



REGULATORY ALERT

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EPA FINAL RULE INCREASES DISTILLATE FUNGIBILITY BY REMOVING REGULATORY BARRIERS TO DOWNSTREAM REDESIGNATION OF 15 PPM ULSD

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Heating fuel dealers are about to get much needed regulatory relief from the EPA that will increase downstream fuel distribution efficiency and reduce costs by making distillate fuels more fungible. The agency's final [Fuels Regulatory Streamlining](#) rule includes several regulatory relief provisions that affect the heating fuel industry as well as downstream marketers of diesel fuel, jet fuel, kerosene and locomotive and marine fuel. EMA (formerly PMAA) successfully advocated for all the heating fuel and distillate regulatory relief provisions in [written comments](#) and testimony submitted to the EPA during the rulemaking process earlier this year.

I. DOWNSTREAM REDESIGNATION OF ULSD DISTILLATES

Under the new rule, any batch of distillate fuel that is certified and designated as ULSD by upstream manufacturers may be redesignated by downstream distributors as heating oil, kerosene, ECA marine fuel, jet fuel, or distillate global marine fuel if it is also *suitable* for such use.

Before the new rulemaking, heating fuel dealers could not redesignate 15-ppm heating oil to 15-ppm diesel fuel without triggering onerous sampling, testing and reporting requirements meant for terminal operators and refiners. Downstream redesignation was largely limited to designating 15-ppm diesel fuel as 15-ppm heating fuel.

A. Distillates That May Be Redesignated Downstream

The new rule allows downstream distributors to redesignate distillate fuel without manufacturer recertification as follows:

(i) ULSD Suitable for Use as Kerosene or Jet Fuel - Commonly referred to as dual use kerosene, may be designated as ULSD, kerosene, or jet fuel (as applicable).

(ii) ULSD Diesel Fuel - May be redesignated as 500-ppm locomotive/marine (LM) diesel fuel, heating oil, kerosene, emission control area (ECA) marine fuel, jet fuel, or distillate global marine fuel without manufacturer recertification.

(iii) Heating Oil, Kerosene, ECA Marine Fuel, or Jet Fuel - May be redesignated as ULSD diesel if the fuel meets required ULSD standard specifications (15-ppm or less sulfur content, minimum cetane index of 40, maximum aromatic content of 35 volume percent) and was designated on the product transfer document (PTD) as ULSD by the manufacturer.

(iv) 500-ppm Locomotive and Marine Diesel Fuel - May be redesignated as ECA marine fuel, distillate global marine fuel, or heating oil. Any person that redesignates 500-ppm LM diesel fuel to ECA marine fuel or distillate global marine fuel must maintain records from the producer of the 500-ppm LM diesel fuel (i.e., PTDs accompanying the fuel) to demonstrate compliance with the 500-ppm sulfur standard.

B. Product Transfer Document Requirements

In order to redesignate ULSD distillates downstream, product transfer documents generated by the refiner or terminal operator **must indicate** the distillates were manufactured to ULSD standards, including cetane and aromatic specifications (15-ppm or less sulfur content, minimum cetane index of 40, maximum aromatic content of 35 volume percent).

II. HEATING OIL DISPENSER LABELS

The new rule replaces the current heating fuel dispenser label for use by retailers and/or wholesale purchaser consumers.

(i) The minimum sulfur content on the current heating oil dispenser label is 500-ppm. Since most heating oil is now 15-ppm, the new label drops sulfur content information altogether. Heating oil dispenser labels must now read:

“HEATING OIL

WARNING

Federal law prohibits use in highway vehicles or engines,

or in nonroad, locomotive, or marine diesel engines.

Its use may damage these diesel engines.”

(ii) The label content must be in block letters of no less than 24-point bold type, printed in a color contrasting with the background.

(iii) The new labels are not required until existing dispenser labels require replacement due to fading, cracking, etc.

III. REMOVAL OF EPA RED DYE REQUIREMENT

The new rule removes the red dye provision for high sulfur distillates designed to prevent use in on-road diesel engines. The red dye requirement has become obsolete now that all distillates other than locomotive and marine meet the 15-ppm sulfur content standard.

IMPORTANT! *The IRS red dye requirement for nontaxable fuel remains in place, limiting the redesignation of heating oil to ULSD diesel fuel for non-road non-taxable uses and on-road use by state and local government entities.*

IV. EFFECTIVE DATE OF NEW PROVISIONS

The new provisions described above are effective ***January 1, 2021***.