

SUPPORTING STATEMENT
PART A

1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) TITLE AND NUMBER OF THE INFORMATION COLLECTION

Alternative Affirmative Defense Requirements for Ultra-low Sulfur Diesel. The current OMB control number is 2060-0639. The EPA number for this proposed information collection request (ICR) renewal is 2364.03.

(b) SHORT CHARACTERIZATION/ABSTRACT

The highway diesel program regulations require most motor vehicle (highway) diesel fuel sold at retail stations to contain 15 parts per million (ppm) sulfur or less (hereafter referred to as ultra low sulfur diesel fuel, or ULSD) beginning October, 2006. General recordkeeping and reporting related to diesel fuel regulations for on-road, non-road and performance-based test methods are included in EPA ICR 1718.08 (OMB Control Number 2060-0277).

Under the regulation, where a violation of the 15 ppm sulfur standard is identified at a retail outlet, the retailer responsible for dispensing the noncompliant fuel is deemed liable, as well as the refiner(s), importer(s) and distributor(s) of such fuel. The highway diesel regulations further provide, however, that any person deemed liable can rebut this presumption by establishing an affirmative defense that includes, among other things, showing that it conducted a quality assurance sampling and testing program as prescribed by the regulations. This ICR covers burdens and costs associated with provisions that allow refiners and importers of ULSD an alternative means of meeting the affirmative defense requirements in the diesel sulfur regulations by participating in a nationwide diesel fuel sampling and testing program. The reporting burden covered by this proposed ICR related to reports that refiners, importers and distributors, have to submit in the event they have a non-complying sulfur test result. (See 40 CFR § 80.613.) The authority citation for the direct final rule and the association information collection is for the following Clean Air Act sections: 42 United States Code §§ 7414, 7542, 7545, and 7601(a).

2. NEED FOR AND USE OF THE COLLECTION

(a) NEED/AUTHORITY FOR THE COLLECTION

The basic need and authority for the collection of information have been established in the ICR for the highway diesel final rule. The rule established specific recordkeeping and reporting requirements in order to enforce compliance with the 15 ppm sulfur standard for highway diesel fuel.

(b) PRACTICAL UTILITY/USERS OF THE DATA

The alternative affirmative defense (survey) provisions are designed to grant flexibility to

refiners and importers by permitting them to conduct activities normally conducted on a facility basis on a nationwide basis. The burden described in this ICR only affects parties who receive a test result that indicates non-compliance.

The EPA's Office of Enforcement and Compliance Assurance and EPA's Office of Air and Radiation, Office of Transportation and Air Quality, will be the governmental users of the information contained in this proposed information collection.

3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

(a) NONDUPLICATION

This proposed ICR is not unnecessarily duplicative of information otherwise reasonably accessible to the Agency. Wherever possible, we have designed the proposed regulation to make sure that there is no unnecessary duplication.

(b) PUBLIC NOTICE REQUIRED PRIOR TO ICR SUBMISSION TO OMB

A copy of this supporting statement, the accompanying Federal Register notice announcing our proposal to renew this ICR is available in the public docket. We received no public comments.

(c) CONSULTATIONS

We encourage all interested parties to submit comments. We contacted two representatives from companies that may be affected by this ICR. Please see section 6(a).

(d) EFFECTS OF LESS FREQUENT COLLECTION

Less frequent reporting would make discovery and correction of violations take too long to discover from the date of violation, and would give non-complying parties a competitive advantage for long periods of time. A lesser recordkeeping burden would make verification of compliance extremely difficult.

(e) GENERAL GUIDELINES

The general guidelines for the collection of information pursuant to the highway diesel rule are approved in the ICR for the final highway diesel rule. The record retention requirements specified is five (5) years. This proposed ICR also specifies five (5) years as the retention period.

(f) CONFIDENTIALITY AND SENSITIVE QUESTIONS

(i) Confidentiality

Any information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA regulations at 40 C.F.R. 2.201 et seq.

(ii) Sensitive Questions

This section is not applicable as this proposed ICR does not involve matters of a sensitive nature.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

(a) RESPONDENTS/NAICS and SIC CODES

Recordkeeping and, in some cases, reporting affects the following respondents: refiners (2911/324110), importers (5172/424720), marketers and other distributors (5171/424710 and 5172/424720).

(b) INFORMATION REQUESTED

(i) Data Items, Including Recordkeeping and Reporting Requirements

Knowledge of the following definitions at 40 CFR 80.2 is important for a thorough understanding of the reporting and recordkeeping requirements:

“Motor Vehicle Diesel Fuel” means any diesel fuel or other distillate fuel sold in any State (State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) that is used, intended for use in, or made available for use in for use in motor vehicles or motor vehicle engines.

“Refiner” means any person who owns, leases, operates, controls, or supervises a refinery.

“Importer” means a person who imports diesel fuel from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands).

There is a respondent burden associated with refiners, importers and distributors preparing a report for EPA explaining the circumstances behind and root causes for any noncompliant ULSD samples. There is also an Agency burden associated with reviewing each report. This burden is estimated below under “ESTIMATING THE BURDEN AND COST OF THE COLLECTION”. The following sections describe respondent and Agency activities.

(ii) Respondent Activities

The following may be required in the event of a non-complying sample:

- Read and comprehend the regulations.
- Gather and organize the information.
- Report the information to EPA, as specified in the regulations.

