

in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, 1055 East 9th Street, Cleveland, OH 44114. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an

environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal government, even if that impact may not constitute a “tribal implication” under that Order.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast

Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

While not required, a preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES** for your review.

■ For the reasons discussed in the preamble, and under authority in 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, the Coast Guard amends the temporary final rule published July 1, 2005 (69 FR 38015) entitled, “Security Zone; Cleveland Harbor, Cleveland, Ohio”.

#### § 165.T09–027 [Amended]

■ In rule FR Doc. 05–13072 published on July 1, 2005 (69 FR 38015) make the following amendments to paragraphs (a) and (b) of § 165.T09–027. On page 38016, in the third column, remove the last 2 lines, and on page 38017, in the first column, removed the first 12 lines, and add, in their place, the following text:

(a) *Location*. The following area is a security zone: All waters within a 300 yard radius of Cleveland port Authority Dock 32 (41°30′37″N, 081°41′49″W) and all waters contained in the North Coast Harbor. All coordinates reference North American 83 Datum (NAD 83).

(b) *Effective period*. This section is effective from 12:01 a.m. July 15, 2005, until 11:59 p.m., July 17, 2005.

Dated: July 8, 2005.

**W. Watson,**

*Lieutenant, U.S. Coast Guard, Acting Captain of the Port of Cleveland.*

[FR Doc. 05–13955 Filed 7–14–05; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[AMS–FRL–7937–3]

RIN 2060–AN19

### Control of Emissions of Air Pollution From Diesel Fuel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to correct, amend, and revise certain provisions of the Highway Diesel Rule adopted on January 18, 2001 (66 FR 5002), and the Nonroad Diesel Rule on June 29, 2004 (69 FR 38958). First, it makes minor corrections to clarify the regulations governing compliance with the diesel fuel standards. These minor corrections focus primarily on the Nonroad Rule, however, some may affect provisions contained in the Highway Rule that were overlooked at the time the Nonroad Rule was finalized. Second, it amends the designate and track provisions to account for companies within the fuel distribution system that perform more than one function related to fuel production and/or distribution. This will alleviate the problem of inaccurate volume balances due to a company performing multiple functions. Finally, with respect to the generation of fuel credits, it revises the regulatory text to allow refiners better access to early highway diesel fuel credits. The intention of this amendment is to help

ensure a smooth transition to ultra low-sulfur diesel fuel nationwide.

**DATES:** This direct final rule is effective on August 29, 2005 without further notice, unless we receive adverse comments by August 15, 2005 or receive a request for a public hearing by August 1, 2005. As explained in section II below, we do not expect to hold a public hearing, however, if we receive such request we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments. If any adverse comments or requests for a hearing are received within the time frame described above, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** *Comments:* All comments and materials relevant to this action should be submitted to Public Docket No. OAR-2005-0134 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500, 401 M Street, SW., Washington, DC 20460. Materials related to this rulemaking are available

at EPA's Air Docket for review at the above address (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260-7548 and by facsimile at (202) 260-4400. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

**FOR FURTHER INFORMATION CONTACT:** Tia Sutton, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214-4018, fax (734) 214-4816, e-mail [sutton.tia@epa.gov](mailto:sutton.tia@epa.gov) or Emily Green, see address above; telephone (734) 214-4639, fax (734) 214-4816, e-mail [green.emilya@epa.gov](mailto:green.emilya@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities*

This action will affect companies and persons that produce, import, distribute, or sell highway and/or nonroad diesel fuel. Affected Categories and entities include the following:

Category	NAICS code <sup>a</sup>	Examples of potentially affected entities
Industry .....	324110	Petroleum refiners.
Industry .....	422710	Diesel fuel marketers and distributors.
Industry .....	484220	Diesel fuel carriers.

<sup>a</sup>North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document?*

1. *Docket.* EPA has established an official public docket for this action under Air Docket No. OAR-2005-0134. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information restricted from disclosure by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution

Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

2. *Electronic Access.* This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for Internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

a. <http://www.epa.gov/docs/fedrgstr/EPA-AIR> (either select desired date or use Search features).

b. <http://www.epa.gov/otaq> (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into

which the document may be downloaded, format changes may occur.

*C. Why Is EPA Proposing a Direct Final Rule?*

EPA is publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments are filed. If EPA receives adverse comment on one or more distinct amendment, paragraph, or section of this rulemaking, or receives a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We will address all public comments received in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct

amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective as indicated in the **DATES** section above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

#### *D. How and To Whom Do I Submit Comments?*

You may submit comments on this direct final rule as described in this section. You should note that we are also publishing a notice of proposed rulemaking in the "Proposed Rules" section of today's **Federal Register**, which matches the substance of this direct final rule. Your comments on this direct final will be considered to also be applicable to that notice of proposed rulemaking. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM and in any other accompanying materials to ensure that you can be identified as the submitter of the comment. It is EPA's policy that we will not edit your comment, and any identifying or contact information provided will allow EPA to contact you if we cannot read your comment due to technical difficulties or need further information on the substance of your comment. If EPA cannot contact you in these circumstances, we may not be able to consider your comment. Contact information provided in the body of the comment will be included as part of the comment placed in the official public

docket and made available in EPA's electronic public docket.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket> and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OAR-2005-0134. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES** above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR-2005-0134.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. OAR-2005-0134. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. *By Facsimile.* Fax your comments to: (202) 566-1741, Attention Docket ID. No. OAR-2005-0134.

