

■ Therefore, for the reasons set out in the preamble, amend the authority citation for part 251, amend subpart A of part 261, and remove part 291 of title 36 of the Code of Federal Regulations as follows:

**PART 251—LAND USES**

■ 1. Revise the authority citation for part 251 to read as follows:

**Authority:** 7 U.S.C. 1011(f), 16 460l–6d, 472, 497b, 497c, 551, 580d, 1134, 3210, 6802(h); 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

**Subpart B—Special Uses**

■ 2. Amend § 251.53 to revise paragraph (k) to read as follows:

**§ 251.53 Authorities.**

\* \* \* \* \*

(k) Special recreation permits issued under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)), for specialized recreation uses of National Forest System lands, such as group activities, recreation events, and motorized recreational vehicle use.

\* \* \* \* \*

**PART 261—PROHIBITIONS**

■ 3. The authority citation for part 261 continues to read as follows:

**Authority:** 7 U.S.C. 1011(f); 16 U.S.C. 460l–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

**Subpart A—General Prohibitions**

■ 4. Amend § 261.2 to add in alphabetical order a definition for “recreation fee” to read as follows:

**§ 261.2 Definitions**

\* \* \* \* \*

*Recreation fee* means a standard amenity recreation fee, an expanded amenity recreation fee, or a special recreation permit fee as defined in section 802(8) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801(8)).

\* \* \* \* \*

■ 5. Revise § 261.15 to read as follows:

**§ 261.15 Recreation fees**

Failure to pay any recreation fee is prohibited. Notwithstanding 18 U.S.C. 3571(e), the fine imposed for the first offense of nonpayment shall not exceed \$100.

**PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE**

**PART 291—[REMOVED]**

■ 6. Remove the entire part 291.

Dated: November 7, 2005.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 05–23111 Filed 11–21–05; 8:45 am]

**BILLING CODE 3410–11–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[OAR–2005–0153; FRL–7996–9]

RIN 2060–AJ71

**Control of Air Pollution From New Motor Vehicles; Revisions to Motor Vehicle Diesel Fuel Sulfur Transition Provisions; and Technical Amendments to the Highway Diesel, Nonroad Diesel, and Tier 2 Gasoline Programs**

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

**ACTION:** Direct final rule.

**SUMMARY:** The highway diesel fuel sulfur program, finalized in 2001, is resulting in the nationwide transition in 2006 of most diesel fuel from low-sulfur diesel (LSD) to ultra-low sulfur diesel (ULSD). Some in the diesel fuel production and distribution industries indicated that they may be unable to complete the transition to ULSD by the current deadlines at the very furthest reaches of the distribution system. In response, today’s action makes limited changes to the transition provisions for entities in the highway diesel distribution system. These changes finely balance the concerns of the fuel industry and the critical need for ULSD to be available for 2007 diesel vehicles and engines. The impacts of the recent hurricanes along the Gulf Coast of the U.S. are not a contributing factor in taking today’s action, and there is no change in the June 1, 2006 start date for refiners to be producing ULSD (15 ppm sulfur).

In today’s action, we extend the ULSD implementation dates for terminals and retail outlets by 45 days. Thus, terminals will have until September 1, 2006 (vs. July 15) and retailers will have until October 15, 2006 (vs. September 1) to complete their transitions to ULSD. We also provide that downstream of the refinery fuel with a sulfur content

slightly higher than 15 ppm may temporarily be sold as ULSD. In addition, we extend the beginning of the restriction on how much ULSD can be downgraded to higher sulfur fuel by 15 days, to October 15, 2006 to be consistent with the end of the new transition dates. The rule also includes corrections to the recordkeeping and reporting requirements under the highway diesel program and also includes several minor amendments to the highway diesel sulfur, nonroad diesel sulfur, and gasoline sulfur programs to correct errors or omissions in the regulations.

**DATES:** This direct final rule is effective on January 6, 2006 without further notice, unless we receive adverse comments by December 22, 2005 or receive a request for a public hearing by December 7, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR–2005–0153. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the 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 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.

**FOR FURTHER INFORMATION CONTACT:** Tad Wysor, Assessment and Standards Division, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4332, fax (734) 214–4816, e-mail [wysor.tad@epa.gov](mailto:wysor.tad@epa.gov).

**SUPPLEMENTARY INFORMATION:** We do not expect to hold a public hearing, however, if we receive such request we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments. If we receive adverse comment or a request for a hearing, we will withdraw the amendment, paragraph or section of the direct final rule receiving such comment or hearing request, and such withdrawn amendment, paragraph or section will

not take effect. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment or request for hearing will become effective on the date set out in the "DATES" section of today's preamble.

**Does This Action Apply to Me?**

This action will affect you if you produce or distribute motor vehicle diesel fuel or gasoline. The table below gives an example of entities that may have to comply with the regulations.

However, since this is only an example, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated industries
Industry .....	324110	2911	Petroleum refiners.
Industry .....	422710	5171	Diesel and gasoline fuel marketers and distributors.
	422720	5172	
Industry .....	484220	4212	Diesel and gasoline fuel carriers.
	484230	4213	

Notes:  
<sup>a</sup> North American Industry Classification System (NAICS).  
<sup>b</sup> Standard Industrial Classification (SIC) system code.

**How Can I Obtain Copies of This Document and Other Related Information?**

*Docket:* EPA has established an official public docket for this action under Docket ID No. OAR-2500-0153 at <http://www.epa.gov/edocket>. 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 whose disclosure is restricted 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 Reading Room is (202) 566-1742, and the telephone number for the Air Docket is (202) 566-1742.

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An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket

facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

**I. Amendments to the Highway ULSD Transition Provisions**

In 2001, EPA published the final rule for the Heavy-Duty Engine and Diesel Fuel program. 66 FR 5002 (January 18, 2001). This rule, developed through extensive interaction with the diesel engine industry, refiners producing diesel fuel, diesel fuel distributors, states, and non-governmental organizations, will result in very large reductions in emissions from on-road trucks and buses. The health benefits of the program will far exceed the economic costs. All major stakeholders are supportive of the overall program.

Key to the success of the program will be the near-total removal of sulfur from all diesel fuel used in highway diesel engines. Ultra-Low Sulfur Diesel (ULSD) fuel is a critical complement to the stringent new emission standards coming into effect for these engines during the same time period. These engine emission standards will require diesel engine manufacturers to introduce new emission control systems which will rely on the exclusive use of ULSD to maintain operability and effectiveness.

The highway diesel fuel sulfur program will result in the nationwide production and distribution of ULSD fuel, diesel fuel that is subject to a sulfur level of 15 parts per million (ppm) or less. This fuel will replace current Low Sulfur Diesel (LSD) fuel used in highway vehicles, which is subject to a 500 ppm sulfur standard. Together, the stringent engine emission standards and the stringent diesel fuel sulfur standards combine to represent a major step toward reducing the major public health concerns associated with emissions

from on-highway diesel trucks and buses.<sup>1</sup>

The nationwide system that produces and distributes diesel fuel is complex and efficient, and these characteristics are reflected in the diesel sulfur program. The major segments of the industry are the producers (refiners and importers); companies operating fuel pipelines and other means of transporting fuel, and distribution terminals; fuel wholesalers and tank truck operators; and retailers and "wholesale purchaser-consumers" (WPCs). All segments of the system are involved in the transition from current diesel fuel to the widespread availability of ULSD fuel, and each of the entities involved is affected by provisions of the rule.

- Refining companies have been upgrading their refineries in order to remove most of the sulfur from diesel fuel and be ready to introduce ULSD highway fuel into the distribution system no later than June 1, 2006.
- Pipeline and terminal operators are in the process of adding, upgrading, or making operational changes for equipment that handles diesel fuel, including piping, valves, and storage tanks. As ULSD begins to flow through the downstream distribution system, pipelines and terminals will either completely transition from LSD to ULSD, use separate capability to distribute ULSD to their downstream customers, or carefully manage sequential shipments of these products.

<sup>1</sup> The highway diesel sulfur program will be followed by the nonroad diesel sulfur program, issued in 2004. 69 FR 38958 (June 29, 2004). The nonroad program will require LSD to be produced for use in nonroad diesel engines beginning in 2007. ULSD will be produced for use in nonroad diesel engines beginning in 2000, during the same time period when new stringent emissions standards will go into effect for new nonroad engines.

• Retail and WPC facilities represent the final segment of the distribution system. These entities will also need to turn over their higher sulfur diesel fuel supplies and make operational adjustments to be able to supply ULSD to the ultimate consumers.

The next sections of this preamble describe the technical and logistical issues facing the diesel fuel industry during the 2006 transition to ULSD highway fuel, including some concerns raised recently as we near the beginning of the implementation of the program. In today's action, we implement limited revisions to the transition provisions of the highway diesel sulfur rule. These changes are designed to address transition issues concerning various segments of the diesel fuel industry and help facilitate the successful nationwide transition to ULSD fuel.

