling that could result from having a racing fuel with higher sulfur in the marketplace that would be intended for use only in racing or competition versions of highway vehicles. Consequently, we are not proposing that diesel fuel used in racing vehicles be exempted from the diesel fuel requirements proposed today. We request comment on this decision and whether an exemption should be allowed for racing diesel fuel.

7. Would California Be Exempt From the Rule?

Although California is currently considering diesel fuel regulations, we do not propose to exempt California from the federal rule at this time.[177] California has received an exemption from certain compliance related provisions under the Federal reformulated gasoline (RFG) program, on the grounds that California has implemented a program in covered areas that meets or exceeds Federal RFG standards and because the California ARB has sufficient resources and authority to enforce the program to ensure equivalent environmental benefits are realized. These exemptions cover such enforcement provisions as recordkeeping, reporting, and test methods. California gasoline is not exempted from the standards for Federal RFG or conventional gasoline. See 40 CFR 80.81. We have also proposed full exemption for California from the proposed gasoline sulfur standards and other provisions of that rule because California has an effective gasoline sulfur program that is different from the

[177] On November 10, 1998, The California ARB held a workshop to comply with the Governor's Executive Order W–144–97. At that workshop the ARB discussed the possibility of amending Title 13 of the California Code of Regulations, Section 2281, ''Sulfur Content of Diesel Fuel.'' Under that section, California currently enforces a 500 ppm sulfur standard for highway diesel fuel. The ARB is considering a diesel fuel standard that may be as stringent as, or more stringent than, the standard we are proposing today.

proposed federal rule. Although it would be premature to grant similar exemptions to the California low-sulfur diesel program at this time, EPA may revisit the issue of enforcement exemptions when such action is timely, and we invite public comment on this approach. Exemptions for other states and territories are discussed in section VI.C.

8. What Are the Proposed Liability and Penalty Provisions for Noncompliance?

Today's proposed rule contains provisions for liability and penalties that are similar to the liability and penalty provisions of the other EPA fuels regulations. Under the proposed rule, regulated parties would be liable for committing certain prohibited acts, such as selling or distributing diesel fuel that does not meet the sulfur standards, or causing others to commit prohibited acts. In addition, parties would be liable for a failure to meet certain affirmative requirements, or causing others to fail to meet affirmative requirements. All parties in the diesel fuel distribution system, including refiners, importers, distributors, carriers, retailers, and wholesale purchaser-consumers, would be liable for a failure to fulfill the recordkeeping requirements and the PTD requirements.

a. Presumptive Liability Scheme of Current EPA Fuels Programs

All EPA fuels programs include a presumptive liability scheme for violations of prohibited acts. Under this approach, liability is imposed on two types of parties: (1) The party in the fuel distribution system that controls the facility where the violation was found or had occurred; and (2) those parties, typically upstream in the fuel distribution system from the initially listed party, (such as the refiner, reseller, and any distributor of the fuel), whose prohibited activities could have caused the program non-conformity to exist.[178] This presumptive liability scheme has worked well in enabling us to enforce our fuels programs, since it creates comprehensive liability for substantially all the potentially responsible parties. The presumptions of liability may be rebutted by establishing an affirmative defense.

To clarify the inclusive nature of these presumptive liability schemes, today's proposed rule would explicitly include causing another person to commit a prohibited act and causing the presence of non-conforming diesel fuel (or kerosene or other additives for motor vehicle use) to be in the distribution system as prohibitions. This is consistent with the provisions and implementation of other fuels programs.

Today's proposed rule, therefore, provides that most parties involved in the chain of distribution would be subject to a presumption of liability for actions prohibited, including causing non-conforming diesel fuel to be in the distribution system and causing violations by other parties. Like the other fuels regulations, a refiner also would be subject to a presumption of vicarious liability for violations by any downstream facility that displays the refiner's brand name, based on the refiner's ability to exercise control at these facilities. Carriers, however, would be liable only for violations arising from product under their control or custody, and not for causing non-conforming diesel fuel to be in the distribution system, except where specific evidence of causation exists.

b. Affirmative Defenses for Liable Parties

The proposal includes affirmative defenses for each party that is deemed liable for a violation, and all presumptions of liability are refutable. The proposed defenses are similar to the defenses available to parties for violations of the RFG regulations. We believe that these defense elements set forth reasonably attainable criteria to rebut a presumption of liability. The defenses include a demonstration that: (1) The party did not cause the violation; (2) the party has PTDs indicating that the fuel was in compliance at its facility; and (3) except for retailers and wholesale purchaser-consumers, the party conducted a quality assurance program. For parties other than tank truck carriers, the quality assurance program would be required to include periodic sampling and testing of the diesel fuel. For tank truck carriers, the quality assurance program would not need to include periodic sampling and testing, but in lieu of sampling and testing, the carrier would be required to demonstrate evidence of an oversight program for monitoring compliance, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records concerning diesel fuel quality and delivery.

As in the other fuels regulations, branded refiners would be subject to more stringent standards for establishing a defense because of the control such refiners have over branded downstream parties. Under today's rule, in addition to the other presumptive liability defense elements, branded refiners would be required to show that the violation was caused by an action by another person in violation of law, an action by another person in violation of a contractual agreement with the refiner, or the action of a distributor not subject to a contract with the refiner but engaged by the refiner for the transportation of the diesel fuel.

Based on experience with other fuels programs, we believe that a presumptive liability approach would increase the likelihood of identifying persons who cause violations of the sulfur standards. We normally do not have the information necessary to establish the cause of a violation found at a facility downstream of the refiner or importer. We believe that those persons who actually handle the fuel are in the best position to identify the cause of the violation, and that a refutable presumption of liability would provide an incentive for parties to be forthcoming with information regarding the cause of the violation. In addition to identifying the party that caused the violation, providing evidence to rebut a presumption of liability would serve to establish a defense for the parties who are not responsible. Presumptive liability is familiar to both industry and to EPA, and we believe that this approach would make the most efficient use of EPA's enforcement resources. For these reasons, we are proposing a liability scheme for the diesel fuel sulfur program based on a presumption of liability. We request comment on the proposed liability provisions.

c. Penalties for Violations

Section 211(d)(1) of the CAA provides for penalties for violations of the fuels regulations.[179] Today's rule proposes penalty provisions that would apply this CAA penalty provision to the diesel fuel sulfur rule. The proposal would subject any person who violates any requirement or prohibition of the diesel fuel sulfur rule to a civil penalty of up

[178] An additional type of liability, vicarious liability, is also imposed on branded refiners under these fuels programs.

[179] Section 211(d)(1) reads, in pertinent part: ''(d)(1) Civil Penalties.—Any person who violates . . the regulations prescribed under subsection (c) . . of this section . . shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or saving resulting from the violation. . . . Any violation with respect to a regulation prescribed under subsection (c). . . of this section which establishes a regulatory standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. . . . '' Pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note), the maximum penalty amount prescribed in section 211(d)(1) of the CAA was increased to $27,500. (See 40 CFR part 19.)

to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of a sulfur cap standard would constitute a separate day of violation for each day the diesel fuel giving rise to the violation remains in the diesel fuel distribution system. The length of time the diesel fuel in question remains in the distribution system would be deemed to be twenty-five days unless there is evidence that the diesel fuel remained in the diesel fuel distribution system for fewer than or more than twenty-five days. The penalty provisions proposed in today's rule are similar to the penalty provisions for violations of the RFG regulations and the Tier 2 gasoline sulfur rule. EPA requests comment on these provisions.

9. How Would Compliance with the Diesel Sulfur Standards Be Determined?

We have often used a variety of evidence to establish non-compliance with the requirements imposed under our current fuels regulations. Test results of the content of diesel fuel or gasoline have been used to establish violations, both in situations where the sample has been taken from the facility at which the violation occurred, and where the sample has been obtained from other parties' facilities when such test results have had probative value of the fuel's characteristics at points upstream or downstream. The Agency has also commonly used documentary evidence to establish non-compliance or a party's liability for non-compliance. Typical documentary evidence has included PTDs identifying the fuel as inappropriate for the facility it is being delivered to, or identifying parties having connection with the non-complying fuel.

We propose that compliance with the sulfur standards would be determined based on the sulfur level of the diesel fuel, as measured using the regulatory testing method. We further propose that any evidence from any source or location could be used to establish the diesel fuel sulfur level, provided that such evidence is relevant to whether the sulfur level would have been in compliance if the regulatory sampling and testing methodology had been correctly performed.

Compliance with the standard would be determined using the specified sampling and test methodologies. While other information could be used, including test results using different test methods, such other information may only be used if it is relevant to determining whether the sulfur level would meet the standard had compliance been properly measured using the specified test method. The proposal would establish the regulatory test method as the benchmark against which other evidence is measured. EPA intends to use the regulatory test method for enforcement testing purposes.

Today's proposal is consistent with the approach adopted in the Tier 2 gasoline sulfur rule (65 FR 6698, February 10, 2000). EPA intends to undertake rulemaking in the near future to revise the current fuels regulations to include the same language for the use of other evidence as is proposed today. We seek comment on this approach.

The proposed rule would also clarify that any probative evidence obtained from any source or location may be used to establish non-compliance with requirements other than the sulfur standard, such as recordkeeping requirements, as well as to establish which parties have facility control or some other basis for liability for sulfur rule noncompliance. Since proof of these elements is not predicated on establishing sulfur levels, whether or not regulatory test methods are used is not significant. EPA is seeking comment on this approach for monitoring and determining compliance with the applicable requirements.

To ensure the effectiveness and the ability to adequately enforce the sulfur standards, it is reasonable for EPA to consider evidence other than actual test results using the regulatory test method, where such evidence can be related to the test results. As described above, test results using the regulatory test method are often not available. In such circumstances, it is reasonable to consider other evidence of compliance, such as test results using other methods or commercial documents, if such evidence can be shown to be relevant to determining whether the diesel fuel would meet the standard if tested using the regulatory methods. The proposal would only permit the use of other evidence that is relevant to such a determination, and is therefore reasonably limited to allow for effective enforcement, without creating uncertainty about compliance.

B. Lubricity

We strongly encourage, but do not believe it necessary to require, fuel producers and distributors to voluntarily monitor and provide diesel fuel with lubricity characteristics at least as good as those of current fuel. We believe this voluntary action is reasonable and has a high likelihood of success, because the issues surrounding the impact of sulfur reduction on lubricity are well established. Refiners and distributors have an incentive to supply fuel products that will not damage or create problems with consumer equipment. For a further discussion of diesel fuel lubricity, and why we believe a voluntary approach will be effective, please refer to the earlier discussion in section IV.D.6. We request comment on this approach, on whether or not a regulatory requirement is needed, and on whether there are concerns unique to the military.

C. Would States Be Preempted from Adopting Their Own Sulfur Control Programs for Highway Diesel Fuel?

When we adopt federal fuel standards, states are preempted from adopting state-level controls with respect to the same fuel characteristics or components. Section 211(c)(4)(A) of the CAA prohibits states from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1) of the Act. This preemption applies to all states except California, as explained in section 211(c)(4)(B) of the Act. For states other than California, the Act provides two mechanisms for avoiding preemption. First, section 211(c)(4)(A)(ii) creates an exception to preemption for a state prohibition or control that is identical to a prohibition or control adopted by EPA. Second, a state may seek EPA approval of a SIP revision containing a fuel control measure, as described in section 211(c)(4)(C) of the Act. EPA may approve such a SIP revision, and thereby ''waive'' preemption, only if it finds the state control or prohibition ''is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.''

When we adopted the current diesel fuel sulfur standards pursuant to our authority under section 211(c)(1) of the Act in 1990, States were preempted from also doing so under the provisions of section 211(c)(4)(A). The diesel sulfur standards proposed today merely modify the existing standards and as a result do not initiate any new preemption of State authority. The provisions of this proposal would merely continue the already existing State preemption provisions with respect to highway diesel fuel sulfur.

D. Refinery Air Permitting

Prior to making diesel desulfurization changes, some refineries could be required to obtain a preconstruction

permit, under the New Source Review (NSR) program, from the applicable state/local air pollution control agency.[180] We believe that today's proposal provides sufficient lead time for refiners to obtain any necessary NSR permits well in advance of the proposed compliance date. For the recently promulgated gasoline sulfur control program, refiners had expressed concerns that permit delays might impede their ability to meet compliance dates. EPA committed to undertake several actions to minimize the possibility of any delays for refineries obtaining major NSR permits for gasoline desulfurization projects. These actions include providing federal guidance on emission control technologies and the appropriate use of motor vehicle emission reductions (resulting from the use of low sulfur fuel), where available, as emission offsets, as well as forming EPA permit teams to assist states in quickly resolving issues, where needed. These three items are discussed in more detail in the Tier 2 final rule and interested parties should refer to that discussion for additional details regarding permitting considerations in the gasoline sulfur program (see 65 FR 6773, Feb. 10, 2000).

However, given that the proposed diesel sulfur program would provide several more years of lead time than was provided under the gasoline sulfur program, refiners should have ample time to obtain any necessary preconstruction permits. As we learned in finalizing the gasoline sulfur program, state/local permitting agencies are prepared to process refinery permits within the needed time frames, so long as refiners begin discussing potential permit issues with them early in the process and submit their permit applications in a timely manner. EPA believes that this will be the case for diesel fuel. We request comment on the interaction of this proposed rule and the permitting process and whether the permitting approaches discussed in the Tier 2 final rule should be continued, and if necessary updated, to assist refineries in obtaining any necessary permits for refinery diesel desulfurization changes.

E. Provisions for Qualifying Refiners

As explained in the Regulatory Flexibility Analysis discussion in section XI.B of this document, we have considered the impacts of these proposed regulations on small businesses. As part of this process, we convened a Small Business Advocacy Review Panel (Panel) for this proposed rulemaking, as required under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Panel was charged with reporting on the comments of small business representatives regarding the likely implications of possible control programs, and to make findings on a number of issues, including:

- A description and estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule;
- An identification of other relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- A description of any significant alternatives to the proposed rule that accomplish the objectives of the proposal and that may minimize any significant economic impact of the proposed rule on small entities.

