

Environmental Protection Agency

§ 80.580

1,000 ppm SULFUR ECA MARINE FUEL (1,000 ppm Sulfur Maximum)

For use in Category 3 (C3) marine vessels only.

WARNING

Federal law prohibits use in any engine that is not installed on a C3 marine vessel; use of fuel oil with a sulfur content greater than 1,000 ppm in an ECA is prohibited except as allowed by 40 CFR Part 1043.

(2) The labels required by paragraph (a)(1) of this section must be placed on the vertical surface of each pump housing and on each side that has gallon and price meters. The labels shall be on the upper two-thirds of the pump, in a location where they are clearly visible.

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

(1) *For U.S. Mail:* U.S. EPA, Attn: Diesel Sulfur Alternative Label Request, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) *For overnight or courier services:* U.S. EPA, Attn: Diesel Sulfur Alternative Label Request, 6406J, 1310 L Street, NW., 6th Floor, Washington, DC 20005. (202) 343-9038.

[75 FR 22971, Apr. 30, 2010]

§§ 80.575–80.579 [Reserved]

SAMPLING AND TESTING

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

The sulfur content of diesel fuel and diesel fuel additives is to be determined in accordance with this section.

(a) *Sampling method.* The applicable sampling methodology is provided in § 80.330(b).

(b) *Test method for sulfur*—(1) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using ASTM D2622 (incorporated by reference, *see* paragraph (e) of this section).

(2) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a)(1), sulfur content may be determined

using ASTM D2622 (incorporated by reference, *see* paragraph (e) of this section).

(3) Beginning August 30, 2004, for motor vehicle diesel fuel and diesel fuel additives subject to the 15 ppm sulfur standard of § 80.520(a)(1), sulfur content may be determined using any test method approved under § 80.585.

(4) Beginning August 30, 2004, for NRLM diesel fuel and diesel fuel additives subject to the 15 ppm standard of § 80.510(b), sulfur content may be determined using any test method approved under § 80.585.

(c) *Alternative test methods for sulfur*—

(1) *Options for testing sulfur content of 1,000 ppm diesel fuel.* (i) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using ASTM D4294, ASTM D5453, or ASTM D6920 (all incorporated by reference, *see* paragraph (e) of this section), provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(1) of this section; or

(ii) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using any test method approved under § 80.585.

(2) *Options for testing sulfur content of 500 ppm diesel fuel.* (i) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a), sulfur content may be determined using ASTM D4294, ASTM D5453, or ASTM D6920 (all incorporated by reference, *see* paragraph (e) of this section), provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(2) of this section; or

(ii) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a), sulfur content may be determined using any test method approved under § 80.585.

(d) *Adjustment factor for downstream test results.* (1) Except as specified in paragraph (d)(1)(i) of this section, an adjustment factor of negative two ppm

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sulfur shall be applied to the test results from any testing of motor vehicle diesel fuel or NRLM diesel fuel downstream of the refinery or import facility, to account for test variability, but only for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1).

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

(ii) [Reserved]

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

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

(e) *Materials incorporated by reference.* The Director of the Federal Register approved the incorporation by reference of the document listed in this section as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, under EPA docket ID Number EPA-HQ-OAR-2008-0558, or at the National Archives and Records Administration (NARA). The telephone number for the Air Docket Public Reading Room is (202) 566-1742. For information on the availability of this material at

NARA, call 202-741-6030 or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. For further information on these test methods, please contact the Environmental Protection Agency at 734-214-4582.

(1) *ASTM material.* Anyone may purchase copies of these materials from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428-2959, or by contacting ASTM customer service at 610-832-9585, or by contacting the e-mail address of service@astm.org from the ASTM Web site of <http://www.astm.org>.

(i) ASTM standard method D2622-05 (“ASTM D2622”), Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, approved November 1, 2005.

(ii) [Reserved]

(iii) ASTM standard method D4294-03 (“ASTM D4294”), Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry, approved November 1, 2003.

