

is under review by the Under Secretary. The director will provide the individual who made the request written notice of the Under Secretary's decision.

(Authority: 38 U.S.C. 501)  
[FR Doc. 2010-11170 Filed 5-10-10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[EPA-HQ-OAR-2007-1158; FRL-9147-5]

RIN 2060-A071

**Regulation of Fuels and Fuel Additives: Alternative Affirmative Defense Requirements for Ultra-Low Sulfur Diesel and Gasoline Benzene Technical Amendment**

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

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is issuing a proposed rule to amend the diesel sulfur regulations to allow refiners, importers, distributors, and retailers of highway diesel fuel the option to use an alternative affirmative defense if the Agency finds highway diesel fuel samples above the specified sulfur standard at retail facilities. This rule also proposes to amend the gasoline benzene regulations to allow disqualified small refiners the same opportunity to generate gasoline benzene credits as that afforded to non-small refiners.

**DATES: Comments:** Comments must be received on or before June 10, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before June 10, 2010.

**Hearings:** If EPA receives a request from a person wishing to speak at a public hearing by May 26, 2010, a public hearing will be held at a time and location to be announced in a

subsequent **Federal Register** notice. To request to speak at a public hearing, send a request to the contact in **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-1158, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- *Fax:* (202) 566-9744

- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. EPA-HQ-OAR-2007-1158. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Comments should be submitted according to the detailed instructions in the **ADDRESSES** section of the corresponding Direct Final Rule located in the "Rules" section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Jaimee Dong, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Office of Air and Radiation, Environmental Protection Agency, Mail Code 6405J, 1200 Pennsylvania Avenue, Washington, DC 20460; *telephone number:* (202) 343-9672; *fax number:* (202) 343-2800; *e-mail address:* [Dong.Jaimee@epa.gov](mailto:Dong.Jaimee@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Why is EPA issuing this proposed rule?**

EPA is issuing a proposed rule to amend the diesel sulfur regulations to allow refiners, importers, distributors, and retailers of highway diesel fuel the option to use an alternative affirmative

defense if the Agency finds highway diesel fuel samples above the specified sulfur standard at retail facilities. This rule also proposes to amend the gasoline benzene regulations to allow disqualified small refiners the same opportunity to generate gasoline benzene credits as that afforded to non-small refiners.

We have also published a direct final rule to make these same amendments in the "Rules and Regulations" section of this **Federal Register** because we view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions of the direct final rule we are withdrawing. The provisions that are not withdrawn will go into effect on the effective date noted in the **DATES** section of the direct final rule, notwithstanding adverse comment on any other provision. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on the action. Any parties interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule and is published in the "Rules and Regulations" section of this **Federal Register**.

**II. Does this action apply to me?**

Entities potentially affected by this action include those involved with the production, importation, distribution, marketing, or retailing of diesel fuel and production of gasoline. Categories and entities affected by this action include:

| Category       | NAICS Codes <sup>a</sup> | SIC Codes <sup>b</sup> | Examples of potentially regulated entities |
|----------------|--------------------------|------------------------|--|
| Industry ..... | 324110                   | 2911                   | Petroleum Refiners.                        |
| Industry ..... | 422710                   | 5171                   | Diesel Fuel Marketers and Distributors.    |
| Industry ..... | 484220                   | 4212                   | Diesel Fuel Carriers.                      |

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

<sup>b</sup>Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action; however, other types of entities not listed in the table could also be affected. To determine

whether your entity is affected by this action, you should examine the applicability criteria of Parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding applicability of this action to

a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### III. Statutory and Executive Order Reviews

For a complete discussion of all the administrative requirements applicable to this action, see Section IV in the direct final rule amending the diesel sulfur regulations and gasoline benzene regulations in the “Rules and Regulations” section of this **Federal Register**. The following discussion is related to the information collection requirements under the Paperwork Reduction Act.

The modifications to the diesel sulfur information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

This proposed rule provides refiners, importers and distributors of ULSD highway diesel fuel with additional flexibility to comply with the diesel sulfur regulations. The flexibility afforded under this rule is optional. Modest information collection requirements in the form of reports for noncompliant diesel sulfur samples are required for those parties who avail themselves of the flexibility provided in this rule.

The estimated hourly burden per respondent for the diesel surveys is 16 hours. The estimated annual hourly burden is 320 hours for all respondents (assuming 20 respondents per year). The estimated hourly cost is \$71 per hour. The total estimated cost per respondent is \$1,136. The total estimated cost for all respondents is \$22,270.

The information under this rule will be collected by EPA’s Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation (OAR), and by EPA’s Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance (OECA). The information collected will be used by EPA to evaluate compliance with the requirements under the diesel sulfur program. This oversight by EPA is necessary to ensure attainment of the air quality goals of the diesel sulfur program.

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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this direct final rule.

Today’s rule also amends the gasoline benzene regulations to allow disqualified small refiners the same opportunity to generate gasoline benzene credits as that afforded to non-small refiners. The amendment to the gasoline benzene regulations does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing gasoline benzene regulations at 40 CFR part 80, subpart L, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0277. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### IV. Statutory Provisions and Legal Authority

Statutory authority for the fuel controls set in this proposed rule comes from sections 211 and 301(a) of the CAA.

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

Environmental protection, Air pollution control, Fuel additives, Diesel, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 3, 2010.

**Lisa P. Jackson**,  
Administrator.

[FR Doc. 2010–10909 Filed 5–10–10; 8:45 am]

**BILLING CODE 6560–50–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[EPA–HQ–SFUND–2009–0654; FRL–9146–7]

#### National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 2 is issuing a Notice of Intent to Delete the Asbestos Dump Superfund Site (Site) located in Meyersville, New Jersey, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New Jersey, through the New Jersey Department of Environmental Protection (NJDEP), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments must be received by *June 10, 2010*.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2009–0654, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *E-mail:* [hwilka.theresa@epa.gov](mailto:hwilka.theresa@epa.gov): Theresa Hwilka, Remedial Project Manager  
[seppi.pat@epa.gov](mailto:seppi.pat@epa.gov): Pat Seppi, Community Involvement Coordinator.
- *Fax:* 212–637–4429.
- *Mail:* Theresa Hwilka, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, Emergency & Remedial Response Division, 290 Broadway, 19th Floor, New York, NY 10007; Or Pat Seppi, Community Involvement Coordinator, U.S. Environmental Protection Agency, Region II, Public Affairs Division, 290 Broadway, 26th Floor, New York, NY 10007.
- *Hand delivery:* U.S. Environmental Protection Agency, Region II,