The Panel's final report is available in the docket. In summary, the Panel concluded that small refiners would likely be directly affected by the proposed program.

In addition, the Panel concluded that small diesel distributors and retailers also would likely be directly affected by the fuel program's compliance requirements, but that under the approach we are proposing today these requirements would pose minimal burden. Therefore, the Panel did not recommend any regulatory relief for this group of small businesses under the program proposed today.

We understand that the proposed low sulfur standards will require significant economic investment by the refining industry. We also recognize that refineries owned by small businesses could experience more difficulty in complying with the proposed standards on time because, as a group, they have less ability to raise capital necessary for desulfurization investments, face proportionately higher costs due to economies of scale, and may be less successful in competing for limited construction and engineering resources. Some of the small refiners with whom we and the Panel met indicated their belief that, because of the extreme level of economic hardship their businesses would face in meeting the new standards, their businesses might close without additional time to comply or certain flexibility alternatives. The Panel recommended that EPA seek comment on various flexibilities that potentially could alleviate the burden on small refiners.

Upon evaluating the potential impacts of our proposed diesel sulfur requirements on small refiners and careful review of the Panel's recommendations, we are seeking comment on three approaches that could provide flexibility for small refiners. We believe that these approaches could provide meaningful flexibility for small refiners in meeting the proposed standards, although we do have concerns that certain approaches, to varying extents, may compromise the environmental benefits of the program (as discussed below), while still ensuring that the vast majority of the program is implemented as expeditiously as practical in order to achieve the air quality benefits sooner. Therefore, we invite comment on the appropriateness of any or all of these approaches in light of the environmental goals, the relative usefulness in allowing additional time and flexibility for small refiners to comply with the proposed low sulfur targets, and information and ideas on appropriate implementation mechanisms. These approaches are summarized in subsection 1 below.

Elsewhere, in section VI, we seek comment on various alternatives for phasing in the fuel program. Some small refiners have commented that some form of a phase-in approach could potentially mitigate the hardship they would experience under the proposed fuel standards. (See the discussion in section VI for a discussion of the potential impacts of a phase-in approach on entities in the distribution system).

In addition to considering the following flexibility approaches for small refiners, we are interested in exploring appropriate flexibility options for farmer cooperatives. There are currently four refiner co-ops, yet only one meets SBA's definition of a small business. The farmer cooperatives have expressed concern that they have the same difficulty as small refiners in obtaining access to capital for desulfurization investments. Farmers are both the customer and the member owner of their cooperatives. Because cooperatives do not have an investor/stockholder form of ownership, they are

[180] Hydrotreating diesel fuel involves the use of process heaters, which have the potential to emit pollutants associated with combustion, such as NO_X, PM, CO and SO2. In addition, reconfiguring refinery processes to add desulfurization equipment could increase fugitive VOC emissions. The emissions increases associated with diesel desulfurization will vary widely from refinery to refinery, depending on many source-specific factors, such as crude oil supply, refinery configuration, type of desulfurization technology, amount of diesel fuel produced, and type of fuel used to fire the process heaters.

not able to access equity markets that provide capital to larger refiners. The added costs of financing projects through traditional loans is eventually borne by farmers. The refiner co-ops have also expressed concern that the highway diesel sulfur program could result in higher fuel prices for farmers, and could potentially reduce refining capacity and diesel fuel supply in rural America. To help address these concerns, we are requesting comment on the following flexibility approaches for farmer cooperatives as well. We also seek comment on other appropriate flexibility approaches for farmer cooperatives that may have merit.

1. Allow Small Refiners to Continue Selling 500 ppm Highway Diesel

First, we are seeking comment on an option for small refiner flexibility that would allow small refiners to continue selling their current 500 ppm highway diesel, provided there are adequate safeguards to prevent contamination and misfueling. This option would effectively delay the ultra-low sulfur compliance date for small refiners, and allow them to continue selling their current fuel to the highway diesel market. Under this approach, retailers would not have an availability requirement; rather, retailers would be free to choose to sell only 500 ppm fuel (from small refiners), only ultra-low sulfur fuel, or both.

During the Panel process, small refiners expressed varying views on this flexibility approach. At least one small refiner supported this option, while others expressed the concern that they would not be able to find markets for the 500 ppm fuel once large refiners begin producing exclusively ultra-low sulfur highway diesel (*i.e.*, as soon as the rule were implemented). Those small refiners doubtful of continued 500 ppm markets think it is unlikely that retailers would either continue to sell only 500 ppm diesel instead of ultra-low sulfur, or that retailers would make the investments to market both grades. Their key assumption is that there would be no price differential between the ultra-low sulfur fuel and the 500 ppm fuel and, thus, no incentive for marketers to want the ''old'' fuel. Small refiners noted that, although ultra-low sulfur fuel would be more costly to produce than the current grade, vertically integrated refiners with control over the marketing of their refinery products would have incentives to price below cost in order to eliminate the potential for niche markets that would be of value to any small refiners seeking to avail themselves of this flexibility option. Small diesel distributors and retailers commented that marketers also don't anticipate a price differential, but acknowledged that a market for small refiner's 500 ppm likely would last as long as there were a price differential. Nevertheless, most small refiners with whom we and the Panel met strongly supported this option, largely because it potentially could benefit at least a few small refiners. At the same time, they believed it should not be the only flexibility option provided for small refiners. We believe that seeking public comment on this option will give all small refiners an opportunity to continue exploring the extent of potential markets for the 500 ppm fuel, and thus, the potential viability of this flexibility option.

We also request comment on an appropriate duration for this option. We seek comment on the need for, and appropriateness of, an unlimited exemption, as well as whether such an exemption should be limited to a specific timeframe (*e.g.*, two years, ten years, etc.). We note that by limiting this flexibility to two years, for example, during which time the new vehicle fleet would still be relatively small, the potential for misfueling would be minimized. We also question how long this flexibility option may remain viable, since many small refiners commented during the Panel process that they do not expect markets for the 500 ppm fuel to remain after larger refiners begin producing exclusively ultra-low sulfur fuel. Nevertheless, we request comment on the need for, and potential impacts of, a longer exemption. A longer duration for this flexibility option would give participating refiners more time to stagger their diesel desulfurization investments. The number of vehicles potentially affected by misfueling or contamination would still be fairly limited under this approach, since small refiners produce only approximately four percent of all the highway diesel fuel produced in the U.S. Moreover, the potential for misfueling would be further limited because most small refiners distribute highway diesel in a fairly local area. (Some small refiners, however, distribute a portion of their diesel fuel outside their local area via pipeline or barge. See further discussion below about the potential need to prohibit pipeline/barge shipments of 500 ppm highway diesel under this option). An unlimited exemption would allow the market to determine the duration of flexibility provided to small refiners. There would be diminishing returns to small refiners from such an option over time, as a growing portion of the vehicle miles traveled would be from vehicles with emission control devices requiring ultra-low sulfur, and so small refiners would eventually switch over to producing low sulfur highway diesel fuel.

To ensure that this flexibility option would not compromise the expected environmental benefits of today's proposal, there would have to be certain safeguards with refiners as well as downstream parties to prevent contamination of the ultra-low sulfur fuel, and to prevent misfueling of new vehicles. We seek comment on how best to prevent misfueling and contamination of the ultra-low sulfur fuel under this approach for small refiner flexibility. Specifically, we request comment on the following measures to prevent misfueling and contamination:

- Small refiners could make an initial demonstration to EPA of how they would ensure the fuel remains segregated through the distribution system to its end use.
- Small refiners could be prohibited from distributing 500 ppm highway diesel via pipeline or barge. As the fuel is piped or barged to locations further from the refinery, it would likely become more difficult to ensure proper segregation and labeling. We have learned through the Panel process that most small refiners distribute highway diesel in a fairly local area; it appears that only a few small refiners distribute highway diesel via pipeline or barge. All small refiners (even those that distribute highway diesel via pipeline or barge) also distribute fuel to the local area, which should provide adequate potential markets for the 500 ppm fuel. This provision may be less necessary in the context of a broader program, such as the approaches discussed in section VI.A.
- There could be some general requirements on any entities carrying the fuel downstream of the refiner, such as a condition to keep the fuel segregated and maintain records (e.g., product transfer documents).
- Retailers who choose to sell the 500 ppm fuel could be required to label pumps, clearly indicating that the fuel is higher sulfur and should not be used in new (*e.g.*, 2007 model year or later) diesel vehicles.

We also seek comment on how to best prevent small refiners from increasing the refinery's production capacity (selling 500 ppm highway diesel under such a program) without also increasing the refinery's desulfurization capacity. Specifically, we request comment on whether it would be appropriate and necessary to limit the volume of 500

ppm highway fuel produced by a refinery owned by a small refiner to the lesser of: (1) 105 percent of the highway volume it produced on average in 1998 and 1999; or (2) the volume of highway diesel fuel produced from crude oil on average in the calendar year. Such limits to a small refiner's 500 ppm production expansion could also serve to limit the potential for fuel shortages of the ''new'' fuel in local areas where small refiners have or will gain significant market share as a result being allowed to continue producing and selling 500 ppm highway diesel fuel. This issue is discussed further below.

We believe that safeguards such as these would add minimal burden on small refiners or any party choosing to distribute or sell small refiner highway diesel, but would be critical to preventing misfueling and potential damage to new vehicles—and thus critical to preserving the environmental benefits of the program. These types of safeguards are typical of EPA fuel programs where more than one fuel is introduced into commerce.

We also would need to ensure that this type of flexibility would not result in lack of availability of low sulfur highway diesel in markets served primarily by small refiners. We seek comment on whether there is a potential for lack of availability of the low sulfur fuel under this approach and, if so, how to prevent this.

Finally, we seek comment on the appropriate definition of a small refiner under such a program. If such a flexibility option is promulgated under the final rule, EPA would envision considering a refiner as a small refiner if both of the following criteria are met:

- No more than 1500 employees corporate-wide, based on the average number of employees for all pay periods from January 1, 1999 to January 1, 2000.
- A corporate crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1999.

In determining the total number of employees and crude capacity, a refiner would include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners. This definition of small refiner mirrors the one recently promulgated under the Tier 2/gasoline sulfur program, except that the time period used to determine the employee number and crude capacity criteria has been updated to reflect the most recent calendar year. This is consistent with the Small Business Administration's regulations, which specify that, where the number of employees is used as a size standard, the size determination is based on the average number of employees for all pay periods during the preceding 12 months (13 CFR 121.106). However, because the gasoline sulfur standards and the proposed diesel sulfur standards would impact small refiners in relatively the same timeframes, we believe it is reasonable to consider any small refiner approved by EPA as meeting the small refiner definition under the gasoline sulfur program (40 CFR 80.235) as a small refiner under the highway diesel sulfur rule as well. We request comment on this provision.

2. Temporary Waivers Based on Extreme Hardship Circumstances

We are also seeking comment on a case-by-case approach to flexibility that would provide a process for all domestic and foreign refiners, including small refiners, to seek case-by-case approval of applications for temporary waivers to the diesel sulfur standards, based on a demonstration of extreme hardship circumstances. Small refiners have expressed their belief that there may be no ''one size fits all'' approach to flexibility—given the wide variety of refinery circumstances and configurations. Although this option was first raised in the context of small refiner flexibility during the Panel process, we believe that it could be extended to any qualifying refiner meeting the criteria described below. We recognize that there may be case-by-case flexibilities that are feasible, environmentally neutral, and warranted to meet the unique needs of an individual refiner, but that, if applied across the board, might jeopardize the environmental benefits of the program. This provision would further our overall environmental goals of achieving low sulfur highway diesel fuel as soon as possible. By providing short-term relief to those refiners that need additional time because they face hardship circumstances, we can adopt a program that reduces diesel sulfur beginning in 2006 for the majority of the industry that can comply by then. We envision that this option would be modeled after a similar provision in the recently-promulgated gasoline sulfur program. This case-by-case provision could be in addition to or in place of the small refiner option discussed above.

We understand that the ultra-low sulfur standards for highway diesel fuel will require significant economic investments by the refining industry. We recognize that refineries owned by small businesses could experience more difficulty in complying with the standards on time because, as a group, they have less ability to raise capital necessary for desulfurization investments, face proportionately higher costs due to economies of scale, and may be less successful in competing for limited construction and engineering resources. However, because the refining industry encompasses a wide variety of individual circumstances, it is possible that other refiners also may face particular difficulty in complying with the proposed sulfur standards on time. For example, as discussed above the farmer cooperatives have expressed concern that they would face considerable difficulty in obtaining access to capital for desulfurization investments. Because farmer cooperatives do not have an investor/stockholder form of ownership, they are not able to access equity markets that provide capital to larger refiners; thus, the added costs of financing projects through traditional loans is eventually borne by farmers.This option would allow any refiner to request additional flexibility based on a showing of unusual circumstances that result in extreme hardship and significantly affect the refiner's ability to comply by the applicable date, despite its best efforts. However, we would not intend for this waiver provision to encourage refiners to delay planning and investments they would otherwise make in anticipation of receiving relief from the applicable requirements.

An example of case-by-case flexibility under this approach might be to allow a refiner to continue selling 500 ppm highway diesel fuel for an extended time period, so long as that fuel were properly segregated and labeled at pump stands (see the discussion of possible compliance measures in section E.1. above).

To further preserve the environmental benefits of the program, recognizing the constraints it places on any flexibility, we currently believe that it would be necessary to segregate the fuel pool for any highway diesel fuel sold under an approved hardship waiver. Consequently, any additional compliance flexibilities would carry with them certain safeguards for preventing contamination and misfueling. We welcome comment on these compliance measures and any other alternatives. These provisions would be analogous to those discussed above under section E.1. Further, as part of such a flexibility, we would need to ensure that there was not a significant potential for lack of availability of the low sulfur fuel for those refiners that are the primary supplier of highway diesel fuel in a given area (as discussed in section E.1 above). We seek comment on whether there is a significant potential

for lack of availability of the low sulfur fuel under this approach and, if so, how to prevent this situation.