(iv) ASTM standard method D5453-08a (“ASTM D5453”), Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence, approved February 1, 2008.

(v) ASTM standard method D6920-07 (“ASTM D6920”), Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection, approved December 1, 2007.

(2) [Reserved]

[69 FR 39184, June 29, 2004, as amended at 70 FR 40896, July 15, 2005; 70 FR 70510, Nov. 22, 2005; 71 FR 16500, Apr. 3, 2006; 71 FR 25719, May 1, 2006; 73 FR 74357, Dec. 8, 2008; 75 FR 22971, Apr. 30, 2010]

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

(a) Beginning on June 1, 2006 (or earlier pursuant to § 80.531), for motor vehicle diesel fuel, and beginning June 1, 2010 (or earlier pursuant to § 80.535), for NRLM diesel fuel, and beginning June 1, 2014, for ECA marine fuel, each refiner and importer shall collect a representative sample from each batch of motor vehicle or NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur content standard, or ECA marine fuel subject to the 1,000 ppm sulfur content standard. Batch, for the purposes of this section, means batch as defined under § 80.2 but without the reference to transfer of custody from one facility to another facility.

(b) Except as provided in paragraph (c) of this section, the refiner or importer shall test each sample collected pursuant to paragraph (a) of this section to determine its sulfur content for compliance with the requirements of this subpart prior to the diesel fuel leaving the refinery or import facility, using an appropriate sampling and testing method as specified in § 80.580.

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

(2) To obtain an exemption from paragraph (b) of this section, the refiner must submit to EPA all the information required under § 80.65(f)(4)(i)(A). A letter signed by the president, chief

operating or chief executive officer of the company, or his/her designee, stating that the information contained in the submission is true to the best of his/her belief must accompany any submission under this paragraph (c)(2).

(3) Refiners who seek an exemption under paragraph (c)(2) of this section must comply with any request by EPA for additional information or any other requirements that EPA includes as part of the exemption.

(4) Within 60 days of EPA's receipt of a submission under paragraph (c)(2) of this section, EPA will notify the refiner if the exemption is not approved or of any deficiencies in the refiner's submission, or if any additional information is required or other requirements are included in the exemption pursuant to paragraph (c)(3) of this section. In the absence of such notification from EPA, the effective date of an exemption under this paragraph (c) is 60 days from EPA's receipt of the refiner's submission.

(5) EPA reserves the right to modify the requirements of an exemption under this paragraph (c), in whole or in part, at any time, if EPA determines that the refiner's operation does not effectively or adequately control, monitor or document the sulfur content of the refinery's diesel fuel production, or if EPA determines that any other circumstances exist which merit modification of the requirements of an exemption, such as advancements in the state of the art for in-line blending measurement which allow for additional control or more accurate monitoring or documentation of sulfur content. If EPA finds that a refiner provided false or inaccurate information in any submission required for an exemption under this section, upon notification from EPA, the refiner's exemption will be void *ab initio*.

(d) All test results under this section shall be retained for five years and must be provided to EPA upon request.

(e) Samples collected under this section must be retained for at least 30 days and provided to EPA upon request.

[69 FR 39184, June 29, 2004, as amended at 71 FR 25719, May 1, 2006; 75 FR 22971, Apr. 30, 2010]

§ 80.582 What are the sampling and testing methods for the fuel marker?

For heating oil and NRLM diesel fuel subject to the fuel marker requirement in § 80.510(d), (e), or (f), the identification of the presence and concentration of the fuel marker in diesel fuel may be determined using the test procedures qualified in accordance with the requirements in this section.

(a) *Sampling and testing for methods for the fuel marker.* The sampling, sample preparation, and testing methods qualified for use in accordance with the requirements of this section may involve the use of hazardous materials, operations and equipment. This section does not address the associated safety problems which may exist. It is the responsibility of the user of the procedures specified in this section to establish appropriate safety and health practices prior to their use. It is also the responsibility of the user to dispose of any byproducts which might result from conducting these procedures in a manner consistent with applicable safety and health requirements.