5. THE INFORMATION COLLECTED--AGENCY ACTIVITIES, COLLECTION METHODOLOGY AND INFORMATION MANAGEMENT

(a) AGENCY ACTIVITIES

The following are required:

- Respond to inquiries.
- Provide access to the regulations and guidance documents.
- Review the submitted information.
- Contact the respondent when the information has not been submitted properly and provide guidance on correction of the problem.
- Perform data analysis and identify violations.

(b) COLLECTION METHODOLOGY AND MANAGEMENT

The information collection has been developed by EPA offices that have planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which will enhance the utility of the information for the Agency and the public. The information collection, to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, Agency efficiency, and responsiveness to the public.

The information is carefully reviewed for compliance with the requirements.

No changes to the collection methodologies in the existing ICR for the diesel rule are anticipated as a result of this proposed ICR modification.

(c) SMALL BUSINESS FLEXIBILITY

The alternative affirmative defense rule grants flexibility to all affected parties, regardless of size. The recordkeeping and reporting burden has been designed to be minimal for respondents of all business sizes.

(d) COLLECTION SCHEDULE

Response is only required in the case of a non-complying sample.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

(a) ESTIMATING THE RESPONDENT BURDEN

We drew upon consultation with industry and our own experience implementing similar regulations to estimate the burden associated with this ICR. We contacted representatives from two companies that may be affected from this ICR; one responded. The responding representative indicated that his company (ExxonMobil) believes the burden estimates in this ICR to be reasonable.

(b) ESTIMATING THE RESPONDENT COST

Three labor categories are involved: managerial (includes legal and professional review), technical, and clerical. The estimates use Bureau of Labor Statistics, "Employer Costs for Employee Compensation - Table 12 - Private Industry, Manufacturing, and Non-Manufacturing Industries by Occupational Group (December 2003), with a 3% inflation factor applied to bring the values to present dollars. Using this method, the following wages and benefits apply by category:

Wages and Benefits

Managerial	\$53.87 per hour
Technical	\$35.29 per hour
Clerical	\$24.56 per hour

Doubling for company overhead beyond wages and benefits, and for convenience, rounding up to the dollar, gives the following rates for this ICR:

Total Employer Cost

Managerial	\$108 per hour
Technical	\$71 per hour
Clerical	\$49 per hour

The labor mix for the activities estimated will be about the same for each and is consistent with prior ICRs in this series. It is assumed that for each hour of activity the mix will be about 0.1 hour managerial, 0.7 hour technical, and 0.2 hour clerical. This gives an average labor cost of \$71 per hour, which will be used in this ICR modification.

(c) ESTIMATING THE RESPONDENT UNIVERSE

We were able to estimate the number of regulated entities by drawing upon our experience regulating the same entities. Respondents for this action may include refiners, importers, and distributors. Based on history and enforcement experience, we expect that approximately 20 instances of non-compliance will result in 20 reports to be submitted each year.

**Annual Respondent Burden Hours & Costs
(Including Non-Postage "Other Costs")**

Collection Activity	# of Respondents	# of Reports per Respondent	Total # of Reports	# of Hours per Report	Total Hours
Submit report for each exceedance	20	1	20	16	320

The estimated respondent burden for reviewing each report for a noncompliant sample is 16 hours, or \$1,136 per response, so the total respondent burden for evaluating 20 reports per year would be \$22,720.

(d) ESTIMATING AGENCY BURDEN AND COST

The annual Agency burden is determined using the 2009 OPM hourly pay table applicable for the Washington DC area,¹ with values multiplied by 1.6, the standard government benefits multiplier. The hourly wage rates are as follows, rounded up to the nearest five dollars:

EPA Manager (GS-15, step one) = \$93
 Technical Staff (GS-13, step one) = \$67
 Clerical Staff (GS-5, step one) = \$26

The total annual Agency burden hours are estimated as follows:

Activity	# of Responses	Manager Hours per Response	Technical Hours per Response	Clerical Hours per Response	Total Agency Hours
Review report for each exceedance	20	0	2	0	40

Based on historical experience, we expect to find approximately 20 noncompliant samples per year. The estimated Agency burden for reviewing each report for a noncompliant sample is 2 hours, or \$134 per response, so the total Agency burden for evaluating 20 reports per year would be \$2,680.

(e) BOTTOM LINE BURDEN HOURS AND COSTS

The annual estimates in burden hours and costs associated with this rule are as follows:

¹ See "Salary Table 2009 – DCB," US Office of Personnel Management, accessed July 16, 2009 at <http://www.opm.gov/oca/09tables/html/dcb.asp>.

TOTALS FROM THE TABLES:

TOTAL NO. OF REPORTS: 20
TOTAL BURDEN HOURS: 320
TOTAL COST: \$22,720

(f) REASON FOR CHANGE IN BURDEN

There is no change in burden.

(g) BURDEN STATEMENT

The average respondent burden in hours per response for this ICR is estimated at 16 hours. 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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OAR-2007-1158, which is available for online viewing at www.regulations.gov, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 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) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. An electronic version of the public docket is available at www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OAR-2007-1158 and OMB Control Number 2060-0639 in any correspondence.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This section is not applicable because statistical methods are not used in the data

collection associated with the diesel fuel regulations.