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Part III

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40 CFR Part 80

Technical Amendments to the Highway and Nonroad Diesel Regulations; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2006–0224; FRL–8161–9]

RIN 2060–AN78

Technical Amendments to the Highway and Nonroad Diesel Regulations

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, and the Nonroad Diesel Rule. This action corrects additional errors and omissions from the previous rules, and it makes minor changes to the regulations to assist entities with regulatory compliance. This action also makes technical amendments that resulted from discussions with various diesel stakeholders. These technical amendments will: provide a temporary increase in the sulfur testing tolerance, revise the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amend the alternative defense provisions to account for conductivity additives and red dye. This action is intended to help facilitate compliance with the diesel fuel regulations and ensure a smooth transition to ultra low sulfur diesel fuel.

DATES: This direct final rule is effective on June 30, 2006 without further notice, unless we receive adverse comments by May 31, 2006. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0224, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-Docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: EPA–HQ–OAR–2006–0224, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR–2006–0224. EPA's policy is that all comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section 1.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Tia Sutton, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood Dr., Ann Arbor MI 48105; telephone (734) 214–4018, fax (734) 214–4816, e-mail *sutton.tia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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 [a]	Examples of potentially affected entities
Industry	324110	Petroleum refiners.
Industry	422710	Diesel fuel marketers and distributors.
Industry	484220	Diesel fuel carriers.

[a] 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. EPA–HQ–OAR–2006–0224. 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 this **Federal Register** publication, we are publishing a separate document that will serve as the proposal for 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 this 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 this 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 this **Federal Register**, which matches the substance of this direct final rule. Your comments on this direct final rule 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. EPA–HQ–OAR–2006–0224. 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. EPA–HQ–OAR–2006–0224.

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. EPA–HQ–OAR–2006–0224. 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. EPA–HQ–OAR–2006–0224.

II. Summary of Rule

The Highway Diesel rule, published on January 18, 2001 (66 FR 5002), is a comprehensive national program that will greatly reduce emissions from diesel engines by integrating engine and fuel controls as a system to gain the greatest air quality benefits. The Nonroad Diesel Rule was subsequently published on June 29, 2004 (69 FR 38958). The Nonroad Diesel Rule took a similar approach, covering nonroad diesel equipment and fuel to further the goal of decreasing harmful emissions. In 2005, we published two additional direct final rulemakings (70 FR 40889 was published on July 15, 2005 and 70 FR 70498 was published on November 22, 2005) to make technical amendments to those rules. We have chosen to publish a third action to correct additional errors and omissions from the previous rules, and to make minor changes to the regulations to assist entities in complying with our diesel fuel rules. In addition, discussions with stakeholders throughout the diesel fuel industry identified a need for additional changes to the regulations such as: (1) Providing a temporary increase in the sulfur

testing tolerance; (2) revising the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards; and, (3) amending the alternative defense provisions to account for conductivity additives and red dye. This action will make all of these changes and additions to further ensure compliance with EPA's diesel fuel regulations.

III. Final Rulemaking Changes to Sulfur Test Tolerance

This action adopts a temporary change to the adjustment factor associated with the testing tolerance for measurement of diesel fuel sulfur for ULSD. Section 80.580(d) specifies that an adjustment factor of negative two ppm shall be applied to the test results, to account for test variability for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1). The temporary change is to allow an adjustment factor of negative three ppm for the sulfur tolerance for a period of two years.

The approach being considered leaves intact the 2 ppm sulfur adjustment factor for addressing lab-to-lab test variability long term; reflecting the very positive results of our round robin testing program. It also makes no change to the 15 ppm fuel sulfur cap for in-use diesel fuel starting June 1, 2006 at the refinery, nor the fuel sulfur cap at the retail outlet. However, it would allow an additional 1 ppm (3 ppm total) testing tolerance for the first 2 years of the program; reflecting the results of our round robin testing program which indicated that not everyone was yet capable of meeting the 2 ppm requirement. This temporary change to the adjustment factor would further help to facilitate the transition to ULSD by eliminating concerns associated with the impact of test method variability on the sulfur level at the refinery gate during the initial implementation of the ULSD program. This ensures that fuel that is compliant with the 15 ppm sulfur requirement is not inappropriately deemed to be noncompliant simply because of the variability in the test. This specific change ensures that laboratories have the time necessary to obtain new instrumentation, tighten their internal quality assurance/quality control (QA/QC) procedures, and train their staff on these new instruments and procedures. It would also give them time to establish a track record on which they can base confidence in both their measurements and those of their customers and suppliers. At the same time, its temporary nature assures that no one will use it to relax their production targets.

With the Nonroad Diesel rule (69 FR 38958, June 29, 2004), EPA adopted a performance-based test method approach. For 15 ppm sulfur Nonroad, Locomotive, and Marine (NRLM) and Motor Vehicle (MV) diesel fuel, under the performance-based approach, any test method could be approved for use in a specific laboratory by meeting certain precision and accuracy criteria as specified in § 80.584. Qualification or approval is maintained as long as that laboratory follows the appropriate quality control procedures as specified in § 80.585(e).

We included a two ppm downstream adjustment to account for the anticipated reproducibility, or lab-to-lab variability, of the test methods that will be used to measure the sulfur content of ULSD. This would allow fuel that actually met the 15 ppm standard not to be inappropriately considered noncompliant by EPA. Parties could not measure above 15 ppm without taking on risk that due to test reproducibility EPA might consider the fuel to be noncompliant.

Subsequent to the Nonroad Diesel rule, concerns continued to be expressed based on testing by the American Society of Testing and Materials (ASTM) that actual reproducibility might be greater than the 2 ppm downstream adjustment. The concern was that refiners might have to reduce the sulfur level of their diesel fuel production to account for test reproducibility greater than 2 ppm. While acknowledging the ASTM test program results, we also highlighted several shortcomings of the ASTM program for the purpose of estimating what reproducibility might be once the ULSD program began. Consequently, we committed to conduct a round-robin test program with industry and to adjust the downstream test tolerance if necessary based on the result. This rulemaking follows up on that commitment.

The round robin testing program required participating laboratories to first qualify their measurement methods by meeting the accuracy and precision requirements of § 80.584 for each individual test method that it wanted to use on a lab-specific basis. The round robin testing program included ten fuel samples that were provided to the laboratories; five in July 2005 and five in August 2005. The laboratories were required to use two different calibration curves when measuring the fuel sulfur content, their in-house curve and a curve generated from National Institute of Standards and Technology (NIST) Standard Reference Materials (SRMs) provided by EPA. The test methods that were used in the round robin testing program were ASTM D 2622, ASTM D 3120, ASTM D 5453, ASTM D 7039, and a non-voluntary consensus standards body (VCSB) Energy Dispersive X-ray Fluorescence method. There were 129 laboratories that participated using 149 instruments.

Typically, laboratory calibrations for measurement of ULSD fuel are done by either using calibration standards that are prepared in the laboratory by preparing a gravimetric stock solution and then performing serial dilutions or by purchasing calibration standards from a variety of calibration standard suppliers. This provides for a plethora of calibration standards and can bias lab-to-lab variability. During our round robin test program, we wanted to account for this variability, so in addition to having the laboratories measure the blind fuel samples using their own in-house calibration curve, we asked them to measure the blind fuel samples using a calibration curve generated from four recently available NIST SRMs that were provided by EPA for the test program. The purpose here was to determine the contribution of calibration curve bias to reproducibility, or lab-to-lab variability, which can be determined when all of the labs are using identical, highly accurate, calibration standards. These SRMs are available to the general public for purchase at a reasonable price and there is a large supply. The results of the test program showed that for the most widely used method, D 5453 and the best performer, D 7039, calibration curve bias accounted for a 0.75 ppm increase in lab-to-lab variability on average when the fuel sulfur content is at or near 15 ppm.

The results led us to the conclusion that the 2 ppm adjustment factor is indeed appropriate. However the results also indicated that an additional 1 ppm on a temporary basis could be appropriate. For the newest test methods (ASTM D 5453 and ASTM D 7039) when laboratories used NIST standards coupled with appropriate test procedures, reproducibility was less than 2 ppm for 15 ppm sulfur in diesel fuel. The conclusions that we drew from the round robin testing program were that:

- Older methods struggled with meeting the reproducibility requirement.
- Newer test methods are fully capable.
- Qualification of the test laboratory is important to the ability of the

laboratories to validate their reproducibility.

• With any method, proper QA/QC procedures, including periodic use of calibration check standards are important.

The results of the round robin testing also indicated that some laboratories are still having difficulty. EPA believes that this is likely the result of using older test methods, improper staff training, older test equipment, inadequate calibration standards, and improper QA/QC. To the extent that laboratories were qualified prior to the start of the testing and the quality control practices were continued, there was a greater likelihood the testing facilities were able to meet the testing tolerance requirements. We continue to believe that with newer equipment coupled with best practices for quality control, laboratory-to-laboratory reproducibility can meet the 2 ppm compliance margin and thus lead to greater assurance that in-use compliance will not be a challenge.

The approach that EPA is finalizing today provides greater assurance that refineries do not need to expend the resources to produce even lower sulfur fuel to compensate for uncertainty associated with the test variability at the start of the program which will not exist after the transition period. By allowing a 3 ppm temporary compliance margin, laboratories downstream of the refinery will have greater assurance that their procedures are adequate without fear of compliance challenges. Without the appropriate adjustment factor to address test variability, refiners expressed concern that they would have had to lower the sulfur level of the diesel fuel they produced unnecessarily to account for greater test uncertainty. They also stated that this would cause them to operate their refineries in a way that might constrain fuel supply. The temporary nature of the modified adjustment factor focuses on the fact that EPA continues to believe that improvements in reproducibility are forthcoming. The two year adjustment factor increase allows time for the industry to transition to the improved test procedures and instrumentation while minimizing the potential for supply disruptions associated with the need to downgrade fuel that could have potentially been noncompliant based on test method variability. This should not lead to an increase in fuel sulfur levels above the 15 ppm cap at any point in the distribution system as parties would risk being found in noncompliance by EPA should they release fuel with a measured sulfur level greater than 15 ppm. The purpose of the downstream adjustment factor is simply to ensure that fuel actually meeting the 15 ppm cap is not rejected by pipelines or otherwise treated as noncompliant due to concerns with testing variability.

After the two-year period (through October 14, 2008) all entities responsible for measuring fuel sulfur levels and ensuring that the sulfur content of the fuel is at or below 15 ppm sulfur will have a maximum sulfur testing adjustment factor of negative two ppm. This should provide all ULSD refiners, distributors and marketers sufficient time to procure new instrumentation if necessary, improve their QA/QC procedures, and train personnel to improve their testing to less than the 2 ppm allowed.