(b) *What are the precision and accuracy criteria for qualification of fuel marker test methods?*—(1) *Precision.* A standard deviation of less than 0.10 milligrams per liter is required, computed from the results of a minimum of 20 repeat tests made over 20 days on samples taken from a homogeneous commercially available diesel fuel which meets the applicable industry consensus and federal regulatory specifications and which contains the fuel marker at a concentration in the range of 0.10 to 8 milligrams per liter. In order to qualify, the 20 results must be a series of tests on the same material and there must be a sequential record of the analysis with no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(2) *Accuracy.* (i) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available marker solvent yellow 124 standard in the range of 0.10 to 1 milligrams per liter shall not differ from

the ARV of that standard by more than 0.05 milligrams per liter.

(ii) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available marker solvent yellow 124 standard in the range of 4 to 10 milligrams per liter shall not differ from the ARV of that standard by more than 0.05 milligrams per liter.

(iii) In applying the tests of paragraphs (b)(2)(i) and (ii) of this section, individual test results shall be compensated for any known chemical interferences.

(c) *What process must a test facility follow in order to qualify a test method for determining the fuel marker content of distillate fuels and how will EPA qualify or decline to qualify a test method?*—(1) *Qualification of test methods approved by voluntary consensus-based standards bodies.* Any standard test method developed by a Voluntary Consensus-Based Standards Body, such as the American Society for Testing and Materials (ASTM) or International Standards Organization (ISO), shall be considered a qualified test method for determining the fuel marker content of distillate fuel provided that it meets the precision and accuracy criteria under paragraph (b) of this section. The qualification of a test method is limited to the single test facility that performed the testing for accuracy and precision. The individual facility must submit the accuracy and precision results for each method, including information on the date and time of each test measurement used to demonstrate precision, following procedures established by the Administrator.

(2) *Qualification of test methods that have not been approved by a voluntary consensus-based standards body.* A test method that has not been approved by a voluntary consensus-based standards body may be qualified upon approval by the Administrator. The following information must be submitted in the application for approval by each test facility, for each test method that it wishes to have approved:

(i) Full test method documentation, including a description of the technology and/or instrumentation that makes the method functional.

(ii) Information demonstrating that the test method meets the accuracy and precision criteria under paragraph (b) of this section, including information on the date and time of each test measurement used to demonstrate precision.

(iii) Samples used for precision and accuracy determination must be retained for 90 days.

(iv) If requested by the Administrator, test results utilizing the method and performed on a sample of commercially available distillate fuel which meets the applicable industry consensus and federal regulatory specifications and which contains the fuel marker.

(v) Any additional information requested by the Administrator and necessary to render a decision as to qualification of the test method.

(vi) The qualification of a test method is limited to the single test facility that performed the testing for accuracy and precision and any other required testing.

(3)(i) Within 90 days of receipt of all materials required to be submitted under paragraph (c)(1) or (c)(2) of this section, the Administrator shall determine whether to qualify the test method under this section. The Administrator shall qualify the test method if all materials required under this section are received and the test method meets the accuracy and precision criteria of paragraph (b) of this section.

(ii) If the Administrator denies approval of the test method, within 90 days of receipt of all materials required to be submitted under this section, the Administrator will notify the applicant of the reasons for not approving the method. If the Administrator does not notify the applicant within 90 days of receipt of the application, that the test method is not approved, then the test method shall be deemed approved.

(iii) If the Administrator finds that an individual test facility has provided false or inaccurate information under this section, upon notice from the Administrator, the qualification shall be void *ab initio*.

(iv) The qualification of any test method under this paragraph (c) shall be valid for the duration of the period

during which the fuel marker requirements remain applicable under this subpart.