During the Panel process, several small refiners that produce both gasoline and highway diesel expressed concern about the difficulty in obtaining financing for the significant capital costs of desulfurizing both these fuels in relatively the same timeframes. Similar concerns have been expressed by farmer cooperatives and other refiners. Small refiners suggested that they might be able to desulfurize highway diesel fuel under the schedule proposed today, if additional flexibility could be provided in meeting the gasoline sulfur standards, which would allow them to stagger their investments. We estimate that approximately nine small refiners (owning 11 refineries) would be subject to both the gasoline and highway diesel sulfur standards. As another example of case-by-case flexibility under the hardship approach, we request comment on whether and to what extent we should consider additional flexibilities in meeting the gasoline sulfur standards, for those refiners that produce both gasoline and highway diesel fuel, and meet the highway diesel fuel standards on time. For example, we invite comment on whether it would be necessary and appropriate to take into consideration compliance with the diesel sulfur rule as part of a small refiner's application demonstrating significant economic hardship under the gasoline sulfur program's small refiner hardship extension provision (40 CFR 80.260). In evaluating applications for any case-by-case consideration of additional flexibility under the gasoline sulfur program, we would fully consider the environmental consequences of such an approach. For example, we would consider such factors as the relative volumes of gasoline and highway diesel fuel produced by the refiner, where these fuels are sold, and the projected emission impacts of vehicles using the refiner's gasoline and diesel fuels. If we were to consider such a case-by-case approach to compliance under the gasoline and diesel sulfur programs, we believe the gasoline sulfur program requirements may have to be changed to allow for the consideration of appropriate criteria related to compliance with the highway diesel sulfur rule. We seek comment on how such an approach could be accommodated under the gasoline sulfur program and the environmental implications of this approach. We also seek comment on the criteria that should be considered in granting gasoline hardship relief based on early diesel compliance.

Small refiners have recommended that the Agency could provide some flexibility by granting the hardship extension on an automatic, rather than case by case basis, if they agree to meet the highway diesel sulfur standards at the same time as the national program. They commented that this approach would provide more certainty for their planning purposes in determining how to comply with the requirements of both programs. The gasoline sulfur program provides that small refiners can apply for and receive an extension of their interim standards, if we determine that the small refiner has made the best efforts possible to achieve compliance with the national standards by January 1, 2008, but has been unsuccessful for unanticipated reasons beyond its control. We would consider granting the hardship extension for a time period not to extend beyond calendar year 2009, based on several factors, including the small refiner's compliance plan and demonstration of progress toward producing gasoline meeting the national sulfur standards by the end of 2009. (See 40 CFR 80.255 and 80.260). We have concerns about making the small refiner gasoline hardship extension ''automatic'', as this approach could undermine some of the environmental benefits of the Tier 2/gasoline sulfur program, and is not consistent with the purpose of the hardship extension. We would need to consider the environmental impacts of such an extension, by evaluating, for example, the small refiners' relative production of highway diesel fuel as compared to gasoline and the air quality concerns in the locations where both products are sold. We believe it would be more environmentally protective to make this determination on a case-by-case basis. Nevertheless, we seek comment on the approach of granting a small refiner an automatic hardship extension under the gasoline sulfur program if they demonstrate that they will comply on time with the national program for highway diesel fuel. We also seek comment on whether this approach should be applied on a case-by-case, rather than automatic, basis.

As another example of case-by-case flexibility under this approach, we request comment on whether it would be appropriate, as part of a review of a refiner's application for hardship relief under the diesel sulfur program, to consider granting a delay of diesel sulfur standards for those refiners that agree to meet the gasoline sulfur standards under a schedule more accelerated than that required under the gasoline sulfur program. Any consideration of such delays would require full consideration of the environmental implications of such a delay, as well as of other relevant factors.

There are several factors we would consider in evaluating an application for a hardship waiver. These factors could include refinery configuration, severe economic limitations, and other factors that prevent compliance in the lead time provided. Applications for a waiver would need to include information that would allow us to evaluate all appropriate factors. We would consider the total crude capacity of the refinery and its parent corporation, whether the refinery configuration or operation is unique or atypical, how much of a refinery's diesel is produced using an FCC unit, its hydrotreating capacity relative to its total crude capacity, highway diesel production relative to other refinery products, and other relevant factors. A refiner also may face severe economic limitations that result in a demonstrated inability to raise the capital necessary to make desulfurization investments by the compliance date, which could be shown by an unfavorable bond rating, inadequate resources of the refiner and its parent and/or subsidiaries, or other relevant factors. Finally, we would consider where the highway diesel would be sold in evaluating the environmental impacts of granting a waiver. We seek comment on these criteria for evaluating a refiner's hardship application, and on whether there are other criteria that should also be considered.

This hardship provision would be intended to address unusual circumstances, such as unique and atypical refinery operations or a demonstrated inability to raise capital. These kinds of circumstances should be apparent soon after the final rule is promulgated, so refiners seeking additional time under this provision should be able to apply for relief within a relatively short timeframe (e.g., nine months to one year) after promulgation of the final rule. We request comment on an appropriate timeframe for refiners to submit hardship applications to EPA. A refiner seeking a waiver would need to show that unusual circumstances exist that impose extreme hardship and significantly affect its ability to meet the standards on time, and that it has made best efforts to comply with the standards. Applicants for a hardship waiver also would need to submit a plan demonstrating how the standards would be achieved as expeditiously as possible. The plan would need to

include a timetable for obtaining the necessary capital, contracting for engineering and construction resources, and obtaining permits. We request comment on the information that should be contained in a hardship application, as well as the demonstrations that refiners should be required to make in such applications. Once all applications are received, we would consider the appropriate process to follow in reviewing and acting on applications, including whether to conduct a notice and comment decision-making process. We would review and act on applications, and, if a waiver were granted, would specify a time period for the waiver.

During the SBREFA Panel process, small refiners commented that they need certainty as to their regulatory requirements, and any flexibilities, well in advance of compliance dates so that they can seek financing. Therefore, we also seek comment on how such a hardship provision could be administered in a manner that provides the most certainty to small refiners as to any potential hardship relief, well in advance of the compliance deadline. Specifically, we request comment on an appropriate timeframe within which the Agency should respond to hardship applications (for example, one year from the date of receipt).

Because of the significant environmental benefits of lowering sulfur in highway diesel fuel, we would administer any hardship provision in a manner that continues to ensure the environmental benefits of the regulation. To limit the potential environmental impact of this hardship provision, we would reserve the discretion to deny applications where we find that granting a waiver would result in an unacceptable environmental impact. While any hardship determination would be made on a case-by-case basis, we would not anticipate granting waivers that apply to more than a minimal amount of the total national pool of highway diesel fuel, or to more than a minimal percentage of the highway diesel supply in an area with significant air quality problems. The level of this minimal amount of fuel would be considered in light of any additional flexibility options provided for refiners and would be established in a way that maintains the environmental goals of the program.

As a condition of any waiver granted, we would likely impose other reasonable requirements, such as anti-backsliding requirements to ensure no deterioration in the sulfur level of highway diesel fuel produced, or limitations on the volume of highway diesel fuel produced under the waiver (e.g., at or near current production levels). This latter measure would prevent refiners from increasing the refinery's production capacity without also increasing the desulfurization capacity. Specifically, we would limit the volume of highway diesel produced by a refinery covered by a hardship waiver to the lesser of: (1) 105 percent of the highway volume it produced on average in 1998 and 1999; or (2) the volume of highway diesel fuel produced from crude oil on average in the calendar year. We request comment on the need for such a hardship provision and how it should be structured.

3. 50 ppm Sulfur Cap for Small Refiners

In section IV.B, we fully discuss the basis for the 15 ppm sulfur standard proposed, based on the needs of diesel engine technology and on the criteria mandated by the Clean Air Act, and we seek comment on this level. In section III.F, we also discuss the level of sensitivity these new emission control technologies have to sulfur in the fuel, and potential consequences of the vehicles using fuel with a sulfur content higher than that proposed.

During the Panel process, small refiners expressed strong concern about their ability to meet a sulfur standard in the 5 to 40 ppm range discussed. Several small refiners have commented that capital, operating, and maintenance costs of meeting a 50 ppm cap are significantly less than the costs of meeting more stringent standards. Because small refiners produce relatively smaller volumes, their capital (and other fixed) costs per barrel produced are significantly higher than their larger competitors. They also cannot take advantage of the significant economies of scale that exist in the refining industry and may be less successful in competing for limited construction and engineering resources. Small refiners have suggested that a 50 ppm may afford them the flexibility to purchase sufficient blendstocks on the market to blend with their production and still comply with a 50 ppm cap. However, at the proposed 15 ppm standard this flexibility may no longer exist. Nevertheless, they are still interested in the Agency considering a cap for small refiners of 50 ppm. Therefore, we request comment on a 50 ppm cap for small refiners, and on any underlying data and analyses that would be relevant to a decision in the final rule on whether to incorporate a 50 ppm cap for small refiners. For this approach to work, to keep from damaging the vehicle exhaust emission control technologies and also maintain their effectiveness (as discussed in section III.F.), small refiner's fuel would somehow have to be blended downstream of the refinery to 15 ppm (i.e., in the distribution system). However, we question whether small refiners' 50 ppm fuel could simply be ''blended away'' with ultra-low sulfur fuel in the distribution system (i.e., after the fuel leaves the refiner's control). Information submitted by small refiners indicates that most sell highway diesel fuel directly via the refinery rack, for distribution to local truck stops, service stations, and fleet customers. Only a few small refiners distribute highway diesel via pipelines. Therefore, small refiners' highway diesel fuel indeed would go directly into vehicles, and commonly would not be ''blended'' to a significant extent with other refiners' fuel within the distribution system (*i.e.*, downstream of the refinery). Nevertheless, we believe it is appropriate to seek comment on this approach, and welcome any data and analyses that would influence a final decision about this approach.

IX. Standards and Fuel for Nonroad Diesel Engines

Although today's proposal covers only highway diesel engines and highway diesel fuel, our potential plans for nonroad diesel engines—and especially the sulfur content of nonroad diesel fuel—are clearly related. For example, depending on whether and how nonroad diesel fuel is regulated, factors including the costs, leadtime, environmental impacts, and impacts on competitive relationships in the marketplace associated with today's proposed program could be affected. We would need to address these factors in any future regulatory action on nonroad diesel fuel.

Because of these relationships, various stakeholders interested in today's proposal have asked to also know the potential requirements that could apply to nonroad diesel fuel. This section summarizes the background of this issue and our current thinking about future regulation of nonroad diesel engines and fuel.

After establishing an initial set of emission standards for nonroad diesel engines in 1994, EPA proposed in 1997, and finalized in 1998, a comprehensive program of emission standards for most diesel engines designed for nonroad use.[181] This program established NMHC+NO_X and PM standards that are phasing in over the 1999–2006 time frame, with engines of different

[181] See the final rule, 63 FR 56968, October 23, 1998 for more about the history of these regulations.

horsepower ranges coming into the program in different years. At the same time, we set long-term (''Tier 3'') NMHC+NO_X standards—but not PM standards—for medium and high horsepower engines, to begin in 2006. Built into the 1998 final rule was a plan to reassess the Tier 3 NMHC+NO_X standards and to establish PM standards in the 2001 time frame. The 1998 rule also anticipated an EPA reassessment of the Tier 2 NMHC+NO_X standards for the smaller engines (less than 50 horsepower), which are to be phased in beginning in 2004.

EPA did not include nonroad diesel fuel in the diesel fuel sulfur restrictions established in 1993 for highway diesel fuel. We estimate that the average sulfur content for nonroad diesel fuel is currently around 3000 ppm, as compared to the cap for highway diesel fuel of 500 ppm.[182]

We believe that any specific new requirements for nonroad diesel fuel we might propose would need to be carefully considered in the context of a proposal for further nonroad diesel engine emission standards. This is because of the close interrelationship between fuels and engines—the best emission control solutions may not come through either fuel changes or engine improvements alone, but perhaps through an appropriate balance between the two. This is especially significant to the extent that manufacturers would need to address potential challenges related to simultaneously meeting the standards that may be proposed. Thus we need to address issues in both the fuel and engine arenas together.

The many issues connected with any rulemaking for nonroad engines and fuel warrant serious attention, and we believe it would be premature today for us to attempt to propose resolutions to them. We plan to initiate action in the future to formulate thoughtful proposals covering both nonroad diesel fuel and engines.

X. Public Participation

Publication of this document opens a formal comment period on this proposal. You may submit comments during the period indicated under **DATES** above. We encourage everyone who has an interest in the program described in this preamble and the associated rulemaking documents to offer comment on all aspects of the action. Throughout this proposal you will find requests for specific comment on various topics.

We consider and respond in the final rule to every comment we receive before the end of the comment period. We give equal weight to all comments regardless of whether they are submitted on paper, electronically, or in person at a public hearing. The most useful comments are generally those supported by appropriate and detailed rationales, data, and analyses. We also encourage commenters who disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program.

We have previously received many comments from a range of interested parties on our ANPRM and as part of the our outreach to small entities (see section XI.B). These comments are found in the docket, and information gathered from them is reflected in the proposal.

A. Submitting Written and E-mail Comments

If you would like to submit comments in writing, please send them to the contact listed in **FOR FURTHER INFORMATION CONTACT** above on or before the end of the comment period. You can send your comments by e-mail to the following address: diesel@epa.gov. It is usually best to include your comments in the body of the email message rather than as an attachment.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments. Such submissions should be clearly labeled as ''Confidential Business Information'' and be sent to the contact person in **FOR FURTHER INFORMATION CONTACT** (not to the public docket). This will help ensure that proprietary information is not placed in the public docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information must be sent to the contact person for inclusion in the public docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive it, we will make it available to the public without further notice to the commenter.

