

to produce test results establishing that the blended fuel was in compliance with the 15 ppm sulfur standard after being blended with the high sulfur additive. This additional defense element would be required as an added safeguard to ensure nonroad diesel fuel compliance, since the blender has voluntarily chosen to use an additive which increases the risk of diesel fuel non-compliance.

H. How Would Compliance With the Sulfur Standards Be Determined?

EPA is today proposing that compliance with the diesel sulfur standards would be determined based on the sulfur level of the diesel fuel, as measured using a testing methodology approved under the provisions discussed in Section VIII.D of this preamble. We further propose that any evidence from any source or location could be used to establish the diesel fuel sulfur level, provided that such evidence is relevant to whether the level would have been in compliance if the regulatory sampling and testing methodology had been correctly performed. This is consistent with the approach taken under the gasoline sulfur rule and the highway diesel sulfur rule.

The proposed regulations would provide that the primary determinant of compliance with the sulfur standards would be use of an approved test method. Additionally, other information could be used under the proposed rule, including test results using a non-approved method, if the evidence is relevant to determining whether the sulfur level would meet applicable standards had compliance been determined using an approved test methodology. While the use of such a non-approved method might produce results relevant to determining sulfur content, this would not remove any liability for failing to conduct required batch testing using an approved test method.

For example, the Agency might not have sulfur results derived from an approved test method for diesel fuel sold by a terminal, yet the terminal's own test results, based on testing using methods other than those approved under the regulations, could reliably show an exceedance of the sulfur standard. Under this proposed rule, evidence from the non-approved test method could be used to establish the diesel fuel's sulfur level that would have resulted if an approved test method had been conducted. This type of evidence is available for use by either the EPA or the regulated party, and could be used to show either

compliance or noncompliance.

Similarly, absent the existence of sulfur test results using an approved method, commercial documents asserting the sulfur level of diesel fuel or additive could be used as some evidence of what the sulfur level of the fuel would be if the product would have been tested using an approved method.

The Agency believes that the same statutory authority for EPA to adopt the gasoline sulfur rule's evidentiary provisions, Clean Air Act section 211(c), provides appropriate authority for our proposal of the evidentiary provisions of today's diesel sulfur rule. For a fuller explanation of this statutory authority, see Section VI(I) of the gasoline sulfur final rule preamble, 65 FR 6815, February 10, 2000.

IX. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How and to Whom Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the air quality goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section IX.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "Quick Search," and then key in Docket ID No. OAR-2003-0012. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail

Comments may be sent by electronic mail (e-mail) to nrt4@epa.gov, Attention Docket ID No. A-2001-28. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.