(d) *Quality control procedures for fuel marker measurement instrumentation.* A test shall not be considered a test using a qualified test method unless the following quality control procedures are performed separately for each instrument used to make measurements:

(1) Follow all mandatory provisions of ASTM D 6299-02 and construct control charts from the mandatory quality control testing prescribed in paragraph 7.1 of the reference method, following guidelines under A 1.5.1 for individual observation charts and A 1.5.2 for moving range charts. The Director of the Federal Register approved the incorporation by reference of ASTM D 6299-02, Standard Practice for Applying Statistical Quality Assurance Techniques to Evaluate Analytical Measurement System Performance, as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may purchase copies of this standard from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) Follow paragraph 7.3.1 of ASTM D 6299-02 to check standards using a reference material at least monthly or following any major change to the laboratory equipment or test procedure. Any deviation from the accepted reference value of a check standard greater than 0.10 milligrams per liter must be investigated.

(3) Samples of tested batches must be retained for 30 days or the period equal to the interval between quality control sample tests, whichever is longer.

(4) Upon discovery of any quality control testing violation of paragraph A 1.5.1.3 or A 1.5.2.1 of ASTM D 6299-02,

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or any check standard deviation greater than 0.10 milligrams per liter, conduct an investigation into the cause of such violation or deviation and, after restoring method performance to statistical control, retest retained samples from batches originally tested since the last satisfactory quality control material or check standard testing occasion.

(5) Retain results of quality control testing and retesting of retained samples under paragraph (d)(3) of this section for five years.

[69 FR 39185, June 29, 2004]

§ 80.583 What alternative sampling and testing requirements apply to importers who transport motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel by truck or rail car?

Importers who import diesel fuel subject to the 15 ppm sulfur standard under § 80.510(b) or (c) or 80.520(a) into the United States by truck or by rail car may comply with the following requirements instead of the requirements to sample and test each batch of fuel designated as subject to the 15 ppm sulfur standard under § 80.581 otherwise applicable to importers:

(a) *Terminal testing.* For purposes of determining compliance with the 15 ppm sulfur standard, the importer may use test results for sulfur content testing conducted by the foreign truck-loading or rail car-loading terminal operator for diesel fuel contained in the storage tank from which trucks or rail cars used to transport diesel fuel designated as subject to the 15 ppm sulfur content standard into the United States are loaded, provided the following conditions are met:

(1) The sampling and testing shall be performed after each receipt of diesel fuel into the storage tank, or immediately before each transfer of diesel fuel to the importer's truck or rail car.

(2) The sampling and testing shall be performed according to § 80.580.

(3) At the time of each transfer of diesel fuel to the importer's truck or rail car for import to the U.S., the importer must obtain a copy of the terminal test result that indicates the sulfur content of the truck or rail car

load, or truck or rail car compartment load, as applicable.

(b) *Quality assurance program.* The importer must conduct a quality assurance program, as specified in this paragraph (b), for each truck or rail car loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading or rail car loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in § 80.580.

(3) The frequency of the quality assurance sampling and testing must be at least one sample for each 50 of an importer's trucks or rail cars that are loaded at a terminal, or one sample per month, whichever is more frequent.

(c) *Party required to conduct quality assurance testing.* The quality assurance program under paragraph (b) of this section shall be conducted by the importer. In the alternative, this testing may be conducted by an independent laboratory that meets the criteria under § 80.65(f)(2)(iii), provided the importer receives copies of all results of tests conducted no later than 21 days after the sample was taken.

(d) *Alternative batch designations.* For purposes of maintaining batch records under §§ 80.592, 80.600, and 80.602, designation of batches under § 80.598, and reporting under §§ 80.593, 80.601, and 80.604:

(1) In lieu of treating each portion of a tank truck compartment delivered to a different facility as a different batch, a truck importer may treat each compartment as a batch, if all the fuel in the compartment is delivered only to retail outlets, wholesale purchaser-consumers or other end users. Where different compartments contain homogeneous product of identical designations, the total volume of those compartments may be treated as a single batch, if the entire volume is delivered only to retail outlets, wholesale purchaser-consumers or other ultimate consumers.