## **II. Summary of Rule**

On January 18, 2001, we published the final Highway Rule (66 FR 5002) which is a comprehensive national program to greatly reduce emissions from diesel engines by integrating engine and fuel controls as a system to gain the greatest air quality benefits. Subsequently, we adopted the Nonroad Rule (69 FR 38958) on June 29, 2004 which took a similar approach covering nonroad diesel equipment and fuel to further the goal of decreasing harmful emissions. After promulgation of these

rules, we discovered several typographical errors and it also became evident that several additions or deletions were necessary to clarify portions of the regulations. This rule corrects those errors and serves to clarify the regulations to facilitate compliance.

Along with these minor clarifications, the rule also modifies the text of the designate and track provisions to include provisions for companies that perform more than one function in the fuel system. For example, as these provisions are currently written, fuel distributors are only required to report on the volumes of fuel received and delivered. If the same company also produces fuel internally (acts as a refiner or importer), its receipts and deliveries reported will not balance. This rule will allow such companies to balance their volume reports in compliance with the designate and track regulations. Finally, this rule revises the regulatory text of the Nonroad Rule to allow refiners greater access to early fuel credits. The purpose of this change is to ensure a smooth transition to ultra low-sulfur diesel fuel nationwide.

Because EPA views the provisions of the action as noncontroversial and does not expect adverse comment, it is appropriate to proceed by direct final rulemaking. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, or receive a request for hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

## **III. Final Rulemaking Clarifications and Other Minor Corrections**

Table III-1, below, describes the rule clarifications and minor corrections that this rule is establishing.

TABLE III-1.—RULE CLARIFICATIONS AND MINOR CORRECTIONS

Section	Description of clarification or correction
§ 80.510(h) .....	Revised to change "and" to "or" for clarity.
§ 80.525(a) .....	Revised to clarify that nonroad 15 ppm sulfur fuel is included in this provision.
§ 80.525(c) .....	Revised to cite to nonroad downstream standards for consistency.
§ 80.531(a)(2) .....	Revised to correct text in formula.
§ 80.550(b)(3) .....	Revised to correct the date "2003" to "2002."

TABLE III-1.—RULE CLARIFICATIONS AND MINOR CORRECTIONS—Continued

Section	Description of clarification or correction
§ 80.551(f) .....	Revised to change the application subsection from 80.550(e) to 80.550(d) and add clarification that approval is based on information submitted under paragraph (c)(ii).
§ 80.580(c)(1) .....	Revised to correct the cross reference as follows: “(a)(2)” to “(b)(1).”
§ 80.580(c)(2)(i) .....	Revised to correct the cross reference as follows: (a)(2)(ii)” to “(b)(2).”
§ 80.586 .....	Revised to correct a typographical error in the heading.
§ 80.590(a)(6)(i) .....	Revised to add text for clarity.
§ 80.591(b)(3) .....	Revised to add language for label clarity.
§ 80.594(b)(2) .....	Revised to add text clarifying that only 95 percent of fuel must meet the 15 ppm sulfur standard by June 1, 2006 and to add the word “the” for clarity.
§ 80.595(a) .....	Revised to add text that would include small refiners in certain circumstances.
§ 80.595(b) .....	Revised to delete unnecessary text for clarity.
§ 80.596(a) .....	Revised to add text to clarify unit of measurement in formula.
§ 80.599(a) and (a)(1) .....	Revised to change the dates for quarterly and annual compliance periods for consistency with the preamble (69 FR 39100, June 29, 2004) and section 80.601.
§ 80.599(b)(4) .....	Revised to change text to clarify components of formula.
§ 80.604(d)(5) .....	Revised to remove this batch reporting requirement to maintain consistency with EPA’s response to comments, May 2004, p. 10–32, 10.3.3.3.
§ 80.613(a)(1) .....	Revised to add language clarifying that each element in the list must be demonstrated, as applicable, to avoid liability under this section.
pg. 39064 (...4.a.) .....	Revised to correct the text “Where Credit <sub>500</sub> Limit = ...” to “Where Credit <sub>HS</sub> Limit = ...”
pg. 39046 (...4.b.) .....	Revised to add the value for Vol <sub>15hwy</sub> as follows: “Vol <sub>15hwy</sub> = Volume of 15 ppm sulfur diesel fuel produced and designated as highway.”