Although the recent hurricanes along the Gulf Coast of the U.S. caused serious damage to a number of refineries, and the aftermath of the storms has continued to affect the petroleum industry, these events are not a contributing factor in taking today's action. Based on the confidential information provided to us, as well as conversations with the affected refineries, the impacts of the hurricanes on the refineries appear to be temporary, and we do not expect to see any general impediments to the successful widespread production of ULSD by June 1, 2006. To the extent that individual refineries may have experienced temporary delays that might impact their ULSD start-up schedules (due to direct impacts of the hurricanes or indirect impacts on their contractors and suppliers), there are provisions in the existing highway diesel program that allow EPA to consider cases of "extreme, unusual, and unforeseen circumstances" (40 CFR 80.561). We will address these cases under these provisions on a refinery-by-refinery basis.

As described below, this rule focuses on providing a limited amount of additional time for entities in the diesel fuel distribution system to flush higher sulfur fuel out of the system during the transition to ULSD. This rule does not affect the start date by which refineries need to be producing ULSD under the highway diesel program—June 1, 2006. In fact, although EPA has taken several actions in response to the hurricanes, none of these actions affects the start date of the program.

#### *A. The Existing ULSD Transition Provisions*

In developing the highway diesel sulfur program, EPA recognized several

practical considerations inherent in successfully changing over most of the nation's highway diesel fuel from LSD to ULSD before the introduction of new highway diesel engines designed to operate exclusively on ULSD fuel. The overall program, finalized in early 2001, provided long lead times for the diesel fuel refining and distribution industries to prepare for compliance in 2006. Incorporated in the program was a set of provisions carefully designed, with extensive input from industry and others, to ensure the smooth nationwide completion of the transition to ULSD.

After the formal beginning of the program on June 1, 2006 and during the next few years, the opportunity for refiners and importers to produce and market 500 ppm highway diesel fuel will be significantly limited. As of June 1, 2006, at least 80 percent of the highway diesel fuel that refiners produce or importers introduce must meet the 15 ppm sulfur standard. The remaining 20 percent can continue to be produced to a 500 ppm sulfur standard.<sup>2</sup> The 2005 refiner pre-compliance report data provided by refiners indicate that about 90 percent of the highway diesel fuel produced or imported will meet the 15 ppm sulfur standard beginning June 1, 2006, well above the 80 percent requirement. Thus, the vast majority of all highway diesel fuel produced by refiners or introduced by importers will have reached ULSD levels by that date. Even before the June 1, 2006 refinery gate deadline for the ULSD requirement, we expect that several refineries will have begun introducing some volumes of ULSD into the distribution system. Starting June 1, 2006, if fuel is designated and marketed as ULSD, it must meet the ULSD standards.

As very low sulfur diesel fuel begins to enter the distribution system, pipelines and terminals, and in some cases retailers and WPCs, will start to turn over their existing supplies of LSD fuel to ULSD. The transition will accelerate after June 1, 2006 as large volumes of ULSD enter the system. During this transition, all parts of the downstream distribution system, from pipelines through terminals, retailers, and wholesale purchaser consumers (WPCs), must designate their fuel for sulfur content. This will start to affect downstream entities as soon as refineries designate their fuel at the refinery gate as ULSD. If a downstream entity receives ULSD and designates it as ULSD, it is subject to the 15 ppm sulfur standard. If the downstream entity re-designates it as LSD, it is subject to the

500 ppm sulfur standard. Under the existing diesel sulfur program, the downstream compliance dates in the regulations are based on the expectation that the transition to ULSD will be completed at the terminal stage by July 15, 2006, and at the retail and WPC stage by September 1, 2006.

These July 15 and September 1 downstream transition dates for the terminal and retail levels do not themselves restrict the relative volumes of LSD and ULSD present in the distribution system downstream of the refiner and importer. Another provision of the regulations, the "anti-downgrading" provision, provides the assurance that downstream entities in the system will begin providing the vast majority of the highway diesel fuel as ULSD. This provision establishes the date after which no more than 20 percent of the ULSD highway fuel received by a downstream entity can be re-designated, or downgraded, to 500 ppm highway diesel fuel.<sup>3</sup>

By limiting the volume of 15 ppm highway diesel fuel that can be downgraded to 500 ppm highway fuel, the program helps to ensure that the vast majority of highway diesel fuel that is marketed after that date will be ULSD and that ULSD will be available in all parts of the country for the engines that need it. Without the anti-downgrading limitation, terminals, retailers, and others in the distribution system could continue to blend 15 ppm highway fuel with 500 ppm highway fuel and simply market the fuel as 500 ppm highway fuel. This would have the potential to interfere with the successful implementation of the ULSD highway program by slowing the transition and reducing the volumes of ULSD available at the retail level. In the highway diesel rule, the anti-downgrading requirements were to take effect on June 1, 2006. However, this date was extended to October 1, 2006 in the recent Nonroad Diesel final rule in recognition of the need for mixing of the 15 ppm and 500 ppm fuel as the distribution system is flushed out.<sup>4</sup> The 20 percent downgrading limitation continues until May 31, 2010, after which downgrading is no longer a concern given that all highway diesel fuel must be ULSD.

<sup>3</sup> There are no restrictions on the volume of ULSD highway fuel that may be downgraded to heating oil, or nonroad, locomotive, and marine diesel fuel.

<sup>4</sup> In the nonroad diesel rule, EPA concluded that it would be appropriate to have a single anti-downgrading date for all entities in the distribution system rather than set separate dates for terminals and retailers. Furthermore, the date was extended beyond the September 1 retail date in response to industry concerns that in some cases the final transition may take longer.

<sup>2</sup> Such 500 ppm fuel can only be used in model year 2006 and earlier highway diesel engines.

Although the July 15 and September 1 downstream transition dates for the terminal and retail levels do not themselves restrict the relative volumes of LSD and ULSD, we expect that ULSD will become the predominant highway diesel fuel in most parts of the fuel distribution system well before the implementation of the anti-downgrading requirement. First, the pre-compliance reports compiled to date indicate that beginning June 1, 2006 most distributors will only be able to obtain ULSD or fuel being blended down to ULSD. Second, we expect that refiners will be motivated to bring ULSD to retail as soon as possible so that they can begin to recoup their capital investments through the sale of ULSD. Finally, fuel distributors will need to begin blending down much of their highway diesel fuel to ULSD specifications before the implementation date for the anti-downgrading requirements in order to be in compliance with the anti-downgrading specifications once they become effective. As a result, terminals and retail facilities will begin insisting on delivery of ULSD from their suppliers as soon as possible. Therefore, while the anti-downgrading provision ensures a date-certain for the final completion of the transition, the July 15 and September 1 implementation dates for terminals and retailers/WPCs are important milestones in the transition to ULSD.

#### *B. Recent Concerns About the Transition*

All segments of the diesel fuel production and distribution system have been actively taking steps to prepare for the nationwide transition to ULSD fuel. The primary elements of the program are designed to work together to result in a relatively quick and efficient large scale shift from LSD to ULSD throughout the system. These elements include:

- The leadtime provided since the rule was published in 2001,
- The requirement that refiners produce the vast majority of fuel as ULSD by June 1, 2006,
- The sequential implementation dates for refiners/importers, terminals, and retailers, and
- The beginning of the anti-downgrading requirements.

In developing the highway diesel rule, each of these elements was evaluated individually and in combination, and the program was designed to maximize the efficiency and effectiveness of the transition to ULSD fuel. All information available to us continues to indicate that these elements will combine to result in a smooth transition to ULSD in most if

not all cases, and no one has expressed concerns about completing the transition for the large bulk of diesel fuel.

However, in recent months, some in the industry have expressed a degree of uncertainty in their ability to complete the transition by the current deadlines in the very farthest reaches of some of the more complex parts of the distribution system. These parts of the system can involve long pipelines, secondary pipeline systems, and several points where the flow of fuel is interrupted by temporary storage in break-out tanks. For these parts of the system, the process of completely blending down the fuel to 15 ppm levels in all the intermediate tanks presents somewhat greater challenges than do less complex systems.

At the same time, the amount of time available to complete the ULSD transition and ensure the widespread availability of the fuel has been balanced with the absolute need for ULSD to be available for use in model year 2007 diesel engines and vehicles. Over the past four years, the engine and vehicle manufacturers have worked hard and have made substantial financial investments to develop sophisticated emission control systems to meet the 2007 emission standards, with the expectation that these systems would only be exposed to ULSD sulfur levels. Thus, the success of the new emission control standards for these engines hinges on the widespread availability of ULSD in time for the coordinated launch of 2007 model year engines and vehicles. Recognizing that transition times that are too long would interfere with the introduction of the new model year 2007 diesel engines designed to operate on ULSD, EPA incorporated this balance in the design of the highway diesel program. The appropriate transition time was the subject of many substantial comments on the proposed rule.

EPA has re-evaluated this balance in light of the uncertainties that have been expressed. We are aware of no information that definitively shows that problems in the distribution system will in fact develop during the transition. In fact, the broad consensus is that for the vast majority of the country, the existing provision of the program should be sufficient. Still, we believe that limited additional flexibility for entities downstream of the refineries would help to address the potential problems that might be faced by certain limited portions of the distribution system. Today's action will facilitate the thorough changeover of diesel fuel and increase the certainty that ULSD will be

available on time for use in 2007 engines and vehicles in all parts of the country.