B. Public Hearings

We will hold public hearings in New York City, NY, Chicago, IL, Atlanta, GA, Los Angeles, CA, and Denver, CO. See **ADDRESSES** near the beginning of this document for the locations of the hearings. If you would like to present testimony at one or more of the public hearings, we ask that you notify the contact person listed above ten days before the date of the hearing at which you plan to testify. We also suggest that you bring about fifty copies of the statement or material to be presented for the EPA panel and audience. In addition, it is helpful if the contact person receives a copy of the testimony or material before the hearing. An overhead projector and a carousel slide projector will be available.

The hearings will be conducted informally, and technical rules of evidence will not apply. We will, however, prepare a written transcript of each hearing. The official record of the hearings will be kept open until the end of the comment period to allow submittal of supplementary information. Each hearing will begin at 10:00 a.m. local time. In general, we expect to organize the hearings in a panel format, with representatives of several different perspectives on each panel. We will reserve the last part of each hearing for any previously unscheduled testimony. There will be a sign-in sheet, and we will hear the testimony of anyone signed in by 6:30 p.m. local time.

XI. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

[182] Information from recent national fuel surveys by the National Institute for Petroleum and Energy Research (NIPER) and the Alliance of Automobile Manufacturers.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposal is a ''significant regulatory action'' because the proposed engine standards, diesel fuel sulfur standards, and other proposed regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. Accordingly, a Draft RIA has been prepared and is available in the docket for this rulemaking. This action was submitted to the OMB for review as required by Executive Order 12866. Written comments from OMB on today's action and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. In response to the provisions of this statute, EPA has identified industries subject to this proposed rule and has provided information to, and received comment from, small entities and representatives of small entities in these industries. To accompany today's proposal, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared by the Agency to evaluate the economic impacts of today's proposal on small entities.[183] The key elements of the IRFA include:

—The number of affected small entities;
—The projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including the classes of small entities that would be affected and the type of professional skills necessary for preparation of the report or record;
—Other federal rules that may duplicate, overlap, or conflict with the proposed rule; and,
—Any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize significant economic impacts of the proposed rule on small entities.

The Agency convened a Small Business Advocacy Review Panel (the Panel) under section 609(b) of the Regulatory Flexibility Act as added by SBREFA. The purpose of the Panel was to collect the advice and recommendations of representatives of small entities that could be directly affected by today's proposed rule and to report on those comments and the Panel's findings as to issues related to the key elements of the IRFA under section 603 of the Regulatory Flexibility Act. The report of the Panel has been placed in the rulemaking record.[184] The IRFA can be found in the Draft RIA associated with today's proposal.

The contents of both today's proposal and the IRFA reflect the recommendations in the Panel's report. We summarize our outreach to small entities and our responses to the recommendations of the Panel below. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts.

1. Potentially Affected Small Businesses

Today's proposed program, which would establish new emission standards for heavy-duty engines and new standards for the sulfur content of highway diesel fuel, would directly affect manufacturers of heavy-duty engines and petroleum refiners that produce highway diesel fuel, respectively. In addition, but to a lesser extent, the program would directly affect diesel distributors and marketers.

We have not identified any manufacturers of heavy-duty engines that meet SBA's definition of a small business. However, we have identified several petroleum refiners that produce highway diesel fuel and meet the SBA's definitions for a small business for the industry category. According to the SBA's definition of a small business for a petroleum refining company (Standard Industrial Classification (SIC) 2911), a company must have 1500 or fewer employees to qualify as an SBA small business. Of the approximately 158 refineries in the U.S. today, we estimate that approximately 22 refiners (owning 26 refineries) have 1500 or fewer employees and produce highway diesel fuel. Two of these refineries are currently shutdown, but have indicated that they expect to reopen this year. We estimate that these 22 small refiners comprise 3.7 percent of nationwide crude capacity and produce approximately four percent of highway diesel fuel.

EPA also has identified several thousand businesses in the diesel distribution and marketing industry that meet SBA's definitions of small business. More information about these industries is contained in the IRFA. Under today's proposal, there are some, fairly minimal, regulatory requirements on these parties downstream of the refineries related to segregating the low sulfur highway diesel fuel throughout the distribution system. However, these proposed compliance provisions for downstream parties are fairly consistent with those in place today for other fuel programs, including the current highway diesel fuel program, and are not expected to impose significant new burdens on small entities.

2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives

The Small Business Advocacy Review Panel was convened by EPA on November 12, 1999. The Panel consisted of representatives of the Small Business Administration (SBA), the Office of Management and Budget (OMB) and EPA. During the development of today's proposal, EPA and the Panel were in contact with representatives from the small businesses that would be subject to the provisions in today's proposal. In addition to verbal comments from industry noted by the Panel at meetings and teleconferences, written comments were received from each of the affected industry segments or their representatives. The Panel report contains a summary of these comments, the Panel's recommendations on options that could mitigate the adverse impacts on small businesses. Today's proposal requests comment on the alternatives and issues suggested by the Panel for implementing the fuel program.

The Panel considered a range of options and regulatory alternatives for providing small businesses with flexibility in complying with new sulfur standards for highway diesel fuel. As part of the process, the Panel requested and received comment on several early ideas for flexibility that were suggested by SERs and Panel members. Taking into consideration the comments received on these ideas, as well as additional business and technical information gathered about potentially affected small entities, we summarize the Panel's recommendations below.

The Panel recommended that EPA seek comment on an option that would provide a process for refiners to seek case-by-case approval of applications for temporary waivers to the diesel sulfur standards, based on a demonstration of extreme hardship circumstances. Small refiners commented to the Panel that there is no ''one size fits all'' approach to flexibility—given the wide variety of refinery circumstances and

[183] The Initial RFA is contained in Chapter VII of the Draft RIA.

[184] Report of the Small Business Advocacy Review Panel on Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine Standards and Diesel Fuel Sulfur Control Requirements, March 24, 2000.

configurations. Thus, the Panel believed that it would be appropriate for EPA to consider a case-by-case approach to flexibility. The Panel further recognized that there may be case-by-case flexibilities that are feasible, environmentally neutral, and warranted to meet the unique needs of an individual refiner, but that, if applied across the board, might jeopardize the environmental benefits of the program. The Panel envisioned that this option would be modeled after a similar provision in the recently-promulgated gasoline sulfur program. This option would allow domestic and foreign refiners, including small refiners, to request additional flexibility based on a showing of unusual circumstances that result in extreme hardship and significantly affect the ability to comply by the applicable date, despite their best efforts.

In addition, the Panel recommended that EPA seek comment on two options for small refiner flexibility. First, the Panel recommended that EPA seek comment on a 50 ppm cap for small refiners, as well as any data or underlying analyses that could support such a decision. Second, the Panel recommended that EPA seek comment on an option that would allow small refiners to continue selling their current 500 ppm highway diesel, provided there are adequate safeguards to prevent contamination and misfueling. The Panel further recommended that EPA request comment on an appropriate duration for this option. This option would effectively delay the low sulfur compliance date for small refiners, and allow them to continue selling their current fuel to the highway diesel market. To ensure the environmental benefits of the rule were achieved while implementing this flexibility option, there would have to be certain safeguards with refiners as well as downstream parties to prevent contamination of the ultra-low sulfur fuel, and to prevent misfueling of new vehicles.

The Panel also discussed the merits of phasing in the fuel program, and alternatives that could potentially limit the burden of such a program on small refiners and distributors.

The Panel's recommendations are discussed in detail in the Panel Report, contained in the docket. In addition, EPA's request for comment on these options is contained in section VIII.E of this preamble.

The Initial Regulatory Flexibility Analysis evaluates the financial impacts of the proposed heavy-duty engine standards and fuel controls on small entities. EPA believes that the regulatory alternatives we seek comment on in this proposal could provide substantial relief to qualifying small businesses from the potential adverse economic impacts of complying with today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements (ICR) for this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information, unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The information collection requirements associated with today's proposed rule pertain to the proposed requirements for diesel fuel sulfur content. A draft information collection request document entitled, ''Draft Information Collection Request—Recordkeeping Requirements for the Fuel Quality Regulations for Diesel Fuel Sold in 2006 and Later Years' has been prepared and is available from the Air Docket at the location indicated in **ADDRESSES** section or from the person(s) listed in **FOR FURTHER INFORMATION CONTACT** section. We request comments on the costs associated with the regulatory language as proposed and with regard to other specific approaches outlined in this notice that may affect information collection burdens.

The Paperwork Reduction Act stipulates that ICR documents estimate the burden of activities that would be required of regulated parties within a three year time period. Consequently, the draft ICR document that accompanies today's proposed rule provides estimates for the activities that would be required under the first three years of the proposed program. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of diesel fuel on which the proposed rule would rely currently exist under EPA's 500 ppm highway diesel fuel and anti-dumping programs.[185] The ICR for the 500 ppm program covered start up costs associated with reporting diesel fuel sulfur content under the 500 ppm program. Consequently, much of the cost of the information collection requirements under the proposed diesel sulfur control program has already been accounted for under the 500 ppm program.

We request comments on the Agency's need for the information proposed to be collected, the accuracy of our estimates of the associated burdens, and any suggested methods for minimizing the burden, including the use of automated techniques for the collection of information. Comments on the draft ICR should be sent to: the Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2136), 401 M Street, SW, Washington, DC 20460, marked ''Attention: Director of OP;'' and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any such correspondence. OMB is required to make a decision concerning the ICR between 30 and 60 days after publication of a proposed rule. Therefore, comments to OMB on the ICR are most useful if received within 30 days of the publication date of this proposal. Any comments from OMB and from the public on the information collection requirements in today's proposal will be placed in the docket and addressed by EPA in the final rule.

Copies of the ICR documents can be obtained from Sandy Farmer, Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. Insert the ICR title and/or OMB control number in any correspondence. Copies may also be downloaded from the Internet at http://www.epa.gov/ncepihom/catalog.html.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the

[185] ''Regulations of Fuel and Fuel Additives; Fuel Quality Regulations for Highway Diesel Sold in 1993 and Later Calendar Years; Recordkeeping Requirements,'' OMB Control Number 2060–0308, EPA ICR Number 1718.12 (expires July 31, 2001). Copies of this ICR may be obtained from Sandy Farmer, Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW, Washington, DC 20460. Please mark requests, ''Attention: Desk Officer for EPA'' and include the ICR in any correspondence.

private sector, of $100 million or more for any single year. Before promulgating a rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative that is not the least costly, most cost effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposed rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. As discussed at length in section VI of this proposal, EPA considered and evaluated a wide range of regulatory alternatives before arriving at the program proposed today. EPA believes that the proposed program represents the least costly, most cost effective approach to achieve the air quality goals of the proposed rule. Nevertheless, as is clear in section VI and throughout the preamble, we continue to investigate and seek comment on alternatives that may achieve the proposals objectives but at a lower cost. See the ''Administrative Designation and Regulatory Analysis'' (section XI.A) for further information regarding these analyses.

2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. The proposed engine emissions, diesel fuel, and other related requirements for private businesses in this proposal would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this proposal. Thus, EPA's conclusions regarding the impacts from the implementation of today's proposed rule discussed in the other sections of this proposal are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are proposed in this proposal. The standards referenced in today's proposed rule involve the measurement of diesel fuel parameters and engine emissions. The measurement standards for diesel fuel parameters referenced in today's proposal are all voluntary consensus standards. The engine emissions measurement standards referenced in today's proposed rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of engine emissions. Therefore, the Agency proposes to use the existing EPA-developed standards found in 40 CFR part 86 for the measurement of engine emissions.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is subject to the Executive Order because it is an economically significant regulatory

action as defined by Executive Order 12866 and it concerns in part an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

This rulemaking will achieve significant reductions of various emissions from heavy-duty engines, primarily NO_X, but also PM. These pollutants raise concerns regarding environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children, such as impacts from ozone, PM and certain toxic air pollutants. See section II and the Draft RIA for a further discussion of these issues.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxics and the related adverse impacts on children's health. EPA will also be addressing the issues raised by air toxics from engines and their fuels in a separate rulemaking that EPA will initiate in the near future under section 202(l) of the Act. That rulemaking will address the emissions of hazardous air pollutants from engines and fuels, and the appropriate level of control of HAPs from these sources.

In this proposal, EPA has evaluated several regulatory strategies for reductions in emissions from heavy-duty engines. (See section III of this proposal as well as the Draft RIA.) For the reasons described there, EPA believes that the strategies proposed are preferable under the CAA to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, EPA believes that it has selected for proposal the most stringent and effective control reasonably feasible at this time, in light of the technology and cost requirements of the Act.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Section 211(d)(4)(A) of the CAA prohibits states from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1) of the Act. This proposed rule merely modifies existing EPA diesel fuel and heavy-duty vehicle standards and therefore will merely continue an existing preemption of State and local law as discussed in section VIII.C. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. In particular EPA consulted with the State of Alaska in the design of the program as it applies to them, as discussed in section VI. EPA also talked to representatives from the State of California as well as representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

XII. Statutory Provisions and Legal Authority

Statutory authority for the engine controls proposed in this notice can be found in sections 202, 203, 206, 207, 208, and 301 of the CAA, as amended, 42 U.S.C. 7521, 7522, 7525, 7541, 7542, and 7601.

Statutory authority for the fuel controls proposed in this document comes from section 211(c) and 211(i) of the CAA, which allows EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment which is in general use or has been in general use. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's proposal, including the proposed recordkeeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 69

Environmental protection. Air pollution control.

40 CFR Part 80

Environmental protection, Diesel fuel, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 17, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, we propose to amend Parts 69, 80 and 86 of chapter I of Title 40 of the Code of Federal Regulations to read as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 is revised to read as follows:

Authority: 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

Subpart E—Alaska

2. Section 69.51 of subpart E is revised to read as follows:

§ 69.51 Title II exemptions and exclusions.

(a) Diesel fuel that is designated for use only in Alaska and is used only in Alaska, is exempt from the sulfur standard of 40 CFR 80.29(a)(1)(i) and the dye provisions of 40 CFR 80.29(a)(1)(iii) and 40 CFR 80.29(b) until the implementation dates set out in 40 CFR 80.440, provided that:

(1) The fuel is segregated from non-exempt diesel fuel from the point of such designation; and

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-facility, the transferor must provide to the transferee a product transfer document stating:

This diesel fuel is for use only in Alaska. It is exempt from the federal low sulfur standards applicable to motor vehicle diesel fuel and red dye requirements applicable to non-motor vehicle diesel fuel only if it is used in Alaska.