#### IV. Final Rulemaking Corrections to Designate and Track Regulations

Table III-2, below, describes the changes to the Designate and Track regulations that this rule is establishing.

TABLE III-2.—CORRECTIONS TO THE DESIGNATE AND TRACK REGULATIONS

Section	Description of clarification or correction
§ 80.599(b)(1), (b)(2), (c)(1), (c)(3), (d)(1) and (d)(2).	Revised to add text clarifying that, for purposes of calculation, total volume includes fuel “produced by or imported into the facility.”
§ 80.599(e)(2)–(e)(5) .....	Revised to modify the existing value “I” to clarify that imported fuel is considered fuel produced rather than fuel received and to add a separate value (P) to account for total volume of fuel “produced by or imported into the facility.”
§ 80.600(a)(6) .....	Revised to add text clarifying that batch records must include identification as to whether the batch was received into, produced by, imported into or delivered from the facility.
§ 80.600(a)(13) .....	Revised to add paragraph (a)(13) clarifying that “[r]efiners and importers that receive fuel from another facility must also comply with the requirements of paragraph (b) separately for those volumes.”
§ 80.600(b)(1) and (b)(1)(i)–(b)(1)(v) .....	Revised to add text clarifying that recordkeeping requirements also apply to batches of fuel produced at the facility.
§ 80.600(b)(2) and (b)(3) .....	Revised to add text clarifying that an accurate batch identification includes an indication whether the batch was produced by or imported into the facility, where applicable.
§ 80.601(a)(2) .....	Revised to add paragraph (a)(2)(i) using the existing text and add paragraph (a)(2)(ii) to include the total volume of fuel produced or imported by the facility.
§ 80.601(a)(4)(iii)–(a)(4)(vi) .....	Revised to add paragraph (a)(4)(iii) to require reporting of total volumes produced or imported at truck loading terminals and to redesignate the subsequent provisions for consistency.
§ 80.601(b) .....	Revised to correct the cross reference “(e)(2)” to “(d)(2).”
§ 80.601(b)(1) .....	Revised to add paragraph (b)(1)(i) using the existing text and add paragraph (b)(1)(ii) to include the total volume of fuel produced or imported by the facility.
§ 80.601(b)(3) .....	Revised to add a new paragraph (b)(3)(ii) requiring annual reporting of certain fuels produced or imported at the facility and to redesignate the subsequent provisions for consistency.

#### V. Final Rulemaking Changes to Motor Vehicle Diesel Fuel Credits

During the development of the Highway Rule, a number of provisions were included to ensure widespread availability of the mandated Ultra-Low Sulfur Diesel (ULSD, 15 ppm sulfur fuel) at the commencement of the program. Section 80.531 of the Highway Rule contains one such provision

providing refiners a credit for early production of ULSD. It uses a tiered structure to prohibit a potential surplus of credits that could delay availability of ULSD to the 2007 model year vehicles.

The ability to generate early credits is limited by restrictions contained in the regulatory text. Section 80.531(c)(1) contains one such restriction providing that a refiner or importer may only

generate credits for each gallon of ULSD dispensed at retail outlets or at wholesale-purchaser consumer facilities from June 1, 2005 through May 31, 2006. In effect, this language curtails credit production by providing credit to refiners only for volumes delivered to retail as 15 ppm rather than the volumes produced. Thus, if the distribution

system was unable to deliver it as 15 ppm, no credit would be given.

Since the rule was finalized, however, concern over ULSD availability has subsided. Refiners' precompliance reports indicate that as of June 1, 2006, ninety-five percent of diesel fuel will be produced at the ULSD standard, well in excess of the required eighty percent. Simultaneously, concerns have arisen with respect to the smooth transition of the fuel distribution system to ULSD on

June 1, 2006. Pipelines and terminals are currently seeking batches of ULSD from refiners to work through possible contamination issues prior to commencement of the program, but finding it difficult to obtain them.

The limitations imposed on the generation of early credits, coupled with the cost of early ULSD production, create an economic disincentive for refiners to produce this fuel for use in testing the fuel distribution system.

Allowing refiners better access to early credits would provide additional economic incentive for production and, hence, supply the fuel necessary to test the ability of the distribution system to effectively deliver the fuel on specification. For this reason, we are now allowing refiners to claim credit for the entire volume of ULSD delivered into the distribution system beginning May 1, 2005.

