



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2012-0223; FRL 9733-3]

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard and Diesel Sulfur Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is issuing this direct final rule to amend the definition of heating oil in the Renewable Fuel Standard (“RFS” or “RFS2”) program under section 211(o) of the Clean Air Act. This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (RINs) as heating oil to include fuel oil produced from qualifying renewable biomass that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. Fuel oils used to generate process heat, power, or other functions will not be included in the amended definition. Producers or importers of fuel oil that meets the amended definition of heating oil will be allowed to generate RINs, provided that the fuel oil meets the other requirements specified in the RFS regulations. This amendment will not modify or limit fuel included in the current definition of heating oil. EPA is also amending the requirements under EPA’s diesel sulfur program related to the sulfur content of locomotive and marine diesel fuel produced by transmix processors. These amendments will allow locomotive and marine diesel fuel produced by transmix processors to meet a

maximum 500 parts per million (ppm) sulfur standard provided that; the fuel is used in older technology locomotive and marine engines that do not require 15 ppm sulfur diesel fuel, the fuel is used outside of the Northeast Mid-Atlantic Area, and the fuel is kept segregated from other fuel. These amendments will provide significant regulatory relief for transmix processors while having a neutral or net positive environmental impact. EPA is also amending the fuel marker requirements for 500 ppm sulfur locomotive and marine (LM) diesel fuel to address an oversight in the original rulemaking where the regulations failed to incorporate provisions described in the rulemaking preamble to allow for solvent yellow 124 marker to transition out of the distribution system.

DATES: This rule is effective on [**insert date 60 days after the date of publication in the Federal Register**] without further notice, unless EPA receives adverse comment or a public hearing request by [**insert date 30 days after the date of publication in the Federal Register**]. If EPA receives a timely adverse comment or a hearing request on the rule or any specific portion of this rule, we will publish a withdrawal of the rule or a specific portion of the rule in the *Federal Register* informing the public that the rule or portions of the rule with adverse comment will not take effect. If a public hearing is requested, we will publish a notice in the *Federal Register* announcing the date and location of the hearing at least 14 days prior to the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0223, by of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov, Attention Air and Radiation Docket ID EPA-HQ-OAR-2012-0223.

- Fax: 731-214-4051.
- Mail: Air and Radiation Docket, Docket No. EPA-HQ-OAR-2012-0223, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery: EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460, Attention Air and Radiation Docket, ID No. EPA-HQ-OAR-2012-0223. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0223. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Kristien Knapp, Office of Transportation and Air Quality, Mail Code: 6405J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, 20460; telephone number: (202) 343-9949; fax number: (202) 343-2800; email address: knapp.kristien@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose

EPA is issuing a direct final rule to amend provisions in the renewable fuel standard (RFS) and diesel sulfur fuel programs. The RFS amendment changes the definition of home heating oil, and the diesel sulfur amendments provide additional flexibility for transmix processors who produce locomotive and marine diesel fuel, and allow solvent yellow 124 marker to transition out of the distribution system. EPA is taking this action under section 211 of the Clean Air Act.

B. Summary of Today's Rule

Amended Definition of Home Heating Oil

This rule amends the definition of heating oil in 40 CFR § 80.1401 in the renewable fuel standard (“RFS” or “RFS2”) program promulgated under section 211(o) of the Clean Air Act (CAA). This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (“RINs”) as “home heating oil” to include fuel oil that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This rule will allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met. Fuel oils used to generate process heat, power, or other functions will not be approved for RIN generation under the amended definition of heating oil. The amendment will not modify, limit, or change fuel included in the current definition of heating oil at 40 CFR § 80.2(ccc).

Diesel Transmix Amendments

The diesel transmix amendments will reinstate an allowance for transmix processors to produce 500 ppm sulfur diesel fuel for use in older technology locomotive

and marine diesel outside of the Northeast Mid-Atlantic Area after 2014. EPA's ocean-going vessels rule forbade this allowance beginning 2014 because a new stream of diesel, containing up to 1000 ppm sulfur, was introduced at that time, which we believed would provide a suitable outlet for transmix distillate product. Transmix processors stated that they were not aware of the changes to the 500-ppm LM transmix provisions until after they were finalized, and that the ocean-going vessels market would not be a viable outlet for their distillate product. Based on additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition, EPA believed that it would be appropriate to extend the 500-ppm diesel transmix flexibility beyond 2014. EPA finalized a settlement agreement and this DFR and NPRM are in accord with the settlement agreement. Our analysis indicates that extending this flexibility beyond 2014 will have a neutral or net beneficial effect on overall emissions.

Yellow Marker Amendments

The yellow marker amendments address an oversight in the original nonroad diesel rulemaking. In that rulemaking, the regulations failed to incorporate provisions described in the rulemaking preamble. The preamble made clear that EPA intended to allow 500 ppm locomotive marine (LM) diesel fuel containing greater than 0.10 milligrams per liter of Solvent Yellow 124 (SY124) time to transition out of the fuel distribution system. However, the regulations are not consistent with the preamble and did not provide this same allowance.

Specifically, the regulations as currently written do not provide any transition time for unmarked LM fuel delivered from a truck loading rack beginning June 1, 2012 to

work its way through the fuel distribution system downstream of the truck loading rack. The yellow marker amendments will allow 500 ppm LM diesel fuel at any point in the fuel distribution and end use system to contain more than 0.10 milligrams per liter of SY 124 through November 30, 2012. This regulatory change will allow marked LM diesel fuel to transition normally through the LM fuel distribution and use system. Today's rule also amends the regulation to clarify the transition of the solvent yellow 124 marker out of heating oil beginning June 1, 2014. After December 1, 2014, EPA will no longer have any requirements with respect to the use of the SY 124 marker.

C. Costs and Benefits

These three sets of amendments attempt to provide new opportunities for RIN generation under the RFS program and necessary flexibilities and transition periods for those affected by EPA's transmix and marker requirements. Therefore, EPA believes that these amendments will impose no new direct costs or burdens on regulated entities beyond the minimal costs associated with reporting and recordkeeping requirements. At the same time, EPA does not believe that any of these amendments will adversely impact emissions.

