

REGULATORY COMPLIANCE ALERT

August 15, 2030

EPA Final Rule on Fuel Programs Affects Product Transfer Documents

BACKGROUND: The Environmental Protection Agency has issued a final rule streamlining its fuels programs and revising its Product Transfer Documents for fuel sellers. [85 Fed. Reg. 78412](#) (December 4, 2020).

Although the rule became effective on January 1, 2021, the ***revised requirements for PTDs become effective May 1, 2021***; voluntary compliance with the PTD revisions is authorized as of January 1, however.

The final rule does not make any changes to the sulfur or cetane/aromatics standards for diesel fuel, the sulfur standards for diesel fuel additives, or the ECA marine fuel standards. But the EPA has removed expired provisions that were needed to support the phase-in of the current diesel fuel sulfur program, which was completed in 2014. The final rule establishes a new 40 CFR Part 1090 that consolidates identical provisions for highway and other diesel fuels into a single regulatory requirement to improve clarity.

The EPA rule also removes the requirement that motor vehicle diesel fuel be free of red dye because the agency believes this requirement is no longer necessary to evaluate compliance with the diesel sulfur standards. Note that this change does not alter the Internal Revenue Code requirement that non-road, locomotive, and marine (NRLM) diesel fuel, heating oil, and exempt motor vehicle diesel fuel must contain red dye before leaving a fuel distribution terminal to indicate its tax-exempt status.

The EPA stated that because the vast majority of heating is also currently subject to a 15 ppm sulfur standard, the agency believes that the requirement that red dye should not be present in motor vehicle diesel fuel “no longer provides any meaningful added assurance of compliance with [Ultra Low Sulfur Diesel] standards.”

The final rule allows heating oil, kerosene, and jet fuel certified to ULSD standards to be redesignated downstream as ULSD for use in motor vehicles and NRLM engines without recertification by the downstream party if certain conditions are met. The downstream parties may rely on documentation from pipelines or fuel manufacturers that the heating oil, kerosene, or jet fuel was certified to meet the 15 ppm sulfur standard and cetane/aromatics specifications to fungibly transport, store, and dispense all 15 ppm sulfur distillate fuels downstream. EPA is also allowing ULSD to be used as heating oil, kerosene, jet fuel, or ECA marine fuel without recertification as long as records are kept demonstrating that the ULSD had been redesignated.

But redesignating ULSD for use in motor vehicles and NRLM engines, however, will require companies to register as obligated parties under the Renewable Fuels Standards and meet blending, recordkeeping and reporting requirements as if they were refiners or terminal operators.

The final rule asserts the new 40 CFR Part 1090 mostly consolidates the various PTD language requirements throughout the current Part 80 into a single, consistent section to help bring uniformity to the PTD language across fuels, fuel additives, and regulated parties. This action removes PTD language that is no longer needed and provides standard, updated language to address a variety of common products and situations. The rule also makes some minor modifications from the Part 80 requirements, however.

For example, the rule clarifies the requirement for listing exempt fuels on PTDs. Also, where PTD requirements may conflict with other federal, state, or local PTD or identification requirements and fuels, fuel additives, or regulated blendstocks could be identified with contradictory language that makes it

difficult for parties in the fuel distribution system to comply with all requirements, the new rule adds flexibilities for parties to seek approval for alternative PTD language for all PTD language requirements.

Recordkeeping requirements (including for PTDs) will not change under the new rule.

The PTD requirements are contained in a new 40 CFR Part 1090 Subpart L. The new 40 CFR 1090.1100 provides the general requirements for PTD language:

§1090.1100 General requirements.

(a) General provisions.

(1) On each occasion when any person transfers custody or title to any product covered under this part, other than when fuel is sold or dispensed to the ultimate end user at a retail outlet or WPC facility, the transferor must provide the transferee PTDs that include the following information:

- (i) The name and address of the transferor.*
- (ii) The name and address of the transferee.*
- (iii) The volume of the product being transferred.*
- (iv) The location of the product at the time of the transfer.*
- (v) The date of the transfer.*

(2) The specific designations required for gasoline-related products specified in §1090.1010 or distillate-related products specified in §1090.1015.