TABLE III-3.—CHANGES TO MOTOR VEHICLE DIESEL FUEL CREDIT REGULATIONS

Section	Description of clarification or correction
§ 80.531(c) .....	Revised to allow refiners increased incentive to produce ULSD fuel for the distribution system.
§ 80.531(c)(2)(i) .....	Revised to change the date for providing notice of intent to generate early credits for consistency with amended credit provisions.
§ 80.531(d)(1) .....	Revised to restrict cross reference for consistency with amended credit provisions.
§ 80.531(d)(4) .....	Revised to remove the plan requirements specified in paragraph (d)(4) for consistency with amended credit provisions.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 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.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is not a "significant regulatory action" as it merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel

requirements. There are no new costs associated with this rule. Therefore, this final rule is not subject to the requirements of Executive Order 12866. A Final Regulatory Support Document was prepared in connection with the original regulations for the Highway Rule and Nonroad Rule as promulgated on January 18, 2001 and June 29, 2004, respectively, and we have no reason to believe that our analyses in the original rulemakings were inadequate. The relevant analyses are available in the docket for the January 18, 2001 rulemaking (A-99-061) and the June 29, 2004 rulemaking (OAR-2003-0012 and A-2001-28)<sup>1</sup> and at the following Internet address: <http://www.epa.gov/cleandiesel>. The original action was submitted to the Office of Management and Budget for review under Executive Order 12866.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden, as it merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements for the original Highway Rule (66 FR 5002, January 18, 2001) and the Nonroad Rule (69 FR 38958, June 29, 2004) and has assigned OMB control number 2060-0308 (EPA ICR #1718). A

<sup>1</sup> During the course of the Nonroad Rule, the Agency converted from the legacy docket system to the current electronic docket system (EDOCKET).

copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For

purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements.

#### *D. 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 private sector, of \$100 million or more in any one year. Before promulgating an EPA 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 other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for the following: notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This 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 rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. The requirements of UMRA therefore do not apply to this action.

#### *E. 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" are 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, imposes substantial direct compliance costs, and is not required by statute. However, if 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 regulation, these restrictions do not apply. 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 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 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. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Although Section 6 of Executive Order 13132 did not apply to the Highway Rule (66 FR 5002) or the Nonroad Rule (69 FR 38958), EPA did consult with representatives of various State and local governments in developing these rules. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on

the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This rule does 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 rule. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Thus, Executive Order 13175 does not apply to this rule.

*G. 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 rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This direct final rule merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance

with the ultra low-sulfur diesel fuel requirements.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. It merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Thus, we have determined that the requirements of the NTTAA do not apply.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2) and will become effective August 29, 2005.

**VII. Statutory Provisions and Legal Requirements**

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support

for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

**List of Subjects in 40 CFR Part 80**

Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: July 6, 2005.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set forth in the preamble, part 80 of the Code of Federal Regulations is amended as follows:

**PART 80—REGULATION OF FUELS AND FUEL ADDITIVES**

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

**Authority:** 42 U.S.C. 7414, 7521(l), 7545 and 7601(a).

■ 2. Section 80.510 is amended by revising paragraph (h) introductory text to read as follows:

**§ 80.510 What are the standards and marker requirements for NRLM diesel fuel?**

\* \* \* \* \*

(h) Pursuant and subject to the provisions of § 80.536, § 80.554, § 80.560, or § 80.561:

\* \* \* \* \*

■ 3. Section 80.525 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 80.525 What requirements apply to kerosene blenders?**

(a) For purposes of this subpart, a kerosene blender means any refiner who produces NRLM or motor vehicle diesel fuel by adding kerosene to NRLM or motor vehicle diesel fuel downstream of the refinery that produced that fuel or of the import facility where the fuel was imported, without altering the quality or quantity of the fuel in any other manner.

\* \* \* \* \*

(c) For purposes of compliance with §§ 80.524(b)(1) and 80.511(b)(1), the product transfer documents must indicate that the fuel to which kerosene is added complies with the 500 ppm sulfur standard for motor vehicle diesel fuel and is for use only in model year 2006 and older diesel motor vehicles, the fuel is properly downgraded pursuant to the provisions of § 80.527 to motor vehicle diesel fuel subject to the 500 ppm sulfur standard, or the applicable NRLM standard.

\* \* \* \* \*

■ 4. Section 80.531 is amended by revising the equation for V<sub>n</sub> in

paragraph (a)(2), revising paragraphs (c)(1), (c)(2)(i) and (d)(1), and removing and reserving paragraph (d)(4) to read as follows:

**§ 80.531 How are motor vehicle diesel fuel credits generated?**

(a) \* \* \*

(2) \* \* \*

$$V_{i,n} = V_{15} + V_{500} * * *$$

\* \* \* \* \*

(c) \* \* \*

(1) Beginning June 1, 2005, a refiner or importer may generate one credit for each gallon of motor vehicle diesel fuel produced or imported that meets the 15 ppm sulfur standard in § 80.520(a)(1) that is delivered into the distribution system. Such refiners and importers must comply with the requirements of this paragraph (c) and paragraph (d) of this section.

(2)

(i) Any refiner or importer planning to generate credits under this paragraph must provide notice of intent to generate early credits at least 30 calendar days prior to the date it begins generating credits under this paragraph (c).