(b) Beginning on the implementation dates set out in § 80.440, diesel fuel that is designated for use only in Alaska or is used only in Alaska, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under paragraph (c) of this section. Alaska may submit for EPA approval an alternative plan for implementing the sulfur standard in Alaska by [date one year after the effective date of the final rule]. EPA shall approve or disapprove the plan within one year of receiving Alaska's submission.

(c) If such diesel fuel is designated as fuel that does not comply with the standards and requirements for motor vehicle diesel fuel under 40 CFR part 80, subpart I, it is exempt from the dye presumption of 40 CFR 80.446(b)(2) provided that:

(1) The fuel is segregated from all motor vehicle diesel fuel.

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-facility, the transferor must provide to the transferee a product transfer document complying with the requirements of 40 CFR 80.462(a) and (d) and stating:

This diesel fuel is for use only in Alaska and is not for use in motor vehicles. It is exempt from the red dye requirement applicable to non-motor vehicle diesel fuel only if it is used in Alaska.

(3) Any pump dispensing the fuel must comply with the labeling requirements in 40 CFR 80.453.

PART 80—[AMENDED]

3. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

4. Section 80.2 is amended by revising paragraphs (x) and (y) and adding paragraphs (bb) and (nn), to read as follows:

§ 80.2 Definitions.

* * * * *

(x) *Diesel fuel* means any fuel sold in any state and suitable for use in diesel motor vehicles, diesel motor vehicle engines or diesel nonroad engines, and which is commonly or commercially known as diesel fuel.

(y) *Motor vehicle diesel fuel* means any diesel fuel, or any distillate product, that is used, intended for use, or made available for use, as a fuel in diesel motor vehicles or diesel motor vehicle engines. Motor vehicles or motor vehicle engines do not include nonroad vehicles or nonroad engines.

* * * * *

(bb) *Sulfur percentage* is the percentage of sulfur in diesel fuel by weight, as determined using the applicable sampling and testing methodologies set forth in § 80.461.

* * * * *

(nn) *Batch of motor vehicle diesel fuel* means a quantity of diesel fuel which is homogeneous with regard to those properties that are specified for motor vehicle diesel fuel under subpart I of this part.

* * * * *

5. Section 80.29 is amended by revising paragraphs (a)(1) introductory text and (b), to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) *Prohibited activities.* (1) Beginning October 1, 1993 and continuing until the implementation dates for subpart I of this part as specified in § 80.440, except as provided in 40 CFR 69.51, no person, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers, shall manufacture, introduce into commerce, sell, offer for sale, supply, store, dispense, offer for supply or transport any diesel fuel for use in motor vehicles, unless the diesel fuel:

* * * * *

(b) *Determination of compliance.* (1) Any diesel fuel which does not show visible evidence of being dyed with dye solvent red 164 (which has a characteristic red color in diesel fuel) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section.

(2) Compliance with the sulfur, cetane, and aromatics standards in paragraph (a) of this section shall be determined based on the level of the applicable component or parameter, using the sampling methodologies specified in § 80.330(b), as applicable, and the appropriate testing methodologies specified in § 80.461(a) or (b) for sulfur, § 80.2(w) for cetane index, and § 80.2(z) for aromatic content. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the level of the applicable component or parameter in the diesel fuel, if the evidence or information is relevant to whether that level would have been in compliance with the standard if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph (b), business records, and commercial documents.

(3) Determination of compliance with the requirements of this section other than the standards described in paragraph (a) of this section, and determination of liability for any violation of this section, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

* * * * *

6. Section 80.30 is amended by revising paragraphs (g)(2)(ii) and (g)(4)(i), and adding paragraph (h), to read as follows:

§ 80.30 Liability for violations of diesel fuel controls and prohibitions.

* * * * *

(g) *Defenses.* * * *

* * * * *

(2) * * *

(ii) Test results, performed in accordance with the applicable sampling and testing methodologies set forth in §§ 80.2(w), 80.2(z), 80.2(bb), and 80.461, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards of § 80.29(a) when it was delivered to the next party in the distribution system;

* * * * *

(4) * * *

(i) Test results, performed in accordance with the applicable sampling and testing methodologies set forth in §§ 80.2(w), 80.2(z), 80.2(bb), and 80.461, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards of § 80.29(a) when it was delivered to the next party in the distribution system;

* * * * *

(h) *Detection of violations.* In paragraphs (a) through (f) of this section, the term ''is detected at'' means that the violation existed at the facility in question, and the existence of the violation at that facility may be established through evidence obtained or created at that facility, at any other location, and by any party.

7. Subpart I is added to read as follows:

Subpart I—Diesel Fuel Sulfur Control

Sec.

General Information

80.440 What are the implementation dates for the diesel fuel sulfur control program?
80.441 What diesel fuel is subject to the provisions of this subpart?
80.442–80.445 [Reserved]

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80.447 What are the standards and identification requirements for additives that are blended into or are offered for sale for use in motor vehicle diesel fuel?
80.448 May used motor oil be dispensed into diesel motor vehicles?
80.449 What diesel fuel designation requirements apply to refiners and importers?
80.450–80.452 [Reserved]
80.453 What labeling requirements apply to retailers and wholesale purchaser-consumers?
80.454–80.460 [Reserved]

Sampling and Testing

80.461 What are the sampling and test methods for sulfur?

Recordkeeping and Reporting Requirements

80.462 What are the product transfer document requirements for motor vehicle diesel fuel?
80.463 What are the product transfer document requirements for additives to be used in motor vehicle diesel fuel?
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80.466 What are the requirements for obtaining an exemption for motor vehicle diesel fuel used for research, development or testing purposes?
80.467 What are the requirements for an exemption for motor vehicle diesel fuel for use in the Territories?
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80.470 What acts are prohibited under the diesel fuel sulfur control program?
80.471 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
80.472 Who is liable for violations of this subpart?
80.473 What defenses apply to persons deemed liable for a violation of a prohibited act?
80.474 What penalties apply under this subpart?

Subpart I—Diesel Fuel Sulfur Control General Information

§ 80.440 What are the implementation dates for the diesel fuel sulfur control program?

(a) [Reserved]

(b) *Standards applicable to refiners and importers.* Beginning April 1, 2006, standards for motor vehicle diesel fuel under § 80.446 apply to motor vehicle diesel fuel produced by any refinery or imported by any importer.

(c) *Standards applicable downstream of the refinery or importer.* Beginning May 1, 2006, standards for motor vehicle diesel fuel under § 80.446 apply to motor vehicle diesel fuel at any facility in the diesel fuel distribution system downstream of the refinery or importer except at retail outlets and wholesale purchaser-consumer facilities.

(d) *Standards applicable to retailers and wholesale purchaser-consumers.* Beginning June 1, 2006, standards for motor vehicle diesel fuel under § 80.446 and § 80.453 apply to motor vehicle diesel fuel at any facility in the diesel fuel distribution system.

(e) [Reserved]

(f) *Other provisions.* All other provisions of this subpart apply April 1, 2006.

§ 80.441 What diesel fuel is subject to the provisions of this subpart?

(a) *Included fuel.* The provisions of this subpart apply to motor vehicle diesel fuel as defined in § 80.2(y), and to diesel fuel additives and motor oil that are used as fuel in diesel motor vehicles or are blended with diesel fuel for use in diesel motor vehicles at any point downstream of the refinery, as provided in §§ 80.447 and 80.448.

(b) *Excluded fuel.* The provisions of this subpart do not apply to motor vehicle diesel fuel that is designated for export outside the United States, and identified for export by a transfer document as required under § 80.462.

§§ 80.442—80.445 [Reserved]

Motor Vehicle Diesel Fuel Standards and Requirements

§ 80.446 What are the standards and dye requirements for motor vehicle diesel fuel?

(a) *Standards.* All motor vehicle diesel fuel is subject to the following per-gallon standards:

(1) *Sulfur content.* 15 parts per million (ppm);

(2) *Cetane index and aromatic content.* (i) A minimum cetane index of 40; or

(ii) A maximum aromatic content cap of 35 volume percent.

(b) *Dye requirements.* (1) All motor vehicle diesel fuel shall be free of visible presence of dye solvent red 164 (which has a characteristic red color in diesel fuel), except for motor vehicle diesel fuel that is used in a manner that is tax exempt under section 4082 of the Internal Revenue Code (26 U.S.C. 4082).

(2) Any diesel fuel that does not show visible presence of dye solvent red 164 shall be considered to be motor vehicle diesel fuel and subject to all the requirements of this subpart for motor vehicle diesel fuel, except for diesel fuel designated for use only in:

(i) Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands as provided under § 80.467;

(ii) The State of Alaska as provided under 40 CFR 69.51; or

(iii) Jet aircraft, research and development testing, or for export.

§ 80.447 What are the standards and identification requirements for additives that are blended into or are offered for sale for use in motor vehicle diesel fuel?

(a) Any additive that is blended into motor vehicle diesel fuel downstream of the refinery or is offered for sale for use in diesel motor vehicles shall have a sulfur content not exceeding 15 ppm.

(b) Transfer of the diesel fuel additive shall be accompanied by a transfer document under § 80.463, except as

provided in paragraph (c) of this section.

(c) For additives sold in containers for use by the ultimate consumer of diesel fuel, each transferor shall include on the additive container, in a legible and conspicuous manner, the following accurate printed statement:

This diesel fuel additive complies with the federal sulfur content requirements for use in diesel motor vehicles.

§ 80.448 May used motor oil be dispensed into diesel motor vehicles?

No person shall introduce used motor oil, or used motor oil blended with diesel fuel, into model year 2007 or later diesel motor vehicles, unless the following requirements have been met:

(a) The engine manufacturer has received a Certificate of Conformity for the vehicle engine under 40 CFR part 86 that is explicitly based on the addition of motor oil having the greatest sulfur content of any motor oil that is commercially available; and

(b) The oil is added in a manner consistent with the conditions of the certificate.

§ 80.449 What diesel fuel designation requirements apply to refiners and importers?

Any refiner or importer shall accurately and clearly designate all fuel it produces or imports for use in motor vehicles as motor vehicle diesel fuel.

§§ 80.450–80.452 [Reserved]

§ 80.453 What labeling requirements apply to retailers and wholesale purchaser-consumers?

Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, non-road diesel fuel and motor vehicle diesel fuel, must prominently and conspicuously display in the immediate area of each pump stand from such fuel is offered for sale or dispensing, the following legible label, in block letters of no less than 36-point bold type, printed in a color contrasting with the background, and placed in a location that is readily visible to the fuel recipient:

This is high sulfur diesel fuel which is not to be used in any highway motor vehicle. The use of high sulfur diesel fuel in highway motor vehicles may damage emissions controls, harm engine operations, and void your emissions warranty.

§§ 80.454–80.460 [Reserved]

Sampling and Testing

§ 80.461 What are the sampling and test methods for sulfur?

(a) *Diesel fuel.* For purposes of § 80.446, the sulfur content of diesel fuel is the sulfur content as determined by:

(1) *Sampling method.* The applicable sampling methodology provided in § 80.330(b).

(2) *Test method for sulfur.* The American Society for Testing and Materials (ASTM) standard method D 2622–98, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry,'' modified as follows:

(i)(A) The blank stock used as a diluent for all calibration standards and sample dilutions must be prepared by mixing the following compounds at the specified proportions: 15 grams tert-butylbenzene, 15 grams decane, 15 grams dodecane, 15 grams tetradecane, 15 grams hexadecane, 15 grams tetralin, 5 grams octadecane, 5 grams napthalene.

(B) The weight tolerances are +/−5 percent for each compound. The compounds must have a minimum purity of 99 percent.

(ii) Standards must be prepared by gravimetric dilution of the appropriate pure or certified sulfur compounds in the blank stock.

(iii) A standard series of 5 calibration points at standard levels must be run. An additional blank calibration standard must be included using the blank stock prepared pursuant to the requirements of this section.

(iv) A graph of the calibration points must be prepared. This graph must show the calibration data to be linear with minimal deviation from the least squares line. Any deviation from linearity and/or any standard that does not appear to lie on the least squares line must be investigated.

(v) A new regression line must be calculated using the calibration point from the blank and the single standard that falls closest to the least squares line that was derived using all of the calibration points. This is simply a recalculation using the same data, additional standard analyses are not necessary for this recalculation. For this recalculation, it is preferred that the non-zero standard be in the upper portion of the calibration.

(vi) Analyzing the blank as an unknown, the blank must return a zero within +/−1 ppm.

(vii) The following guidelines are useful in limiting test variability: For ongoing verification when samples are in the single digit range, it is good practice to include more duplicates and include both blank samples and control fluid samples. For higher level samples, it is good practice to analyze samples in batches of 12. One duplicate and one control fluid sample should be analyzed with each batch of 12 samples. For lower level work, it is good practice to run samples in batches of 6. One duplicate, one control fluid, and one blank should be analyzed with each batch of 6 samples. As a general comment, care must be taken not to pollute the blank with sulfur from higher samples or standards through the process of preparing standards and analyzing the blanks.

(3) *Quality assurance test method.* Any ASTM sulfur test method may be used for quality assurance testing under § 80.473, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in paragraph (b) of this section.

(b) *Motor Oil.* For purposes of § 80.448, the sulfur content of unused motor oil for use in diesel fuel is the sulfur content as determined by the use of American Society for Testing and Materials (ASTM) standard method D 6443–99, entitled ''Standard Test Method for Determination of Calcium, Chlorine, Copper, Magnesium, Phosphorous, Sulfur, and Zinc, in Unused Lubricating Oils and Additives by Wavelength Dispersive X-ray Fluorescence Spectrometry (Mathematical Correction Procedure).''

(c) *Incorporation by reference.* ASTM Standard Method D 6443–99 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–99–06, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Recordkeeping and Reporting Requirements

§ 80.462 What are the product transfer document requirements for motor vehicle diesel fuel?