(b) Use of codes. Except for transfers to a truck carrier, retailer, or WPC, product codes may be used to convey the information required under this subpart, if such codes are clearly understood by each transferee.

(c) Part 80 PTD requirements. For fuel, fuel additive, or regulated blendstock subject to 40 CFR part 80, subpart M, a party must also include the applicable PTD information required under 40 CFR 80.1453.

In addition, a new 40 CFR 1090.1115 contains language for PTD requirements for distillate and residual fuels:

§1090.1115 PTD requirements for distillate and residual fuels.

(a) On each occasion when any person transfers custody or title of any distillate or residual fuel, other than when fuel is sold or dispensed to the ultimate end user at a retail outlet or WPC facility, the transferor must provide the transferee PTDs that include the following information:

(1) The sulfur per-gallon standard that the transferor represents the fuel to meet under subpart D of this part (e.g., 15 ppm sulfur for ULSD or 1,000 ppm sulfur for ECA marine fuel).

(2) An accurate and clear statement of the applicable designation(s) of the fuel under § 1090.1015 (e.g., “ULSD”, “500 ppm LM diesel fuel”, or “ECA marine fuel”).

(3) If the fuel does not meet the sulfur standard in § 1090.305(b) for ULSD, the following statement: “Not for use in highway vehicles or engines or nonroad, locomotive, or marine engines.”

(b) 500 ppm LM diesel fuel language requirements. For batches of 500 ppm LM diesel fuel, in addition to the information required under paragraph (a) of this section, PTDs must include the following information:

(1) *The following statement: “500 ppm sulfur (maximum) LM diesel fuel. For use only in accordance with a compliance plan under 40 CFR 1090.515(g). Not for use in highway vehicles or other nonroad vehicles and engines.”*

(2) *[Reserved]*

(c) *ECA marine fuel language requirements. For batches of ECA marine fuel, in addition to the information required under paragraph (a) of this section, PTDs must include the following information:*

(1) *The following statement: “1,000 ppm sulfur (maximum) ECA marine fuel. For use in Category 3 marine vessels only. Not for use in Category 1 or Category 2 marine vessels.”*

(2) *A party may replace the required statement in paragraph (c)(1) of this section with the following statement for qualifying vessels under 40 CFR part 1043: “High sulfur fuel. For use only in ships as allowed by MARPOL Annex VI, Regulation 3 or Regulation 4.”*

(3) *Under 40 CFR 1043.80, a fuel supplier (i.e., the person who transfers custody or title of marine fuel onto a vessel) must provide bunker delivery notes to vessel operators. (d) Distillate global marine fuel language requirements. For batches of distillate global marine fuel, in addition to the information required under paragraph (a) of this section, PTDs must include the following information:*

(1) *The following statement: “5,000 ppm sulfur (maximum) Distillate Global Marine Fuel. For use only in steamships or Category 3 marine vessels outside of an Emission Control Area (ECA), consistent with MARPOL Annex VI.”*

Sample Product Transfer Document/Delivery Ticket Language

With these regulatory changes, you might need to change the language on your delivery tickets and other product transfer documents. Any new EPA-required language is in addition to the requirements for product descriptions under the U.S. Department of Transportation regulations for shipping papers. Also, please note the following:

- The EPA notification language does not require disclosure of sulfur content for heating oil as the Clean Air Act does not give the EPA specific authority to regulate heating oil. The sulfur content of all other distillates must be disclosed.
- The U.S. DOT hazardous materials product description and hazard communication language is required for all shipping papers, but not on delivery tickets generated for home delivery.
- The U.S. DOT and EPA language notice requirements cannot be changed. They must appear in the exact order and wording provided below.
- The U.S. DOT shipping paper requirements mandate that the “UN” or “NA” number appear first in the language string.
- The list does not include any PTD or delivery ticket language that individual states may require. The language below is based on federal requirements and may not superseded or changed by any state requirements.