IV. Amendments to the Designate and Track Requirements Regarding Non-Petroleum Diesel Fuel

Biodiesel blenders recently made us aware of several issues with respect to how biodiesel is treated within the context of the designate and track (D&T) provisions under EPA's diesel program. They stated that 100 percent biodiesel (B100) and high concentration biodiesel blends do not necessarily meet the specifications for either #1D or #2D diesel fuel, and requested that EPA amend the regulations to provide accurate designations for these fuels. Similar to the existing provisions for #1D 15 ppm diesel fuel, they stated that B100 and high concentration biodiesel blends designated as 15 ppm highway diesel fuel should be exempted from the anti-downgrading requirements. Finally, they stated that the regulations as currently written would compel numerous biodiesel blenders downstream of the terminal to comply with the D&T registration and reporting requirements. They related that this would represent a substantial unanticipated burden for these parties and questioned whether it was necessary to meet EPA's regulatory goals.

A. Background

Biodiesel is manufactured primarily for blending into petroleum-based diesel fuel. Biodiesel blends manufactured for use interchangeably with 100 percent petroleum-based diesel fuel typically contain up to 20 percent biodiesel (B20).[1] Most biodiesel has inherently very low sulfur content. Consequently, it is anticipated that to facilitate distribution of a single grade of B100 which can be blended into multiple distillate fuel grades (*e.g.* highway diesel, nonroad diesel, heating oil) most, if not all, B100 will be designated as 15 ppm diesel fuel by the manufacturer. As a result of the tax incentives made available for biodiesel blenders by the Jobs Act of 2004 and extended by the Energy Policy Act (EPAct) of 2005, the interest in blending biodiesel in growing. Biodiesel blenders are eligible for a tax credit for the volume of biodiesel that is blended into petroleum-based diesel for fuel use. The Internal Revenue Service (IRS) requires that to receive the tax credit, the biodiesel blend must contain at least one tenth of one percent petroleum based diesel fuel (referred to as B99.9).[2] To become eligible for this tax credit, upstream parties sometimes manufacture B99.9 for use downstream to produce finished biodiesel blends.

B100 and B99.9 meet the IRS definition of an ''excluded liquid'' and thus are not subject to federal fuel excise taxes.[3] At the point where an excluded liquid is blended with a sufficient quantity of petroleum-based diesel fuel so that the final fuel blend contains at least 4 percent normal paraffins, such liquid ceases to be an excluded liquid, and the volume of previously excluded liquid becomes subject to federal fuel excise taxes. Thus, parties downstream of the terminal where fuel taxes are normally assessed such as bulk plant operators, tank truck operators, centrally fueled fleets, and retail operators could take custody of B100 or B99.9 on which highway taxes have not yet been assessed for use in blending into petroleum-based diesel fuel. Under current EPA regulations, all parties that take custody of diesel fuel on which taxes have not been assessed would need to comply with the designate and track registration and reporting requirements.

B. Amendments Made by This Rule

To accommodate B100 and high concentration biodiesel blends that do not satisfy the specifications for either #1D or #2D diesel fuel, this rule amends the regulations to add a designation for non-petroleum based diesel fuel and high concentration blends of non-petroleum diesel fuel. Any diesel fuel that is composed of at least 80 percent non petroleum diesel fuel (such as biodiesel) can be designated as non-

[1] 2 percent biodiesel (B2) and 5 percent biodiesel (B5) are common biodiesel blends.

[2] Internal Revenue Bulletin 2005–35, August 29, 2005.

[3] 26 CFR 4081–1(b) states the an excluded liquid contains less than 4 percent normal paraffins.

petroleum (NP) diesel.[4] We have included 80 percent blends in the definition of NP diesel because we are aware that 20 percent petroleum based diesel is sometimes blended into B100 during winter to improve its cold temperature performance. B99.9 and B80 are used for the same purposes as B100, either as a finished fuel or for the later manufacture of biodiesel blends for use as finished fuel. Similar to #1D fuel, we agree that it is not appropriate to apply the anti-downgrading requirements for 15 ppm highway diesel fuel to NP diesel fuel since this would interfere with its intended purpose of NP diesel as a blend component into all grades of diesel fuel (including 500 ppm highway diesel fuel). Consequently, this rule amends the regulations to exempt fuel designated as NP diesel from the anti-downgrading requirements.

We agree that it is not necessary to include facilities downstream of the terminal in the D&T system if the only action that would cause them to be included is that they handle a tax-excluded liquid. The purpose of the D&T requirements is to maintain the integrity of the distillate sulfur requirements for petroleum refiners. Once highway taxes have been assessed on such fuels and red dye or marker is added (if required [5]), typically before the fuel leaves the terminal, there is no potential for inappropriate shifting from one pool to another.[6] For most, if not all, of the parties that take custody of an excluded liquid such as B100 or B99.9 downstream of the terminal, these are the only fuels that they handle on which highway diesel taxes have yet to be assessed. For such parties, EPA can rely on the presence or absence of red dye and marker to evaluate whether any inappropriate shifting has taken place.

This rule exempts parties from the D&T registration and reporting requirements if: (1) The only diesel fuel that the entity delivers or receives on which taxes have not been assessed pursuant to IRS code (26 CFR part 48) is an excluded liquid pursuant to IRS code 26 CFR 48.4081–1(b), and (2) the entity does not transfer such excluded liquid to a facility which delivers or receives other diesel fuel on which taxes have not been assessed. The second provision is necessary to ensure that all volumes reported under the D&T provisions can be accounted for when EPA audits compliance with these requirements. In most cases, this second provision will be moot since the parties for which this exemption is being crafted are biodiesel blenders and typically do not further distribute B100.

Table IV–1, below, contains a summary of the amendments to the D&T provisions made by this action to accomplish the goals outlined above. These amendments will reduce the compliance burden for a number of required parties while maintaining the environmental benefits of the program.

TABLE IV–1.—SUMMARY OF AMENDMENTS TO THE DESIGNATE AND TRACK REQUIREMENTS REGARDING NON-PETROLEUM DIESEL FUEL

Section	Description
80.2	Amended the definition of heating oil to reflect that it can contain NP diesel. Added a definition for NP diesel.
80.520	Amended the standards and dye requirements to reflect that diesel fuel can be designated as NP diesel.
80.590	Amended the product transfer document requirements to reflect that diesel fuel can be designated as NP diesel.
80.597	Amended the D&T provisions to exempt a facility from registration if: (1) The only diesel fuel that the entity delivers or receives on which taxes have not been assessed pursuant to IRS code (26 CFR part 48) is an excluded liquid pursuant to IRS code 26 CFR 4081–1(b), and (2) The entity does not transfer such excluded liquid to a facility which delivers or receives other diesel fuel on which taxes have not been assessed.
80.598	Amended the diesel fuel designation requirements so that diesel fuel can be designated as NP diesel.
80.599	Amended the manner in which compliance with the anti-downgrading requirement is evaluated to exempt diesel fuel designated as NP from the requirements.
80.600	Amended the recordkeeping requirements under the designate and track provisions to: (1) Reflect that diesel fuel can be designated as NP diesel, and (2) clarify that facilities that are exempt from the registration requirements under the D&T provisions (per the amendment to § 80.597) do not need to identify the EPA entity or facility registration number to which fuel composed entirely of an excluded liquid was distributed.
80.601	Amended the reporting requirements under the D&T provisions to clarify that facilities that are exempted from the registration requirements (per the amendments to § 80.597) are not subject to these reporting requirements.

V. Amendments to the Designate and Track Requirements Regarding California Diesel

California refiners and distributors of diesel fuel requested that EPA consider exempting diesel fuel that meets the State of California requirements for highway diesel fuel (known as California Air Resource Board diesel, or ''California diesel'') from the designate and track requirements under EPA's diesel program while such California diesel fuel is in the State of California. They stated that because the State of California will require that California diesel meet a 15 ppm sulfur specification by June 1, 2006, the D&T provisions to prevent the inappropriate shifting of higher sulfur diesel fuel into the California diesel pool are not needed for California diesel while it is in the State of California. It was stated that California diesel which enters the 49 states could be incorporated into the D&T system so as to maintain the integrity of the system. It was also requested that the D&T requirements be amended to accommodate cases where California diesel is shipped via pipeline to a terminal outside of California to be distributed by tank truck back into the State of California.

The State of California's diesel fuel program does not contain the temporary compliance option for highway diesel fuel, or the small refiner and credit provisions that exist under the federal program. At the time of its introduction, California diesel became mandatory for use in both highway vehicles and nonroad equipment. Beginning January 2007, the State of California requires that California diesel meeting a 15 ppm sulfur specification be used in intrastate locomotives and marine engines.

[4] It is also likely that non-petroleum diesel fuels other than biodiesel will not satisfy the specifications for #1D or #2D diesel fuel.

[5] Outside of the Northeast Mid-Atlantic Area, the marker solvent yellow 124 must be added to heating oil beginning June 1, 2007 and to locomotive and marine diesel fuel from June 1, 2010–May 31, 2012 before the fuel leaves the terminal.

[6] For example, from the nonroad diesel pool into the 500 ppm highway diesel pool during the highway program's temporary compliance option, or from the heating oil pool into the high sulfur NRLM pool while the NRLM program's small refiner and credit provisions remain effective.

Consequently, we agree that the concerns which led us to implement the D&T requirements do not exist with respect to California diesel while it is in the State of California. Therefore, this action amends the D&T regulations so that facilities which handle California diesel while it is within the State of California are not subject to the associated registration, volume balance, and reporting requirements.

Under this amendments, a pipeline that ships California diesel to a terminal outside of California will continue to be subject to all of the D&T requirements except for the volume balance requirements for highway diesel fuel. Such pipeline facilities will not need to identify the specific facilities from which they received the California diesel that enters the 49 states. The terminal within the 49 states that receives California diesel must redesignate the fuel as federal 15 ppm sulfur highway diesel fuel (ULSD) or segregate the California diesel fuel it receives for redistribution back into the State of California. Refiners and importers of diesel fuel in the State of California will continue to be subject to the federal sulfur testing requirements. This rule contains various amendments (listed below in table V–1) to ensure that the integrity of the D&T system is maintained.

Table V–1, below, contains a summary of the regulatory amendments made by this action to implement the approach outlined above. We expect that these amendments will reduce compliance burdens for California refiners and distributors while preserving the environmental benefits of the clean diesel program.

TABLE V–1.—SUMMARY OF AMENDMENTS TO THE DESIGNATE AND TRACK REQUIREMENTS REGARDING DIESEL FUEL THAT MEETS CALIFORNIA'S STANDARDS

Section	Description
80.597(c)(1)(iv)	Added to clarify that facilities that ship California diesel outside of California are required to register under the designate and track provisions.
80.598(b)(2)(iii), 80.598(b)(3)(iv)	Added new designation for California diesel fuel.
80.598(b)(9)(xvi)	Added new section which specifies that California diesel shipped outside of California must either be re-designated as 15 ppm MVNRLM of segregated for delivery back into California by tank truck.
80.599(b)(2), 80.599(e)(2)	Amended definitions of $MV15_I$ and $\#2MV15_I$ to include CA diesel received pursuant to new section 80.617(b)(1).
80.600(b)(1)(i)(E), 80.600(b)(1)(ii)(I)	Added to specify that records must be maintained regarding transfers of California diesel fuel out of the State of California under § 80.617(b).
80.600(n)	Added to clarify that records do not need to be maintained re the specific facilities to which taxed or dyed California diesel fuel (or taxed or dyed 15 ppm MVNRLM) is delivered.
80.601(a)(1)(i), 80.601(a)(2)(i)	Amended reporting requirements to include fuel designated as California diesel that is distributed outside of California.
80.616	Added exemption provisions for California diesel within the State of California.
80.617	Added provisions on how to handle California diesel distributed outside the State of California.