On each occasion that any person transfers custody or title to motor vehicle diesel fuel, except when such fuel is dispensed into motor vehicles at a retail outlet or wholesale purchaser-facility, the transferor must provide to the transferee a product transfer document identifying the fuel as motor vehicle diesel fuel, and which:

(a) Identifies the name and address of the transferor and transferee, and the date of transfer;

(b) Except as provided in 40 CFR 69.51, includes an accurate statement, as applicable, that:

(1) ''This fuel complies with the 15 ppm sulfur standard for motor vehicle diesel fuel.'';

(2) ''This is high sulfur motor vehicle diesel fuel for use only in Guam, American Samoa, or the Northern Mariana Islands.'';

(3) ''This diesel fuel is for export use only.''; or

(4) ''This diesel fuel is for research, development, or testing purposes only.''

(c) For motor vehicle diesel fuel that contains visible evidence of the dye solvent red 164, the following accurate statement:

This fuel is motor vehicle diesel fuel for tax-exempt use only, in accordance with Section 4082 of the Internal Revenue Code.

(d) Except for transfers to truck carriers, retailers or wholesale purchaser-consumers, product codes may be used to convey the information required by paragraph (a) of this section if such codes are clearly understood by each transferee.

§ 80.463 What are the product transfer document requirements for additives to be used in motor vehicle diesel fuel?

(a) Except as provided in § 80.447(c), on each occasion that any person transfers custody or title to an additive for use in motor vehicle diesel fuel, to a party in the motor vehicle diesel fuel distribution system downstream of the refiner, the transferor must provide to the transferee a product transfer document which identifies the type of additive, and which:

(1) Identifies the name and address of the transferor and transferee, and the date of transfer; and

(2) Includes the following accurate statement:

This additive complies with the federal 15 ppm sulfur standard for motor vehicle diesel fuel.

(b) Except for transfers of motor vehicle diesel fuel to truck carriers, retailers or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraph (a) of this section, if such codes are clearly understood by each transferee.

§ 80.464 What records must be kept?

(a) *Records that must be kept.* Beginning April 1, 2006, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports motor vehicle diesel fuel subject to the provisions of this subpart must keep the following records:

(1) The product transfer documents required under §§ 80.462 and 80.463.

(2) For any sampling and testing for sulfur content, cetane index or aromatics content of motor vehicle diesel fuel or additives, conducted as part of a quality assurance program or otherwise:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the testing; and

(iii) The results of the tests for diesel fuel properties as required under this subpart and the volume of product in the storage tank or container from which the sample was taken.

(3) The actions the party has taken, if any, to stop the sale or distribution of any diesel fuel found not to be in compliance with the standards specified in this subpart, and the actions the party has taken, if any, to identify the cause of any noncompliance and prevent future instances of noncompliance.

(4) Business records establishing compliance with the designation and/or segregation requirements pursuant to the requirements of this subpart.

(b) [Reserved]

(c) *Additive distribution system records.* Beginning April 1, 2006, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports an additive for use in motor vehicle diesel fuel and who is required to transfer or receive a product transfer document for that additive pursuant to § 80.463, must maintain such documents.

(d) *Length of time records must be kept.* The records required under this section must be maintained for five years from the date they were created.

(e) *Make records available to EPA.* The records required to be maintained under this section must be made available to the Administrator or the Administrator's authorized representative upon request.

§ 80.465 [Reserved]

Exemptions

§ 80.466 What are the requirements for obtaining an exemption for motor vehicle diesel fuel used for research, development or testing purposes?

(a) *Written request for R&D exemption.* Any person may receive an exemption from the provisions of this subpart for motor vehicle diesel fuel used for research, development, or testing (''R&D'') purposes by submitting the information listed in paragraph (c) of this section to:

(1) Director (6406J), Transportation and Regional Programs Division, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (postal mail); or

(2) Director (6406J), Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 501 3rd Street, NW., Washington, DC 20001 (express mail/courier); and

(3) Director (2242A), Air Enforcement Division, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the person requesting an exemption must:

(1) Demonstrate a purpose that constitutes an appropriate basis for exemption;

(2) Demonstrate that an exemption is necessary;

(3) Design an R&D program to be reasonable in scope; and

(4) Exercise a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(c) *Information required to be submitted.* To demonstrate each of the elements in paragraphs (b)(1) through (4) of this section, the person requesting an exemption must include the following information in the written request required under paragraph (a) of this section:

(1) A concise statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under this subpart.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's duration in time and, if appropriate, mileage;

(ii) An estimate of the maximum number of vehicles or engines involved in the program;

(iii) The manner in which the information on vehicles and engines used in the program will be recorded and made available to the Administrator upon request; and

(iv) The quantity of diesel fuel which does not comply with the requirements of §§ 80.446 through 80.448.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including:

(i) The site(s) of the program (including facility name, street address, city, county, state, and zip code);

(ii) The manner in which information on vehicles and engines used in the program will be recorded and made available to the Administrator upon request;

(iii) The manner in which information on the diesel fuel used in the program (including quantity, fuel properties, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to the Administrator upon request;

(iv) The manner in which the party will ensure that the R&D fuel will be segregated from motor vehicle diesel fuel and fuel pumps will be labeled to ensure proper use of the R&D diesel fuel;

(v) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(vi) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in this paragraph, and the location where such information will be maintained.

(d) *Additional requirements.* (1) The product transfer documents associated with R&D motor vehicle diesel fuel must comply with requirements of § 80.462(b)(5).

(2) The R&D diesel fuel must be designated by the refiner or supplier, as applicable, as R&D diesel fuel.

(3) The R&D diesel fuel must be kept segregated from non-exempt motor vehicle diesel fuel at all points in the distribution system.

(4) The R&D diesel fuel must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a diesel fuel retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the diesel fuel.

(5) At the completion of the program, any emission control systems or elements of design which are damaged or rendered inoperative shall be replaced, or the responsible person will be liable for a violation of the Clean Air Act Section 203(a)(3) unless sufficient evidence is supplied that the emission controls or elements of design were not damaged.

(e) [Reserved]

(f) *Mechanism for granting of an exemption.* A request for an R&D exemption will be deemed approved by the earlier of sixty (60) days from the date on which EPA receives the request for exemption, (provided that EPA has not notified the applicant of potential disapproval by that time), or the date on which the applicant receives a written approval letter from EPA.

(1) The volume of diesel fuel subject to the approval shall not exceed the estimated amount in paragraph (c)(3)(iv) of this section, unless EPA grants a greater amount in writing.

(2) Any exemption granted under this section will expire at the completion of the test program or three years from the date of approval, whichever occurs first, and may only be extended upon re-application consistent will all requirements of this section.

(3) The passage of sixty (60) days will not signify the acceptance by EPA of the validity of the information in the request for an exemption. EPA may elect at any time to review the information contained in the request, and where appropriate may notify the responsible person of disapproval of the exemption.

(4) In granting an exemption the Administrator may include terms and conditions, including replacement of emission control devices or elements of design, that the Administrator determines are necessary for monitoring the exemption and for assuring that the purposes of this subpart are met.

(5) Any violation of a term or condition of the exemption, or of any requirement of this section, will cause the exemption to be void *ab initio*.

(6) If any information required under paragraph (c) of this section should change after approval of the exemption, the responsible person must notify EPA in writing immediately. Failure to do so may result in disapproval of the exemption or may make it void *ab initio*, and may make the party liable for a violation of this subpart.

(g) *Effects of exemption.* Motor vehicle diesel fuel that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the fuel is used in a manner that complies with the purpose of the program under paragraph (c) of this section and the requirements of this section.

(h) *Notification of Completion.* The party shall notify EPA in writing within thirty (30) days of completion of the R&D program.

§ 80.467 What are the requirements for an exemption for motor vehicle diesel fuel for use in the Territories?

The sulfur standards and dye requirement of § 80.446(a)(1) and (b) do not apply to diesel fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in the Territories of Guam, American Samoa or the Commonwealth of the Northern Mariana Islands provided that such diesel fuel is:

(a) Designated by the refiner or importer as high sulfur diesel fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(b) Used only in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(c) Accompanied by documentation that complies with the product transfer document requirements of § 80.462(b)(3); and

(d) Segregated from non-exempt highway and other diesel fuel at all points in the distribution system from the point the diesel fuel is designated as exempt fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, while the exempt fuel is in the United States but outside these Territories.

§§ 80.468–469 [Reserved]

Violation Provisions

§ 80.470 What acts are prohibited under the diesel fuel sulfur program?

No person shall:

(a) *Standard or dye violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport motor vehicle diesel fuel that does not comply with the applicable standards and dye requirements under § 80.446.

(b) *Additive violation.* Blend or permit the blending into motor vehicle diesel fuel downstream of the refinery, or use, or permit the use, as motor vehicle diesel fuel, of additives which do not comply with the requirements of § 80.447.

(c) *Motor Oil violation.* Introduce into diesel motor vehicles, or permit the introduction into such vehicles of motor oil, or motor oil blended with diesel fuel, which does not comply with the requirements of § 80.448.

(d) *Introduction violation.* Introduce, or permit the introduction of, fuel into diesel motor vehicles which does not comply with the standards of § 80.446.

(e) *Cause another party to violate.* Cause another person to commit an act in violation of paragraphs (a) through (d) of this section.

(f) *Cause violating fuel or additive to be in the distribution system.* Cause diesel fuel to be in the diesel fuel distribution system which does not comply with the applicable standard or dye requirements of § 80.446, or cause any diesel fuel additive to be in the distribution system which does not comply with the sulfur standard of § 80.447.

§ 80.471 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) *Compliance with sulfur, cetane, and aromatics standards.* Compliance with the standards in §§ 80.446 and 80.448 shall be determined based on the level of the applicable component or parameter, using the sampling methodologies specified in § 80.330(b), as applicable, and the appropriate testing methodologies specified in § 80.461(a) or (b) for sulfur, § 80.2(w) for cetane index, and § 80.2(z) for aromatic content. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the level of the applicable component or parameter in the diesel fuel, or motor oil to be used in diesel fuel, if the evidence or information is relevant to whether that level would have been in compliance with the standard if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph, business records, and commercial documents.

(b) *Compliance with other requirements.* Determination of compliance with the requirements of this subpart other than the standards described in paragraph (a) of this section and in §§ 80.446 and 80.448, and determination of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.472 Who is liable for violations of this subpart?

(a) *Persons liable for violations of prohibited acts.*—(1) *Standard, dye, additives, motor oil, and introduction violations.* (i) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility where a violation of § 80.470(a) through (d) occurred, is deemed liable for the applicable violation.

(ii) Any person who violates § 80.470(a) through (d) is liable for the violation.

(iii) Any person who causes another person to violate § 80.470(a) through (d) is liable for a violation of § 80.470(e).

(iv) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of, diesel fuel that violates § 80.470(a), is deemed in violation of § 80.470(e).

(2) *Cause violating diesel fuel or additive to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility from which motor vehicle diesel fuel or additive was released into the distribution system which does not comply with the applicable standards or dye requirement of § 80.446 or § 80.447, is deemed in violation of § 80.470(f).

(3) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.470(a) occurred, is deemed in violation of § 80.470(a).

(4) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(1)(iii) or (iv) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(5) *Parent corporation.* Any parent corporation is liable for any violations of this subpart that are committed by any subsidiary.

(6) *Joint venture.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who:

(1) Fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision; or

(2) Causes another person to fail to meet a provision of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

§ 80.473 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) *Presumptive liability defenses.* Any person deemed liable for a violation of a prohibition under § 80.472 (a)(1)(i) or (a)(1)(iv), (a)(2) or (a)(3), will not be deemed in violation if the person demonstrates that:

(1) The violation was not caused by the person or the person's employee or agent;

(2) Product transfer documents account for fuel or additive found to be in violation and indicate that the violating product had met the applicable requirements when it was under the party's control; and

(3) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the diesel fuel in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) *Branded refiner defenses.* In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraphs (a)(1) and (a)(2) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of diesel fuel, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) *Causation demonstration.* Under paragraph (a)(1) of this section for any person to show that a violation was not caused by that person, or under paragraph (b) of this section to show that a violation was caused by any of the specified actions, the person must

demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance and testing program.* (1) To demonstrate an acceptable quality assurance program under paragraph (a)(2) of this section, a person must present evidence of the following:

(i) A periodic sampling and testing program to ensure the motor vehicle diesel fuel or additive the person sold, dispensed, supplied, stored, or transported, meets the applicable standards; and

(ii) On each occasion when motor vehicle diesel fuel or additive is found not in compliance with the applicable standard:

(A) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(B) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring).

(2) For any carrier who transports motor vehicle diesel fuel or additive in a tank truck, the quality assurance program required under this paragraph (d) need not include periodic sampling and testing of the motor vehicle diesel fuel or additive in the tank truck, but in lieu of such tank truck sampling and testing, the carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of this subpart relating to the transport or storage of such product by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning motor vehicle diesel fuel or additive quality and delivery.

§ 80.474 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.472 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b)(1) Any person liable under § 80.472(a)(1) for a violation of an applicable standard or requirement under § 80.446, or of causing another party to violate such standard or requirement, is subject to a separate day of violation for each and every day the non-complying motor vehicle diesel fuel remains any place in the distribution system.

(2) Any person liable under § 80.472(a)(2) for causing motor vehicle diesel fuel to be in the distribution system which does not comply with an applicable standard or requirement of § 80.446, is subject to a separate day of violation for each and every day that the non-complying motor vehicle diesel fuel remains any place in the motor vehicle diesel fuel distribution system.

(3) For purposes of this paragraph (b), the length of time the motor vehicle diesel fuel in question remained in the motor vehicle diesel fuel distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying motor vehicle diesel fuel remained in the distribution system for fewer than or more than twenty-five days.

(c) Any person liable under § 80.472(a)(1) for blending into motor vehicle diesel fuel an additive violating the sulfur standard under § 80.447(a)(1), or of causing another party to violate that requirement, is subject to a separate day of violation for each and every day the non-complying motor vehicle diesel fuel remains any place in the system.