I. 15-ppm Heating Oil

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: “NA 1993, Fuel Oil (No. 2), 3, PG III”

EPA PTD Language Requirement: *"Heating Oil; Not for use in highway vehicles or engines or nonroad, locomotive, or marine engines."*

II. 15-ppm Dyed Diesel Fuel

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"NA 1993, Diesel Fuel, 3, PG III"*

EPA PTD Language Requirement: *"15-ppm sulfur dyed ULSD. Nonroad or tax-exempt use only."*

III. 15-ppm Diesel Fuel (Clear)

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"NA 1993, Diesel Fuel, 3, PG III"*

EPA PTD Language Requirement: *"15-ppm sulfur ULSD"*

IV. 15-ppm Kerosene; On-Road Use (Clear)

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"UN 1223, Kerosene, 3, PG III"*

EPA PTD Language Requirement: *"15-ppm sulfur ULSK"*

V. 15-ppm Kerosene; Off-Road Use (Dyed)

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"UN 1223, Kerosene, 3, PG III"*

EPA PTD Language Requirement: *"15-ppm sulfur ULSK; Nonroad or tax-exempt use only."*

VI. Heating Kerosene (Dyed)

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"UN 1223, Kerosene, 3, PG III"*

EPA PTD Language Requirement: *"Dyed Kerosene; not for use in highway vehicles or engines or nonroad, locomotive, or marine engines."*

VII. Heating Kerosene (Clear)

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"UN 1223, Kerosene, 3, PG III"*

EPA PTD Language Requirement: *"15-ppm sulfur ULSK"*

VIII. ECA Marine Fuel

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"NA 1993, Flammable Liquid, n.o.s (Fuel Oil), 3, PG III"*

EPA PTD Language Requirement: *"1,000 ppm sulfur (maximum) ECA marine fuel. For use in Category 3 marine vessels only. Not for use in Category 1 or Category 2 marine vessels."*

IX. Gasoline

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"UN 1203, Gasoline includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol, 3, PG II"*

EPA PTD Language Requirement: (a) Statement of the applicable designation of the gasoline under 40 CFR § 1090.1010;¹ (b) for BOB, a statement of each oxygenate and amount; there are separate requirements for summer BOB; (c) for RFG and CG, you must also indicate the proper RVP standard; and (d) for ethanol blends, indicate the ethanol content. See 40 CFR § 1090.1010 for specifics.

X. Propane

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: *"Petroleum gases, liquefied or Liquefied petroleum gas, UN 1075 or UN 1978, 2.1"*
EPA PTD Language Requirement: None.

XI. B100

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: None
EPA PTD Language Requirement: See Dyed or Clear Diesel Fuel in II. or III., above

XII. B99

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: None
EPA PTD Language Requirement: See Dyed or Clear Diesel Fuel in II. or III., above

XIII. B20

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: None
EPA PTD Language Requirement: See Dyed or Clear Diesel Fuel in II. or III., above

XIV. B10

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: None
EPA PTD Language Requirement: See Dyed or Clear Diesel Fuel in II. or III., above

XV. BXX

U.S. DOT Hazardous Materials PTD Language Requirement for Shipping Papers: None
EPA PTD Language Requirement: See Dyed or Clear Diesel Fuel in II. or III., above

Recordkeeping. Copies of PTDs must be maintained for a period of five years for any transfer for which the party is the transferor or transferee.

Enforcement Penalties. Failure or refusal to permit access to or copying of records or failure to make PTDs or provide information required under this regulation may result in a fine of up to \$25,000. In addition, each day may constitute a new violation. But in reality, such substantial penalties are reserved for the most egregious violations.

Questions? NEFI Regulatory Counsel Contact Rick Schweitzer NEFI Regulatory Counsel at regulations@nefi.com

¹ The options are: (i) Winter RFG; (ii) Summer RFG; (iii) Winter RBOB; (iv) Summer RBOB; (v) Winter CG; (vi) Summer CG; (vii) Winter CBOB; (viii) Summer CBOB; (ix) Exempt gasoline under subpart G of this part (including additional identifying information); (x) California gasoline. In addition, other redesignations may be available to distributors for certain gasoline products. See 40 CFR 1090.1010(b). Distributors may rely on the designations made by manufacturers.