\* \* \* \* \*

(d) \* \* \*

(1) The designation requirements of § 80.598, and all recordkeeping and reporting requirements of §§ 80.592 (except for paragraph (a)(3)), 80.593, 80.594, 80.600, and 80.601.

\* \* \* \* \*

(4) [Reserved]

\* \* \* \* \*

■ 5. Section 80.550 is amended by revising paragraph (b)(3) to read as follows:

**§ 80.550 What is the definition of a motor vehicle diesel fuel small refiner or a NRLM diesel fuel small refiner under this subpart?**

\* \* \* \* \*

(b) \* \* \*

(3) Had an average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2002.

\* \* \* \* \*

■ 6. Section 80.551 is amended by revising paragraph (f) to read as follows:

**§ 80.551 How does a refiner obtain approval as a small refiner under this subpart?**

\* \* \* \* \*

(f) Approval of small refiner status for refiners who apply under § 80.550(d) will be based on all information submitted under paragraph (c)(ii) of this section, except as provided in § 80.550(e).

\* \* \* \* \*

■ 7. Section 80.580 is amended by revising paragraphs (c)(1) and (c)(2)(i) to read as follows:

**§ 80.580 What are the sampling and testing methods for sulfur?**

\* \* \* \* \*

(c) \* \* \*

(1) Until December 27, 2004, for motor vehicle diesel fuel and diesel fuel additives subject to the 15 ppm standard of § 80.520(a)(1), sulfur content may be determined using ASTM D 5453–03a or ASTM D 3120–03a, provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(1) of this section.

(2) \* \* \*

(i) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a), sulfur content may be determined using ASTM D 4294–03, ASTM D 5453–03a, or ASTM D 6428–99, provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(2) of this section; or

\* \* \* \* \*

■ 8. Section 80.586 is amended by revising the section heading to read as follows:

**§ 80.586 What are the record retention requirements for test methods approved under this subpart?**

\* \* \* \* \*

■ 9. Section 80.590 is amended by revising paragraph (a)(6)(i) to read as follows:

**§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil and other distillates?**

(a) \* \* \*

(6) \* \* \*

(i) The facility registration number of both the transferor and transferee issued under § 80.597, if any.

\* \* \* \* \*

■ 10. Section 80.591 is amended by revising paragraph (b)(3) to read as follows:

**§ 80.591 What are the product transfer document requirements for additives to be used in diesel fuel?**

\* \* \* \* \*

(b) \* \* \*

(3) If the additive contains a static dissipater additive having a sulfur content greater than 15 ppm, include the following statement:

“This diesel fuel additive contains a static dissipater additive having a sulfur content greater than 15 ppm.”

\* \* \* \* \*

■ 11. Section 80.594 is amended by revising paragraph (b)(2) to read as follows:

**§ 80.594 What are the pre-compliance reporting requirements for motor vehicle diesel fuel?**

\* \* \* \* \*

(b) \* \* \*

(2) In the case of a refinery with an approved application under § 80.552(c), a demonstration that by June 1, 2006, 95 percent of its motor vehicle diesel fuel will be at 15 ppm sulfur at a volume meeting the requirements of § 80.553(e).

\* \* \* \* \*

■ 12. Section 80.595 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

**§ 80.595 How does a refiner apply for a motor vehicle diesel fuel volume baseline?**

(a) Any small refiner applying for an extension of the duration of its small refiner gasoline sulfur standards of § 80.240, under §§ 80.552(c) and 80.553, any small refiner applying to produce MVDF under § 80.552(a), or any refiner applying for an extension of the duration of the GPA standards under § 80.540 must apply for a motor vehicle diesel fuel volume baseline by December 31, 2001. \* \* \*

(b) The volume baseline must be sent via certified mail with return receipt or express mail with return receipt to: U.S. EPA-Attn: Diesel Baseline, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460 (certified mail/return receipt) or Attn: Diesel Baseline, Transportation and Regional Programs Division, 501 3rd Street, NW. (6406J), Washington, DC 20001 (express mail/return receipt).

\* \* \* \* \*

■ 13. Section 80.596 is amended by revising the values for  $V_{base}$  base and  $V_i$  in paragraph (a) to read as follows:

**§ 80.596 How is a refinery motor vehicle diesel fuel volume baseline calculated?**

(a) \* \* \*

$V_{base}$  = Volume baseline value, in gallons.

$V_i$  = Volume of motor vehicle diesel fuel batch i, in gallons. \* \* \*

\* \* \* \* \*

■ 14. Section 80.599 is amended as follows:

■ a. By revising paragraph (a) introductory text and paragraph (a)(1).

■ b. By revising the value for  $MV_i$  in paragraph (b)(1).

■ c. By revising the values for  $MV_{15i}$  and  $MV_{500i}$  in paragraph (b)(2).

■ d. By revising the equation for  $MVNB_E$  and the value of  $\Sigma MVB$  in paragraph (b)(4).