VI. Amendments to the Alternative Defense Provisions Regarding the Use of Conductivity Additives and Red Dye With a Sulfur Content That Exceeds 15 ppm

Conductivity Additives

EPA's diesel program provides for the use of additives with a sulfur content greater than 15 ppm in diesel fuel that is subject to the 15 ppm sulfur standard. Under such circumstances, the party that blends the additive is responsible for ensuring that the finished fuel is compliant with the 15 ppm sulfur standard. If a violation of the 15 ppm standard is discovered, EPA will require that all parties that had custody of the fuel provide affirmative defenses to presumptive liability to demonstrate that they did not cause or contribute to the violation. For blenders of additives with a sulfur content greater than 15 ppm, such affirmative defenses typically include a post-additization sulfur test on the fuel batch which shows that the finished diesel fuel is compliant with the 15 ppm sulfur standard. Certain diesel fuel additives are typically injected as the fuel is being delivered into a tank truck. The cost of post-additization sulfur testing could be significant under these circumstances and could discourage the injection of additives with a sulfur content that exceeds 15 ppm as the fuel is delivered into the tank truck. This might force more additization to take place upstream at the refiner when possible or in the terminal storage tank.

The final Highway and Nonroad Diesel rules projected that manufacturers of additives for use in diesel fuel subject to the 15 ppm sulfur standard would reformulate such additives where needed and practicable to have a sulfur content of less than 15 ppm. During the rulemaking process, we learned that important safety additives used to increase the electrical conductivity of diesel fuel can not currently be reformulated to have a sulfur content of less than 15 ppm. Conductivity (static dissipater) additives are often injected as the fuel is delivered into the tank truck although they are sometimes added to the terminal tank. They are typically not added at the refinery because of concerns that the additives might contaminate jet fuel during shipment by pipeline.

Concerns related to fires caused by the discharge of static electricity during the transfer of diesel fuel are primarily focused on instances where a tank truck that previously contained gasoline is subsequently loaded with diesel fuel.[7] Under such a circumstance, a flammable mixture of gasoline and air is likely to exist in the tank truck compartment.[8] Static electricity is generated during the transfer of diesel fuel into the tank truck compartment, which unless properly managed, can serve as an ignition source for this flammable mixture. The risk of fuel fires caused by static electric discharge can be mitigated by employing procedural safeguards and by the use of additives that increase the electrical conductivity of the fuel. Such procedural safeguards include: Bonding and grounding the tank truck to allow a safe pathway for the discharge of static electricity, controlling fuel flow rate and splashing to limit the generation of static electricity, and allowing sufficient time for the static charge that does accumulate to dissipate prior to completing the refueling procedure. Conductivity additives decrease the

[7] Such sequential loading is referred to as switch loading.

[8] Because the flash point of diesel fuel is much higher than that of gasoline, it is much less likely for a flammable diesel/air mixture to exist under typical ambient conditions.

extent to which a static charge can accumulate and the time needed for the charge that does accumulate to dissipate.

To facilitate the use of conductivity additives, the Nonroad Diesel final rule included alternative affirmative defense provisions for over 15 ppm sulfur conductivity additives that contribute no more than 0.05 ppm sulfur to the finished fuel blend (§ 80.614). Under these alternative affirmative defense provisions, additive blenders use a sulfur test prior to additization and volume accounting reconciliation (VAR) of the amount of additive injected into a volume of diesel over a compliance period to demonstrate that the sulfur contribution from the additive did not cause the finished fuel blend to exceed 15 ppm sulfur. We limited the use of these alternative defense provisions to conductivity additives that contribute no more than 0.05 ppm sulfur to the finished fuel blend for two reasons. First, the information available to us at the time indicated that the corresponding additive treatment rate would be adequate to meet the conductivity needs for all in-use fuels. Second, we wished to provide an upper limit on the potential sulfur contribution from such additives so that their sulfur content could not increase.

Certain fuel distributors recently related that to maintain safe operation during the transfer of 500 ppm diesel fuel they currently employ both procedural safeguards and add conductivity additives at a concentration that results in a sulfur contribution to the finished fuel in excess of the 0.05 ppm. They further stated that the limited number of conductivity tests on batches of early production 15 ppm diesel fuel indicates that the processes used to remove sulfur also tends to reduce the natural conductivity of the fuel. This could lead to increased concerns regarding protecting against fires caused by static discharge during the loading of petroleum tank trucks with ULSD. It was requested that to ensure a smooth transition to ULSD, EPA amend the criteria under which the alternative affirmative defense provisions can be used to allow the use of conductivity additives that contribute up to 0.4 ppm sulfur to the finished fuel blend. This corresponds to the maximum treatment rate recommended by a manufacturer of conductivity additives.

We believe that in order to facilitate the safe operation of tank truck loading facilities, it is appropriate to provide as much flexibility as possible for blenders of conductivity additives under the ULSD program. Thus, this rule provides that the alternative affirmative defense provisions may be used by blenders of conductivity additives that contribute no more than 0.4 ppm to the finished fuel. We expect that this change will allow the alternative defense provisions to be used under the most extreme circumstances, when treating diesel fuel batches during wintertime conditions (when static electricity concerns are heightened) that have extremely low conductivity and are also relatively unresponsive to the effects of conductivity improver additives. We continue to believe that in most cases the treatment rate of conductivity additive that will be needed will be much lower than that provided for under these amended alternative affirmative defense provisions.

Red Dye

The Internal Revenue Service (IRS) requires that red dye be added to nonroad diesel fuel prior to leaving the terminal to indicate its non-tax status. The D&T provisions under EPA's diesel program only apply up to the point where taxes are assessed as the fuel leaves the terminal. After this point, EPA's diesel program relies on the presence/absence of red dye to differentiate highway diesel fuel from nonroad diesel fuel. The success of both the IRS fuel excise tax program and EPA's clean diesel programs is dependant on the continued use of red dye.

Manufacturers of red dye recently related that their efforts to reformulate their additive to reduce the sulfur content below 15 ppm have not been fully successful and that it is currently unclear how this can be accomplished. Our review of the information which they provided indicates that reformulating red dye to meet a 15 ppm specification is currently not feasible.

Information provided by additive manufactures indicates that the use of red dye to meet IRS requirements should result in a contribution to the sulfur content of the finished fuel of no more than 0.04 ppm. Based on the above discussion, we believe that it is appropriate to allow the use of the alternative VAR-based affirmative defense provisions by blenders of red dye into diesel fuel subject to the 15 ppm sulfur standard provided that the use of red dye contributes no more than 0.04 ppm to the finished fuel blend. This rule amends the regulations to make this allowance.

Summary of the Amendments

The amendments made by this action regarding the use of the alternative defense provisions by blenders of greater than 15 ppm conductivity additives and red dye are summarized in the following table VI–1. For these alternative defense provisions to apply, it will continue to be necessary for the blender to have a sulfur test prior to additization which shows that the sulfur contribution from the additive will not cause the sulfur content of the finished fuel to exceed 15 ppm. Thus, these amendments will not have a negative impact on the environmental benefits of the ULSD program or on the sulfur sensitive diesel engine emissions control equipment on which these benefits depend. We intend to revisit the need for these alternative affirmative defenses should it become practical in the future to manufacture conductivity additives and/or red dye with a sulfur content of less than 15 ppm.

TABLE VI–1.—SUMMARY OF AMENDMENTS TO THE ALTERNATIVE DEFENSE PROVISIONS FOR CONDUCTIVITY ADDITIVES AND RED DYE

Section	Description
80.591	Amended product transfer document requirements in keeping with applicability of alternative defense provisions for red dye.
80.614	Amended alternative defense provisions so that they may be used by blenders of red dye that contributes no more than 0.04 ppm to the finished fuel and conductivity additives that contribute no more than 0.4 ppm to the finished fuel.

VII. Correction of Errors and Omissions From the Highway and Nonroad Diesel Regulations and Other Clarifications

Following the publication of the Highway and Nonroad Diesel rules, as well as the two subsequent rulemakings, we discovered additional errors and clarifications that we are addressing in this action. Some of these items are merely grammar corrections, typographical errors, and minor clarification edits. This action also includes more substantive amendments that we believe will assist regulated entities in compliance with the diesel sulfur rules. These include: The allowance for early motor vehicle diesel credits to be traded across Credit Trading Areas, the assignment of Puerto Rico and the U.S. Virgin Islands to CTA 1, the allowance of shorter statements on product transfer documents (with EPA approval), and the clarification that approved small refiners who have elected to use the ''gas-for-diesel'' small refiner option (§§ 80.553 and 80.554) may designate 15 ppm diesel fuel as motor vehicle diesel fuel or nonroad, locomotive, and marine diesel fuel.

The table below details the various clarifications and other corrections that are being made through this action:

Section	Description
Subpart I	Revised title to reflect the fact that the provisions of this subpart are applicable to motor vehicle, nonroad, locomotive and marine diesel fuel.
80.502(b)	Added definition to allow for the aggregation of refineries with truck loading terminals.
80.502(f)	Added to clarify that Alaska and Hawaii are in PADD V, and to assign the U.S. Virgin Islands and Puerto Rico to PADD VI.
80.527(c)	Amended to clarify that the anti-downgrading provisions begin October 15, 2006.
80527(c)(4), 80.527(e)(2)	Revised to clarify the anti-downgrading provisions as they apply to retailers and wholesale purchaser-consumers.
80.531(a)(5)(i)–(ii) and (v)	Amended to clarify that Puerto Rico and the U.S. Virgin Islands are assigned to CTA 1.
80.531(c)(5) and (d)(2), and 80.532	Amended to allow cross-CTA trading for early motor vehicle diesel fuel credits.
80.533 section heading, 80.533(d)(2) and (e).	The section heading was revised to better describe the purpose and objectives of this provision. Paragraphs were also amended to clarify that calculations of NRLM baselines should only be calculated using #2D distillates, to state that these provisions apply to ''produced or imported'' fuel, and for consistency with the revisions made to section 80.554(d).
80.535	Revised to state a refiner must submit its NRLM early credit generation intent letter at least 30 days prior to the date that it begins generating early credits.
80.551(f)	This provision was inadvertently omitted during the printing of a prior rulemaking.
80.553	Amended to state that at least 95 percent of the diesel fuel that a small refiner produces must be produced to meet the 15 ppm sulfur standard.
80.554(d)	Amended to better reflect the intent of the small refiner ''gas-for-diesel'' option.
80.570(e), 80.571(f), 80.572(f), 80.573(c), and 80.574(d).	Revised to state ''EPA'' instead of ''the Administrator.''
80.590(a)(7)	Amended to allow entities to use shorter statements regarding diesel fuel classifications on PTDs (with EPA approval).
80.590(i)	Added to cover the situation where some small amount of potentially off-spec ULSD, or ''interface ULSD'', may be transferred by a pipeline due to batch sequencing and pipeline batch cutting methods.
80.592(b)(7)–(b)(7)(i)	Amended to state ''compliance period'' rather than ''calendar year''.
80.592(f)	Added to state recordkeeping requirements for the situation where a refinery is aggregated with a truck loading terminal.
80.593	Amended to reflect the fact that this section is applicable to importers as well as refiners.
80.595	Revised the section heading to better describe the purpose and objectives of this provision.
80.597(c)(1) and (c)(2)	Revised to clarify that only entities delivering or receiving the fuels in 80.597(c)(1)(i)–(iii) must register.
80.598(a)(3)(iv)	Amended to clarify that small refiners who elect to produce NRLM to meet the 15 ppm standard in 2006 may designate 15 ppm fuel as MV or NRLM fuel beginning June 1, 2006 (as stated in § 80.554(d)).
80.598(b)(9)(iv) & (b)(9)(vii)(A)	Amended to state ''2006'' rather than ''2007''.
80.600	Various sections amended to address recordkeeping for the situation where a refinery is aggregated with a truck loading terminal.
80.601(a)(iv)–(v)	Amended to clarify volume balance requirements.
80.601(b)(4) and 80.601(f)	Added to state reporting requirements for the situation where a refinery is aggregated with a truck loading terminal.
80.602(g)	Added to address recordkeeping for the situation where a refinery is aggregated with a truck loading terminal.