(2) Each portion of a rail car (or rail cars) delivery of a different designation

or each delivery to a different facility is considered to be a separate batch.

(e) *EPA inspections of terminals.* EPA inspectors or auditors must be given full and immediate access to the truck or rail car-loading terminal and any laboratory at which samples of diesel fuel collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect diesel fuel samples and perform audits. These inspections or audits may be either announced or unannounced.

(f) *Certified DFR-Diesel.* This section does not apply to Certified DFR-Diesel as defined in § 80.620.

(g) *Effect of noncompliance.* If any of the requirements of this section are not met, all motor vehicle diesel fuel and NRLM diesel fuel imported by the truck or rail car importer during the time the requirements are not met is deemed in violation of the 15 ppm sulfur diesel fuel standards in § 80.510(b) or (c) or § 80.520(a), as applicable. Additionally, if any requirement is not met, EPA may notify the importer of the violation, and, if the requirement is not fulfilled within 10 days of notification, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.581.

[69 FR 39186, June 29, 2004, as amended at 75 FR 22971, Apr. 30, 2010]

§ 80.584 What are the precision and accuracy criteria for approval of test methods for determining the sulfur content of motor vehicle diesel fuel, NRLM diesel fuel, and ECA marine fuel?

(a) *Precision.* (1) For motor vehicle diesel fuel and diesel fuel additives subject to the 15 ppm sulfur standard of § 80.520(a)(1) and NRLM diesel fuel and diesel fuel additives subject to the 15 ppm sulfur standard of § 80.510(b) and (c), a standard deviation less than 0.72 ppm, computed from the results of a minimum of 20 repeat tests made over 20 days on samples taken from a single homogeneous commercially available diesel fuel with a sulfur content in the range of 5–15 ppm. The 20 results must be a series of tests with a sequential record of the analyses and no omissions. A laboratory facility may exclude a given sample or test result only

if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(2) For motor vehicle diesel fuel subject to the 500 ppm sulfur standard of § 80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a), of a standard deviation less than 9.68 ppm, computed from the results of a minimum of 20 repeat tests made over 20 days on samples taken from a single homogeneous commercially available diesel fuel with a sulfur content in the range of 200–500 ppm. The 20 results must be a series of tests with a sequential record of the analyses and no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(3) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), of a standard deviation less than 18.07 ppm, computed from the results of a minimum of 20 repeat tests made over 20 days on samples taken from a single homogeneous commercially available diesel fuel with a sulfur content in the range of 700–1,000 ppm. The 20 results must be a series of tests with a sequential record of the analyses and no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(b) *Accuracy.* (1) For motor vehicle diesel fuel and diesel fuel additives subject to the 15 ppm sulfur standard of § 80.520(a)(1) and NRLM diesel fuel and diesel fuel additives subject to the 15 ppm sulfur standard of § 80.510(b) and (c):

(i) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 1–10 ppm sulfur shall not differ from the accepted reference value (ARV) of that standard by more than 0.54 ppm sulfur;

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(ii) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 10–20 ppm sulfur shall not differ from the ARV of that standard by more than 0.54 ppm sulfur; and

(iii) In applying the tests of paragraphs (b)(1)(i) and (ii) of this section, individual test results shall be compensated for any known chemical interferences.

(2) For motor vehicle diesel fuel subject to the 500 ppm sulfur standard of § 80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a):

(i) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 100–200 ppm sulfur shall not differ from the ARV of that standard by more than 7.26 ppm sulfur;

(ii) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 400–500 ppm sulfur shall not differ from the ARV of that standard by more than 7.26 ppm sulfur; and

(iii) In applying the tests of paragraphs (b)(2)(i) and (ii) of this section, individual test results shall be compensated for any known chemical interferences.