(d) Any person liable under § 80.472(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

PART 86—[AMENDED]

8. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

9. Section 86.004–2 of subpart A is amended by adding in alphabetical order a definition of ''U.S.-directed production'' to read as follows:

§ 86.004–2 Definitions.

* * * * *

U.S.-directed production means the engines or vehicles produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

* * * * *

10. Section 86.004–40 of subpart A is amended by revising the introductory text to read as follows:

§ 86.004–40 Heavy-duty engine rebuilding practices.

The provisions of this section are applicable to heavy-duty engines subject to model year 2004 or later standards and are applicable to the process of engine rebuilding (or rebuilding a portion of an engine or engine system). The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and also may include the removal of the engine from the vehicle and other acts associated with rebuilding an engine. Any deviation from the provisions contained in this section is a prohibited act under section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

* * * * *

11. A new § 86.007–10 is added to subpart A to read as follows:

§ 86.007–10 Emission standards for 2007 and later model year Otto-cycle heavy-duty engines and vehicles.

This § 86.007–10 includes text that specifies requirements that differ from § 86.099–10. Where a paragraph in § 86.099–10 is identical and applicable to § 86.007–10, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.099–10.''

(a)(1) Exhaust emissions from new 2007 and later model year Otto-cycle HDEs shall not exceed:

(i)(A) *Oxides of Nitrogen (NO_X).* 0.20 grams per brake horsepower-hour (0.075 grams per megajoule).

(B) A manufacturer may elect to include any or all of its Otto-cycle HDE families in any or all of the NO_X and NO_X plus NMHC emissions ABT programs for HDEs, within the restrictions described in § 86.007–15 or § 86.004–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FEL may not exceed 0.50 grams per brake horsepower-hour (0.19 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Non-methane Hydrocarbons (NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 0.14 grams per brake horsepower-hour (0.052 gram per megajoule).

(B) *Non-methane Hydrocarbon Equivalent (NMHCE) for engines fueled with methanol.* 0.14 grams per brake

horsepower-hour (0.052 gram per megajoule).

(iii)(A) *Carbon monoxide.* 14.4 grams per brake horsepower-hour (5.36 grams per megajoule).

(B) *Idle Carbon Monoxide.* For all Otto-cycle HDEs utilizing aftertreatment technology: 0.50 percent of exhaust gas flow at curb idle.

(iv) *Particulate.* 0.01 gram per brake horsepower-hour (0.0037 gram per megajoule).

(v) *Formaldehyde.* 0.016 grams per brake horsepower-hour (0.0060 gram per megajoule)

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part.

(3) [Reserved]

(4) [Reserved]

(b) Evaporative emissions from heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

(1) Hydrocarbons (for vehicles equipped with gasoline-fueled, natural gas-fueled or liquefied petroleum gas-fueled engines). (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.4 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 1.75 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

(C) Fuel dispensing spitback test (gasoline-fueled vehicles only): 1.0 gram per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.9 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 2.3 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

(2) Total Hydrocarbon Equivalent (for vehicles equipped with methanol-fueled engines). (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.4 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.75 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(C) Fuel dispensing spitback test: 1.0 gram carbon per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.9 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 2.3 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(3)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraphs (b)(1) and (b)(2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standards set forth in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.098–23(b)(4)(ii)).

(4) All fuel vapor generated in a gasoline-or methanol-fueled heavy-duty vehicle during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 2007 or later model year Otto-cycle HDE.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of this section.

(e)[Reserved]. For guidance see § 86.099–10.

12. A new § 86.007–11 is added to subpart A to read as follows:

§ 86.007–11 Emission standards for 2007 and later model year diesel heavy-duty engines and vehicles.

Section 86.007–11 includes text that specifies requirements that differ from § 86.004–11. Where a paragraph in § 86.004–11 is identical and applicable to § 86.007–11, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.004–11.''

(a)(1) Exhaust emissions from new 2007 and later model year diesel HDEs shall not exceed the following:

(i)(A) *Oxides of Nitrogen (NO_X).* 0.20 grams per brake horsepower-hour (0.075 gram per megajoule).

(B) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the NO_X and NO_X plus NMHC emissions ABT programs for HDEs, within the restrictions described in § 86.007–15 or § 86.004–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FELs may not exceed 0.50 grams per brake horsepower-hour (0.19 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Non-methane Hydrocarbons (NMHC) for engines fueled with either diesel fuel, natural gas, or liquefied petroleum gas.* 0.14 grams per brake horsepower-hour (0.052 gram per megajoule).

(B) *Non-methane Hydrocarbon Equivalent (NMHCE) for engines fueled with methanol.* 0.14 grams per brake horsepower-hour (0.052 gram per megajoule).

(iii) *Carbon monoxide.* (A) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule).

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-, natural gas-, and liquefied petroleum gas-fueled diesel HDEs only).

(iv) *Particulate.* (A) 0.01 gram per brake horsepower-hour (0.0037 gram per megajoule).

(B) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the particulate ABT programs for HDEs, within the

restrictions described in § 86.007–15 or superseding applicable sections. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.02 gram per brake horsepower-hour (0.0075 gram per megajoule).

(v) *Formaldehyde.* 0.016 grams per brake horsepower-hour (0.0060 gram per megajoule).

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(2) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part, except as noted in § 86.007–23(c)(2).

(3)(i) The weighted average exhaust emissions, as determined under § 86.1360–2004(e)(5) pertaining to the supplemental steady-state test cycle, for each regulated pollutant shall not exceed 1.0 times the applicable emission standards or FELs specified in paragraph (a)(1) of this section.

(ii) Exhaust emissions shall not exceed the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360–2004(f), when the engine is operated in the steady-state control area defined under § 86.1360–2004(d).

(4)(i) The weighted average emissions, as determined under § 86.1370 pertaining to the not-to-exceed test procedures, for each regulated pollutant shall not exceed 1.25 times the applicable emission standards or FELs specified in paragraph (a)(1) of this section, except as noted in paragraph (a)(4)(ii) of this section.

(ii) Exhaust emissions shall not exceed either the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360(f) or the exhaust emissions specified in paragraph (a)(4)(i) of this section, whichever is numerically lower, when the engine is operated in the steady-state control area defined under § 86.1360(d).

(b)[Reserved]. For guidance see § 86.004–11.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 2007 or later model year diesel HDE.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), (c), and (d) of this section.

(e)[Reserved]. For guidance see § 86.004–11.

(f) Optional phase-in provisions. For model years 2007, 2008, and 2009, manufacturers may certify some of their engine families to the combined NOx plus NMHC standard applicable to model year 2006 engines under § 86.004–11, in lieu of the separate NO_X, NMHC, and formaldehyde standards specified in this section. These engines must comply with all other requirements applicable to model year 2007 engines.

(1) The following sales limits apply:

(i) For model year 2007, the combined number of engines in the engine families certified to the 2006 combined NO_X plus NMHC standard may not exceed 75 percent of the manufacturer's U.S.-directed production of heavy-duty diesel motor vehicle engines for model year 2007.

(ii) For model year 2008, the combined number of engines in the engine families certified to the 2006 combined NO_X plus NMHC standard may not exceed 50 percent of the manufacturer's U.S.-directed production of heavy-duty diesel motor vehicle engines for model year 2008.

(iii) For model year 2009, the combined number of engines in the engine families certified to the 2006 combined NO_X plus NMHC standard may not exceed 25 percent of the manufacturer's U.S.-directed production of heavy-duty diesel motor vehicle engines for model year 2009.

(2) During the phase-in period, manufacturers may not average together (as part of the ABT program) engine families certified to the NO_X plus NMHC standards applicable to model year 2006 and engine families certified to the separate NO_X and NMHC standards specified in this section.

(g)(1) Diesel heavy-duty engines and vehicles for sale in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be subject to the same standards and requirements as apply to 2006 model year diesel heavy-duty engines and vehicles, but only if the vehicle or engine bears a permanently affixed label stating:

THIS ENGINE (or VEHICLE, as applicable) CONFORMS TO US EPA EMISSION STANDARDS APPLICABLE TO MODEL YEAR 2006. THIS ENGINE (or VEHICLE, as applicable) DOES NOT CONFORM TO US EPA EMISSION REQUIREMENTS IN EFFECT AT TIME OF PRODUCTION AND MAY NOT BE IMPORTED INTO THE UNITED STATES OR ANY TERRITORY OF THE UNITED STATES EXCEPT GUAM, AMERICAN SAMOA, OR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(2) The importation or sale of such a vehicle or engine for use at any location other than Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be considered a violation of section 203(a)(1) of the Clean Air Act. In addition, vehicles or vehicle engines subject to this exemption may not subsequently be imported or sold into any state or territory of the United States other than Guam, American Samoa, or Commonwealth of the Northern Mariana Islands.

13. A new § 86.007–15 is added to Subpart A to read as follows:

§ 86.007–15 NO_X and particulate averaging, trading, and banking for heavy-duty engines.

Section 86.007–15 includes text that specifies requirements that differ from § 86.004–15. Where a paragraph in § 86.004–15 is identical and applicable to § 86.007–15, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.004–15.''

(a) through (k) [Reserved]. For guidance see § 86.004–15.

(l) The following provisions apply for model year 2007 and later engines. These provisions apply instead of the provisions of § 86.004–15 (a) through (k) to the extent that they are in conflict.

(1) Credits are calculated as NO_X credits. Banked NO_X plus NMHC credits and PM credits generated in prior model years (before 2007) may not be used in the 2007 and later NO_X and PM averaging programs, unless:

(i) The engines generating the credits meet all of the applicable standards listed in § 86.007-10 (a)(1) or § 86.007–11 (a)(1); or

(ii) The engines using the credits are certified under the § 86.007–11(f).

(2) The FEL must be expressed to the same number of decimal places as the standard (one-hundredth of a gram per brake horsepower-hour).

(3) Credits are rounded to the nearest one-hundredth of a Megagram.

(4) Credits generated for 2007 and later model year engine families are not discounted, and do not expire.

14. A new § 86.007–23 is added to Subpart A to read as follows:

§ 86.007–23 Required data.

Section 86.007–23 includes text that specifies requirements that differ from § 86.095–23, § 86.098–23, or § 86.001–23. Where a paragraph in § 86.095–23, § 86.098–23, or § 86.001–23 is identical and applicable to § 86.007–23, this may

be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.095–23.'', ''[Reserved]. For guidance see § 86.098–23.'', or ''[Reserved]. For guidance see § 86.001–23.''.

(a) through (b)(1) [Reserved]. For guidance see § 86.098–23.

(b)(2) [Reserved]. For guidance see § 86.001–23.

(b)(3) and (b)(4) [Reserved]. For guidance see § 86.098–23.

(c) *Emission data*—(1) *Certification vehicles.* The manufacturer shall submit emission data (including, methane, methanol, formaldehyde, and hydrocarbon equivalent, as applicable) on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.000–26(a)(3). In lieu of providing emission data the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with certain applicable emission standards of this part Standards eligible for such manufacturer requests are those for idle CO emissions, smoke emissions, or particulate emissions from methanol-fueled diesel-cycle certification vehicles, those for particulate emissions from gasoline-fueled or methanol-fueled Otto-cycle certification vehicles, and those for formaldehyde emissions from petroleum-fueled vehicles. Also eligible for such requests are standards for total hydrocarbon emissions from model year 1994 and later certification vehicles. By separate request, including appropriate supporting test data, the manufacturer may request that the Administrator also waive the requirement to measure particulate or formaldehyde emissions when conducting Selective Enforcement Audit testing of Otto-cycle vehicles.

(2) *Certification engines.* The manufacturer shall submit emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.000–26(c)(4). In lieu of providing emission data on idle CO emissions or particulate emissions from methanol-fueled diesel-cycle certification engines, on particulate emissions from Otto-cycle engines, on CO emissions from petroleum-fueled or methanol-fueled diesel certification engines, or on formaldehyde emissions from petroleum-fueled engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emission standards of this part . In lieu of providing emission data on smoke emissions from methanol-fueled or petroleum-fueled diesel certification engines, the Administrator may, on the request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emissions standards of this part In lieu of providing emissions data on smoke emissions from petroleum-fueled or methanol-fueled diesel engines, or on formaldehyde emissions from petroleum-fueled engines when conducting Selective Enforcement Audit testing under subpart K of this part, the Administrator may, on separate request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable smoke emissions standards of this part.

(d) through (e)(1) [Reserved]. For guidance see § 86.098–23.

(e)(2) and (e)(3) [Reserved]. For guidance see § 86.001–23.

(f) through (g) [Reserved]. For guidance see § 86.095–23.

(h) through (k) [Reserved]. For guidance see § 86.098–23.

(l) [Reserved]. For guidance see § 86.095–23.

(m) [Reserved]. For guidance see § 86.098–23.

15. A new § 86.007–25 is added to Subpart A to read as follows:

§ 86.007–25 Maintenance.

Section 86.007–25 includes text that specifies requirements that differ from § 86.094–25, § 86.098–25, or § 86.004–25. Where a paragraph in § 86.094–25, § 86.098–25, or § 86.004–25 is identical and applicable to § 86.007–25, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.094–25.'', ''[Reserved]. For guidance see § 86.098–25.'', or ''[Reserved]. For guidance see § 86.004–25.''

(a) through (b)(3)(v)(H) [Reserved]. For guidance see § 86.004–25.

(b)(3)(vi)(A) through (b)(3)(vi)(D) [Reserved]. For guidance see § 86.094–25.

(b)(3)(vi)(E) through (b)(3)(vi)(J) [Reserved]. For guidance see § 86.098–25.

(b)(4) introductory text through (b)(4)(iii)(C) [Reserved]. For guidance see § 86.004–25.

(b)(4)(iii)(D) Particulate trap or trap oxidizer systems including related components (adjustment and cleaning only for filter element, replacement of the filter element is not allowed during the useful life).

(b)(4)(iii)(E) [Reserved]. For guidance see § 86.004–25.