II. Why is EPA Issuing a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because this may be viewed as a noncontroversial action that would not receive adverse comment. However, in the "Proposed Rules" section of today's *Federal Register*, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments or a hearing request are filed on the rule or any portion of the rule.¹

¹ The proposed rule contains all aspects of this direct final rule and seeks comments. Additionally, this document also requests comments on one issue that is not included in the direct final rule: whether the

We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

III. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production, distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel, as well as those involved with the production, distribution and sale of other fuel oils that are not transportation fuel.

Regulated categories and entities affected by this action include:

Category	NAICS Codes ^a	SIC Codes ^b	Examples of Potentially Regulated Parties
Industry	324110	2911	Petroleum refiners, importers.
Industry	325193	2869	Ethyl alcohol manufacturers.
Industry	325199	2869	Other basic organic chemical manufacturers.
Industry	Various	Various	Transmix Processors
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

^aNorth American Industry Classification System (NAICS).

^bStandard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities

amendments to the requirements for locomotive and marine diesel fuel produced by transmix processors should be extended to fuel used inside the Northeast Mid-Atlantic Area.

that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding “FOR FURTHER INFORMATION CONTACT” section above.

IV. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting information claimed as CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree. Suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Docket Copying Costs. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

V. Amendments under the Renewable Fuel Standard Program

A. Amended Definition of Heating Oil

EPA is issuing a direct final rule to amend the definition of heating oil in 40 CFR § 80.1401 in the renewable fuel standard (“RFS” or “RFS2”) program promulgated under section 211(o) of the Clean Air Act (CAA).² This amendment will expand the scope of renewable fuels that can generate Renewable Identification Numbers (“RINs”) as home heating oil to include fuel oil that will be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. This rule will

² The Energy Independence and Security Act (EISA) of 2007 amended section 211(o) of the Clean Air Act (CAA), which was originally added by the Energy Policy Act (EPAAct) of 2005.

allow producers or importers of fuel oil that meets the amended definition of heating oil to generate RINs, provided that other requirements specified in the regulations are met. Fuel oils used to generate process heat, power, or other functions will not be approved for RIN generation under the amended definition of heating oil, as these fuels are not within the scope of “home heating oil” as that term is used in the Energy Independence and Security Act of 2007 (“EISA”), for the RFS program. The amendment will not modify or limit fuel included in the current definition of heating oil at 40 CFR § 80.2(ccc).

The RFS program requires the production and use of renewable fuel to replace or reduce the quantity of fossil fuel present in transportation fuel. Under EPA’s RFS program this is accomplished by providing for the generation of RINs by producers or importers of qualified renewable fuel. RINs are transferred to the producers or importers of gasoline and diesel transportation fuel who then use the RINs to demonstrate compliance with their renewable fuel volume obligations. RINs also serve the function of credits under the RFS program.

Congress provided that EPA could also establish provisions for the generation of credits by producers of certain renewable fuel that was not used in transportation fuel, called “additional renewable fuel.”³ Additional renewable fuel is defined as fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.⁴ In essence, additional renewable fuel has to meet all of the requirements applicable to qualify it as renewable fuel under the regulations, with the only difference being that it is blended into or is home heating oil or

³ “EISA changed the definition of ‘renewable fuel’ to require that it be made from feedstocks that qualify as ‘renewable biomass.’ EISA’s definition of the term ‘renewable biomass’ limits the types of biomass as well as the types of land from which the biomass may be harvested.” Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 FR 14670, 14681 (March 26, 2010).

⁴ See CAA sections 211(o)(1)(A) and (o)(5)(E).

jet fuel. This does not change the volume requirements of the statute itself, however this can provide an important additional avenue for parties to generate RINs for use by obligated parties, thus promoting the overall cost-effective production and use of renewable fuels.

EPA addressed the provision for additional renewable fuels in the RFS2 rulemaking, specifically addressing the category of “home heating oil.” EPA determined that this term was ambiguous, and defined it by incorporating the existing definition of heating oil at 40 CFR § 80.2(ccc). EPA stated that:

EISA uses the term “home heating oil” in the definition of “additional renewable fuel.” The statute does not clarify whether the term should be interpreted to refer only to heating oil actually used in homes, or to all fuel of a type that can be used in homes. We note that the term ‘home heating oil’ is typically used in industry in the latter manner, to refer to a type of fuel, rather than a particular use of it, and the term is typically used interchangeably in industry with heating oil, heating fuel, home heating fuel, and other terms depending on the region and market. We believe this broad interpretation based on typical industry usage best serves the goals and purposes of the statute. If EPA interpreted the term to apply only to heating oil actually used in homes, we would necessarily require tracking of individual gallons from production through ultimate [use] in homes in order to determine eligibility of the fuel for RINs. Given the fungible nature of the oil delivery market, this would likely be sufficiently difficult and potentially expensive so as to discourage the generation of RINs for renewable fuels used as home heating oil. This problem would be similar to that which arose under RFS1 for certain renewable fuels (in particular biodiesel) that were produced for the highway diesel market but were also suitable for other markets such as heating oil and non-road applications where it was unclear at the time of fuel production (when RINs are typically generated under the RFS program) whether the fuel would ultimately be eligible to generate RINs. Congress eliminated the complexity with regards to non-road applications in RFS2 by making all fuels used in both motor vehicle and nonroad applications subject to the renewable fuel standard program. We believe it best to interpret the Act so as to also avoid this type of complexity in the heating oil context. Thus, under today’s regulations, RINs may be generated for renewable fuel used as “heating oil,” as defined in existing EPA regulations at §80.2(ccc). In addition to simplifying implementation and administration of the Act, this

interpretation will best realize the intent of EISA to reduce or replace the use of fossil fuels.⁵

The existing definition of heating oil at 40 CFR § 80.2(ccc) means “any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, stationary diesel engines, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, or similar trade names, and that is not jet fuel, kerosene, or [Motor Vehicle, Non-Road, Locomotive and Marine (MVNRLM)] diesel fuel.” The existing definition of non-petroleum diesel at 40 CFR § 80.2(sss) means a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats. Thus, in order to generate RINs for home heating oil that is a non-petroleum diesel blend, the fuel must contain at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, as well as meeting all other requirements of the RFS2 regulations. Since the promulgation of the RFS2 final rule, we have received a number of requests from producers to consider expanding the scope of the home heating oil provision to include additional fuel oils that are produced from qualifying renewable biomass but do not meet the regulatory definition of heating oil because they are not #1 or #2 diesel and do not contain at least 80 percent mono-alkyl esters. Parties raising this issue have suggested that limiting “home heating oil” to the fuel types defined in 40 CFR § 80.2(ccc) disqualifies certain types of renewable fuel oils that could be used for home heating and that this limitation does not align with our reasoning in the preamble to take a broad interpretation of the term “home heating oil” in CAA section 211(o).