VIII. 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 must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This final rule simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate

and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. 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 Diesel Rule and the Nonroad Diesel 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) 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 simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations of the Highway Diesel Rule (66 FR 5002, January 18, 2001) and the Nonroad Diesel Rule (69 FR 38958, June 29, 2004) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0308 (EPA ICR #1718). A 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 Analyses

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. 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. After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose additional regulatory burden on small entities. This direct final rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye.

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 that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for 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 (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. 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 errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye.

Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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 simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. Although Section 6 of Executive Order 13132 did not apply to the Highway Diesel Rule (66 FR 5002) or the Nonroad Diesel Rule (69 FR 38958), EPA did consult with representatives of various State and local governments in developing these rules. For this direct final action, EPA consulted with representatives of the California Air Resources Board and the Western States Petroleum Association (WSPA) for the amendments made which will affect refiners and distributors in California.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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.'' This direct final rule does not have tribal implications as specified in Executive Order 13175. 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 errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.,* biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. 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, the Agency must 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 simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye.

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. This direct final rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. 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 June 30, 2006.

IX. 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

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

Dated: April 20, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, 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, 7545 and 7601(a).

■ 2. Section 80.2 is amended by revising paragraph (ccc) and adding paragraph (sss) to read as follows:

§ 80.2 Definitions.

* * * * *

(ccc) *Heating Oil* means any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, stationary diesel engines, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.

* * * * *

(sss) *Non-petroleum diesel (NP diesel)* means a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

■ 3. Subpart Heading I is revised to read as follows:

Subpart I—Motor Vehicle, Nonroad, Locomotive, and Marine Diesel Fuel

■ 4. Section 80.502 is amended by adding new paragraphs (b)(1)(iii), (d)(1), (d)(2) and (f), to read as follows:

§ 80.502 What definitions apply for purposes of this subpart?

* * * * *

(b) * * *

(1) * * *

(iii) *Situations where a refinery is aggregated with a truck loading terminal.*

(A) Where a refinery is aggregated with a truck loading terminal, diesel fuel or other product subject to the requirements of this subpart I produced by such refinery and distributed over the truck terminal rack must be included in refinery batches that may be based on shipments to a truck terminal rack tank or on the total volumes delivered to tanker trucks for a period not to exceed 1 calendar month per batch.

(B) Where a refinery is aggregated with a truck loading terminal, diesel fuel or other product subject to the requirements of this subpart I that were imported or produced by another refinery, and that are distributed through the refinery or truck terminal rack, must be treated as previously designated fuel for which the aggregated facility is responsible for all applicable balance and downgrade requirements under §§ 80.527, 80.598, 80.599 and related recordkeeping and reporting requirements like any other distributor downstream from the refiner or importer.

* * * * *

(d) * * *

(1) In the case of aggregated facilities consisting of a refinery and a truck loading terminal, a batch may be defined by one of the following methods:

(i) The sum of the deliveries from the truck loading terminal rack to trucks for periods not to exceed 1 month;

(ii) Each individual truck or truck compartment; or

(iii) For refineries with ''certification tanks'' where testing is performed and ''rack tanks'' that feed the truck loading terminal rack, each transfer from the certification tank to the rack tank. If this method of determining a batch is selected, it must be the sole method used and must be performed such that no double-counting or undercounting of volumes occurs.

(2) [*Reserved*.]

(f) *Definition of PADD.* For the purposes of this subpart only, the following definitions of PADDs apply:

(1) The following States are included in PADD I:

Connecticut
Delaware
District of Columbia
Florida
Georgia
Maine
Maryland
Massachusetts
New Hampshire
New Jersey
New York
North Carolina
Pennsylvania
Rhode Island
South Carolina
Vermont
Virginia
West Virginia

(2) The following States are included in PADD II:

Illinois
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma

South Dakota
Tennessee
Wisconsin

(3) The following States are included in PADD III:

Alabama
Arkansas
Louisiana
Mississippi
New Mexico
Texas

(4) The following States are included in PADD IV:

Colorado
Idaho
Montana
Utah
Wyoming

(5) The following States are included in PADD V:

Alaska
Arizona
California
Hawaii
Nevada
Oregon
Washington

(6) The following areas are included in PADD VI:

U.S. Virgin Islands
Commonwealth of Puerto Rico

■ 5. Section 80.520 is amended by revising paragraph (b)(2) introductory text to read as follows:

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

* * * * *

(b) * * *

(2) Until June 1, 2010, any #1D or #2D distillate, or NP diesel fuel that does not show visible evidence 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 distillate fuel designated or classified as any of the following:

* * * * *

■ 6. Section 80.527 is amended by revising paragraph (c) introductory text, (c)(3), (c)(4), and (e)(2) to read as follows:

§ 80.527 Under what conditions may motor vehicle diesel fuel subject to the 15 ppm sulfur standard be downgraded to motor vehicle diesel fuel subject to the 500 ppm sulfur standard?

* * * * *

(c) *Downgrading limitation.* The provisions of this section apply beginning October 15, 2006.

* * * * *

(3) Compliance with the limitation of paragraph (c)(1) of this section applies separately for the compliance periods of October 15, 2006 through May 31, 2007; June 1, 2007 through June 30, 2008; July 1, 2008 through June 30, 2009; July 1, 2009 through May 31, 2010.

(4) Except as provided in paragraph (e) of this section, compliance with the limitation of paragraph (c)(1) of this section shall be as calculated under § 80.599(e).

* * * * *

(e) * * *

(2) A retailer or wholesale purchaser-consumer who does not sell, offer for sale, or dispense motor vehicle diesel fuel subject to the 15 ppm sulfur standard under § 80.520(a)(1) must comply with the downgrading limitations of paragraph (c) of this section, such that it may not downgrade a volume of motor vehicle diesel fuel, designated as subject to the 15 ppm sulfur standard, for more than 20% of the total volume of motor vehicle diesel fuel that it sells, offers for sale, or dispenses in any compliance period.

* * * * *

■ 7. Section 80.531 is amended by revising paragraphs (a)(5)(i), (a)(5)(ii), and (d)(2), and by adding paragraphs (a)(5)(v) and (c)(5) to read as follows:

§ 80.531 How are motor vehicle diesel fuel credits generated?

(a) * * *

(5) * * *

(i) PADDs I, II, III and IV, as described in § 80.502(f) except as provided in paragraph (a)(5)(iv) of this section. The CTAs shall be designated as CTA 1, 2, 3, and 4, respectively, and correspond to PADDs I, II, III, and IV, respectively;

(ii) CTA 5 shall correspond to PADD V, as described in § 80.502(f), except as provided in paragraphs (a)(5)(iii) and (iv) of this section;

* * * * *

(v) The U.S. territories specified in § 80.502(f)(6) shall be included in CTA 1.

* * * * *

(c) * * *

(5) *Credit transfers for early credits.* For early credits generated under § 80.531(c), credits may be used in any of the CTAs 1 through 5 that were generated in any of the CTAs 1 through 7 to achieve compliance with the volume limit in § 80.503(a)(3);

* * * * *

(d) * * *

(2) Credits generated under paragraphs (b) and (c) of this section shall be generated separately by CTA as defined in paragraph (a)(5) of this section and must be designated by CTA of generation, and by the refiner and refinery, or by importer and port of import, as applicable, except as provided under paragraph (c)(5) of this section.

* * * * *

■ 8. Section 80.532 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 80.532 How are motor vehicle diesel fuel credits used and transferred?

* * * * *

(d) * * *

(1) * * *

(i) The motor vehicle diesel fuel credits were generated in the same CTA as the CTA in which motor vehicle diesel fuel credits are used to achieve compliance, except as provided in § 80.531(c)(5);

* * * * *

■ 9. Section 80.533 is amended as follows:

■ a. By revising the section heading.

■ b. By adding a new paragraph (c)(2)(iii).

■ c. By revising paragraph (d)(2).

■ d. By adding introductory text to paragraph (e).

■ e. By revising paragraph (e)(1).

■ f. By revising paragraph (f).

■ g. By revising paragraph (g).

■ h. By revising paragraph (h).

■ i. By adding a new paragraph (i).

§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline for the generation of NRLM credits or the use of the NRLM small refiner compliance options?

* * * * *

(c) * * *

(2) * * *

(iii) For purposes of a total diesel baseline volume for use in determining compliance with the provisions of § 80.554(d), the baseline volumes of motor vehicle diesel fuel produced during the calendar years beginning January 1, 1998 and 1999 (per §§ 80.595(a) and 80.596(a)); and the baseline volumes of non-highway diesel fuel produced during the three calendar years beginning January 1, 2003, 2004, and 2005. This shall be calculated as stated under paragraph (f) of this section.

* * * * *

(d) * * *

(2) Under paragraph (c)(2)(ii) of this section, B_{MV} equals the average annual volume of motor vehicle diesel fuel produced or imported during the period from January 1, 2006 through December 31, 2008.

* * * * *

(e) *Calculation of the Non-highway Baseline,* B_{NRLM}. For purposes of this paragraph (e), B_{MV} shall only include the average annual volume of #2D distillate fuel.

(1) Under paragraphs (c)(2)(i) and (c)(2)(iii) of this section, B_{NRLM} equals the average annual volume of all #2D distillate produced or imported from January 1, 2003 through December 31, 2005, less B_{MV} as determined in paragraph (d)(1) of this section.