In considering an appropriate degree of additional flexibility for the distribution system as described in the next section, we held extensive consultations with the associations representing the heavy-duty and light-duty engine manufacturing industries, as well as meetings with individual companies. Based on these meetings, we have concluded that it is critical that the end of any additional downstream transition flexibility occur no later than October 15, 2006. We know of several instances in which extending the transition period until October 15 will indeed impact scheduled launch dates for Model Year 2007 engines. It is our understanding that, given the strong assurance that 15 ppm fuel will be broadly available by October 15, these companies are willing to delay their vehicle or engine introductions. However, any further delays would have significant impacts on their ability to launch their 2007 model year product lines and would be considered unacceptable. The actions we are taking today, as discussed next, balance the needs of both the fuel distribution and diesel engine manufacturing entities.

#### *C. Actions EPA Is Taking to Ease the Transition to ULSD*

EPA is taking three actions to address the transition concerns that have been raised and to facilitate the smooth transition across the country to ULSD highway fuel. First, in response to concerns raised by the diesel fuel production and distribution industries, EPA is extending by 45 days the dates in the regulations that identify when the transition is expected to be completed by downstream entities. This would now be September 1, 2006 for terminals and all entities upstream of terminals (and downstream of refiner and importer origination facilities), and October 15 for retailers and WPCs.<sup>5</sup> Second, for consistency with this change of dates, EPA is also extending the deadline for meeting the anti-downgrading requirements until October 15, 2006. This will mean that prior to that date entities can redesignate the ULSD highway fuel received from the refinery to LSD highway fuel without restriction, but after that date the ability to redesignate

<sup>5</sup> The change in the implementation date applies only to the sulfur standard of 40 CFR 80.520(a), not the dye requirements of 40 CFR 80.520(b). We do not believe that a similar delay in the implementation date for the dye requirements is needed or would be of value to entities in the distribution system.

ULSD as 500 ppm highway fuel will be significantly restricted.

Together, we expect that these changes will ensure that even the most remote parts of the distribution system will have sufficient time to transition to ULSD in an orderly way. With this additional time, all entities in the distribution system will be better able to learn how the system is responding as large volumes of very low sulfur fuel begin to flow, while still having sufficient time to react as necessary based on what they and others learn. Thus, they will be in a better position to complete the flushing of LSD from the system while minimizing capital expenditures for temporary measures otherwise needed only during the transition. Based on confidential conversations with engine and vehicle manufacturers, any extension beyond October 25 would have a serious impact on the introduction of new MY 2007 highway diesel engines.

With these changes, the expected end of the transition for retail outlets and the anti-downgrading date are now aligned. Thus, the date established in today's action for the end of the additional retail transition flexibility (October 15, 2006) is now supported by the beginning of the anti-downgrading restriction on the same date. This alignment will help encourage retail entities to plan the transition of their diesel fuel so that not only will all ULSD they sell by October 15, 2006 be 15 ppm, but also the vast majority of all highway fuel they sell will be ULSD under the anti-downgrading provision.<sup>6 7</sup>

Finally, the third action EPA is taking to facilitate the transition to ULSD is to temporarily allow diesel fuel at a sulfur level of 22 ppm to be distributed downstream of the refinery as ULSD during this extended transition period.<sup>8</sup> The existing program provides for a 2 ppm adjustment for sulfur test results of downstream diesel fuel, to account for

<sup>6</sup> Under the existing program, these aspects of the program were not aligned. After the end of the retail transition period, September 1, 2006, and before the anti-downgrading date of October 1, 2006, retailers that wished to sell 15 ppm fuel as ULSD would have been able to downgrade as much of that fuel as they wished, which might have unnecessarily slowed the overall transition.

<sup>7</sup> Some entities have indicated that their recordkeeping systems may not readily allow for a mid-month start to a compliance period. Therefore, we would allow them to maintain the original October 1, 2006 date at their option.

<sup>8</sup> Currently, a downstream batch of ULSD with test results of 17 ppm is treated as in compliance with the 15 ppm sulfur standard. Under this temporary revision, a downstream batch of ULSD with test results of 24 ppm would be in compliance with the sulfur standard for ULSD. In both cases, this downstream adjustment only applies to testing of diesel fuel after it leaves the refinery, it does not apply to a refiner's or importer's fuel.

testing variability. Today's revision temporarily allows an additional downstream adjustment of 7 ppm—to account for downstream sulfur contamination that may occur as the system transitions to ULSD—for a total adjustment of 9 ppm. This temporary increase applies for the same additional 45 days noted above, expiring before the expected introduction of new 2007 model year highway diesel engines.

This additional adjustment factor is designed to help the transition by making it more likely that fuel will be classified by downstream entities as ULSD as early as possible, and that it will stay classified as ULSD throughout the distribution system. This will make it easier for the points near the end of the distribution system to keep the ULSD classification for the diesel fuel they receive as ULSD. During the transition to ULSD fuel, entities in the distribution system may find themselves in possession of fuel with test results slightly above 15 ppm sulfur, and we believe it will be beneficial if they are temporarily able to continue treating this fuel as ULSD during this transition period. This will reduce the perceived need for entities near the end of the distribution system to downgrade ULSD to 500 ppm LSD because of concern over liability from low level contamination remaining in the system. Reducing the need to downgrade will maximize the volume of highway fuel distributed as ULSD, which will help to ensure a timely transition to ULSD.

## II. Amendments To Ensure the Enforceability of the Highway Diesel Program

As discussed in the previous section on the amendments to the ULSD transition provisions, the benefits of the highway diesel program depend on ensuring that beginning October 15, 2006 the predominant fuel available at retail for use in highway diesel engines meets a 15 ppm sulfur standard. The highway diesel program's Temporary Compliance Option (TCO) provides that up to 20 percent of highway diesel fuel produced by a refiner or introduced by an importer may continue to meet a 500 ppm sulfur standard until June 1, 2010.<sup>9</sup> Beginning December 1, 2010, all fuel used in any highway diesel engine must meet a 15 ppm sulfur standard.

The nonroad diesel program requires that beginning June 1, 2007, diesel fuel produced for use in nonroad, locomotive, and marine diesel engines (NRLM diesel fuel) must meet a 500

ppm sulfur standard.<sup>10</sup> The nonroad program also provides for the generation of early credits for the production of 500 ppm NRLM diesel fuel beginning June 1, 2006. Thus, from June 1, 2006 through December 1, 2010, we expect that there will be both 500 ppm NRLM and 500 ppm highway diesel fuel in the diesel fuel distribution system. While 500 ppm highway diesel fuel may be used in highway or nonroad engines or other suitable distillate fuel applications without restriction, the nonroad rule closely controls how much 500 ppm diesel fuel that is designated as NRLM may be shifted for use in highway vehicles, in order to maintain the integrity of the highway program (by ensuring the production of 15 ppm diesel fuel).

In the 1993 highway diesel rule, EPA generally required that any diesel fuel that does not show visible evidence of red dye would be subject to all of the requirements applicable to highway diesel fuel. To comply with this requirement, refiners add a visible trace of red dye to non-highway diesel fuel prior to it leaving the refinery gate. If this requirement were maintained, there would be no difficulty in differentiating 500 ppm highway diesel fuel from other diesel fuel. During the development of the nonroad diesel rule, fuel distributors requested that EPA provide that 500 ppm NRLM fuel not be subject to the refinery gate red dye requirement. This would allow for the fungible shipment of 500 ppm NRLM and 500 ppm highway diesel until the point in the distribution system where NRLM diesel fuel must be dyed red to indicate its non-tax status (that is, prior to leaving the terminal).<sup>11</sup> Commenters stated that there would be a substantial savings in fuel distribution costs if the two grades of 500 ppm diesel fuel could be fungibly mixed until they leave the terminal.<sup>12</sup>

In considering this request from distributors in the nonroad diesel rule, EPA recognized that in the absence of the refinery gate red dye provisions, 500 ppm sulfur highway diesel fuel allowed under the highway diesel fuel program's TCO and 500 ppm NRLM diesel fuel would be physically the same up to the point where the NRLM leaves the terminal and is dyed for tax purposes. Therefore, maintaining the benefits and integrity of the highway diesel fuel

<sup>10</sup> The nonroad program includes small refiner and credit provisions that provide for the limited production of high sulfur (>500 ppm) NRLM diesel fuel until June 1, 2010.

<sup>11</sup> Pursuant to Internal Revenue Service Requirements (26 U.S.C. 4082).

<sup>12</sup> This is primarily due to the reduced need for segregated storage tanks prior to leaving the terminal.