⁵ 75 FR 14670, 14687 (March 26, 2010).

EPA has considered this issue further and is revising the definition of heating oil in the RFS2 program to expand the scope of fuels that can generate RINs as heating oil. EPA is revising the definition such that RINs also may be generated by renewable fuel that is fuel oil and is used to heat interior spaces of homes or buildings to control ambient climate for human comfort. This will not include fuel oils used to generate process heat, power, or other functions. The fuel oil must be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. The fuel oil must only be used in heating applications, where the sole purpose of the fuel's use is for heating and not for any other combined use such as process energy use. We are amending the existing definition of heating oil in 40 CFR § 80.1401 to include fuel oils that are used in this way. This is in addition to the fuel oils currently included in the definition of heating oil at 40 CFR § 80.2(ccc), and will not modify or limit the fuel included in the current definition.

EPA believes this expansion of the scope of the home heating oil provision is appropriate and authorized under CAA section 211(o). As EPA described in the RFS2 final rule, Congress did not define the term “home heating oil,” and it does not have a fixed or definite commercial meaning. In the RFS2 final rulemaking, EPA focused on whether the provision was limited to heating oil actually used in homes. EPA noted that the term home heating oil is usually used in the industry to refer to one type of fuel, and not to a specific use for the fuel. Given this more general usage of the term, and the practical barriers that would have arisen if the term was defined as fuel actually used to heat homes, EPA defined the scope of home heating oil in a more specific fashion by identifying those types of fuel oils that are typically used to heat homes. EPA determined

this was a reasonable interpretation of an ambiguous statutory provision that simplified implementation and administration of the Act and promoted achievement of the goals of the RFS program.

In the RFS2 rulemaking, EPA focused on the kinds of fuel oils that can be used to heat homes. The expansion of the definition adopted in this rulemaking will address two types of fuel oils not included in the current definition of heating oil. First, the amended definition will include additional fuel oils that are actually used to heat homes, even if they do not meet the current definition of heating oil. This is clearly within the scope of the statutory provision for home heating oil.

Second, the amended definition will include fuel oils that are used to heat facilities other than homes to control ambient climate for human comfort. Under the current definition of heating oil, a fuel oil meets the definition based on its physical properties and its use in furnaces, boilers, stationary diesel engines, and similar applications, not whether it is actually used to heat a home. The basic decision made in the RFS2 final rulemaking was to allow RIN generation for the group of fuel oils that are typically used for home heating purposes. Under the current definition the relationship of the fuel oil to heating homes is that the fuel oil is of the type that is typically used for and can be used for that purpose.⁶

In the amended definition, qualifying fuel oils will be used for heating places where people live, work, or recreate, and not just their homes. It focuses more on what is getting heated – people – and not where the people are located. EPA believes this is a reasonable interpretation of the phrase “home heating oil,” while recognizing that it is not

⁶ This is different from other renewable fuels in the RFS program, which are defined in terms of their use as transportation fuel or jet fuel. *See* 40 CFR § 80.1401, definitions of “renewable fuel” and “transportation fuel.”

an obvious interpretation. This interpretation recognizes the ambiguity of the phrase used by Congress, which is not defined and does not have a clear and definite commercial meaning. It gives reasonable meaning to the term home heating oil, by limiting the additional fuel oils to fuel oils when used for heating of facilities that people will occupy, and excluding fuel oils when used for other purposes such as generation of energy used in the manufacture of products. It also focuses on the aspect of home that is important here – the heating of people – recognizing that EPA has already determined that fuel oil can be included in the scope of home heating oil even if it is not actually used to heat a home. This interpretation will also promote the purposes of the EISA and the RFS program. It will promote the purposes of the EISA in that it will increase the production and use of renewable fuels by introducing new sources of fuel producers to the RFS program. It will specifically promote the RFS programmatic goals by facilitating the generation of RINs for renewable fuels that reduce emissions of greenhouse gases compared to fossil fuels. For example, EPA has received information from Envergent Technologies (alliance of Ensyn and UOP/Honeywell) that such an expanded definition of heating oil would result in nearly immediate production of 3.5 million gallons from their existing facilities, with an additional projected production of up to 45 million gallons per year within 24 months following regulatory action. Based on this information from Envergent Technologies, application of the expanded definition of heating oil to the entire industry would result in the production of many more million additional gallons of renewable fuel.

B. Lifecycle Greenhouse Gas Assessment of the Amended Definition of Heating Oil

EPA has also evaluated whether any revisions will need to be made to Table 1 to 40 CFR § 80.1426 that lists the applicable D codes for each fuel pathway for use in

generating RINs in the RFS2 regulations in light of the additional fuel oils included in the expanded definition of heating oil. As discussed below, EPA has determined that the applicable D code entries for heating oil in Table 1 to 40 CFR § 80.1426 will continue to be appropriate and will not need to be revised in light of the expanded definition of heating oil.

Under the RFS program, EPA must assess lifecycle greenhouse gas (GHG) emissions to determine which fuel pathways meet the GHG reduction thresholds for the four required renewable fuel categories. The RFS program requires a 20% reduction in lifecycle GHG emissions for conventional renewable fuel (except for grandfathered facilities and volumes), a 50% reduction for biomass-based diesel or advanced biofuel, and a 60% reduction for cellulosic biofuel. For the final RFS2 rule, EPA assessed the lifecycle greenhouse gas emissions of multiple renewable fuel pathways and classified pathways based on these GHG thresholds, as compared to the EISA statutory baseline.⁷ In addition, EPA has added several pathways since the final rule was published. Expanding the definition of heating oil does not affect these prior analyses.