- e. By revising the value of HSNRLM<sub>I</sub> in paragraph (c)(1).
- f. By revising the value of HO<sub>I</sub> in paragraph (c)(3).
- g. By revising the value of NR500<sub>I</sub> in paragraph (d)(1).
- h. By revising the value of LM500<sub>I</sub> in paragraph (d)(2)(ii).
- i. By revising the equation for  $(\#2MV15_O - \#2MV15_P + \#2MV15_{INVCHG})$  and value of #2MV15<sub>I</sub> in paragraph (e)(2).
- j. By adding the value of #2MV15 to paragraph (e)(2).
- k. By revising the equation for #2MV500<sub>O</sub> and value of #2MV500<sub>I</sub> in paragraph (e)(3).
- l. By adding the value of #2MV500<sub>P</sub> to paragraph (e)(3).
- m. By revising the equation for #2MV500<sub>O</sub> and value of #1MV15<sub>I</sub> in paragraph (e)(4).
- n. By adding the value of #1MV15<sub>P</sub> to paragraph (e)(4).
- o. By revising the equation for #2MV500<sub>O</sub> and value of #1MV15<sub>B</sub> to paragraph (e)(5).
- p. By adding the value of #2MV500<sub>P</sub> to paragraph (e)(5).

#### **§ 80.599 How do I calculate volume balances for designation purposes?**

(a) Quarterly compliance periods. The quarterly compliance periods are shown in the following table:

#### **QUARTERLY COMPLIANCE PERIODS AND REPORTING DATES**

Quarterly compliance period <sup>^</sup>	Report due date
July 1 through September 30 October 1 through December 31.	November 30. February 28.
January 1 through March 31 April 1 through June 30 .....	May 31. August 31.

<sup>^</sup> The first quarterly reporting period will be from June 1, 2007 through September 30, 2007 and the last quarterly compliance period will be from April 1, 2010 through May 31, 2010.

(1) Annual compliance periods. The annual compliance periods before the period beginning July 1, 2016 are shown in the following table:

#### **ANNUAL COMPLIANCE PERIODS AND REPORTING DATES**

Annual compliance period	Report due date
June 1, 2007–June 30, 2008	August 31.
July 1, 2008–June 30, 2009	August 31.
July 1, 2009–May 31, 2010 ..	August 31.
June 1, 2010–June 30, 2011	August 31.
July 1, 2011–May 31, 2012 ..	August 31.
June 1, 2012–June 30, 2013	August 31.
July 1, 2013–May 31, 2014 ..	August 31.
June 1, 2014–June 30, 2015	August 31.

#### **ANNUAL COMPLIANCE PERIODS AND REPORTING DATES—Continued**

Annual compliance period	Report due date
July 1, 2015–June 30, 2016	August 31.

\* \* \* \* \*

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

MV<sub>I</sub> = the total volume of all batches of fuel designated as motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced by or imported into the facility shall also be included in this volume. \* \* \*

(2) \* \* \*

MV15<sub>I</sub> = the total volume of all batches of fuel designated as 15 ppm sulfur motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced by or imported into the facility shall also be included in this volume.

MV500<sub>I</sub> = the total volume of all batches of fuel designated as 500 ppm sulfur motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced by or imported into the facility shall also be included in this volume. \* \* \*

\* \* \* \* \*

(4) \* \* \*

MVNB<sub>E</sub> = MV15<sub>BINV</sub> + MV500<sub>BINV</sub> - £MVB  
Where:

ΣMVB = the sum of the balances for motor vehicle diesel fuel for the current compliance period and previous compliance periods. \* \* \*

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*

HSNRLM<sub>I</sub> = the total volume of all batches of fuel designated as high sulfur NRLM received diesel fuel for the compliance period. Any high sulfur NRLM produced by or imported into the facility shall also be included in this volume. \* \* \*

\* \* \* \* \*

(3) \* \* \*

HO<sub>I</sub> = the total volume of all batches of fuel designated as heating oil received for the compliance period. Any heating oil produced by or imported into the facility shall also be included in this volume. \* \* \*

\* \* \* \* \*

(d) \* \* \*  
(1) \* \* \*

NR500<sub>I</sub> = the total volume of all batches of fuel designated as 500 ppm sulfur NR diesel fuel received for the compliance period. Any 500 ppm sulfur NR diesel fuel produced by or imported into the facility shall also be included in this volume. \* \* \*

(2) \* \* \*

(ii) \* \* \*

LM500<sub>I</sub> = the total volume of all batches of fuel designated as 500 ppm sulfur LM diesel fuel received for the compliance period. Any 500 ppm sulfur LM diesel fuel produced by or imported into the facility shall also be included in this volume.

(e) \* \* \*  
(2) \* \* \*

$(\#2MV15_O - \#2MV15_P + \#2MV15_{INVCHG}) \geq 0.8 \times \#2MV15_I$

Where: \* \* \*

#2MV15<sub>P</sub> = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #2D 15 ppm sulfur motor vehicle diesel fuel when it was delivered.