<sup>9</sup> Such 500 ppm fuel can only be used in model year 2006 and earlier highway diesel engines.

program required some means of differentiating highway diesel fuel from NRLM diesel fuel throughout the distribution system. For example, if a refiner produced all 500 ppm sulfur fuel and designated it as NRLM diesel fuel, that refiner would have no obligation to produce any 15 ppm sulfur highway diesel fuel. Without an effective way of limiting the use in the highway market of 500 ppm sulfur diesel fuel produced as NRLM diesel fuel, much more 500 ppm sulfur fuel could find its way into the highway market than would otherwise happen under the highway program. This in turn could displace 15 ppm sulfur diesel fuel that would have otherwise been produced. This series of events would circumvent the intent of the highway program's TCO and sacrifice some of the resulting particulate matter (PM) and sulfur dioxide (SO<sub>2</sub>) emission benefits of the overall highway diesel program. If this occurred to any significant degree, it could also undermine the integrity of the highway program by threatening the widespread availability of 15 ppm sulfur diesel fuel nationwide for the vehicles that will need it.

In lieu of the refinery gate red dye requirement, commenters suggested that EPA adopt accounting provisions to ensure that 500 ppm NRLM diesel fuel is not inappropriately shifted into the highway diesel market downstream of the refinery. Working cooperatively with industry, we developed provisions that require the designation of fuel and the tracking and balancing of fuel volumes, as well as related recordkeeping and reporting concerning the fuels received and delivered. Among other things, this allows for the fungible shipment of 500 ppm highway and 500 ppm NRLM diesel fuel up to the point where such fuel leaves the terminal, while controlling the shift of NRLM fuel into the highway market. In the nonroad diesel final rule, we promulgated such accounting provisions allowing for the removal of the dye requirement and fungible distribution of 500 ppm diesel fuel. These provisions are part of the designation and tracking requirements adopted in the nonroad diesel rule.

We intended that the removal of the dye requirement for 500 ppm NRLM diesel fuel coincide with the implementation date for the downstream limitations on redesignating 500 ppm NRLM as 500 ppm highway fuel. By linking these dates, the integrity of the highway diesel program would be protected by the dye requirement for 500 ppm NRLM until its removal, and by the related designate and track requirements thereafter. However, the date specified in the

regulatory text for the removal of the dye requirement for 500 ppm diesel fuel designated as NRLM was set earlier than the effective date for the requirements that restrict the ability to redesignate 500 ppm NRLM as 500 ppm highway diesel fuel. The effective date for the removal of the refinery gate red dye requirement for 500 ppm NRLM is June 1, 2006, whereas the effective date for the requirements that restrict the ability to redesignate 500 ppm NRLM as 500 ppm highway diesel fuel is June 1, 2007. Thus, for the period of June 1, 2006 through June 1, 2007, when refiners can produce 500 ppm NRLM for early credit, there is a "gap" in the designate and track regulations, resulting in the lack of effective regulatory requirements to prevent the misdirection of non-highway 500 ppm diesel fuel into the highway diesel market.

#### *A. Description of Today's Action*

Today's action amends the diesel fuel program to require that beginning June 1, 2006, any entity that receives and/or distributes 15 ppm or 500 ppm highway diesel fuel must demonstrate compliance with the requirements limiting the redesignation of 500 ppm NRLM to 500 ppm highway fuel. Each entity that distributes and/or receives 15 ppm and/or 500 ppm highway diesel fuel after that date will be required to demonstrate compliance with these requirements during each quarterly compliance period beginning June 1, 2006. Each such entity will also have to report to EPA on the volume of 15 ppm and 500 ppm highway diesel fuel that they receive and distribute, broken down by exchange partner.

As discussed in the next section, we believe that the approach we are establishing today will be effective in closing the unintended gap in the designate and track regulations. In addition, it has advantages over several other approaches that we evaluated. The next section describes each of the options we evaluated and also describes provisions we are including to mitigate any negative impact of this change on entities that distribute diesel fuel.

#### *B. Evaluation of Options*

In evaluating how best to resolve this regulatory gap in the designate and track regulations, EPA evaluated three options. One option we evaluated would require that all undyed 500 ppm diesel fuel be designated as motor vehicle (highway) diesel fuel from June 1, 2006 through May 31, 2007. Since all undyed 500 ppm fuel would be considered highway diesel fuel, there would be no way for refiners to direct 500 ppm NRLM fuel into the highway

market, thus helping to maintain the integrity of the highway diesel program. However, this approach would need to include the elimination of the NRLM program provisions that allow the generation of early credits via the sale of 500 ppm NRLM fuel before June 1, 2007.

The elimination of the early NRLM credit provisions could significantly impact refiners planning to generate and/or use early 500 ppm NRLM credits. In addition, such an approach might result in the shifting of more 500 ppm fuel production to the highway market than would have otherwise occurred, interfering with the flexibility offered by the temporary compliance option (TCO) in the highway diesel program. It is very late in the planning process for any refiners planning to use any of these flexibilities in the NRLM and highway diesel programs. Consequently, we do not believe it would be appropriate to pursue this option.

Another option we evaluated would address the timing problem by moving the effective date of the removal of the red dye requirement for 500 ppm NRLM diesel fuel from June 1, 2006 to June 1, 2007. By requiring that 500 ppm NRLM fuel continue to be dyed at the refinery gate, the integrity of the highway diesel program would be maintained, since the dye would prevent NRLM from being diverted into the highway diesel pool during that period. The serious problem with this approach, however, is that refiners or importers, as well as pipelines and terminals, that are planning to ship 500 ppm fuel for the highway and NRLM markets together would be prevented from doing so. Again, especially because of the late date, we believe it would be inappropriate to change the program in ways that may significantly change diesel fuel production and distribution plans.

The third option that we evaluated, and, as described above, the one we are adopting today, would amend the diesel fuel program to begin certain designate and track provisions on June 1, 2006. Thus, any downstream entity that receives and/or distributes 15 ppm or 500 ppm highway diesel fuel after that date would need to demonstrate, for these fuels, compliance with the limitations on redesignating 500 ppm NRLM as 500 ppm highway fuel. We believe that this approach is most consistent with the express purpose of the provisions of the nonroad rule—to allow refiners and importers to freely mix 500 ppm highway and NRLM diesel fuel in the absence of the red dye requirement

while maintaining the integrity of the highway diesel fuel program. We also believe that this approach will result in the least number of substantive changes to the existing program.

Members of the fuel industry have noted that some fuel distributors may have to establish reporting systems earlier than they had planned. However, we have assessed the additional reporting and recordkeeping requirements of this action and we have concluded that the additional resources some entities may need to expend in response to today's action will be relatively modest and the available lead time should be sufficient. However, in response to industry concerns expressed about these unanticipated requirements, today's action contains two provisions to help mitigate these concerns. First, as mentioned above, the new, earlier hand-off reporting requirements will be limited to 15 ppm and 500 ppm highway diesel fuel transfers for the first four quarterly compliance periods (*i.e.*, no new reporting will be required for NRLM fuel.) Second, today's action allows entities to partially consolidate their designate and track requirements during the first year of the highway diesel program. Thus, the highway diesel volume balance and hand-off reporting requirements for the first two quarterly compliance periods may be combined, as may those of the third and fourth compliance periods. Although some entities may need to establish reporting systems earlier than they had anticipated, this provision reduces the reporting burden considerably for the first year.

Finally, EPA received four additional suggestions that, on further consideration, we believe would be unworkable. One of these was to make use of the existing anti-downgrade provisions to restrict the shifting of 500 ppm NRLM into the highway diesel pool during the first year of the program until the D&T requirement originally intended for this purpose becomes effective. However, in order for the anti-downgrade provision to conceivably accomplish the purpose of closing the gap in the highway diesel fuel program, the intended purposes of the provisions

would be largely lost. For example, the most straightforward of four options that refiners and importers have to demonstrate that they are meeting the downgrading restrictions would need to be eliminated during the first year, since it could allow significant shifting of 500 ppm fuel into the highway diesel pool. In addition, as described above, the issues of inconsistent dates (June 1, 2006 vs. October 15, 2006<sup>13</sup>) and lack of reporting requirements would also need to be addressed in any revision of the anti-downgrading provisions. Overall, we believe that using the anti-downgrading provisions to resolve the problem is unworkable. In any event, to modify the anti-downgrade provisions to correct the shortcomings would have no advantage over the approach being finalized today.

The second concept suggested to us would have some characteristics of the approach we are adopting in this rule. However, instead of requiring that the highway fuel volume balance and hand-off reporting begin on June 1, 2006, this concept would introduce a new provision that would require a balance of NRLM fuel and associated reporting during that first year of the program. While this concept would have the possible benefit of limiting attention to the pool of fuel most likely to create problems for the program—that is 500 ppm NRLM produced for early credit purposes, it has other major problems.

For example, downgrades or losses from the 500 NRLM pool would result in noncompliance. More importantly, 500 ppm from other pools (*e.g.*, jet fuel) would not be prevented from entering the highway pool. Further, a volume balance is not otherwise required for NRLM fuel under the designate and track regulations. Thus, this approach would represent a significant and yet temporary change to the program; requiring the establishment of recordkeeping and reporting requirements now that would have no use later. We do not believe the concept represents a workable alternative to the approach we are adopting.