The fuel pathways consist of fuel type, feedstock, and production process requirements. GHG emissions are assessed at all points throughout the lifecycle pathway. For instance, emissions associated with sowing and harvesting of feedstocks and in the production, distribution and use of the renewable fuel are examples of what are accounted for in the GHG assessment. A full accounting of emissions is then compared with the petroleum baseline emissions for the transportation fuel being replaced. The lifecycle GHG emissions determination is one factor used to determine compliance with the regulations.

⁷ See Table 1 to 40 CFR § 80.1426.

There are currently several fuel pathways that list heating oil as a fuel type with various types of feedstock and production processes used, qualifying the heating oil pathways as either biomass-based diesel, advanced, or cellulosic. The determinations for these different pathways were based on the current definition of heating oil. The pathways also include several types of distillate product including diesel fuel, jet fuel and heating oil.

The lifecycle calculations and threshold determinations are based on the GHG emissions associated with production of the fuel and processing of the feedstock. Converting biomass feedstocks such as triglycerides (if oils are used as feedstock) or hemi-cellulose, cellulose, lignin, starches, etc. (if solid biomass feedstock is used) into heating oil products and can be accomplished through either a biochemical or thermochemical process converting those molecules into a fuel product. The existing heating oil pathways were based on the current definition of the fuel, and were based on a certain level of processing to produce #1, #2, or a non-petroleum diesel blend and the related energy use and GHG emissions that were part of the lifecycle determination for those fuel pathways.

The main difference between the current definition of heating oil, which refers to #1, #2, or a non-petroleum diesel blend, and the expanded definition adopted in this rulemaking is that the expanded definition will include heavier types of fuel oil with larger molecules. Based on the type of conversion process, producing these heavier fuel oil products versus the #1, #2, or a non-petroleum diesel blend will affect the amount of energy used and therefore the GHG emissions from the process. There are two main paths for producing a fuel oil product from biomass. In one the biomass is converted into

a biocrude which is further refined into lighter products. In this case producing a heavier fuel oil product will require less processing energy and have lower GHG emissions than converting the same feedstock into a #1, #2, or non-petroleum diesel blend.

In the other type of process the compounds in the biomass are changed into a set of intermediary products, such as hydrogen (H) and carbon monoxide (CO).⁸ These compounds are then either catalytically or biochemically converted into the fuel product. In this case, the vast majority of the energy is associated with breaking down the feedstock into the set of intermediary compounds. The process used and the energy needed for it does not vary based on the type of fuel that is then produced from these intermediary compounds. The type of fuel could affect the type of catalyst or biological process used to change the intermediary compounds into the fuel product, but based on EPA calculations and assessments developed as part of the RFS2 rulemaking,⁹ this will have no real impact on the energy used or the GHG emissions associated with converting the biomass into a different fuel product.

Based on these considerations, EPA believes the GHG emissions associated with producing the fuel oil included in the expanded definition will be the same or lower than the GHG emissions associated with producing #1, #2, or non-petroleum diesel blend. Therefore, EPA believes the prior life cycle analysis for heating oil support applying the existing pathways for fuel oil in the RFS2 regulations to the expanded definition of heating oil. Once the regulatory change to the definition of “heating oil” is final, all of

⁸ This describes the Fischer-Tropsch process. Other processes rely on forming different sets of compounds from the biomass, and then producing the fuel product from the set of compounds.

⁹ “Regulation of Fuel and Fuel Additives; Changes to Renewable Fuel Standard Program,” 75 FR 14670, available at <http://www.gpo.gov/fdsys/pkg/FR-2010-03-26/pdf/2010-3851.pdf>. See also, EPA’s summary factsheet, “EPA Lifecycle Analysis of Greenhouse Gas Emissions from Renewable Fuels,” available at <http://www.epa.gov/otaq/renewablefuels/420f10006.pdf>.

the pathways currently applicable to heating oil under Table 1 to 40 CFR § 80.1426 would apply to the expanded definition of heating oil.

C. Additional Registration, Reporting, Product Transfer Document, and Recordkeeping Requirements

1. Additional Requirements for the Amended Definition of Heating Oil

An important issue to address is how to implement such an expanded definition. As EPA recognized in the RFS2 rulemaking, fuel oils end up being used in a variety of different uses, where the fuel producer may have little knowledge at the time of production as to eventual use of the fuel. This is especially the case where the fuel oil is distributed in a fungible distribution system. EPA addressed this in the RFS2 rulemaking by defining home heating oil as a type of fuel with certain characteristics, irrespective of where it was used. This approach avoided the need to track the fuel to its actual use, and including the characteristics of the fuel in its definition in 40 CFR § 80.1401, was adequate to retain a close tie to the concept underlying home heating oil.

The expansion of the definition raises this same issue but in a more significant way. While the expansion of the definition includes some limited physical characteristics that fuels oils will need to meet in order to qualify for generating RINs, it does not provide sufficient specificity to differentiate between those fuels oils used to heat buildings for climate control for human comfort and those used to generate process heat or other purposes. Therefore, for eligible fuel oils other than those qualifying under the existing definition in 40 CFR § 80.2(ccc), EPA is requiring that the renewable fuel producer or importer have adequate documentation to demonstrate that the fuel oil

volume for which RINs were generated was used to heat buildings for climate control for human comfort and meets the expanded definition of heating oil prior to generating RINs.

EPA recognizes that under the current definition of heating oil no tracking or other documentation of end use is required, and some heating oils that meet the current definition could end up being used for other purposes. However, in all cases the heating oil under the current definition has to have the physical or other characteristics that tie it to the type of fuel oil used to heat homes. In addition, because these fuel oils will qualify to generate RINs under the RFS program, it will likely lead to their use for heating of buildings, and not for generation of process heat. For the fuel oils included in the expanded definition, the tie to home heating oil will not be the physical characteristics of the fuel oil but instead its actual usage for heating for the purposes of climate control for human comfort.