#2MV15<sub>I</sub> = the total volume of fuel received during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall *not* be included in this volume. \* \* \*

(3) \* \* \*

$\#2MV500_O \leq \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 \times \#2MV15_I$

Where: \* \* \*

#2MV500<sub>I</sub> = the total volume of fuel received during the compliance period that is designated as #2D 500 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

#2MV500<sub>P</sub> = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #2D 500 ppm sulfur motor vehicle diesel fuel when it was delivered. \* \* \*

(4) \* \* \*

$\#2MV500_O \leq \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 \times (\#1MV15_I + \#2MV15_I)$

Where:

#1MV15<sub>I</sub> the total volume of fuel received during the compliance period that is designated as #1D 15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

#1MV15<sub>P</sub> = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #1D 15 ppm sulfur motor vehicle diesel fuel when it was delivered.

(5) \* \* \*

$\#2MV500_O \leq \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 \times \#2MV15_I + \#1MV15_B + \#2NRLM500_S$

Where:

#1MV15<sub>B</sub> = the total volume of fuel received during the compliance period that is designated as #1D 15 ppm sulfur motor

vehicle diesel fuel and that the facility can demonstrate they blended into #2D 500 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

#2MV500P = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #2MV 500 ppm sulfur motor vehicle diesel fuel when it was delivered. \* \* \*

\* \* \* \* \*

■ 15. Section 80.600 is amended as follows:

- a. By revising paragraph (a)(6).
- b. By adding paragraph (a)(13).
- c. By revising paragraphs (b)(1) introductory text, (b)(1)(i) introductory text, (b)(1)(ii) introductory text, (b)(1)(iii) introductory text, (b)(1)(iv) introductory text, (b)(1)(v) introductory text.
- d. By revising (b)(2).
- e. By revising the first sentence of paragraph (b)(3).

**§ 80.600 What records must be kept for purposes of the designate and track provisions?**

(a) \* \* \*

(6) The records for each batch with designations identified in paragraphs (a)(1) through (a)(5) of this section must clearly and accurately identify the batch number (including an indication as to whether the batch was received into the facility, produced by the facility, imported into the facility, or delivered from the facility), date and time of day (if multiple batches are delivered per day) that custody was transferred, the designation, the volume in gallons of the batch, and the name and the EPA entity and facility registration number of the facility to whom such batch was transferred.

\* \* \* \* \*

(13) Refiners and importers who also receive fuel from another facility must also comply with the requirements of paragraph (b) of this section separately for those volumes.

(b) \* \* \*

(1) Any distributor shall maintain the records specified in paragraphs (b)(2) through (b)(10) of this section for each batch of distillate fuel with the following designations for which custody is received or delivered as well as any batches produced. Records shall be kept separately for each of its facilities.

(i) For each facility that receives #2D 15 ppm sulfur motor vehicle diesel fuel and distributes any #2D 500 ppm sulfur motor vehicle diesel fuel, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well

as any batches produced during the time period from June 1, 2006 through May 31, 2007:

\* \* \* \* \*

(ii) For each facility, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period from June 1, 2007 through May 31, 2010:

\* \* \* \* \*

(iii) For each facility that receives unmarked fuel designated as NR diesel fuel, LM diesel fuel or heating oil, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period from June 1, 2010 through May 31, 2012:

\* \* \* \* \*

(iv) For each facility that receives unmarked fuel designated as heating oil, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period from June 1, 2012 through May 31, 2014:

\* \* \* \* \*

(v) For each facility that receives unmarked fuel designated as heating oil, records for each batch of diesel fuel with the following designations for which custody is received or delivered as well as any batches produced during the time period beginning June 1, 2014:

\* \* \* \* \*

(2) Records that for each batch clearly and accurately identify the batch number (including an indication as to whether the batch was received into the facility, produced by the facility, imported into the facility, or delivered from the facility), date and time of day (if multiple batches are delivered per day) that custody was transferred, the designation, the volume in gallons of each batch of each fuel, and the name and the EPA entity and facility registration number of the facility to whom or from whom such batch was transferred.

\* \* \* \* \*

(3) Records that clearly and accurately identify the total volume in gallons of each designated fuel identified under paragraph (b)(1) of this section transferred, produced, or imported over each of the compliance periods, and over the periods from June 1, 2007 to the end of each compliance period.

\* \* \* \* \*

\* \* \* \* \*

■ 16. Section 80.601 is amended as follows:

- a. By revising paragraph (a)(2).
- b. By redesignating paragraphs (a)(4)(iii) through (a)(4)(v) as paragraphs (a)(4)(iv) through (a)(4)(vi).
- c. By adding paragraph (a)(4)(iii).
- d. By revising paragraph (b) introductory text and paragraph (b)(1).
- e. Redesignating paragraphs (b)(3)(ii) through (b)(3)(ix) as paragraphs (b)(3)(iii) through (b)(3)(x).
- f. Adding paragraph (b)(3)(ii).