* * * * *

(f) *Calculation of the Total Diesel Baseline, B_{MVNRLM}.* B_{MVNRLM} equals the sum of B_{MV} (as calculated under § 80.596) plus B_{NRLM} (as calculated under paragraph (e)(1) of this section).

(g)(1) Applications submitted under paragraphs (c)(2)(i) and (c)(2)(iii) of this section must be postmarked by February 28, 2006.

(2) Applications submitted under paragraph (c)(2)(ii) of this section must be postmarked by February 28, 2009.

(h)(1) For applications submitted under paragraphs (c)(2)(i) and (c)(2)(iii) of this section, EPA will notify refiners or importers by June 1, 2006 of approval of the baselines for each of the refiner's refineries or importer's import facilities or of any deficiencies in the refiner's or importer's application.

(2) For applications submitted under paragraph (c)(2)(ii) of this section, EPA will notify refiners or importers by June 1, 2009 regarding approval of the baselines for each of the refiner's refineries or importer's import facilities of any deficiencies in the refiner's or importer's application.

(i) If at any time the motor vehicle baseline or non-highway baseline submitted in accordance with the requirements of this section is determined to be incorrect, EPA will notify the refiner or importer of the corrected baseline and any compliance calculations made on the basis of that baseline will have to be adjusted retroactively.

■ 10. Section 80.535 is amended by revising paragraphs (a)(1)(i) and (c)(1)(i) to read as follows:

§ 80.535 How are NRLM diesel fuel credits generated?

(a) * * *

(1) * * *

(i) The refiner or importer notifies EPA of its intention to generate credits and the period during which it will generate credits. This notification must be received by EPA at least 30 calendar days prior to the date it begins generating credits under this section.

* * * * *

(c) * * *

(1) * * *

(i) The refiner or importer notifies EPA of its intention to generate credits and the period during which it will generate credits. This notification must be received by EPA at least 30 calendar days prior to the date it begins generating credits under this section.

* * * * *

■ 11. Section 80.551 is amended by adding 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(e) will be based on all information submitted under paragraph (c) of this section, except as provided in § 80.550(e).

* * * * *

■ 12. Section 80.553 is amended by revising paragraphs (b) and (d) to read as follows:

§ 80.553 Under what conditions may the small refiner gasoline sulfur standards be extended for a small refiner of motor vehicle diesel fuel?

* * * * *

(b) As part of its application, the refiner must submit an application for a motor vehicle diesel fuel baseline in accordance with the provisions of §§ 80.595 and 80.596. The application must also include information, as provided in § 80.594, demonstrating that starting no later than June 1, 2006, 95 percent of the motor vehicle diesel fuel produced by the refiner will comply with the 15 ppm sulfur content standard under § 80.520(a)(1), and that the volume of motor vehicle diesel fuel produced will comply with the volume requirements of paragraph (e) of this section.

* * * * *

(d) Beginning June 1, 2006, and continuing through December 31, 2010, 95 percent of the motor vehicle diesel fuel produced by a refiner that has received an extension of its small refiner gasoline sulfur standards under this section must be accurately designated under § 80.598 as meeting the 15 ppm sulfur content standard under § 80.520(a)(1).

* * * * *

■ 13. Section 80.554 is amended by revising paragraphs (d)(1)(i), (d)(1)(ii), and (d)(3)(i) to read as follows:

§ 80.554 What compliance options are available to NRLM diesel fuel small refiners?

* * * * *

(d) * * *

(1) * * *

(i) From June 1, 2006 until the expiration of the refiner's small refiner gasoline sulfur standards (through December 31, 2007 or 2010) 95 percent of the total MVNRLM diesel fuel produced by the refiner must be accurately designated under § 80.598(a) as meeting the 15 ppm sulfur standard of § 80.510(b).

(ii) The refiner must produce MVNRLM diesel fuel each year or partial year under paragraph (d)(1)(i) of this section at a volume that is equal to or greater than 85 percent of B_{MVNRLM}, as defined in § 80.533, calculated on an annual basis.

* * * * *

(3)(i) If the refiner fails to produce the necessary volume of 15 ppm sulfur MVNRLM diesel fuel by June 1, 2006 and every year thereafter through the deadlines specified under paragraph (d)(1)(i) of this section, the refiner must report this in its annual report under § 80.604, and the adjustment of gasoline sulfur standards under paragraph (d)(2)(i) of this section will be considered void as of January 1, 2004.

* * * * *

■ 14. Section 80.570 is amended by revising paragraph (e) to read as follows:

§ 80.570 What labeling requirements apply to retailers and wholesale purchaser-consumers of diesel fuel beginning June 1, 2006?

* * * * *

(e) Alternative labels to those specified in paragraphs (a) through (c) of this section may be used as approved by EPA.

■ 15. Section 80.571 is amended by revising paragraph (f) to read as follows:

§ 80.571 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel or heating oil beginning June 1, 2007?

* * * * *

(f) Alternative labels to those specified in paragraphs (a) through (d) of this section may be used as approved by EPA.

■ 16. Section 80.572 is amended by revising paragraph (f) to read as follows:

§ 80.572 What labeling requirements apply to retailers and wholesale purchaser-consumers of NR and NRLM diesel fuel and heating oil beginning June 1, 2010?

* * * * *

(f) Alternative labels to those specified in paragraphs (a) through (d) of this section may be used as approved by EPA.

■ 17. Section 80.573 is amended by revising paragraph (c) to read as follows:

§ 80.573 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel and heating oil beginning June 1, 2012?

* * * * *

(c) Alternative labels to those specified in paragraph (a) of this section may be used as approved by EPA.

■ 18. Section 80.574 is amended by revising paragraph (d) to read as follows:

§ 80.574 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel, or heating oil beginning June 1, 2014?

* * * * *

(d) Alternative labels to those specified in paragraphs (a) and (b) of this section may be used as approved by EPA.

■ 19. Section 80.580 is amended by revising paragraph (d) to read as follows:

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

* * * * *

(d) *Adjustment factor for downstream test results.* (1) Except as specified in paragraph (d)(1)(i) of this section, an adjustment factor of negative two ppm sulfur shall be applied to the test results from any testing of motor vehicle diesel fuel or NRLM diesel fuel downstream of the refinery or import facility, to account for test variability, but only for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1).

(i) Prior to October 15, 2008 an adjustment factor of negative three ppm sulfur shall be applied to the test results, to account for test variability, but only for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1).

(ii) [*Reserved.*]

(2) In addition to the adjustment factor provided in paragraph (d)(1)(i) of this section, prior to September 1, 2006, an adjustment factor of negative 7 ppm shall be applied to the test results from any testing of motor vehicle diesel fuel downstream of the refinery or import facility, to facilitate the transition to ULSD fuel, but only for testing of motor vehicle diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.520(a)(1).

(3) In addition to the adjustment factor provided in paragraph (d)(1)(i) of this section, prior to October 15, 2006, an adjustment factor of negative 7 ppm shall be applied to the test results from any testing of motor vehicle diesel fuel at any retail outlet or wholesale purchaser-consumer facility, to facilitate the transition to ULSD fuel, but only for testing of motor vehicle diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.520(a)(1).

* * * * *

■ 20. Section 80.581 is amended by revising paragraph (c)(1) to read as follows:

§ 80.581 What are the batch testing and sample retention requirements for motor vehicle and NRLM diesel fuel?

* * * * *

(c)(1) Any refiner who produces motor vehicle or NRLM diesel fuel using computer-controlled in-line blending equipment, including the use of an on-line analyzer test method that is approved under the provisions of § 80.580, and who, subsequent to the production of the diesel fuel batch tests a composited sample of the batch under the provisions of § 80.580 for purposes of designation and reporting, is exempt from the requirement of paragraph (b) of this section to obtain the test result required under this section prior to the diesel fuel leaving the refinery, provided that the refiner obtains approval from EPA. The requirement of this paragraph (c)(1) that the in-line blending equipment must include an on-line analyzer test method that is approved under the provisions of § 80.580 is effective beginning June 1, 2006.

* * * * *

■ 21. Section 80.590 is amended by revising paragraphs (a)(7) introductory text and (a)(7)(i), and by adding paragraph (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) * * *

(7) For transfers of title or custody from one facility to another in the distribution system where diesel fuel or distillates are taxed, dyed or marked, and for any subsequent transfers (except when such fuel is dispensed into motor vehicles or nonroad, locomotive, or marine equipment), an accurate statement on the product transfer document of the applicable fuel uses and classifications, as follows (however, in instances where space is constrained, substantially similar language may be used following approval from EPA):

(i) *Undyed 15 ppm sulfur diesel fuel.* For the period from June 1, 2006 and beyond, ''15 ppm sulfur (maximum) Undyed Ultra-Low Sulfur Diesel Fuel. For use in all diesel vehicles and engines.'' From June 1, 2006 through May 31, 2010, the product transfer document must also state whether the diesel fuel is #1D or #2D, or NP diesel.

* * * * *

(i) *Pipeline Ticketing.* For the case where a pipeline delivers a batch of ULSD to another facility that contains slight amounts of another type of fuel from a preceding or following batch, a clear statement must be included on the PTD denoting this. When this occurs, the receiving facility must handle the fuel appropriately (*e.g.,* redesignate or downgrade any amount of fuel in that batch that does not meet the applicable sulfur standard), in accordance with the provisions of §§ 80.527 and 80.599.

■ 22. Section 80.591 is amended by revising paragraphs (b)(3), (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) 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 package contains a static dissipater additive and/or red dye having a sulfur content greater than 15 ppm, a statement must be included which accurately describes the contents of the additive package pursuant to one of the following choices:

(i) ''This diesel fuel additive contains a static dissipater additive having a sulfur content greater than 15 ppm.''

(ii) ''This diesel fuel additive contains red dye having a sulfur content greater than 15 ppm.''

(iii) ''This diesel fuel additive contains a static dissipater additive and red dye having a sulfur content greater than 15 ppm.''

(4) * * *

(i) The additive package's maximum sulfur concentration.

(ii) The maximum recommended concentration in volume percent for use of the additive package in diesel fuel.

(iii) The contribution to the sulfur level of the fuel, in ppm, that would result if the additive package is used at the maximum recommended concentration.

* * * * *

■ 23. Section 80.592 is amended by adding a new paragraph (f) to read as follows:

§ 80.592 What records must be kept by entities in the motor vehicle diesel fuel and diesel fuel additive distribution systems?

* * * * *

(f) *Additional records to be kept by aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the records required by paragraph (a) of this section, such aggregated facilities must also keep the following records beginning June 1, 2006:

(1) The following information for each batch of motor vehicle diesel fuel

produced by the refinery and sent over the aggregated facility's truck rack:

(i) The batch volume;

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1);

(iii) The date of receipt or import;

(iv) A record designating the batch as motor vehicle diesel fuel meeting the 500 ppm sulfur standard or as motor vehicle diesel fuel meeting the 15 ppm sulfur standard; and,

(v) A record indicating the volumes that were either taxed, dyed, or dyed and marked.