In order to verify that the fuel oils are actually used to generate heat for climate control purposes, EPA is adopting the following registration, recordkeeping, product transfer document (PTD) and reporting requirements. These requirements will not apply to fuels qualifying under the existing 40 CFR § 80.2(ccc) of the regulations. If RINs are generated for fuel oils under the expansion of the scope of home heating oil in today's rule, and those fuel oils are designated for but not actually used to generate heat for climate control purposes, but for some other purpose, all parties involved in either the generation, assignment, transfer or use of that RIN, including the end user of that fuel oil, are subject to and liable for violations of the RFS2 regulations and the CAA.

a. Registration

For the purpose of registration, EPA is allowing the producer of the expanded fuel oil types to establish their facility's baseline volume in the same manner as all other producers under the RFS program, e.g., based on the facility's permitted capacity or actual peak capacity. Additionally though, we are requiring producers of the expanded fuel oil types to submit affidavits in support of their registration, including a statement that the fuel will be used for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose. We also require that producers submit secondary affidavits from the existing end users to verify that the fuel is actually being used for a qualifying purpose. We are also adopting new reporting, product transfer documents (PTD), and recordkeeping requirements discussed below that will be used as a means for verification that the qualifying fuel is being used in an approved application. These requirements are necessary to assure confidence that the fuel used to generate RINs is actually used for a qualifying purpose because these types of fuel have not previously been used as heating oil, and are not readily identifiable by their physical characteristics. Without such safeguards, EPA could not be confident that the fuel is used as heating oil, and end users might not have adequate notice that the fuel must be used as heating oil. EPA believes these requirements will place a small burden on producers and end users, and greatly benefit the integrity of the program.

b. Reporting, Product Transfer Documents and Recordkeeping Requirements

For the purpose of continued verification after registration, EPA is adopting additional requirements for reporting in § 80.1451(b)(1)(ii)(T), PTDs in § 80.1453(d), and recordkeeping in 40 CFR § 80.1454(b), for the expanded fuel oil types.

The reporting, PTD, and recordkeeping requirements will help ensure that the expanded fuel oil types that are used to generate RINs are actually used in a qualifying application. For reporting, producers are required to file quarterly reports with EPA that identify certain information about the volume of fuel oil produced and used as heating oil. The additional reporting requirements stipulate that the producer of fuel oils submit affidavits to EPA reporting the total quantity of the fuel oils produced, the total quantity of the fuel oils sold to end users, and the total quantity of fuel oils sold to end users for which RINs were generated. Additionally, affidavits from each end user must be obtained by the producer and reported to EPA, describing the total quantity of fuel oils received from the producer, the total amount of fuel oil used for qualifying purposes, the date the fuel oil was received from the producer, the blend level of the fuel oil, quantity of assigned RINs received with the renewable fuel, and quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.¹⁰ The additional product transfer document requirement associated with the expanded definition of heating oil is that a PTD must be prepared and maintained between the fuel oil producer and the final end user for the legal transfer of title or custody of a specific volume of fuel oil that is designated for use, and is actually used, only for the purpose of heating interior spaces of buildings to control ambient climate for human comfort. This additional PTD requirement requires that the PTD used to transfer ownership or custody of the renewable fuel must contain the statement: “This volume of renewable fuel is designated and intended to be used to heat interior spaces of homes or buildings to control ambient

¹⁰ EPA does not expect that the expanded definition of home heating oil will result in an obligation on home owners or small businesses. Based on our analysis of the market, qualifying fuel oil is expected to be used in large industrial settings or apartment buildings, not in individual homes. Therefore, EPA anticipates that the information it is requiring would be readily available and producible by these entities.

climate for human comfort. Do NOT use for process heat or any other purpose, pursuant to 40 CFR § 80.1460(g).” EPA believes that this PTD requirement will help to ensure that each gallon of fuel oil that is transferred from the producer to the end user is used for qualifying purposes under the expanded definition of heating oil. If the fuel oil is sent to the end user, but the fuel oil is not actually used to generate heat for climate control purposes, but for some other non-qualifying purpose, then the RINs that were generated for that fuel oil must be immediately retired and reported under 40 CFR § 80.1451. The additional recordkeeping requirement is that producers are required to keep copies of the contracts which describe the fuel oil under contract with each end user. Consistent with existing regulations, producers are required to maintain all documents and records submitted for registration, reporting, and PTDs as part of the producer’s recordkeeping requirements. EPA believes the producer’s maintenance of these records will allow for continued tracking and verification that the end use of the fuel oil is in compliance with the expanded definition of heating oil.

D. Additional Requirement for RIN Generation

We are also amending the regulatory text that describes the general requirements for how RINs are generated and assigned to batches of renewable fuel by renewable fuel producers and importers. This will explicitly clarify a requirement that always existed: that producers and importer of renewable fuel who generate RINs must comply with the registration requirements of 40 CFR § 80.1450, the reporting requirements of 40 CFR § 80.1451, the recordkeeping requirements of 40 CFR § 80.1454, and all other applicable regulations of this subpart M. This is a generally applicable requirement – not specific to fuel meeting the definition of home heating oil. *See* amended section 80.1426(a)(1)(iii).

VI. Amendments Related to Transmix

The final regulations for the nonroad diesel program were published in the *Federal Register* on June 24, 2004.¹¹ The provisions in the nonroad diesel rule related to transmix processors were modified by the Category 3 Marine diesel final rule that was published on April 30, 2010.¹² This action amends the requirements for diesel fuel produced by transmix processors. Below is a table listing the provisions that we are amending. The following sections provide a discussion of these amendments.

Proposed Amendments to the Diesel Program Section	Description
80.511(b)(4)	Amended to allow for the production and sale of 500 ppm locomotive and marine (LM) diesel fuel produced from transmix past 2014.
80.513 (entire section)	Amended to allow for the production and sale of 500 ppm LM diesel fuel produced from transmix past 2014.
80.572(d)	Amended to extend 500ppm LM diesel fuel label past 2012.
80.597(d)(3)(ii)	Amended to include 500 ppm LM diesel fuel in the list of fuels that an entity may deliver or receive custody of past June 1, 2014.

A. Extension of the Diesel Transmix Provisions Outside of the Northeast Mid-Atlantic Area and Alaska Beyond 2014

¹¹ 69 FR 38958 (June 24, 2004).

¹² 75 FR 22896 (April 30, 2010).