A third suggestion was that perhaps the approach we are finalizing could be limited only to those facilities that

handle 500 ppm NRLM. However, we have concluded that such a concept would not be adequately enforceable. This is because without highway fuel balance requirements and hand-off reports, it would not always be possible to trace the complete line of hand-offs and demonstrate whether any 500 ppm NRLM fuel entered the highway market. Further, it would likely suffer from confusion caused by new facilities that entered into the 500 ppm NRLM market as the June 1, 2007 start date for the NRLM diesel program neared and thus began to be subject to the balance and reporting requirements. We believe that this concept would be an unworkable substitute for the approach we have finalized.

A final suggestion was to avoid specific new designate and track requirements by simply introducing a clear prohibition against inappropriate shifts of undyed 500 ppm NRLM fuel into the highway diesel pool. However, without associated tracking and reporting, EPA would have difficulty identifying where instances of non-compliance might be occurring. Although it was suggested that violations would likely be few and that EPA could depend on entities informing EPA of potential violations by their competitors, we believe that this would create too much uncertainty for all parties, including EPA. Further, we are concerned that this uncertainty might embolden some entities to stretch the boundaries of the program requirements. For example, an entity might sell substantial amounts of 500 ppm nonroad as highway fuel or other inappropriate actions. Without a clear highway diesel fuel balance requirement and reporting, we would have limited ability to demonstrate that such actions were "inappropriate." On balance, we believe that the addition of modest new volume balance and reporting requirements between June 1, 2006 and June 1, 2007 represent a necessary component of the program.

We are making several changes to the regulations in order to implement the actions discussed above. In general, this is accomplished by adding 4 earlier quarterly reporting periods and one

<sup>13</sup> Today's action moves the compliance date with the anti-downgrade requirements forward from October 1, 2006 to October 15, 2006. See section I in today's preamble.

earlier annual reporting period covering the period June 1, 2006 to June 1, 2007, as well as allowing some of the reports to be combined. The volume balance

and hand-off compliance and reporting requirements for non-highway designated diesel fuels are not affected by today's action.

The following table II-1 lists each of the regulatory provisions that are revised in today's action relating to the actions discussed above.

TABLE II-1.—SUMMARY OF AMENDMENTS TO ENSURE THE ENFORCEABILITY OF THE HIGHWAY DIESEL PROGRAM

Section	Description
80.597 .....	Amended to require registration if an entity intends to deliver or receive custody of any designated fuels by June 1, 2006. In addition to supporting the implementation of the highway volume balance and hand-off requirements in 2006, this amendment is also needed to support compliance with current product transfer document requirements under section 80.590.
80.599 .....	Amended to add 4 quarterly compliance periods covering June 1, 2006–September 30, 2007, October 1, 2006–December 31, 2006, January 1, 2007–March 31, 2007, and April 1, 2007–May 31, 2007, and one annual compliance period covering June 1, 2006–May 31, 2007. Amended to define MV500 <sub>BINV</sub> as the volume of fuel designated as 500 ppm motor vehicle diesel fuel at the beginning of the program (June 1, 2006).
80.600 .....	Amended to require recordkeeping by each facility that receives or distributes 15 ppm or 500 ppm highway diesel fuel beginning June 1, 2006.
80.601 .....	Amended to require reporting regarding demonstration of the new compliance periods added to section 80.599 and to limit reporting to the highway volume balance and highway hand-off requirements for the period of June 1, 2006–May 31, 2007. Provides dates by which reports must be submitted.

**III. Amendments to the Registration Requirements for Mobile Facilities**

Parties throughout the fuel production and distribution system use mobile components (or mobile vessels- *i.e.*, ships/barges, trucks, rail cars, etc.) to transfer product from one point to another. These are referred to as mobile facilities by EPA for purposes of registration and compliance with the designate and track requirements. Questions have arisen regarding how individual mobile facilities can be aggregated for registration purposes. To provide clarification on how such aggregation might take place, today's action amends the provisions pertaining to the registration of mobile facilities.

Mobile facilities are sometimes owned by an entity in the fuel industry who also owns a stationary facility (*e.g.* terminal) that would be required to be registered with EPA. However, in most cases, the use of a mobile facility is obtained through a contract with another party or entity. Such contracts are often of short duration, and the make-up of the fleet of individual mobile facilities serving a given fuel distributor is continually in flux. Given this situation, fuel distributors stated that requiring every individual mobile facility or entity owning a fleet of individual mobile facilities to register would be unworkable. We agree, and therefore, we believe that it is appropriate to modify the regulations to allow a registered entity to register the mobile facilities that distribute its fuel. Under the current regulations, an entity has to register facilities where they have

custody of fuel. For mobile facilities we are allowing an entity to register a mobile facility where the entity has title to the fuel, even if it does not have custody. The registration would, however, only cover the mobile facility for the fuel to which the entity has title.

A registered entity may register one mobile facility, or multiple mobile facilities defined by area or component type. Any number of individual mobile components (*i.e.* ships/barges, trucks, rail cars) could be aggregated under a given mobile facility registration. Specifics regarding the make up of the fleet (*e.g.* number and identity of ships/barges) comprising a mobile facility would not need to be provided to EPA at the time of registration.<sup>14</sup>

Compliance with the designate and track regulations would be the responsibility of the entity that registered the mobile facility. In the event of a designate and track violation, the registered entity would be still presumed liable. However, compliance with the applicable fuel sulfur standard would still be the responsibility of both the registered entity and the owner/operator of the individual mobile component in which the fuel is located. Further, in the event of the discovery of non-compliant product, EPA may apply presumptive liability to the owner of the individual mobile component in which the product is found, the registered entity, and all parties upstream.

The allowance of mobile facilities has resulted in changes to the definition of a facility and the registration and recordkeeping requirements. We have

amended the definition of a facility to include the situation of a mobile facility, where a registered entity may not have custody of fuel while it is being transported in a component, but the entity retains title to the product. This change to the definition allows an entity to register a mobile component that is transporting its product as part of the entity's facility. The changes to the regulations allow for this registration of mobile facilities (§ 80.597) and state specifications for additional records that need to be kept for registered mobile facilities (§§ 80.600 and 80.602). These changes are all noted below in Table III-1.

As noted above, the registered entity would be presumed liable in the case of a designate and track violation. We have not made changes to any of the provisions that deal with standards violations, so all requirements for meeting the applicable sulfur, dye, and marker standards remain in place. Thus, any person that could be considered liable for a prohibited act under § 80.613 (any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser consumer) who owned, leased, leased, operated, controlled, or supervised a facility where a violation occurred can be presumed liable if a non-compliant product is found in a mobile facility.

With the exception of the changes discussed above and in Table III-1, there are no additional requirements. Mobile facilities will be treated similar to all other registered facilities in the designate and track system.

<sup>14</sup> The registration of mobile facilities is also discussed in the Mobile Facilities Guidance

Document, which can be found on the Clean Diesel

Compliance Help page at ([www.epa.gov/cleandiesel/comphep](http://www.epa.gov/cleandiesel/comphep)).

TABLE III-1.—SUMMARY OF AMENDMENTS TO THE REGISTRATION REQUIREMENTS FOR MOBILE FACILITIES

Section	Description
80.502 .....	Added additional language to the definitions in paragraph (b) to allow for mobile facilities.
80.597 .....	Added paragraph (d)(3)—registration of mobile facilities.
80.600 .....	Added additional language on recordkeeping requirements for mobile facilities, and renumbered some paragraphs.
80.602 .....	Added additional language on recordkeeping requirements for mobile facilities, and renumbered some paragraphs.

**IV. Miscellaneous Other Technical Amendments to the Highway and Nonroad Diesel Programs and the Tier 2 Gasoline Program**

After promulgation of the highway diesel, nonroad diesel, and Tier 2

gasoline programs, and subsequent technical amendments, we discovered several typographical errors. It also became evident that several additions/deletions were necessary to clarify portions of the regulations. The

amendments contained in today’s rule to remedy these problems are summarized in the following Table IV-1.

TABLE IV-1.—SUMMARY OF MISCELLANEOUS TECHNICAL AMENDMENTS TO THE HIGHWAY AND NONROAD DIESEL PROGRAMS AND THE TIER 2 GASOLINE PROGRAM

Section	Description
80.215 .....	Revised to add Klickitat County to the list of Geographic Phase-In Areas.
80.531 .....	Removed and reserved paragraph (c)(2)(ii). This change was inadvertently left out of the regulatory text of the Direct Final Rule published on July 15, 2005 (40 FR 40889) which was intended to allow refiners and importers to generate early credits (June 1, 2005 through May 31, 2006) for the entire volume of ULSD delivered into the distribution system rather than the volume delivered to the end user.
80.533 .....	Corrected the language in (e)(2) to state “BNRLM” instead of “NRLM”.
80.590 .....	Revised to clarify what parties will be affected by the requirement that transferee ID numbers appear on product transfer documents; revised to clarify how parties shall denote the level of the standard on product transfer documents.
80.592 .....	Revised to change the cite in (a)(2)(iii) from “80.580(a)(4)” to “80.580(d)”
80.593 .....	Revised to correct the section number that is cited in 80.593(a)(7)(i) from “80.523” to “80.598.”
80.599 .....	Paragraphs 80.599(b)(4), (b)(5), (e)(2), and (e)(3) were revised to maintain consistency with the symbol conventions in the formulas found in this section.
80.601 .....	Revised paragraph (d)(3) to clarify reporting requirements.
80.602 .....	Revised paragraph (a)(2)(iii) to correct the cite “80.580(a)(4)” to “80.580(d)”; and revised paragraph (b) to correct the cite “80.660” to “80.560.”