(3) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k):

(i) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 300–400 ppm sulfur shall not differ from the ARV of that standard by more than 13.55 ppm sulfur;

(ii) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 900–1,000 ppm sulfur shall not differ from the ARV of that standard by more than 13.55 ppm sulfur; and

(iii) In applying the tests of paragraphs (b)(3)(i) and (ii) of this section, individual test results shall be com-

pensated for any known chemical interferences.

[69 FR 39187, June 29, 2004, as amended at 75 FR 22971, Apr. 30, 2010]

§ 80.585 What is the process for approval of a test method for determining the sulfur content of diesel or ECA marine fuel?

(a) *Approval of test methods approved by voluntary consensus-based standards bodies.* For such a method to be approved, the following information must be submitted to the Administrator by each test facility for each test method that it wishes to have approved: Any test method approved by a voluntary consensus-based standards body, such as the American Society for Testing and Materials (ASTM) or International Standards Organization (ISO), shall be approved as a test method for determining the sulfur content of diesel fuel if it meets the applicable accuracy and precision criteria under § 80.584. The approval of a test method is limited to the single test facility that performed the testing for accuracy and precision. The individual facility must submit the accuracy and precision results for each method, including information on the date and time of each test measurement used to demonstrate precision, following procedures established by the Administrator.

(b) *Approval of test methods not approved by a voluntary consensus-based standards body.* For such a method to be approved, the following information must be submitted to the Administrator by each test facility for each test method that it wishes to have approved:

(1) Full test method documentation, including a description of the technology and/or instrumentation that makes the method functional.

(2) Information demonstrating that the test method meets the applicable accuracy and precision criteria of § 80.584, including information on the date and time of each test measurement used to demonstrate precision.

(3) If requested by the Administrator, test results from use of the method to analyze samples of commercially available fuel provided by EPA.

(4) Any additional information requested by the Administrator and necessary to render a decision as to approval of the test method.

(c) *Sample retention.* Samples used for precision and accuracy determination must be retained for 90 days.

(d) *EPA approval.* (1) Within 90 days of receipt of all materials required to be submitted under paragraph (a) or (b) of this section, the Administrator shall determine whether the test method is approved under this section.

(2) If the Administrator denies approval of the test method, within 90 days of receipt of all materials required to be submitted under paragraph (a) or (b) of this section, the Administrator will notify the applicant of the reasons for not approving the method. If the Administrator does not notify the applicant within 90 days of receipt of the application, that the test method is not approved, then the test method shall be deemed approved.

(3) If the Administrator finds that an individual test facility has provided false or inaccurate information under this section, upon notice from the Administrator the approval shall be void *ab initio*.

(4) The approval of any test method under paragraph (b) of this section shall be valid for five years from the date of approval by the Administrator and shall not be extended. If the method is later approved by a voluntary consensus-based standards body, the approval shall remain valid as long as the conditions of paragraph (a) of this section are met.

(e) *Quality assurance procedures for sulfur measurement instrumentation.* A test shall not be considered a test using an approved test method unless the following quality control procedures are performed separately for each instrument used to make measurements:

(1) Follow all mandatory provisions of ASTM D 6299-02 and construct control charts from the mandatory quality control testing prescribed in paragraph 7.1 of the reference method, following guidelines under A 1.5.1 for individual observation charts and A 1.5.2 for moving range charts. The Director of the Federal Register approved the incorporation by reference of ASTM D 6299-02,

Standard Practice for Applying Statistical Quality Assurance Techniques to Evaluate Analytical Measurement System Performance, as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may purchase copies of this standard from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) Follow paragraph 7.3.1 of ASTM D 6299-02 to check standards using a reference material at least monthly or following any major change to the laboratory equipment or test procedure. Any deviation from the accepted reference value of a check standard greater than 1.44 ppm (for diesel fuel subject to the 15 ppm sulfur standard), 19.36 ppm (for diesel fuel subject to the 500 ppm sulfur standard), or 36.14 ppm (for ECA marine fuel subject to the 1,000 ppm sulfur standard) must be investigated.