Batches of different fuel products commonly abut each other as they are shipped in sequence by pipeline. When the mixture between two adjacent products is not compatible with either product, it is removed from the pipeline and segregated as transmix. Transmix typically is gathered for reprocessing at the end of the fuel distribution system far from a refinery. In addition to the long transportation distances to return transmix to a refinery for reprocessing, incorporating transmix into a refinery's feed also presents technical and logistical refining process challenges that typically make refinery reprocessing an unattractive option. Thus, transmix processors provide a valuable service in maintaining an efficient fuel distribution system. Transmix processing facilities handle very low volumes of fuel compared to a refinery and hence are limited to the use of a simple distillation tower and additional blendstocks to manufacture finished fuels. There is currently no desulfurization equipment which has been demonstrated to be suitable for application at a transmix processor facility. The cost of installing and operating a currently available desulfurization unit is too high in relation to the small volume of distillate fuel produced at transmix processing facilities. Some products shipped by pipeline such as jet fuel and heating oil are subject to relatively high sulfur specifications (*e.g.*, maximum 3,000 ppm for jet fuel). The presence of such high sulfur products in multi-product pipelines and consequently in transmix constrains the ability of transmix processors to produce a low sulfur distillate product.

The engine emission standards finalized in the nonroad diesel rulemaking for new nonroad, locomotive, and Category 1 & 2 (C1 & C2) marine engines necessitates the use of sulfur-sensitive emissions control equipment which requires 15 ppm sulfur diesel

fuel to function properly.¹³ Accordingly, the nonroad rule required that nonroad, locomotive and marine (NRLM) diesel fuel must meet a 15 ppm sulfur standard in parallel with the introduction of new sulfur-sensitive emission control technology to NRLM equipment. Beginning June 1, 2014, the nonroad diesel rule required that all NRLM diesel fuel produced by refiners and importers must meet a 15 ppm sulfur standard. The nonroad diesel rule included special provisions to allow the continued use of 500 ppm sulfur locomotive and marine (LM) diesel fuel produced from transmix beyond 2014 in older technology engines as long as such engines remained in the in-use fleet. These provisions along with other now expired flexibilities in the diesel program were designed to minimize and postpone the impacts on transmix processors of transitioning to a condition where all highway, nonroad, locomotive, and marine diesel engines can only operate on 15 ppm diesel fuel.¹⁴ The 500 ppm LM diesel transmix provisions were limited to areas outside of the Northeast Mid-Atlantic Area (NEMA) and Alaska because it was judged that the heating oil market in these areas would provide a sufficient outlet for transmix distillate in these areas.¹⁵ Excluding the NEMA area and Alaska also allowed us to exempt the NEMA area and Alaska from the fuel marker

¹³ Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, Final Rule, 69 FR 38958 (June 24, 2004).

¹⁴ As discussed in the original nonroad diesel rulemaking, as LM equipment is retired from service, the market for 500 ppm LM will gradually diminish and eventually disappear. Given the long lifetime of LM equipment (in many cases 40 years or more), we anticipate that a market for 500 ppm LM will remain for a significant amount of time. This phase-out time will also allow transmix processors to transition to their >15ppm sulfur distillate product to other markets (C3 marine, heating oil, process heat). It may also allow sufficient time for the introduction of desulfurization equipment that is suitable for use at transmix processing facilities.

¹⁵ The NEMA area is defined in 40 CFR § 80.510(g)(1) as follows: (1) Northeast/Mid-Atlantic Area, which includes the following States and counties, through May 31, 2014: North Carolina, Virginia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Washington DC, New York (except for the counties of Chautauqua, Cattaraugus, and Allegany), Pennsylvania (except for the counties of Erie, Warren, McKean, Potter, Cameron, Elk, Jefferson, Clarion, Forest, Venango, Mercer, Crawford, Lawrence, Beaver, Washington, and Greene), and the eight eastern-most counties of West Virginia (Jefferson, Berkeley, Morgan, Hampshire, Mineral, Hardy, Grant, and Pendleton).

provisions that are a part of the compliance assurance regime. The continuation of the 500 ppm LM diesel transmix provisions beyond 2014 (finalized in the nonroad rule) was supported by ongoing recordkeeping, reporting, and fuel marker provisions that were established to facilitate enforcement during the phase in of the diesel sulfur program.¹⁶

In the development of the proposed requirements for Category 3 (C3) marine engines, EPA worked with industry to evaluate how the enforcement provisions for the new 1,000-ppm C3 marine diesel fuel to be introduced in June of 2014 could be incorporated into existing diesel program provisions.¹⁷ Our assessment based on input from industry at the time indicated that incorporating the new C3 marine fuel into the diesel program enforcement mechanisms while preserving the 500 ppm diesel transmix flexibility could not be accomplished without retaining significant existing burdens and introducing new burdens on a broad number of regulated parties. We also concluded that the new C3 marine diesel market would provide a sufficient outlet for transmix processors distillate product in place of the 500 ppm LM diesel market. Thus, we believed the 500 ppm LM diesel transmix flexibility would no longer be needed after 2014. Hence, we requested comment on whether we should eliminate the 500 ppm LM transmix provisions in parallel with the implementation of the C3 marine diesel sulfur requirement. This approach allowed for a significant reduction in the regulatory burden on a large number of industry stakeholders through the retirement of the diesel program's designate-and-track and fuel marker requirements. All of the comments that we received

¹⁶ This included the now-completed phase-in of 15 ppm highway diesel fuel and 15 ppm nonroad diesel fuel as well as the phase-out of the small refiner and credits provisions for LM diesel fuel that will be completed in 2014.

¹⁷ Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule, 74 FR 44442 (August 28, 2009).

on the proposed rule were supportive of the approach. Consequently, we finalized the approach in the C3 marine final rule that was published on April 30, 2010.¹⁸

EPA received a petition from a group of transmix processors on June 29, 2010, requesting that the Agency reconsider and reverse the 2014 sunset date for the 500 ppm LM transmix flexibility.¹⁹ A parallel petition for judicial review was filed with the U.S. Court of Appeals, D.C. Circuit.²⁰ The transmix processors stated that they were not aware of the changes to the 500 ppm LM transmix provisions until after they were finalized. The petitioners also stated that they believe that the C3 marine market would not be a viable outlet for their distillate product given the increased distribution costs compared to the 500 ppm LM market. Based on the additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition, EPA believes that while the increased costs for transportation of transmix distillate product could be accommodated, there is no compelling reason not to extend the 500 ppm diesel transmix flexibility beyond 2014 if such costs can be avoided or deferred without affecting the benefits from the diesel sulfur program. A settlement agreement has been finalized between EPA and the petitioners under which EPA would propose regulatory changes to reintroduce the 500 ppm LM

¹⁸ Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Final Rule, 75 FR 22896 (April 30, 2010).