**V. Public Participation**

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

**VI. Statutory and Executive Order Reviews**

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this

regulatory action would be “significant” and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may:

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is not a “significant regulatory action”. Today’s action

moves the implementation date for certain recordkeeping and reporting requirements under the highway diesel program from June 1, 2007 to June 1, 2006 for an additional one time cost of \$11,570,000 (see sections II and IV.B. in today’s preamble). Today’s final rule extends the terminal and retail ULSD implementation dates, and the effective date of the anti-downgrading requirement, and increases the downstream sulfur adjustment factor during the transition period to ULSD (see section I in today’s preamble). There are no new costs associated with these provisions. There are also no new costs associated with the other miscellaneous technical amendments to the highway diesel, nonroad diesel, and Tier 2 gasoline programs contained in today’s notice (see section III in today’s preamble). Therefore, this final rule is not subject to the requirements of Executive Order 12866. Final Regulatory Support Documents were prepared in connection with the original regulations for the Highway Diesel Rule, Nonroad Diesel Rule, and Tier 2 gasoline rule as promulgated on January 18, 2001, June 29, 2004, and February 10, 2000

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), the June 29, 2004 rulemaking (OAR-2003-0012 and A-2001-28)<sup>1</sup>, and the February 10, 2000 rulemaking (A-97-10), and at the following Internet addresses: <http://www.epa.gov/cleandiesel> and <http://www.epa.gov/tier2>. The original actions were submitted to the Office of Management and Budget for review under Executive Order 12866.

#### B. Paperwork Reduction Act

The annual information collection burden associated with this action was accounted for in previously approved ICRs. The provisions of this direct final rule provide limited additional flexibility to entities in the highway diesel distribution system during the transition to ultra-low sulfur diesel fuel in 2006. The other miscellaneous amendments in today's notice contain technical corrections and clarifications which do not include any new information collection requirements. The amendments to the designate and track provisions under the highway and nonroad diesel programs contained in section II of today's direct final rule require compliance with these provisions beginning June 1, 2006. Compliance with these provisions was previously required beginning June 1, 2007. The annual compliance burden associated with these provisions is not affected by advancing the implementation date by one year. This annual burden was accounted for in the current information collection request for the highway and nonroad diesel fuel programs. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing highway rule (66 FR 5002, January 18, 2001), the existing Nonroad Rule (69 FR 38958, June 29, 2004), and the existing Tier 2 gasoline rule (65 FR 6698, February 10, 2000), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The ICRs contained in the highway diesel and nonroad diesel rules were assigned OMB control number 2060-0308, and EPA ICR number 1718.06. This ICR is currently being revised to reflect the change in the implementation date for the pertinent designate and track requirements from June 1, 2007 to June 1, 2006. The annual compliance burden

for the full designate and track requirement beginning in June 1, 2007 was estimated at \$11,570,000 and 178,000 hours. The designate and track requirements that today's rule make effective June 1, 2006, are for a limited subset of designated fuels (highway diesel only), and the reporting requirements for the initial year (June 1, 2006-May 31, 2007) were abbreviated by today's rule. Therefore, the annual burden for the initial year is expected to be somewhat less than that estimated for following years.

The ICRs contained in the Tier 2 gasoline rule were assigned OMB control number 2060-0437, and EPA ICR number 1907.02. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., 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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for a small business based on Small Business Administration (SBA) size standards; (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. The ULSD transition provisions in today's direct final rule provide limited, temporary flexibility to entities in the highway diesel distribution system downstream of the refineries and import facilities. Advancing the implementation date for certain recordkeeping and reporting requirements under the highway diesel program as described in section II of today's preamble will result in additional one year of cost of compliance with these provisions for all affected fuel distributors, including those that are small entities. During the rulemaking that resulted in the promulgation of these provisions, we determined that they would not have a significant impact on a substantial number of small entities. The other miscellaneous technical amendments to the highway diesel, nonroad diesel, and Tier 2 gasoline programs do not impose a significant new burden to any regulated party.

Prior to proposing the Highway Rule on June 2, 2000, the Nonroad Rule on May 23, 2003, and the Tier 2 Gasoline Rule on May 13, 1999 EPA conducted outreach to small entities and convened Small Business Advocacy Review (SBAR) panels to obtain the advice and recommendations of representatives of the small entities that potentially would be subject to the requirements of the rules (66 FR at 5130, 69 FR at 39155-6, and 69 FR 39155-39162 respectively). For a full description of the Panel process, the SBAR report, and the initial Regulatory Flexibility Analyses (in Chapters 8, 11, and 8 respectively) of each rule's Regulatory Impact Analysis (RIA), refer to the docket for the Highway Diesel Rule (Public Docket A-99-061), the Nonroad Diesel Rule (Public Docket OAR-2003-0012 and A-2001-28), and the Tier 2 Gasoline Rule (Public Docket A-97-10), and the following Internet addresses: <http://www.epa.gov/cleandiesel/> and <http://www.epa.gov/tier2/>

#### 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

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

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 to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

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

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. The requirements of UMRA therefore do not apply to this action.

#### *E. Executive Order 13132: Federalism*

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

power and responsibilities among the various levels of government."

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

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although Section 6 of Executive Order 13132 did not apply to the Highway Rule (66 FR 5002) or the Nonroad Rule (69 FR 38958), EPA did consult with representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to

ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. This rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Children's Health Protection*

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

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

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the

supply, distribution or use of energy. This direct final rule provides limited, temporary flexibility to entities in the highway diesel distribution system downstream of the refineries and import facilities. Other amendments contained in today's action pertain to ensuring the enforceability of the highway diesel program. The remaining amendments in today's final rule provide technical correction and clarification to the requirements under the highway diesel, the nonroad diesel, and the Tier 2 gasoline programs.

*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. 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 consistent with the **DATES** section above.

**VII. Statutory Provisions and Legal Requirements**

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

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

Environmental protections, Diesel fuel, Fuel additives, Gasoline, Motor vehicle Pollution, Penalties, Recordkeeping and reporting requirements.

Dated: November 8, 2005.

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

■ For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended and set forth below.

**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 80.215 is amended in paragraph (a)(2)(i) under the heading for "Washington" by adding a new entry for "Klickitat" in alphabetical order to read as follows:

**§ 80.215 What is the scope of the geographic phase-in program?**

- (a) \* \* \*
  - (2) \* \* \*
  - (i) \* \* \*
- |   |            |   |   |   |
|---|------------|---|---|---|
| * | *          | * | * | * |
|   | Washington |   |   |   |
| * | *          | * | * | * |
|   | Klickitat  |   |   |   |
| * | *          | * | * | * |

■ 3. Section 80.500 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 80.500 What are the implementation dates for the motor vehicle diesel fuel sulfur control program?**

\* \* \* \* \*

(b) *Implementation date for standards applicable to motor vehicle diesel fuel downstream of the refinery or importer.* Except as provided in paragraphs (c) and (d) of this section, beginning September 1, 2006, the standards and requirements under § 80.520(a) shall apply to any motor vehicle diesel fuel at any downstream location.

(c) *Implementation date for standards applicable to motor vehicle diesel fuel at retail outlets and wholesale purchaser-consumer facilities.* Except as provided in paragraph (d) of this section, beginning October 15, 2006, the standards and requirements under § 80.520(a) shall apply to any motor vehicle diesel fuel at any retail outlet or wholesale purchaser-consumer facility.

\* \* \* \* \*

■ 4. Section 80.502 is amended by revising paragraphs (b)(2), and (b)(4) to read as follows:

**§ 80.502 What definitions apply for purposes of this subpart?**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(2) A refinery or import facility may not be aggregated with facilities that receive fuel from other refineries or import facilities, either directly or indirectly. For example, a refinery may not be aggregated with a terminal that receives any fuel from a common carrier pipeline. However, a refinery may be aggregated with a pipeline and terminal that are owned by the same entity and which receive no fuel from any source other than the refinery. Likewise, a refinery may not be aggregated with a mobile facility that is also carrying another entity's fuel; it may however be aggregated with a mobile facility that does not receive fuel from any source other than the refinery. If a refinery or import facility is aggregated with other facilities, then the aggregated facility is treated as a refinery or import facility.

