

investigation conducted into the reasons for this anomalous performance. We also propose that refiners and importers would be required to retain batch samples for a limited amount of time. For example, a retain period could be equal to the interval between QC sample tests. If an instrument was found to be out of control, we propose that all of the retained samples since the last time the instrument was shown to be in control would have to be retested. We seek comment on alternative ways to handle situations in which a method goes out of control at some unknown point in time between check standard tests or between QC sample tests.

(4) QC records, including investigations under item 3 above would be required to be retained for five years and to be provided to the Agency upon request.

#### b. Requirements To Conduct Fuel Sulfur Testing.

Given the importance of assuring that nonroad diesel fuel designated to meet the 15 ppm sulfur standard in fact meets that standard, we are proposing that refiners and importers must test each batch of nonroad diesel fuel designated to meet the 15 ppm sulfur standard and to maintain records of such testing. Requiring that refiners and importers test each batch of fuel subject to the 15 ppm nonroad standard would assure that compliance could be confirmed through testing records, and even more importantly, would assure that nonroad diesel fuel exceeding the 15 ppm standard was not introduced into commerce as fuel for use in nonroad equipment having sulfur-sensitive emission control devices. Batch testing is currently not required under the highway diesel rule, and instead such testing is typically performed to establish a defense to potential liability. However, for the same reasons discussed above, we propose to extend this batch testing requirement to 15 ppm sulfur highway diesel fuel beginning in 2006.

We are not proposing to require downstream parties to conduct every-batch testing. However, we believe most downstream parties would voluntarily conduct "periodic" sampling and testing for quality assurance purposes if they wanted to establish a defense to presumptive liability, as discussed in VIII.G below.

#### 2. Two Part-Per-Million Downstream Sulfur Measurement Adjustment

We believe that it would be appropriate to recognize sulfur test variability in determining compliance with the proposed nonroad diesel fuel

sulfur standard downstream of a refinery or import facility. Thus, we propose that for all 15 ppm sulfur nonroad diesel fuel at locations downstream of the refinery or import facility, sulfur test results could be adjusted by subtracting two ppm. The sole purpose of this downstream compliance provision is to address test variability concerns. We anticipate that the reproducibility of sulfur test methods is likely to improve to two ppm or even less by the time the 15 ppm sulfur standard for highway diesel fuel is implemented—four years before implementation date of the proposed 15 ppm standard for nonroad diesel fuel. With this provision, we anticipate that refiners would be able to produce diesel fuel with an average sulfur level of approximately 7–8 ppm and some contamination could occur throughout the distribution system, without fear of causing a downstream violation due solely to test variability. As test methods improve in the future, we propose to reevaluate whether two ppm is the appropriate allowance for purposes of this compliance provision.

#### 3. Sampling Requirements

This proposed rule would adopt the same sampling methods adopted by the highway diesel rule (66 FR 5002, January 18, 2001). The requirement to use these methods would be effective for nonroad diesel fuel June 1, 2007. These same methods were also adopted for use in the Tier 2/Gasoline Sulfur rule.<sup>333</sup> These sampling methods are American Society for Testing and Materials (ASTM) D 4057–95 (manual sampling) and D 4177–95 (automatic sampling from pipelines/in-line blending).

#### 4. Alternative Sampling and Testing Requirements for Importers of Diesel Fuel Who Transport Diesel Fuel By Tanker Truck

We understand that importers who transport diesel fuel into the U.S. by tanker truck are frequently relatively small businesses that could be subject to a substantial burden if they were required to sample and test each batch of nonroad or highway diesel fuel imported by truck, especially where a trucker imports many small loads of diesel fuel. Therefore, we are proposing that truck importers could comply with an alternative sampling and testing requirement, involving a sampling and testing program of the foreign truck loading terminal, if certain conditions

were met. For an importer to be eligible for the alternative sampling and testing requirement, the terminal would have to conduct sampling and testing of the nonroad or highway diesel fuel immediately after each receipt into its terminal storage tank or immediately before loading product into the importer's tanker truck storage compartments. Moreover, the importer would be required to allow EPA to conduct periodic quality assurance testing of the terminal's diesel fuel, and the importer would be required to assure that EPA would be allowed to make unannounced inspections and audits, to sample and test fuel at the foreign terminal facility, to assure that the terminal maintained sampling and testing records, and to submit such records to EPA upon request. We request comment on this proposal.

#### E. Fuel Marker Test Method

As discussed in section IV.B.2.a.i above, we propose the use of solvent yellow 124 to differentiate diesel fuel intended for different uses. This marker is currently used in Europe. However, there is currently no test procedure recognized by the European Union to quantify the presence of the solvent yellow 124 in distillate fuels. The most commonly accepted method used in the European Union is based on the chemical extraction of the Euromarker using hydrochloric acid solution and cyclohexane, and the subsequent evaluation of the extract using a visual spectrometer to determine the concentration of the marker.<sup>334</sup> This test is inexpensive and easy to use for field inspections. However, the test involves reagents that require some safety precautions and the small amount of fuel required in the test must be disposed of as hazardous waste. Nevertheless, we believe that such safety concerns are manageable here in the U.S. just as they are in Europe and that the small amount of waste generated can be handled along with other similar waste generated by the company conducting the test, and that the associated effort/costs would be negligible.

Similar to the approach proposed regarding the measurement of fuel sulfur content discussed in Section VIII.D. above, we are proposing a performance-based procedure to measure the concentration of solvent yellow 124 in distillate fuel. Section VIII.D above describes our rationale for

<sup>333</sup> 65 FR 6833–34 (Feb. 10, 2000). These methods are also proposed for use under the RFG and CG rules. See 62 FR 37337 *et seq.* (July 11, 1997).

<sup>334</sup> Memorandum to the docket entitled "Use of a Visible Spectrometer Based Test Method in Detecting the Presence and Determining the Concentration of Solvent Yellow 124 in Diesel Fuel."