

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 (Renewal). The current OMB control number is 2060-0639. The EPA number for this information collection request (ICR) renewal is 2364.04.

(b) SHORT CHARACTERIZATION/ABSTRACT

The highway diesel program regulations require 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). 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 2060-0308).

Under the highway diesel fuel regulations, 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 ULSD regulations by participating in a nationwide diesel fuel sampling and testing program. The reporting burden covered by this ICR renewal relates 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 were 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 the 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 ICR renewal 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

EPA sought comment on reporting requirements via Notice found in 78 FR 78953 on December 27, 2013. EPA received no comment at the end of the 60 day comment period.

(c) CONSULTATIONS (Format)

EPA has made an asserted effort to seek industry comment for this ICR. EPA contacted Tim Hogan of the American Fuels and Petrochemical Manufacturers Petroleum who can be contacted on (202) 457-0480 and by e-mail thogan@afpm.org. Mr. Hogan after reviewing the cost analysis believed that the cost to the industry was reasonable and fair. EPA also contacted Mr. Michael Keys of Love's Travel Center who can be contacted on (405) 302-6640 and by e-mail MichaelK@loves.com. Mr. Keys was not able to attest to the cost to report for industry in the ICR. Mr. Keys' is a member of the ULSD consortium in which the association takes care of the fuel testing and activity that leads to the providing a report discussing the reason for violations to the EPA. Mr. Keys was not able to make a fair assumption being that involvement in process was not direct.

(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. This rule exceeds the OMB guidelines. EPA requests an exception to the OMB guidelines that agencies may only require records to be maintained for no more than three years. Records can be kept either electronically or on paper. EPA needs to make sure regulated parties keep records long enough to be evaluated for compliance during this time period. Section 40 CFR Part 80.1454(l) requires record retention for five years from the date the records were created. Any information claimed as confidential will be treated in accordance with 40 CFR Part 2 and established Agency procedures. Information that is received without a claim of confidentiality may be made available to the public without further

(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 own, 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.

(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. In this collection an association will collect samples of low sulfur diesel and report violations in the industry and report to the EPA. Upon a notice of violation to the EPA, industry has the burden to report reasons for the violation. We estimate 5 responses per year under this collection.

b. Estimating the Respondent Burden and Cost

Three labor categories are involved: managerial (includes legal and professional review), technical, and clerical. The estimates used the Bureau of Labor Statistics figures from "National Industry-Specific Occupational Employment & Wage Estimate "Petroleum and Coal Products Manufacturing" (May 2011), with a 3% annual inflation factor applied to bring the values to the present. Using this method, the following wages and benefits apply by category:

Wages and Benefits

Managerial	\$67.44 per hour
Technical	\$65.56 per hour
Clerical	\$22.17 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	\$135.00 per hour
Technical	\$132.00 per hour
Clerical	\$ 45.00 per hour

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 \$115 per hour rounded up,

which will be used in this ICR. This collection includes no annualized capital or operation and maintenance cost.

(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 submissions received over the past five years and enforcement experience, we expect that no more than five instances of non-compliance resulting in a maximum of five reports will be submitted each year.

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

Information Collection Burden by Type of Party							
Collection Activity	Number of Respondents	Number of Responses per Party	Total Number of Responses	Time per Response	Cost per Response (Dollars)	Total Hours	Total Cost (Dollars)
Submit Report for each ULSD exceedance	5	1	5	16	\$1,840.00	80	\$9,200.00
TOTALS	5	1	5	16	\$1,840.00	80	\$9,200.00

The estimated respondent burden for reviewing each report for a noncompliant sample is 16 hours, or \$1,840 per response, so the total respondent burden for submitting five reports per year would be \$9,200.

(d) ESTIMATING AGENCY BURDEN AND COST

No response is required to notifications unless a potential violation is noted. This activity will present no significant, quantifiable burden to the Agency. We have drawn upon our experiences with the highway diesel program and estimate no more than five notifications with an annual burden of 10 burden hours per year and for three years 30 burden hours. We have one full-time GS-13 technical worker working two hours per response and a GS-15 manager all working no hours of his/her time managing this project per response.-

The Agency burden consists of a GS-13 technical worker costs at \$81.55 an hour including overhead, for an Agency burden of \$163.10 per response. With an annual total of \$816 rounded to the nearest dollar.

These estimates are derived from "OPM Salary Table 2010-DCB," effective January 2010. This table may be found at <http://archive.opm.gov/oca/10tables/html/RUS-h.asp>. The extreme of step 10 was assumed for all categories. All values were multiplied by 1.6 (which is a common factor utilized in ICRs to account for overhead costs). We rounded the resulting dollar value to the nearest tenth.

The total annual Agency cost and burden hours are estimated as follows:

Information Collection Burden by Type of Party							
Collection Activity	Number of Respondents	Number of Responses per Party	Total Number of Responses	Time per Response	Cost per Response (Dollars)	Total Hours	Total Cost (Dollars)
Review report for each ULSD exceedance	5	1	5	2	\$163.10	10	\$815.50
TOTALS	5	1	5	2	\$163	10	\$816

(e) BOTTOM LINE BURDEN HOURS AND COSTS

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

TOTALS FROM THE TABLES:	
RESPONDENTS/AFFECTED ENTITIES:	5
TOTAL NO. OF REPORTS:	5
TOTAL BURDEN HOURS:	80
TOTAL COST:	\$9,200

(f) REASON FOR CHANGE IN BURDEN

There is no change in the total estimated burden per response compared with the ICR currently approved by OMB. The respondent universe and responses decreased in this collection due to a higher than expected compliance rate. There was an increase in cost to the industry per response of \$704 due to more accurate numbers used to calculate the industry burden and to account for inflation. There was a decrease in cost to the industry overall of \$13,520 due to the reduction of expected responses from 20 to five.

(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-2010-0258, 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), WJC 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-2010-0258 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.