(2) Volume reports for all motor vehicle diesel fuel from external sources (*i.e.,* from another refiner or importer), as described in § 80.601(f)(2), sent over the aggregated facility's truck rack.

■ 24. Section 80.595 is amended by revising the section heading to read as follows:

§ 80.595 How does a small or GPA refiner apply for a motor vehicle diesel fuel volume baseline for the purpose of extending their gasoline sulfur standards?

* * * * *

■ 25. Section 80.597 is amended by revising paragraphs (c)(1) introductory text, and (c)(2) introductory text, and adding paragraphs (c)(1)(iv) and (c)(5) to read as follows:

§ 80.597 What are the registration requirements?

* * * * *

(c) *Entity registration.* (1) Except as prescribed in paragraph (c)(5) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2006 through May 31, 2010 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section:

* * * * *

(iv) Fuel designated as California Diesel fuel under § 80.598 on which taxes have not been assessed and red dye has not been added (if required) pursuant to IRS code (26 CFR part 48) and that is delivered by pipeline to a terminal outside of the State of California pursuant to the provisions of § 80.617(b).

(2) Except as prescribed in paragraph (c)(5) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2007 through May 31, 2014 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraph (c)(1) of this section:

* * * * *

(5) *Exceptions for Excluded Liquids.* An entity that would otherwise be required to register pursuant to the requirements of paragraphs (c)(1) and (c)(2) of this section is exempted from the registration requirements under this section provided that:

(i) The only diesel fuel or heating oil that the entity delivers or receives on which taxes have not been assessed or which is not received dyed pursuant to Internal Revenue Service (IRS) code 26 CFR part 48 is an excluded liquid as defined pursuant to IRS code 26 CFR 4081–1(b).

(ii) The entity does not transfer the excluded liquid to a facility which delivers or receives diesel fuel other than an excluded liquid on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

* * * * *

■ 26. Section 80.598 is amended as follows:

■ a. By adding paragraph (a)(2)(v)(C).

■ b. By revising paragraph (a)(3)(iv).

■ c. By revising paragraph (a)(3)(vi).

■ d. By adding paragraphs (b)(2)(iii) and (b)(2)(iv).

■ e. By adding paragraphs (b)(3)(iv) and (b)(3)(v).

■ f. By adding paragraph (b)(4)(iv).

■ g. By adding paragraph (b)(9)(xvi).

§ 80.598 What are the designation requirements for refiners, importers, and distributors?

(a) * * *

(2) * * *

(v) * * *

(C) NP diesel (NP).

(3) * * *

(iv) Prior to June 1, 2009 all 15 ppm sulfur MVNRLM diesel fuel must be designated as motor vehicle diesel fuel. A refiner that has been approved as a NRLM diesel fuel small refiner under § 80.551(g) and has elected to use the compliance option specified under § 80.554(d) may also designate 15 ppm sulfur MVNRLM fuel as NRLM diesel fuel beginning June 1, 2006.

* * * * *

(vi) Beginning June 1, 2014, any distillate fuel having a sulfur content greater than 15 ppm may not be designated as MVNRLM diesel fuel.

(b) * * *

(2) * * *

(iii) Fuel that meets the requirements specified in § 80.616 which is transferred by a pipeline facility to a terminal facility outside of the State of California pursuant to § 80.617(b) may be designated as California diesel fuel. Such fuel must subsequently be redesignated by the receiving terminal as either #1D or #2D 15 ppm motor vehicle diesel fuel, or segregated for delivery by tank truck to a retail or wholesale purchaser consumer facility inside the State of California pursuant to § 80.617(b)(2).

(iv) NP 15 ppm sulfur motor vehicle diesel fuel.

(3) * * *

(iv) Fuel that meets the requirements specified in § 80.616 that is transferred by a pipeline facility to a terminal facility outside of the State of California pursuant to § 80.617(b) may be designated as California diesel fuel. Such fuel must either be redesignated by the receiving terminal as either #1D or #2D 15 ppm motor vehicle diesel fuel as prescribed in paragraph (b)(9)(xvi) of this section, or segregated for delivery by tank truck to a retail or wholesale purchaser consumer facility inside the State of California pursuant to § 80.617(b)(2).

(v) NP 15 ppm sulfur motor vehicle diesel fuel.

(4) * * *

(iv) NP 500 ppm sulfur motor vehicle diesel fuel.

* * * * *

(9) * * *

(xvi) Fuel designated as California diesel fuel under paragraph (b)(3)(iv) of this section that is received by a terminal facility pursuant to the provisions of § 80.617(b)(1) must be redesignated as either #1D or #2D 15 ppm motor vehicle diesel fuel as prescribed in paragraph (b)(9)(xvi) of this section, or segregated for delivery by tank truck to a retail or wholesale purchaser consumer facility inside the State of California pursuant to § 80.617(b)(2).

* * * * *

■ 27. Section 80.599 is amended as follows:

■ a. By revising paragraph (b)(2).

■ b. By revising paragraph (e)(2).

■ c. By revising paragraph (e)(4).

■ d. By revising paragraph (e)(5).

■ e. By adding a new paragraph (h).

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

* * * * *

(b) * * *

(2) Calculate the motor vehicle diesel fuel received, as follows:

$$MV_I = MV15_I + MV500_I$$

Where:

$MV15_I$ = the total volume of all the 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. Any untaxed and undyed California diesel fuel received by a terminal pursuant to § 80.617 (b)(1) shall be included in this volume.

$MV500_I$ = 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.

* * * * *

(e) * * *

(2) The volume of #2D 15 ppm sulfur motor vehicle delivered must meet the following requirement:

$(\#2MV15_O + \#2MV15_{INVCHG}) \geq 0.8 * \#2MV15_I$

Where:

$\#2MV15_O$ = the total volume of fuel delivered during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel.

$\#2MV15_{INVCHG}$ = the total volume of diesel fuel designated as #2D 15 ppm sulfur motor vehicle diesel fuel in inventory at the end of the compliance period minus the total volume of #2D 15 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the compliance period, and accounting for any corrections in inventory due to volume swell or shrinkage, difference in measurement calibration between receiving and delivering meters, and similar matters, where corrections that increase inventory are defined as positive.

$\#2MV15_I$ = the total volume of fuel received during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel. Any untaxed and undyed California diesel fuel received by a terminal pursuant to § 80.617(b)(1) shall be included in this volume.

* * * * *

(4) The following calculation may be used to account for wintertime blending of kerosene and the blending of non-petroleum diesel:

$\#2MV500_O < = \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * (\#1MV15_I + \#2MV15_I + NPMV15_I)$

Where:

$\#1MV15_I$ 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.

$NPMV15_I$ is the total volume of fuel received during the compliance period that is designated as NP15 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.

$\#1MV15_P$ = 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) The following calculation may be used to account for wintertime blending of kerosene, the blending of non-petroleum diesel, and/or changes in the facility's volume balance of motor vehicle diesel fuel resulting from a temporary shift of 500 ppm sulfur NRLM diesel fuel to 500 ppm sulfur motor vehicle diesel fuel during the compliance period:

$\#2MV500_O < \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * \#2MV15_I + \#1MV15_B + \#2NRLM500_S + NP_B$

Where:

$\#1MV15_B$ = 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.

$\#2MV500_P$ = 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.

$\#2NRLM500_S$ = the total volume of #2D 500 ppm sulfur NRLM diesel fuel that the facility can demonstrate they redesignated as #2D 500 ppm sulfur motor vehicle diesel fuel during the compliance period.

NP_B = the total volume of fuel received during the compliance period that is designated as NP15 ppm sulfur motor vehicle diesel fuel, and/or NP500 ppm sulfur motor vehicle diesel fuel which the facility can demonstrate they blended into #2D 500 ppm sulfur motor vehicle diesel fuel.

* * * * *

(h) *Additional requirements for aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the volume balance requirements required by paragraphs (a) through (g) of this section, aggregated facilities consisting of a refinery and a truck loading terminal are responsible for balance calculations on the volume difference between the total volume of diesel fuel sold over the truck loading terminal rack and the production volume from the batch reports. Mathematically, the difference will be the volume of fuel received from external sources and passed through to another facility.

■ 28. Section 80.600 is amended as follows:

■ a. By revising paragraphs (a)(1)(v) and (a)(1)(vi).

■ b. By adding new paragraphs (a)(1)(vii), (a)(1)(viii), and (a)(1)(ix).

■ c. By revising paragraphs (a)(3)(ii) and (a)(3)(iii).

■ d. By adding a new paragraph (a)(3)(iv).

■ e. By revising paragraphs (a)(4)(i) and (a)(4)(ii).

■ f. By adding a new paragraph (a)(4)(iii).

■ g. By revising paragraph (b)(1)(i)(D).

■ h. By adding new paragraphs (b)(1)(i)(E), (b)(1)(i)(F), (b)(1)(i)(G), and (b)(1)(i)(H).

■ i. By revising paragraphs (b)(1)(ii)(G) and (b)(1)(ii)(H).

■ j. By adding new paragraphs (b)(1)(ii)(I), (b)(1)(ii)(J), (b)(1)(ii)(K), and (b)(1)(ii)(L).

■ k. By revising paragraphs (b)(1)(iii)(B) and (b)(1)(iii)(C).

■ l. By adding a new paragraph (b)(1)(iii)(D).

■ m. By revising paragraphs (b)(1)(iv)(A) and (b)(1)(iv)(B).

■ n. By adding a new paragraph (b)(1)(iv)(C).

■ o. By revising paragraphs (b)(1)(v)(A) and (b)(1)(v)(B).

■ p. By adding a new paragraph (b)(1)(v)(C).

■ q. By revising paragraphs (b)(1)(vi)(A) and (b)(1)(vi)(B).

■ r. By adding a new paragraph (b)(1)(vi)(C).

■ s. By revising paragraphs (b)(1)(vii)(B) and (b)(1)(vii)(C).

■ t. By adding a new paragraph (b)(1)(vii)(D).

■ u. By revising paragraphs (b)(1)(viii)(A) and (b)(1)(viii)(B).

■ v. By adding a new paragraph (b)(1)(viii)(C).

■ w. By adding new paragraphs (n) and (o).