¹⁹ “Petition to Reconsider Final Rule: Control of Emissions from New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder; Final Rule,” 75 FR 22,896 (April 30, 2010), Letter to EPA Administrator Lisa Jackson dated June 29, 2010, from Chet Thompson of Crowell and Moring LLP, on behalf of Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, Liquid Titan, LLC, and Seaport Refining and Environmental, LLC.

²⁰ Petition for Review, United States Court of Appeals for the District of Columbia Circuit, Petitioners, *Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, LiquidTitan, LLC, and Seaport Refining and Environmental LLC, v. Respondent*, U.S. Environmental Protection Agency, Case 10-1146, Document 1252640, Filed 06/29/2010.

transmix diesel flexibility for legacy LM equipment.²¹ The amendments to the diesel transmix provisions contained in today's action are in accord with the settlement agreement.

Our analysis indicates that extending the 500 ppm LM flexibility beyond 2014 would have a neutral or net beneficial effect on overall vehicle emissions. The use of 500 ppm LM from transmix would be limited to older technology engines that do not possess sulfur-sensitive emissions control technology. We believe that the 500 ppm LM segregation and other associated requirements would prevent misfueling of sulfur-sensitive engines.

To evaluate the environmental consequences of extending the diesel transmix provisions, we compared the potential increase in sulfate particulate matter (PM) from the use of 500 ppm LM from transmix in older engines to the additional transportation emissions associated with shipment to the Category 3 (C3) marine market which might be deferred by allowing continued access to the 500 ppm LM market. Markets for locomotive and marine diesel tend to be nearer to transmix processing facilities than markets for C3 marine diesel. Therefore, extending the diesel transmix provisions would result in a reduction in nitrogen oxides (NO_x), volatile organic compounds (VOCs), carbon monoxide (CO), as well as PM emissions that would otherwise be associated with transporting transmix distillate product to the more distant C3 market.

Although some batches of transmix distillate product may approach the 500 ppm sulfur limit, we estimate that the average sulfur content of transmix distillate product

²¹ Notice of Proposed Settlement Agreement; Request for Public Comment, 76 FR 56194 (September 12, 2011).

would be no more than 300 ppm.²² We estimate that approximately 500 million gallons of distillate fuel per year is produced from transmix.²³ Assuming that all of the transmix distillate product would be used as 500 ppm LM in older engines, we estimate that an additional 70 tons of sulfate PM would be produced annually compared to the use of 15 ppm diesel fuel.²⁴ We believe that a substantial fraction of transmix distillate product would be used as heating oil and C3 diesel fuel regardless of whether the diesel transmix provisions are extended. Also, as the older LM engines are retired from service, the size of the potential 500 ppm LM market will diminish until all LM engines must use 15 ppm diesel fuel. Therefore, assuming that all transmix distillate product would be used as 500 ppm LM provides an upper bound estimate of the potential impact on PM emissions.

We estimate on average that transmix processors would need to ship their transmix distillate product an additional 150 miles by tank truck to reach the C3 Emission Control Area (ECA) marine market as compared to the 500 ppm LM market.²⁵ This would result in an additional 80 tons of PM emissions annually. Thus, the PM emissions associated with transport to the C3 marine market are roughly equal to the increased sulfate PM emissions associated with the continued use of 500 ppm LM. We estimate that the increased transport distances could also result in an additional 2,200 tons of NO_x, 220 tons of VOC, and 650 tons of CO annually. Based on the above discussion, we believe that the extension of the 500 ppm LM provisions beyond 2014 outside the NEMA area and Alaska would have a neutral or net positive environmental impact.

²² This is based on our review of data on the sulfur levels of transmix distillate product from various transmix processors.

²³ Based on information provided by transmix processors, we estimate that approximately 750 million gallons per year of transmix is produced annually and that 2/3 of the transmix-derived product is distillate fuel and 1/3 is gasoline.

²⁴ Sulfate PM was converted to PM_{2.5} to allow a comparison with PM_{2.5} from increased fuel transport emissions.

²⁵ There is no ability to ship transmix distillate product to the C3 marine diesel market by pipeline.

The extension of the 500 ppm LM transmix flexibility would defer additional transportation costs and provide a lower-cost fuel for use in older LM engines for many years to come given that the useful life of LM engines can exceed 40 years.²⁶ Therefore, extending this flexibility would reduce the overall burden on industry of compliance with EPA's diesel sulfur program. Providing additional time for transmix processors to evaluate how the C3 ECA marine market will develop after 2014 would also facilitate a smoother transition for transmix processors from the 500 ppm LM market as it gradually disappears due to fleet turnover.

B. Revised Diesel Transmix Provisions

Industry stakeholders suggested alternative enforcement mechanisms to support the extended flexibility which would not necessitate reinstating and expanding the designate-and-track and fuel marker provisions that were retired by the C3 marine final rule. Reinstatement and expansion of these provisions would likely place an unacceptable burden on a large number of stakeholders, most of whom would not handle 500 ppm LM. The suggested alternative enforcement mechanism would impose minimal additional reporting and recordkeeping burdens only on the parties that produce, handle, and use 500 ppm LM. We believe that this alternative enforcement approach would meet the Agency's goals of ensuring that the pool of 500 ppm LM is limited to transmix distillate and that 500 ppm LM is not used in sulfur-sensitive emissions control equipment.