**§ 80.601 What are the reporting requirements for purposes of the designate and track provisions?**

(a) \* \* \*

(2) Separately for each designation category and separately for each transferor facility;

(i) The total volume in gallons of distillate fuel designated under § 80.598 for which custody was received by the reporting facility, and the EPA entity and facility registration number(s), as applicable, of the transferor; and

(ii) The total volume in gallons of distillate fuel designated under § 80.598 which was produced or imported by the reporting facility.

\* \* \* \* \*

(4) \* \* \*

(iii) The total volumes produced or imported at the facility of each fuel designation required to be reported in paragraphs (a)(1) through (a)(3) of this section over the quarterly compliance period.

\* \* \* \* \*

(b) Annual reports. Beginning August 31, 2007, all entities required to maintain records for batches of fuel under § 80.600 must report the following information separately for each of its facilities to the Administrator on an annual basis, as specified in paragraph (d)(2) of this section:

(1) Separately for each designation category for which records are required to be kept under § 80.600 and separately for each transferor facility;

(i) The total volume in gallons of distillate fuel designated under § 80.598 for which custody was received by the reporting facility, and the EPA entity and facility registration number(s), as applicable, of the transferor; and

(ii) The total volume in gallons of distillate fuel designated under § 80.598 which was produced or imported by the reporting facility.

\* \* \* \* \*

(3) \* \* \*

(ii) The total volumes produced or imported at the facility of each fuel designation required to be reported in paragraph (b)(1) of this section over the quarterly compliance period.

\* \* \* \* \*

- 17. Section 80.604 is amended by removing and reserving paragraph(d)(5).
- 18. Section 80.613 is amended by revising paragraph (a)(1) introductory text to read as follows:

**§ 80.613 What defenses apply to persons deemed liable for a violation of a prohibited act under this subpart?**

(a) \* \* \*

(1) Any person deemed liable for a violation of a prohibition under § 80.612(a)(1)(i), (a)(1)(iii), (a)(2), or (a)(3), will not be deemed in violation if the person demonstrates all of the following, as applicable:

\* \* \* \* \*

[FR Doc. 05-13781 Filed 7-14-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2005-0174; FRL-7723-7]

### Sulfuryl fluoride; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of sulfuryl fluoride and of fluoride anion in or on commodities in food processing facilities. Dow AgroSciences LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective July 15, 2005. Objections and requests for hearings must be received on or before September 13, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP-2005-0174. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St.,

Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

Daniel Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7546; e-mail address: [kenny.dan@epa.gov](mailto:kenny.dan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the

OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

## II. Background and Statutory Findings

In the **Federal Register** of March 4, 2005 (70 FR 10621) (FRL-7701-8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6573) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fumigant sulfuryl fluoride, and of fluoride anion (also referred to as “fluoride” in this document), from the fumigation use of sulfuryl fluoride in food processing facilities, as follows:

1. The petition requested that 40 CFR 180.145 be amended by establishing tolerances for residues of fluoride in or on the following raw agricultural commodities (RAC): Animal feed at 130 parts per million (ppm); beef, meat at 40 ppm; cheese, postharvest at 5 ppm; cocoa bean, postharvest at 12 ppm; coconut, postharvest at 40 ppm; coffee, postharvest at 12 ppm; cottonseed, postharvest at 13 ppm; egg at 850 ppm; ginger, postharvest at 13 ppm; grain, cereal, forage, fodder and straw group 16, postharvest at 130 ppm; grass, forage, fodder and hay group 17, postharvest at 130 ppm; ham at 20 ppm; herbs and spices group 19, postharvest at 50 ppm; milk at 3 ppm; nut, pine, postharvest at 10 ppm; other processed food at 70 ppm; peanut, postharvest at 13 ppm; rice flour, postharvest at 98 ppm; and vegetable, legume, group 06, postharvest at 6 ppm. As a result of the residue data, and in order to provide more adequate coverage of all commodities that may be involved in the use of sulfuryl fluoride in food processing facilities, the proposed tolerances were subsequently revised to tolerances for residues of fluoride in or on all processed food commodities where a separate tolerance is not already established at 70 ppm; cattle, meat, dried at 40 ppm; cheese at 5.0 ppm; cocoa bean, postharvest at 20 ppm; coconut, postharvest at 40 ppm; coffee, postharvest at 15 ppm; cottonseed, postharvest at 70 ppm; eggs, dried at 900 ppm; ginger, postharvest at 70 ppm; ham at 20 ppm; herbs and spices, group 19 postharvest at 70 ppm; milk, powdered at 5.0 ppm; nut, pine, postharvest at 20 ppm; peanut, postharvest at 15 ppm; rice, flour, postharvest at 45 ppm; and vegetables, legume, group 6, postharvest at 70 ppm.