(3) Samples of tested batches must be retained for 30 days or the period equal to the interval between quality control sample tests, whichever is longer.

(4) Upon discovery of any quality control testing violation of paragraph A 1.5.1.3 or A 1.5.2.1 of ASTM D 6299-02, or any check standard deviation greater than 1.44 ppm (for diesel fuel subject to the 15 ppm sulfur standard), 19.36 ppm (for diesel fuel subject to the 500 ppm sulfur standard), or 36.14 ppm (for ECA marine fuel subject to the 1,000 ppm sulfur standard), conduct an investigation into the cause of such violation or deviation and, after restoring method performance to statistical control, retest retained samples from batches originally tested since the last satisfactory quality control material or check standard testing occasion.

[69 FR 39187, June 29, 2004, as amended at 75 FR 22972, Apr. 30, 2010]

§ 80.586 What are the record retention requirements for test methods approved under this subpart?

Each individual test facility must retain records related to the establishment of accuracy and precision values, all test method documentation, and any quality control testing and analysis under §§ 80.582, 80.584 and 80.585, for five years.

[69 FR 39188, June 29, 2004]

§§ 80.587–80.589 [Reserved]

RECORDKEEPING AND REPORTING
REQUIREMENTS

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

(a) This paragraph (a) applies on each occasion that any person transfers custody or title to MVNRLM diesel fuel, heating oil, or ECA marine fuel (including distillates used or intended to be used as MVNRLM diesel fuel, heating oil, or ECA marine fuel) except when such fuel is dispensed into motor vehicles or nonroad equipment, locomotives, marine diesel engines or C3 vessels. Note that 40 CFR part 1043 specifies requirements for documenting fuel transfers to certain marine vessels. For all fuel transfers subject to this paragraph (a), the transferor must provide to the transferee documents which include the following information:

- (1) The names and addresses of the transferor and transferee.
- (2) The volume of diesel fuel or distillate which is being transferred.
- (3) The location of the diesel fuel or distillate at the time of the transfer.
- (4) The date of the transfer.
- (5) For transfers of MVNRLM diesel fuel or ECA marine fuel (beginning June 1, 2014), the sulfur content standard the transferor represents the fuel to meet.
- (6) Beginning June 1, 2006, when an entity, from a facility at any point in the distribution system, transfers custody of a distillate or residual fuel designated under § 80.598, the following information must also be included:

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

(ii) An accurate and clear statement of the applicable designation and/or classification under § 80.598(a) and (b), for example, “500 ppm sulfur NRLM diesel fuel”, or “jet fuel”; and whether the fuel is dyed or undyed, and for heating oil, whether marked or unmarked where applicable.

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

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

(ii) *Dyed 15 ppm sulfur diesel fuel.* From June 1, 2006 and beyond, “15 ppm sulfur (maximum) Dyed Ultra-Low Sulfur Diesel Fuel. For use in all nonroad diesel engines. Not for use in highway vehicles or engines except for tax-exempt use in accordance with section 4082 of the Internal Revenue Code.”

(iii) *Undyed 500 ppm sulfur diesel fuel.* From June 1, 2006 through September 30, 2010, “500 ppm sulfur (maximum) Undyed Low Sulfur Diesel Fuel. For use in Model Year 2006 and older diesel highway vehicles and engines. Also for use in nonroad, locomotive, and marine diesel engines. Not for use in model year 2007 and newer highway vehicles or engines.”

(iv) *Dyed 500 ppm sulfur diesel fuel.* (A) For the period of June 1, 2006 through September 30, 2010, “500 ppm sulfur (maximum) Dyed Low Sulfur Nonroad, Locomotive or Marine Diesel Fuel. Not for use in highway vehicles or engines