(F) Catalytic converter (adjustment and cleaning only for catalyst beds, replacement of the bed is not allowed during the useful life).

(b)(4)(iii)(G) through (b)(6) [Reserved]. For guidance see § 86.004–25.

(b)(7) through (h) [Reserved]. For guidance see § 86.094–25.

16. A new § 86.007–35 is added to Subpart A to read as follows:

§ 86.007–35 Labeling.

Section 86.007–35 includes text that specifies requirements that differ from § 86.095–35. Where a paragraph in § 86.095–35 is identical and applicable to § 86.007–35, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.095–35.''.

(a) Introductory text through (a)(1)(iii)(L) [Reserved]. For guidance see § 86.095–35.

(a)(1)(iii)(M) [Reserved]

(a)(1)(iii)(N)(*1*) For vehicles exempted from compliance with certain revised performance warranty procedures, as specified in § 86.096–21(j), a statement indicating the specific performance warranty test(s) of 40 CFR part 85, subpart W, not to be performed.

(*2*) For vehicles exempted from compliance with all revised performance warranty procedures, as specified in § 86.096–21(k), a statement indicating:

(*i*) That none of the performance warranty tests of 40 CFR part 85, subpart W, is to be performed, and

(*ii*) The name of the Administrator-approved alternative test procedure to be performed.

(2) Light-duty truck and heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.

(i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not

be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of the manufacturer;

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative/refueling family;

(a)(2)(iii)(D) through (a)(2)(iii)(E) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(F) [Reserved]

(a)(2)(iii)(G) through (a)(2)(iii)(K) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(L) [Reserved]

(a)(2)(iii)(M) through (a)(2)(iii)(N) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(O)(*1*) For vehicles exempted from compliance with certain revised performance warranty procedures, as specified in § 86.096–21(j), a statement indicating the specific performance warranty test(s) of 40 CFR part 85, subpart W, not to be performed.

(*2*) For vehicles exempted from compliance with all revised performance warranty procedures, as specified in § 86.096–21(k), a statement indicating:

(*i*) That none of the performance warranty tests of 40 CFR part 85, subpart W, is to be performed, and

(*ii*) The name of the Administrator-approved alternative test procedure to be performed.

(a)(3) heading through (b) [Reserved]. For guidance see § 86.095–35.

(c) Model year 2007 and later diesel heavy-duty vehicles, and diesel-fueled Tier 2 vehicles as defined in Subpart S of this Part, must include permanent readily visible labels on the dashboard (or instrument panel) and near the fuel inlet that states ''Ultra Low Sulfur Diesel Fuel Only''.

(d) through (i) [Reserved]. For guidance see § 86.095–35.

17. A new § 86.007–38 is added to Subpart A to read as follows:

§ 86.007–38 Maintenance Instructions.

Section 86.007–38 includes text that specifies requirements that differ from those specified in § 86.094–38 or § 86.004–38. Where a paragraph in § 86.094–38 or § 86.004–38 is identical and applicable to § 86.007–38, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.094–38.'', or ''[Reserved]. For guidance see § 86.004–38.''

(a) through (f) [Reserved]. For guidance see § 86.004–38.

(g) [Reserved]. For guidance see § 86.094–38.

(h) [Reserved]. For guidance see § 86.004–38.

(i) For each new diesel-fueled engine subject to the standards prescribed in § 86.007–11, as applicable, the manufacturer shall furnish or cause to be furnished to the ultimate purchaser a statement that ''This engine must be operated only with ultra low sulfur diesel fuel (i.e., diesel fuel meeting EPA specifications for highway diesel fuel, including a 15 ppm sulfur cap).''

18. A new § 86.113–07 is added to subpart B to read as follows:

§ 86.113–07 Fuel specifications.

Section 86.113–07 includes text that specifies requirements that differ from § 86.113–94 or § 86.113–04. Where a paragraph in § 86.113–94 or § 86.113–04 is identical and applicable to § 86.113–07, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.113–94 or ''[Reserved]. For guidance see § 86.113–04''.

(a) [Reserved]. For guidance see § 86.113–04.

(b)(1) [Reserved]. For guidance see § 86.113–94.

(b)(2) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, must be used in exhaust emissions testing. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as ''Type 2-D'' grade diesel, must be used:

Item		ASTM test method No.	Type 2–D
(i) Cetane Number		D613	40–50
(ii) Cetane Index		D976	40–50
(iii) Distillation range:			
(A) IBP	°F (°C)	D86	340–400 (171.1–204.4)
(B) 10 pct. point	°F (°C)	D86	400–460 (204.4–237.8)
(C) 50 pct. point	°F (°C)	D86	470–540 (243.3–282.2)
(D) 90 pct. point	°F (°C)	D86	560–630 (293.3–332.2)
(E) EP	°F (°C)	D86	610–690 (321.1–365.6)
(iv) Gravity	°API	D287	32–37
(v) Total sulfur	ppm	D2622	7–15
(vi) Hydrocarbon composition: Aromatics, minimum (Remainder shall be paraffins, naphthenes, and olefins)	pct.	D5186	27

Item		ASTM test method No.	Type 2–D
(vii) Flashpoint, min.	°F (°C)	D93	130 (54.4)
(viii) Viscosity	centistokes	D445	2.0–3.2

(3) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as ''Type 2–D'' grade diesel fuel, shall be used:

Item		ASTM test method No.	Type 2–D
(i) Cetane Number		D613	38–58
(ii) Cetane Index		D976	min. 40
(iii) Distillation range: 90 pct. point	°F	D86	540–630
(iv) Gravity	°API	D287	30–39
(v) Total sulfur	ppm	D2622	7–15
(vi) Flashpoint, min.	°F (°C)	D93	130 (54.4)
(vii) Viscosity	centistokes	D445	1.5–4.5

(b)(4) through (g) [Reserved]. For guidance see § 86.113–94.

19. A new § 86.1313–07 of subpart N is added to read as follows:

§ 86.1313–07 Fuel specifications.

Section 86.1313–07 includes text that specifies requirements that differ from § 86.1313–94. Where a paragraph in § 86.1313–94 is identical and applicable to § 86.1313–07, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1313–94.''.

(a) through (b)(1) [Reserved]. For guidance see § 86.1313–94.

(b)(2) Petroleum fuel for diesel engines meeting the specifications in Table N07–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel used shall be commercially designated as ''Type 2–D'' grade diesel fuel except that fuel commercially designated as ''Type 1–D'' grade diesel fuel may be substituted provided that the manufacturer has submitted evidence to the Administrator demonstrating to the Administrator's satisfaction that this fuel will be the predominant in-use fuel. Such evidence could include such things as copies of signed contracts from customers indicating the intent to purchase and use ''Type 1–D'' grade diesel fuel as the primary fuel for use in the engines or other evidence acceptable to the Administrator. Table N07–2 follows:

TABLE N07–2

Item		ASTM test method No.	Type 1–D	Type 2–D
(i) Cetane Number		D613	40–54	40–50
(ii) Cetane Index		D976	40–54	40–50
(iii) Distillation range: (A) IBP	°F (°C)	D86	330–390 (165.6–198.9)	340–400 (171.1–204.4)
(B) 10 pct. point	°F (°C)	D86	370–430 187.8–221.1)	400–460 (204.4–237.8)
(C) 50 pct. point	°F °C)	D86	410–480 (210.0–248.9)	470–540 (243.3–282.2)

TABLE N07–2—Continued

Item		ASTM test method No.	Type 1–D	Type 2–D
(D) 90 pct. point	°F (°C)	D86	460–520 (237.8–271–1)	560–630 (293.3–332.2)
(E) EP	°F (°C)	D86	500–560 (260.0–293.3)	610–690 (321.1–365.6)
(iv) Gravity	°API	D287	40–44	32–37
(v) Total sulfur	ppm	D2622	7–15	7–15
(vi) Hydrocarbon composition: Aromatics, minimum (Remainder shall be paraffins, naphthenes, and olefins).	pct	D5186	8	27
(vii) Flashpoint, min	°F (°C)	93	120 (48.9)	130 (54.4)
(viii) Viscosity	centistokes	D445	1.6–2.0	2.0–3.2

(3) Petroleum diesel fuel for diesel engines meeting the specifications in table N07–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel used shall be commercially designated as ''Type 2–D'' grade diesel fuel except that fuel commercially designated as ''Type 1–D'' grade diesel fuel may be substituted provided that the manufacturer has submitted evidence to the Administrator demonstrating to the Administrator's satisfaction that this fuel will be the predominant in-use fuel. Such evidence could include such things as copies of signed contracts from customers indicating the intent to purchase and use ''Type 1–D'' grade diesel fuel as the primary fuel for use in the engines or other evidence acceptable to the Administrator. Table N07–03 follows:

TABLE N07–3

Item		ASTM test method No.	Type 1–D	Type 2–D
(i) Cetane Number		D613	40–56	38–58
(ii) Cetane Index		D976	min. 40	min. 40
(iii) Distillation range: 90 pct. point	°F (°C)	D86	440–530 226.7–276–7)	540–630 (293.3–332.2)
(iv) Gravity	°API	D287	39–45	30–39
(v) Total sulfur	ppm	D2622	7–15	7–15
(vi) Flashpoint, min.	°F (°C)	D93	130 (54.4)	130 (54.4)
(vii) Viscosity	centistokes	D445	1.2–2.2	1.5–4.5

(b)(4) through (g) [Reserved]. For guidance see § 86.1313–94.

20. A new § 86.1337–07 is added to subpart N to read as follows:

§ 86.1337–07 Engine dynamometer test run.

Section 86.1337–07 includes text that specifies requirements that differ from § 86.1337–96. Where a paragraph in § 86.1337–96 is identical and applicable to § 86.1337–07, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1337–96.''.

(a) through (c) [Reserved]. For guidance see § 86.1337–96.

(d) For engines equipped with an aftertreatment device that is intermittently regenerated:

(1) Repeat the ''hot start cycle'' until the regeneration event occurs;

(2) Complete the ''hot start cycle'' in which the regeneration event occurs;

(3) Measure emission during each of the ''hot start cycles''; and

(4) Use the measured emission values for the ''hot start cycle'' with the highest emissions as the ''hot start cycle'' emissions for calculations in § 86.1342. (Note: If the highest emission values for each pollutant do not occur in the same ''hot start cycle'', then use the emissions for the cycle in which the emissions come closest to causing an exceedance of an applicable standard.)

21. A new § 86.1808–07 is added to subpart S to read as follows:

§ 86.1808–07 Maintenance instructions.

Section 86.1808–07 includes text that specifies requirements that differ from those specified in § 86.1808–01. Where a paragraph in § 86.1808–01 is identical and applicable to § 86.1808–07, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1808–01.''.

(a) through (f) [Reserved]. For guidance see § 86.1808–01.

(g) For each new diesel-fueled Tier 2 vehicle, the manufacturer shall furnish or cause to be furnished to the purchaser a statement that ''This vehicle must be operated only with ultra low sulfur diesel fuel (i.e., diesel fuel meeting EPA specifications for highway diesel fuel, including a 15 ppm sulfur cap).''.

22. Section 86.1810–01 is amended by revising the introductory text to read as follows:

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

This section applies to model year 2001 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. This section also applies to complete heavy-duty vehicles certified according to the provisions of this subpart. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. For Tier 2 and interim non-Tier 2 vehicles, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

* * * * *

23. A new § 86.1816–07 is added to subpart S, to read as follows:

§ 86.1816–07 Emission standards for complete heavy-duty vehicles.

Section 86.1816–07 includes text that specifies requirements that differ from those specified in § 86.1816–04.[1] Where a paragraph in § 86.1816–04 is identical and applicable to § 86.1816–07, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1816–04.'' This section applies to 2007 and later model year complete heavy-duty vehicles (excluding MDPVs) fueled by gasoline, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to hydrocarbons or total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from 2007 and later model year complete heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane hydrocarbons.* 0.195 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 7.3 grams per mile.

(iv) *Oxides of nitrogen.* 0.20 grams per mile.

(v) *Particulate.* 0.02 grams per mile.

(vi) *Formaldehyde.* 0.016 grams per mile.

(2) Exhaust emissions from 2007 and later model year complete heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane hydrocarbons.* 0.23 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 8.1 grams per mile.

(iv) *Oxides of nitrogen.* 0.40 grams per mile.

(v) *Particulate.* 0.02 grams per mile.

(vi) *Formaldehyde.* 0.021 grams per mile.

(b) [Reserved]

(c) [Reserved]

(d) *Evaporative emissions.* Evaporative hydrocarbon emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled complete heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 1.4 grams per test.

(2) Gasoline and methanol fuel only. For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 1.75 grams per test.

(3) Gasoline and methanol fuel only. Running loss test: 0.05 grams per mile.

(4) Gasoline and methanol fuel only. Fuel dispensing spitback test: 1.0 grams per test.

(e) through (h) [Reserved]. For guidance see § 86.1816–04.

24. A new § 86.1824–07 is added to subpart S, to read as follows:

§ 86.1824–07 Durability demonstration procedures for evaporative emissions.

Section 86.1824–07 includes text that specifies requirements that differ from those specified in § 86.1801–01. Where a paragraph in § 86.1824–01 is identical and applicable to § 86.1824–07, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1824–01.''. This section applies to gasoline-, methanol-, natural gas- and liquefied petroleum gas-fueled LDV/Ts, MDPVs, and HDVs.

(a) through (f) [Reserved]. For guidance see § 86.1824–01.

25. Section 86.1829–01 is amended by revising paragraph (b)(1)(iii)(B) and adding paragraph (b)(1)(iii)(F) to read as follows:

[1] Section 86.1816–04 was proposed to be added at 64 FR 58559, October 29, 1999.

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b)* * *(1) * * *

(iii) * * *

(B) In lieu of testing an Otto-cycle light-duty vehicle, light-duty truck, or heavy-duty vehicle for particulate emissions for certification, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

* * * * *

(F) In lieu of testing a petroleum-fueled heavy-duty vehicle for formaldehyde emissions for certification, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

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