\* \* \* \* \*

(4) Mobile components and mobile facilities. (i) Where an entity maintains custody of diesel fuel in one or more mobile components (e.g., rail, barge, shipping, or trucking operations), the mobile components may be aggregated as a single facility. Mobile components may also be aggregated with a facility from which they receive fuel or a facility to which they deliver fuel. However, mobile components may not be aggregated with both a facility from which they receive fuel and a facility to which they deliver fuel.

(ii) When an entity maintains title to, but not custody of, diesel fuel in one or more mobile components, the entity may treat the mobile component(s) as a facility under this paragraph (b), but only for the fuel to which the entity has title. In the event that title changes while a mobile component is in transport (but the fuel physically remains in the same mobile facility), the original entity that had title to the fuel continues to be responsible for the

designate and track requirements until custody of the fuel is transferred from the mobile facility.

\* \* \* \* \*

**§ 80.531 [Amended]**

■ 5. Section 80.531 is amended by removing and reserving paragraph (c)(2)(ii).

■ 6. Section 80.533 is amended by revising paragraph (e)(2) to read as follows:

**§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline?**

\* \* \* \* \*

(e) \* \* \*

(2) Under paragraph (c)(2)(ii) of this section,  $B_{NRLM}$  equals the average annual volume of MVNRLM produced or imported from January 1, 2006 through December 31, 2008, less  $B_{MV}$  as determined in paragraph (d)(2) of this section.

\* \* \* \* \*

■ 7. 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) 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).

(2) In addition to the adjustment factor provided in paragraph (d)(1) 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) 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).

\* \* \* \* \*

■ 8. Section 80.590 is amended by revising paragraphs (a)(6)(i) and (d) to read as follows:

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

(a) \* \* \*

(6) \* \* \*

(i) The facility registration number of the transferor and transferee, for terminals and all parties upstream, under § 80.597, if any.

\* \* \* \* \*

(d) Except for transfers to truck carriers, retailers or wholesale purchaser-consumers, product codes may be used to convey the information required under this section if such codes are clearly understood by each transferee. "15", "500", or "greater than 500" or ">500" must appear clearly on the product transfer document, and may be contained in the product code. If the designation is included in the code: codes used to convey the statement in paragraphs (a)(7)(i) and (a)(7)(ii) of this section must contain the number "15", codes used to convey the statement in paragraphs (a)(7)(iii) and (a)(7)(iv) of this section must contain the number "500"; codes used to convey the statement in paragraph (a)(7)(v) of this section must contain the statement "greater than 500" or ">500". If another letter, number, or symbol is being used to convey any of the statements in paragraphs (a)(7)(i), (a)(7)(ii), (a)(7)(iii), (a)(7)(iv), and/or (a)(7)(v) of this section, it must be clearly defined and denoted on the product transfer document.

\* \* \* \* \*

■ 9. Section 80.592 is amended by revising paragraph (a)(2)(iii) 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?**

(a) \* \* \*

(2) \* \* \*

(iii) The results of the tests for sulfur content (including, where applicable, the test results with and without application of the adjustment factor under § 80.580(d) and for cetane index or aromatics content (as applicable), and the volume of product in the storage tank or container from which the sample was taken.

\* \* \* \* \*

■ 10. Section 80.593 is amended by revising paragraph (a)(7)(i) to read as follows:

**§ 80.593 What are the reporting requirements for refiners and importers of motor vehicle diesel fuel subject to temporary refiner relief standards?**

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(i) The batch number assigned using the batch numbering conventions under § 80.65(d)(3) and the appropriate designation under § 80.598.

\* \* \* \* \*

■ 11. Section 80.597 is amended by revising paragraph (c) and adding paragraph (d)(3) to read as follows:

**§ 80.597 What are the registration requirements?**

\* \* \* \* \*

(c) Entity registration. (1) 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 subject to designation under § 80.598:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as 15 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(iii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(2) 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 subject to designation under § 80.598:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(iii) Fuel designated as heating oil under § 80.598 that is unmarked pursuant to § 80.510(d) through (f).

(iv) Fuel designated as LM diesel fuel under § 80.598(a)(2)(iii) that is unmarked pursuant to § 80.510(e).

(3) Registration shall be on forms prescribed by the Administrator, and shall include the name, business address, contact name, telephone number, e-mail address, and type of production, importation, or distribution activity or activities engaged in by the entity.

(4) Registration shall include the information required under paragraph (d) of this section for each facility owned or operated by the entity that delivers or receives custody of a fuel described in paragraphs (c)(1) and (c)(2) of this section.

(d) \* \* \*

(3) Mobile facilities:

(i) A description shall be provided in the registration detailing the types of mobile vessels that will likely be included and the nature of the operations.

(ii) Entities may combine all mobile operations into one facility; or may split the operations by vessel, region, route, waterway, etc. and register separate mobile facilities for each.

(iii) The specific vessels need not be identified in the registration, however information regarding specific vessel contracts shall be maintained by each registered entity for its mobile facilities, pursuant to § 80.602(d).

\* \* \* \* \*

■ 12. Section 80.598 is amended by revising paragraph (b)(9)(vi) to read as follows:

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

(b) \* \* \*

(9) \* \* \*

(vi) Batches or portions of batches received designated as 500 ppm sulfur NRLM diesel fuel may be re-designated as 500 ppm sulfur motor vehicle diesel fuel by a truck loading terminal only if the terminal maintains a neutral or positive balance at the end of each quarterly compliance period on their motor vehicle diesel fuel volume from June 1, 2006 as calculated in § 80.599(b)(4).

\* \* \* \* \*

■ 13. Section 80.599 is amended by revising the table in the introductory text in paragraph (a), the table in paragraph (a)(1), and by revising paragraphs (b)(4), (e)(2), and (e)(3) to read as follows:

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

(a) \* \* \*

Beginning date of quarterly compliance period	Ending date of quarterly compliance period
June 1, 2006 .....	September 30, 2006.
October 1, 2006 .....	December 31, 2006.
January 1, 2007 .....	March 31, 2007.
April 1, 2007 .....	May 31, 2007.
June 1, 2007 .....	September 30, 2007.
October 1, 2007 .....	December 31, 2007.
January 1, 2008 .....	March 31, 2008.
April 1, 2008 .....	June 30, 2008.

Beginning date of quarterly compliance period	Ending date of quarterly compliance period
July 1, 2008 .....	September 30, 2008.
October 1, 2008 .....	December 31, 2008.
January 1, 2009 .....	March 31, 2009.
April 1, 2009 .....	June 30, 2009.
July 1, 2009 .....	September 30, 2009.
October 1, 2009 .....	December 31, 2009.
January 1, 2010 .....	March 31, 2010.
April 1, 2010 .....	May 31, 2010.
June 1, 2010 .....	September 30, 2010.

(1) \* \* \*

Beginning date of annual compliance period	Ending date of annual compliance period
June 1, 2006 .....	May 31, 2007.
June 1, 2007 .....	June 30, 2008.
July 1, 2008 .....	June 30, 2009.
July 1, 2009 .....	May 31, 2010.
June 1, 2010 .....	June 30, 2011.
July 1, 2011 .....	May 31, 2012.
June 1, 2012 .....	June 30, 2013.
July 1, 2013 .....	May 31, 2014.
June 1, 2014 .....	June 30, 2015.

\* \* \* \* \*

(b) \* \* \*

(4) The neutral or positive volume balance required for purposes of compliance with § 80.598(b)(9)(vi) and (b)(9)(vii)(A) means that the net balance of motor vehicle diesel fuel in inventory as of the end of the last day of the compliance period (MVNB<sub>E</sub>) must be greater than or equal to zero. MVNB<sub>E</sub> is defined by the following equation:

$$MVNB_E = MV15_{BINV} + MV500_{BINV} + \Sigma MVB$$

Where:

MV15<sub>BINV</sub> = the total volume of fuel designated as 15 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the program on June 1, 2006.

MV500<sub>BINV</sub> = the total volume of fuel designated as 500 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the program on June 1, 2006. Any #2D 500 ppm sulfur MVNRLM in inventory at the beginning of the program on June 1, 2006 may be designated as motor vehicle diesel fuel.

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

\* \* \* \* \*

(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<sub>O</sub> = the total volume of fuel delivered during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel.

#2MV15<sub>INVCHG</sub> = 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<sub>I</sub> = the total volume of fuel received during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel.

(3) The volume of #2D 500 ppm sulfur motor vehicle diesel fuel delivered must meet the following requirement:

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

Where:

#2MV500<sub>O</sub> = the total volume of fuel delivered during the compliance period that is designated as #2D 500 ppm sulfur motor vehicle diesel fuel.

#2MV500<sub>I</sub> = the total volume of fuel received during the compliance period that is designated as #2D 500 ppm sulfur motor vehicle diesel fuel.

#2MV500<sub>INVCHG</sub> = the total volume of diesel fuel designated as #2D 500 ppm sulfur motor vehicle diesel fuel in inventory at the end of the compliance period minus the total volume of #2D 500 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.