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

(a) * * *

(1) * * *

(v) #2D 500 ppm sulfur motor vehicle diesel fuel;

(vi) 500 ppm sulfur NRLM diesel fuel;

(vii) NP 15 ppm sulfur motor vehicle diesel fuel;

(viii) NP 500 ppm sulfur motor vehicle diesel fuel; or,

(ix) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(3) * * *

(ii) 500 ppm sulfur LM diesel fuel;

(iii) Heating oil; or

(iv) Exempt distillate fuels such as fuels that are covered by a national

security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(4) * * *

(i) 500 ppm sulfur NRLM diesel fuel;

(ii) Heating oil; or

(iii) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) #2D 500 ppm sulfur motor vehicle diesel fuel;

(E) California diesel fuel as defined in § 80.616 which is transferred out of the State of California pursuant to the provisions of § 80.617(b);

(F) NP 15 ppm sulfur motor vehicle diesel fuel;

(G) NP 500 ppm sulfur motor vehicle diesel fuel; or

(H) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(ii) * * *

(G) High sulfur NRLM diesel fuel;

(H) Heating oil;

(I) California diesel fuel as defined in § 80.616 which is transferred out of the State of California pursuant to the provisions of § 80.617(b);

(J) NP 15 ppm sulfur motor vehicle diesel fuel;

(K) NP 500 ppm sulfur motor vehicle diesel fuel; or

(L) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(iii) * * *

(B) 500 ppm sulfur LM diesel fuel;

(C) Heating oil; or

(D) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(iv) * * *

(A) 500 ppm sulfur NRLM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(v) * * *

(A) 500 ppm sulfur LM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(vi) * * *

(A) High sulfur NRLM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(vii) * * *

(B) 500 ppm sulfur LM diesel fuel;

(C) Heating oil; or

(D) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(viii) * * *

(A) 500 ppm sulfur NRLM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(n) Notwithstanding the provisions of paragraphs (b)(2) and (b)(3) of this section, for batches of 15 ppm sulfur motor vehicle diesel fuel or California diesel fuel under § 80.617(b) on which taxes have been paid per Section 4082 of the Internal Revenue Code (26 U.S.C. 4082), and 15 ppm sulfur NRLM diesel fuel or California diesel fuel under § 80.617(b) into which red dye has been added per Section 4082 of the Internal Revenue Code (26 U.S.C. 4082), records are not required to be maintained separately for each entity or facility to whom fuel was delivered.

(o) In addition to the requirements of §§ 80.592 and 80.602, the following recordkeeping requirements shall apply to aggregated facilities consisting of a refinery and truck loading terminal:

(1) Any aggregated facility consisting of a refinery and truck loading terminal shall maintain records of the following information for each batch of distillate fuel produced by the refinery and sent over the aggregated facility's truck loading terminal rack:

(i) The batch volume;

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1);

(iii) The date of production;

(iv) A record designating the batch as distillate fuel meeting either the 500 ppm or 15 ppm sulfur standard; and,

(v) A record indicating the volumes that were either taxed, dyed, or dyed and marked.

(2) Volume reports for all distillate fuel from external sources (*i.e.*, from another refiner or importer), as described in § 80.601(f)(2), sent over the aggregated facility's truck rack.

■ 29. Section 80.601 is amended as follows:

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

■ b. By revising paragraph (a)(1)(i).

■ c. By revising paragraph (a)(2)(i).

■ d. By revising paragraphs (a)(4)(v) and (a)(4)(vi).

■ e. By revising paragraph (b) introductory text.

■ f. By adding a new paragraph (b)(4).

■ g. By adding a new paragraph (f).

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

(a) *Quarterly compliance period reports.* Beginning February 28, 2007 and continuing through August 31, 2010, each entity required to register under § 80.597 and to maintain records under § 80.600 must report the following information separately for each of its facilities to the Administrator as specified in paragraph (d)(1) of this section except as provided in paragraph (e) of this section.

(1) * * *

(i) Beginning with the first compliance period and continuing up to and including the compliance period that starts April 1, 2007, fuel designated as 15 ppm or 500 ppm motor vehicle diesel fuel, or California diesel fuel as defined in § 80.616 which is distributed outside the State of California pursuant to § 80.617(b).

* * * * *

(2) * * *

(i) Beginning with the first compliance period and continuing up to and including the compliance period that starts April 1, 2007, fuel designated as 15 ppm or 500 ppm motor vehicle diesel fuel, or California diesel fuel as defined in § 80.616 which is distributed outside the State of California pursuant to § 80.617(b).

* * * * *

(4) * * *

(v) The volume balance under §§ 80.599(b)(4) and 80.598(b)(9)(vi).

(vi) Beginning with the compliance period starting June 1, 2007, the volume balance under §§ 80.599(c)(2) and 80.598(b)(9)(viii)(A).

(b) *Annual reports.* Beginning August 31, 2007, all entities required to register under § 80.597 and 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 except as provided in paragraph (e) of this section.

* * * * *

(4) In the case of aggregated facilities consisting of a refinery and truck loading terminal, the results of annual compliance calculations under § 80.598 for any distillate fuel received from an external source on which taxes have not been assessed and is not dyed and/or marked that the refinery will be handing off to another party, rather than selling over the truck loading terminal rack.

* * * * *

(f) *Additional requirements for aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the reporting requirements listed by paragraphs (a) through (e) of this section, as applicable, such aggregated facilities are also subject to the following requirements:

(1) *Batch reports.* Reports containing the requirements detailed in §§ 80.592(f) and 80.600(m), must be submitted for all distillate produced by the refinery and sent over the truck loading terminal rack.

(2) *Quarterly volume reports.* Reports detailing the quarterly totals of all designations, including whether the fuel was taxed or contained red dye (or red dye and the yellow marker), that left the truck loading terminal rack must be submitted for all distillate received from an external source or produced by the refinery.

(3) *Quarterly hand-off reports.*

(i) Reports detailing the quarterly totals of all designations of fuel received from external refiner/importer sources, if any.

(ii) Reports detailing the quarterly totals of all undesignated fuel received from external refiner/importer sources that entered the designate and track system.

■ 30. Section 80.602 is amended by adding a new paragraph (g) to read as follows:

§ 80.602 What records must be kept by entities in the NRLM diesel fuel and diesel fuel additive production, importation, and distribution systems?

* * * * *

(g) *Additional records to be kept by aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the applicable records required by paragraphs (a) through (f) of this section, such aggregated facilities must also keep the following records:

(1) The following information for each batch of motor vehicle diesel fuel produced by the refinery and sent over the aggregated facility's truck rack:

(i) The batch volume;

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1);

(iii) The date of production;

(iv) A record designating the batch as one of the following:

(A) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, or heating oil, as applicable.

(B) Meeting the 500 ppm sulfur standard of § 80.510(a) or the 15 ppm sulfur standard of § 80.510(b) and (c) or other applicable standard.

(C) Dyed or undyed with visible evidence of solvent red 164.

(D) Marked or unmarked with solvent yellow 124.

(2) Hand-off reports for all distillate fuel from external sources (*i.e.*, from another refiner or importer), as described in § 80.601(f)(2).

■ 31. Section 80.614 is amended as follows:

■ a. By revising the section heading.

■ b. By revising the introductory text.

■ c. By revising paragraph (a).

■ d. By revising paragraph (b).

■ e. By revising paragraph (d).

■ f. By revising paragraph (e).

■ g. By revising paragraphs (f)(1) introductory text and (f)(1)(i).

■ h. By revising paragraph (f)(1)(ii).

■ i. By revising paragraphs (f)(1)(iii), (f)(1)(iv), (f)(1)(v), (f)(1)(vi), (f)(1)(vii) introductory text, (f)(1)(vii)(D), and (f)(1)(iii).

■ j. By revising paragraphs (f)(2) introductory text and (f)(2)(i).

■ k. By revising paragraphs (f)(2)(iii), (f)(2)(iv), (f)(2)(vi), and (f)(2)(vii).

■ l. By revising paragraphs (f)(5) and (f)(6)(i), (f)(6)(ii), (f)(6)(iii), and (f)(6)(iv).

■ m. By revising paragraphs (f)(7) introductory text and (f)(7)(i), (f)(7)(ii), and (f)(7)(iii).

§ 80.614 What are the alternative defense requirements in lieu of § 80.613(a)(1)(vi)?

Any person who blends a MVNRLM diesel fuel additive package into MVNRLM diesel fuel subject to the 15 ppm sulfur standards of § 80.510(b) or (c) or § 80.520(a) which contains a static dissipater additive that has a sulfur content greater than 15 ppm but whose contribution to the sulfur content of the MVNRLM diesel fuel is less than 0.4 ppm at its maximum recommended concentration, and/or red dye that has a sulfur content greater than 15 ppm but whose contribution to the sulfur content of the MVNRLM diesel fuel is less than 0.04 ppm at its maximum recommended concentration, and which contains no other additives with a sulfur content greater than 15 ppm must establish all the following in order to use this section as an alternative to the defense element under § 80.613(a)(1)(vi):

(a)(1) The blender of the additive package has a sulfur content test result for the MVNRLM diesel fuel prior to blending of the additive package that indicates that the additive package, when added, will not cause the MVNRLM diesel fuel sulfur content to exceed 15 ppm sulfur.

(2) In cases where the storage tank that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, the blender of the additive package must have sulfur test results on each batch of MVNRLM diesel fuel that was added to the storage tank during the current and previous volumetric accounting reconciliation (VAR) periods, which indicates that the additive package, when added to the component MVNRLM diesel fuel batch in the storage tank with the highest sulfur level would not cause that component batch to exceed 15 ppm sulfur.

(b) The VAR standard is attained as determined under the provisions of this section. The VAR reconciliation standard is attained when the actual concentration of the additive package used per the VAR formula record under paragraph (f) of this section is less than the concentration that would have caused any batch of MVNRLM diesel fuel to exceed a sulfur content of 15 ppm given the maximum sulfur test result on any MVNRLM diesel fuel batch described in paragraph (a) of this section that is additized with the additive package during the VAR period.

* * * * *

(d) If more than one additive package containing a static dissipater additive and/or red dye is used during a VAR period, then a separate VAR formula record must be created for MVNRLM diesel fuel additized for each of the additive packages used. In such cases, the amount of the each additive package used must be accurately and separately measured, either through the use of a separate storage tank, a separate meter, or some other measurement system that is able to accurately distinguish its use.

(e) Recorded volumes of MVNRLM diesel fuel and the additive package must be expressed to the nearest gallon (or smaller units), except that additive package volumes of five gallons or less must be expressed to the nearest tenth of a gallon (or smaller units). However, if the blender's equipment cannot accurately measure to the nearest tenth of a gallon, then such volumes must be rounded upward to the next higher gallon for purposes of determining compliance with this section.

(f) * * *

(1) *Automated blending facilities.* In the case of an automated additive package blending facility, for each VAR period, for each storage system for an additive package containing a static dissipater additive and/or red dye, and each additive package in that storage system, the following must be recorded:

(i)(A) The manufacturer and commercial identifying name of the package being reconciled, the maximum recommended treatment level, the potential contribution to the sulfur content of the finished fuel that might result when the additive package is used at its maximum recommended treatment level, the intended treatment level, and the contribution to the sulfur content of the finished fuel that would result when the additive package is used at its intended treatment level. The intended treatment level is the treatment level that the additive injection equipment is set to.

(B) The maximum recommended treatment level and the intended treatment level must be expressed in terms of gallons of the additive package per thousand gallons of MVNRLM diesel fuel, and expressed to four significant figures. If the additive package storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

(ii) The total volume of the additive package blended into MVNRLM diesel fuel, in accordance with one of the following methods, as applicable.