\* \* \* \* \*

■ 14. Section 80.600 is amended by revising paragraphs (b)(1)(i) introductory text, (b)(1)(i)(C), (b)(1)(i)(D), (b)(3), (i), (j), (k), and (l), and adding paragraph (m) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) For each facility that receives or distributes #2D 15 ppm sulfur motor vehicle diesel fuel or #2D 500 ppm sulfur motor vehicle diesel fuel, records for each batch of diesel fuel with the following designations for which custody is received or delivered during the time period from June 1, 2006 through May 31, 2007:

\* \* \* \* \*

(C) #1D 500 ppm sulfur motor vehicle diesel fuel;

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

\* \* \* \* \*

(3) Records that clearly and accurately identify the total volume in gallons of each designated fuel identified under paragraph (b)(1) of this section transferred over each of the compliance periods, and over the periods from June 1, 2006 to the end of each compliance period. The records shall be maintained separately for each fuel designated under paragraph (b)(1) of this section, and for each EPA entity and facility registration number from whom the fuel was received or to whom it was delivered. For batches of fuel received from facilities without an EPA facility registration number, any batches of fuel received marked pursuant to § 80.510(d) or (f) shall be deemed designated as heating oil, any batches of fuel received marked pursuant to § 80.510(e) shall be deemed designated as heating oil or LM diesel fuel, any batches of fuel received on which taxes have been paid pursuant to Section 4082 of the Internal Revenue Code (26 U.S.C. 4082) shall be deemed designated as motor vehicle diesel fuel, any 500 ppm sulfur diesel fuel dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(d) or (f) shall be deemed designated as NRLM diesel fuel, and any diesel fuel with less than or equal to 500 ppm sulfur which is dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(e) shall be deemed to be NR diesel fuel.

\* \* \* \* \*

(i) Additional records that must be kept by mobile facilities. Additional records that must be kept by mobile facilities. Any registered mobile facility must keep records of all contracts from any contracted components (e.g. tank truck, barge, marine tanker, rail car, etc.) in each of its registered mobile facilities.

(j) The records required in this section must be made available to the

Administrator or the Administrator's designated representative upon request.

(k) Notwithstanding the provisions of this section, product transfer documents must be maintained under the provisions of §§ 80.590, 80.592, and 80.602.

(l) The records required in this section must be kept for five years after they are required to be collected.

(m) Identifications of fuel designations can be limited to a sub-designation that accurately identifies the fuel and do not need to also include the broader designation. For example, NR diesel fuel does not also need to be designated as NRLM or MVNRLM diesel fuel.

■ 15. Section 80.601 is amended as follows:

■ a. By revising paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(4)(v).

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

■ c. And by revising paragraph (d) introductory text, (d)(1)(i) through (iv), adding paragraphs (d)(1)(v), (d)(1)(vi), and (d)(1)(vii), and revising paragraph (d)(3) to read as follows.

**§ 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 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.

(l) Separately for each fuel designation category specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section and separately for each transferee facility, the total volume in gallons of distillate fuel designated under § 80.598 for which custody was delivered by the reporting facility to any other entity or facility, and the EPA entity and facility registration number(s), as applicable, of the transferee.

(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.

(ii) Beginning with the compliance period that starts June 1, 2007 and continuing up to and including the final reporting period, all fuel designation categories.

(2) Separately for each designation category specified in paragraphs (a)(2)(i)

and (a)(2)(ii) of this section and separately for each transferor facility, the total volume in gallons of distillate fuel designated under § 80.598 for which custody was received by the reporting facility, and the EPA entity and facility registration number(s), as applicable, of the transferor.

(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.

(ii) Beginning with the compliance period that starts June 1, 2007 and continuing up to and including the final reporting period, all fuel designation categories.

\* \* \* \* \*

(4) \* \* \*

(v) 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 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.

\* \* \* \* \*

(d) *Submission of reports for quarterly and annual compliance periods.*

(1) \* \* \*

(i) The reports for the first and second quarterly compliance periods covering June 1, 2006 to September 30, 2006 and October 1, 2006 to December 31, 2006 respectively shall be submitted by February 28, 2007.

(ii) The reports for the third and fourth quarterly compliance periods covering January 1, 2007 to March 31, 2007 and April 1, 2007 to May 31, 2007 respectively shall be submitted by August 31, 2007.

(iii) The report for the fifth quarterly compliance period covering June 1, 2007 to September 30, 2007 shall be submitted by November 30, 2007.

(iv) The report for the sixth quarterly compliance period covering October 1, 2007 to December 31, 2007 shall be submitted by February 28, 2008.

(v) The reports for the quarterly compliance periods beginning with the first period in 2008 up to and including the first period in 2010 shall be submitted as follows:

(A) The report for the period covering January 1 to March 31 shall be submitted by the following May 31.

(B) The report covering the period covering April 1 to June 30 shall be submitted by the following August 31.

(C) The report for the period from July 1 to September 30 shall be submitted by the following November 30.

(D) The report for the quarterly compliance period from October 1 to December 31 shall be submitted by the following February 28.

(vi) The report for the quarterly compliance period from April 1, 2010 to May 31, 2010 shall be submitted by August 31, 2010.

(vii) The report for the last quarterly compliance period from June 1, 2010 to September 30, 2010 shall be submitted by November 30, 2010.

\* \* \* \* \*

(3) All reports shall be submitted on forms and following procedures specified by the Administrator, shall include a statement that volumes reported to the Administrator under this section are in substantial agreement to volumes reported to the Internal Revenue Service (and if these volumes are not in substantial agreement, an explanation must be included) and shall be signed and certified by a responsible corporate officer of the reporting entity.

\* \* \* \* \*

■ 16. Section 80.602 is amended by revising paragraphs (a)(2)(iii), (b) introductory text, (d), and (e), and adding paragraph (f) 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?**

(a) \* \* \*

(2) \* \* \*

(iii) The results of the tests for sulfur content (including, where applicable, the test results with and without application of the adjustment factor under § 80.580(d)), for cetane index or aromatics content, dye solvent red 164, marker solvent yellow 124 (as applicable), and the volume of product in the storage tank or container from which the sample was taken.

\* \* \* \* \*

(b) Additional records to be kept by refiners and importers of NRLM diesel fuel. Beginning June 1, 2007, or June 1, 2006, pursuant to the provisions of § 80.535 or § 80.554(d), any refiner producing diesel fuel subject to a sulfur standard under § 80.510, § 80.513, § 80.536, § 80.554, § 80.560, or § 80.561, for each of its refineries, and any importer importing such diesel fuel separately for each facility, shall keep records that include the following information for each batch of NRLM

diesel fuel or heating oil produced or imported:

\* \* \* \* \*

(d) Additional records that must be kept by mobile facilities. Any registered mobile facility must keep records of all contracts from any contracted components (e.g. tank truck, barge, marine tanker, rail car, etc.) of each of its registered mobile facilities.

(e) Length of time records must be kept. The records required in this section shall be kept for five years from the date they were created, except that records relating to credit transfers shall be kept by the transferor for five years from the date the credits were transferred, used or terminated, whichever is later.

(f) Make records available to EPA. On request by EPA, the records required in this section must be made available to the Administrator or the Administrator's representative. For records that are electronically generated or maintained, the equipment and software necessary to read the records shall be made available, or if requested by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

[FR Doc. 05-22807 Filed 11-21-05; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 146**

[FRL-7999-7]

**Underground Injection Control Program—Revision to the Federal Underground Injection Control Requirements for Class I Municipal Disposal Wells in Florida**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Today's rule amends the current Federal Underground Injection Control (UIC) requirements by providing a regulatory alternative to owners and operators of Class I municipal disposal wells in specific areas of Florida that have caused or may cause movement of fluid into an Underground Source of Drinking Water (USDW). Because operation of Class I wells with fluid movement into a USDW is prohibited by Federal UIC regulations, this new rule offers owners and operators of municipal disposal wells in certain

counties in Florida the ability to continue to operate their wells provided they meet additional wastewater treatment requirements. These new treatment requirements, which apply only to injection operations in certain counties of Florida, are designed to provide an equivalent level of protection to USDWs that is afforded by the no-fluid-movement standard.

**DATES:** This regulation is effective December 22, 2005. For purposes of judicial review, this final rule is promulgated as of 1 p.m., Eastern time on December 6, 2005, as provided in 40 CFR 23.7.

**ADDRESSES:** The official public docket for this rule is located at the U.S. Environmental Protection Agency (EPA), Region 4 Library (9th Floor), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-8960. The docket is available for inspection from 8 a.m. to 3:30 p.m., Eastern time, Monday through Friday, excluding legal holidays. For information on how to access Docket materials, please call (404) 562-8190 and refer to the Florida UIC docket.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries, contact Nancy H. Marsh, Ground Water & UIC Section, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303-8960 (phone: 404-562-9450; E-mail: [marsh.nancy@epa.gov](mailto:marsh.nancy@epa.gov)) or Lee Whitehurst, Office of Ground Water and Drinking Water, U.S. EPA, EPA East, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (phone: 202-564-3896; E-mail: [whitehurst.lee@epa.gov](mailto:whitehurst.lee@epa.gov)). For general information, contact the Safe Drinking Water Hotline, at 800-426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5 p.m., Eastern time.

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