(A) For a facility which uses in-line meters to measure usage, the total volume of additive package measured, together with supporting data which includes one of the following: the beginning and ending meter readings for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(B) For a facility which uses a gauge to measure the inventory of the additive package storage tank, the total volume of additive package shall be calculated from the following equation:

Additive package volume = (A) − (B) + (C) − (D)

Where:

A = Initial additive package inventory of the tank

B = Final additive package inventory of the tank

C = Sum of any additions to additive package inventory

D = Sum of any withdrawals from additive package inventory for purposes other than the additization of MVNRLM diesel fuel.

(C) The value of each variable in the equation in paragraph (f)(1)(ii)(B) of this section must be separately recorded on the VAR formula record. In addition, a list of each additive package addition included in variable C and a list of each additive package withdrawal included in variable D must be provided, either on the formula record or as VAR supporting documentation.

(iii) The total volume of MVNRLM diesel fuel to which the additive package has been added, together with supporting data which includes one of the following: the beginning and ending meter measurements for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(iv) The actual concentration of the additive package, calculated as the total volume of the additive package added (pursuant to paragraph (f)(1)(ii) of this section), divided by the total volume of MVNRLM diesel fuel (pursuant to paragraph (f)(1)(iii) of this section). The concentration must be calculated and recorded to 4 significant figures.

(v) A list of each additive package concentration rate set for the additive package that is the subject of the VAR record, together with the date and description of each adjustment to any initially set concentration. The concentration adjustment information may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation. No concentration setting is permitted above the maximum recommended concentration supplied by the additive manufacturer, except as described in paragraph (f)(1)(vii) of this section.

(vi) The dates of the VAR period, which shall be no longer than thirty-one days. If the VAR period is contemporaneous with a calendar month, then specifying the month will fulfill this requirement; if not, then the beginning and ending dates and times of the VAR period must be listed. The times may be supplied on the VAR formula record or in supporting documentation. Any adjustment to any additive package concentration rate initially set in the VAR period shall terminate that VAR period and initiate a new VAR period, except as provided in paragraph (f)(1)(vii) of this section.

(vii) The concentration setting for the additive package injector may be changed from the concentration initially set in the VAR period without terminating that VAR period, provided that:

* * * * *

(D) If the correction is initiated only to rectify an equipment malfunction, and the amount of additive package used in this procedure is not added to MVNRLM diesel fuel within the compliance period, then this amount is subtracted from the additive package volume listed on the VAR formula record. In such a case, the addition of this amount of additive must be reflected in the following VAR period.

(viii) The measured sulfur level for each batch of MVNRLM diesel fuel to which the additive package is added during each VAR period. In cases where the storage tank that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, a measured sulfur level on each batch added to the storage tank during the current and previous VAR periods must be recorded.

(2) *Non-automated facilities.* In the case of a facility in which hand blending or any other non-automated method is used to blend the additive packages, for each additive package and for each batch of MVNRLM diesel fuel to which the additive package is being added, the following shall be recorded:

(i) The manufacturer and commercial identifying name of the additive package being reconciled, the maximum recommended treatment level, the potential contribution to the sulfur content of the finished fuel that might

result when the additive package is used at its maximum recommended treatment level, the intended treatment level, and the contribution to the sulfur content of the finished fuel that would result when the additive package is used at its intended treatment level.

(A) The maximum recommended treatment level and the intended treatment level must be expressed in terms of gallons of additive package per thousand gallons of MVNRLM diesel fuel, and expressed to four significant figures.

(B) If the additive package storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

* * * * *

(iii) The volume of added additive package.

(iv) The volume of the MVNRLM diesel fuel to which the additive package has been added.

* * * * *

(vi) The actual additive package concentration, calculated as the volume of added additive package (pursuant to paragraph (f)(1)(ii)(B) of this section), divided by the volume of MVNRLM diesel fuel (pursuant to paragraph (f)(1)(iii) of this section). The concentration must be calculated and recorded to four significant figures.

(vii) The measured sulfur level for each batch of MVNRLM diesel fuel to which the additive package is added during each VAR period. In cases where the storage tanks that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, a measured sulfur level on each batch added to the storage tank during the current and previous VAR periods must be recorded.

* * * * *

(5) *Calibration requirements for automated blending facilities.* Automated static dissipater additive package blenders must calibrate their additive package equipment at least once in each calendar half year, with the acceptable calibrations being no less than one hundred twenty days apart, except that calibrations may be closer in time so long as at least two calibrations meet the requirements to be in separate halves of the calendar year and no less than 120 days apart. Equipment recalibration is also required each time the static dissipater additive package is changed, unless written documentation indicates that the new additive package has the same viscosity as the previous additive package. Additive package change calibrations may be used to satisfy the semiannual requirement provided that the calibrations occur in the appropriate half calendar year and are no less than one hundred twenty days apart.

(6) * * *

(i) For all automated additive package blending facilities, documentation reflecting performance of the calibrations required by paragraph (f)(5) of this section, and any associated adjustments of the automated additive package injection equipment;

(ii) For all blending facilities that blend an additive package containing a static dissipater additive and/or red dye, product transfer documents for all such additive packages, and MVNRLM diesel fuel transferred into or out of the facility that is additized with an additive package containing a static dissipater additive and/or red dye;

(iii) For all automated additive package blending facilities that use an additive package containing a static dissipater additive and/or red dye, documentation establishing the brands (if known) of the MVNRLM diesel fuel which is the subject of the VAR formula record; and

(iv) For all hand blenders of an additive package that contains a static dissipater additive and/or red dye, the documentation, if in the party's possession, supporting the volumes of MVNRLM diesel fuel and additive package reported on the VAR formula record.

(7) *Document retention and availability.* All blenders of an additive package that contains a static dissipater additive and/or red dye shall retain the documents required under this section for a period of five years from the date the VAR formula records and supporting documentation are created, and shall deliver them upon request to the EPA Administrator or the Administrator's authorized representative.

(i) Except as provided in paragraph (f)(7)(iii) of this section, automated additive package blender facilities and hand-blender facilities which are terminals, which physically blend an additive packages that contains a static dissipater additive and/or red dye into MVNRLM diesel fuel, must make immediately available to EPA, upon request, the preceding twelve months of VAR formula records plus the preceding two months of VAR supporting documentation.

(ii) Except as provided in paragraph (f)(7)(iii) of this section, other hand-blending additive package facilities which physically blend additive package that contains a static dissipater additive and/or red dye into MVNRLM diesel fuel must make immediately available to EPA, upon request, the preceding two months of VAR formula records and VAR supporting documentation.

(iii) Facilities which have centrally maintained records at other locations, or have customers who maintain their own records at other locations for their proprietary additive package injection systems, and which can document this fact to the Agency, may have until the start of the next business day after the EPA request to supply VAR supporting documentation, or longer if approved by the Agency.

* * * * *

■ 32. A new § 80.616 is added to subpart I to read as follows:

§ 80.616 What are the enforcement exemptions for California diesel distributed within the State of California?

(a) For the purpose of this section, ''California diesel fuel'' is defined as any diesel fuel physically within the State of California that satisfies all requirements of Title 13, California Code of Regulations, Sections 2281–2285, and is sold, intended for sale, or made available for sale as a motor fuel in the State of California, subsequent to May 31, 2006.

(b) Any retailer or wholesale purchaser-consumer of California diesel fuel is, with regard to such diesel fuel, exempt from the labeling requirements contained in §§ 80.570, 80.571, 80.572, 80.573, and 80.574.

(c)(1) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the product transfer requirements of § 80.590, provided that the product transfer document contains the following statement:

''California diesel fuel. Maximum 15 ppm sulfur.''

(2) Product codes may be used to satisfy this product transfer document requirement.

(d) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the designation requirements of § 80.598, provided that:

(1) The refiner, importer, or distributor does not transfer custody of the California diesel fuel to facility outside the State of California;

(2) The fuel is intended to be sold or made available for sale in the State of California; and

(3) The PTD requirements in paragraph (f) of the section are satisfied.

(e) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the volume balance requirements of § 80.599.

(f) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the recordkeeping requirements under designate and track provisions of § 80.600.

(g) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the reporting requirements for the purposes of the designate and track provisions of § 80.601.

(h) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the recordkeeping requirements for entities in the MV or NRLM diesel fuel and diesel fuel additive production, importation, and distribution systems of §§ 80.592 and 80.602 except those relating to sampling and testing, under §§ 80.581, 80.584, 80.585, and 80.586.

(i) Any refiner or importer of California diesel fuel is, with regard to such diesel fuel, exempt from the annual reporting requirements for NRLM diesel under § 80.604.

■ 33. A new § 80.617 is added to subpart I to read as follows:

§ 80.617 How may California diesel fuel be distributed or sold outside of the State of California?

California diesel may be distributed or sold outside of the State of California provided the provisions of either paragraph (a) or (b) of this section are satisfied:

(a) *Distribution of taxed or dyed California diesel fuel.* California diesel fuel that is distributed from a truck loading terminal after such diesel has been taxed or dyed may be distributed or sold outside of the State of California, provided that it is accompanied by a Product Transfer Document that states: ''California diesel fuel. Maximum 15 ppm sulfur.''; or

(b) *Distribution of untaxed and undyed diesel California diesel fuel.* California diesel may be distributed or sold outside of the State of California without having been dyed or taxed provided that the requirements of either paragraph (b)(1) or (b)(2) of this section are satisfied. (Note that the requirements of IRS code 26 CFR part 48 along with other applicable requirements outside of this 40 CFR part 80 subpart I must also be satisfied.)

(1)(i) Prior to shipment outside the State of California, the California diesel fuel meets all requirements of § 80.616 and meets all of the requirements of 40 CFR part 80, subpart I that are not exempted under this section;

(ii) The California diesel fuel is shipped out of the state via pipeline;

(iii) The pipeline shipping the California diesel out of state maintains the California diesel fuel designation while the product is in the pipeline's custody;

(iv) The pipeline provides a product transfer document that clearly indicates that the product is designated as California diesel fuel;

(v) Upon delivery into the terminal, the terminal receiving the California diesel fuel redesignates it as motor vehicle diesel meeting the 15 ppm sulfur standard; and

(vi) The terminal includes the volumes of California diesel fuel redesignated as motor vehicle diesel fuel in the total volume of motor vehicle diesel designated meeting the 15 ppm sulfur standard received by the terminal, per the volume balance and anti-downgrading equations for motor vehicle diesel fuel found in § 80.599(b) and (e).

(2)(i) The California diesel fuel is delivered via pipeline to a terminal outside the State of California that has a tank dedicated to the receipt of California diesel fuel and which intends to distribute the diesel fuel from the dedicated tank back into the State of California;

(ii) The terminal must maintain the designation of the diesel fuel as ''California diesel fuel'' and not redesignate it to another product;

(iii) The product transfer documents for California diesel fuel distributed by a terminal outside of the state of California must indicate ''California diesel fuel. Maximum 15 ppm sulfur.''; and,

(iv) Any volume of California diesel fuel distributed by a terminal outside the state of California must be taxed or dyed and must be excluded from the terminal's volume balance equations under § 80.599.

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