The compliance assurance provisions that we are using to support the extension of the diesel transmix flexibility are similar to those that were used to support the small

²⁶ In the 2011 edition of "Railroad Facts," the Association of American Railroads reported that in 2010 approximately 35% of the locomotive fleet was at least 21 years old.

refiner flexibilities in Alaska during the phase-in of EPA's diesel sulfur program.²⁷ In addition to registering as a refiner and certifying that each batch of fuel complies with the fuel quality requirements for 500 ppm LM diesel fuel, producers of 500 ppm transmix distillate product would be required to submit a compliance plan for approval by EPA. This compliance plan would provide details on how the 500 ppm LM would be segregated through to the ultimate consumer and its use limited to the legacy LM fleet. The plan would be required to identify the entities that would handle the fuel and the means of segregation. We believe that it is appropriate to limit the number of entities that would be allowed to handle the fuel between the producer and the ultimate consumer in order to facilitate EPA's compliance assurance activities.²⁸ Based on conversations with transmix processors, we believe that specifying that no more than 4 separate entities handle the fuel between the producer and the ultimate consumer would not hinder the ability to distribute the fuel.²⁹ The plan would need to identify the ultimate consumers and include information on how the product would be prevented from being used in sulfur-sensitive equipment.

We understand that some transmix processors currently rely on shipment by pipeline to reach the 500 ppm locomotive diesel market.³⁰ As a result, the regulations allow 500 ppm LM to be shipped by pipeline provided that it does not come into contact with distillate products that have a sulfur content greater than 15 ppm. The compliance

²⁷ See 40 CFR § 80.554(a)(4).

²⁸ An entity is defined as any company that takes custody of 500 ppm LM diesel fuel.

²⁹ In most cases, fewer entities would take custody of the product. In many cases, only a single entity (a tank truck operator) would be in the distribution chain between the transmix processor and the ultimate consumer. However, we understand that as many as 4 separate entities may handle the product between the producer and ultimate consumer if it is shipped by pipeline: the tank truck operator to ship the product from the producer to the pipeline, the pipeline operator, the product terminal that receives the fuel from the pipeline, and another tank truck operator to ship the product to the ultimate consumer from the terminal.

³⁰ 500 ppm LM diesel fuel is shipped by a short dedicated pipeline from a product terminal to a locomotive refueling facility.

plan would need to include information from the pipeline operator regarding how this segregation would be maintained. Discussions with transmix processors indicate that this requirement would not limit their ability to ship 500 ppm LM by pipeline. If 500 ppm LM was shipped by pipeline abutting 15 ppm diesel, the volume of 500 ppm LM delivered would likely be slightly greater than that which was introduced into the pipeline as a consequence of cutting the pipeline interface between the two fuel batches into the 500 ppm LM batch. This small increase in 500 ppm LM volume would be acceptable.

To provide an additional safeguard to ensure that volume of 500 ppm LM diesel fuel does not swell inappropriately, the volume increase during any single pipeline shipment must be limited to 2 volume percent or less. This limitation on volume swell to 2 volume percent or less is consistent with the limitation in 40 CFR § 80.599 (b)(5) regarding the allowed swell in volume during the shipment of highway diesel fuel for the purposes of the determination of compliance with the now expired volume balance requirements under 40 CFR § 80.598(b)(9)(vii)(B). Industry did not object to this requirement, and therefore, we believe that limiting the volume swell of 500 ppm LM diesel fuel during shipment by pipeline to 2 volume percent or less should provide sufficient flexibility.

Product transfer documents (PTDs) for 500 ppm LM diesel are required to indicate that the fuel must be distributed in compliance with the approved compliance assurance plan. Entities in the distribution chain for 500 ppm LM diesel fuel are required to keep records on the volumes of the 500 ppm that they receive from and deliver to each other entity. Based on input from fuel distributors, keeping these records will be a minimal additional burden, as discussed in section VIII.B. Such entities are also required

to keep records on how the fuel was transported and segregated. We would typically expect that the volumes of 500 ppm LM delivered would be equal to or less than those received unless shipment by pipeline occurred. Some minimal increase in 500 ppm LM volume would be acceptable due to differences in temperature between when the shipped and received volumes were measured and interface cuts during shipment by pipeline. Entities that handle 500 ppm LM are required to calculate a balance of 500 ppm LM received versus delivered/used on an annual basis. If the volume of fuel delivered/dispensed is greater than that received, EPA would expect that the records would indicate the cause. If an entity's evaluation of their receipts and deliveries of 500 ppm LM fuel indicated noncompliance with the product segregation requirements, the custodian would be required to notify EPA. All entities in the 500 ppm LM distribution chain are required to maintain the specified records for 5 years and provide them to EPA upon request.

VII. Amendments Related to the Marker Requirements for Locomotive and Marine Fuel

Today's rule amends the regulatory provisions regarding the transition in the fuel marker requirements for 500 ppm LM diesel fuel in 2012 to address an oversight in the original rulemaking where the regulations failed to incorporate provisions described in the rulemaking preamble. Today's rule also amends the regulatory provisions regarding the transition in the fuel marker requirements for heating oil in 2014 to provide improved clarity.

The preamble in the nonroad diesel final rule stated that EPA intended to allow 500 ppm LM diesel fuel containing greater than 0.10 milligrams per liter of solvent yellow 124 (SY124) to be present at any location in the fuel distribution system (up to

and including retail and wholesale-purchaser-consumer storage tanks) until September 30, 2012.³¹ Although it was not explicitly stated in the preamble, it was implied that additional time would be allowed for marked 500 ppm LM to transition from the fuel tanks connected to locomotive and marine engines, consistent with the approach taken regarding the implementation of more stringent diesel fuel sulfur standards. However, the nonroad diesel regulations are not consistent with the preamble and do not provide the allowance for marked 500 ppm LM diesel fuel to transition from fuel distribution and end-user tanks. 40 CFR § 80.510(e) requires that all 500 ppm LM diesel fuel delivered from a truck loading rack located outside of the Northeast Mid-Atlantic (NEMA) area and Alaska must contain at least 6 mg/liter of SY124 through May 31, 2012. However, the regulatory text at 40 CFR 80.510(f) requires that beginning June 1, 2012, any diesel fuel that contains 0.10 mg/liter of SY124 must be designated as heating oil. Thus, the regulations as currently written do not provide any transition time for marked LM fuel that is present in the distribution system as of May 31, 2012 to work its way through the fuel distribution system downstream of the truck loading rack and through the tanks connected to locomotive and marine engines.

A number of locomotive and marine wholesale purchaser-consumers have taken custody of marked 500 ppm LM diesel fuel that they will not be able to consume prior to June 1, 2012. A number of fuel suppliers also have inventories of 500 ppm LM diesel fuel on hand that they may not be able to sell to LM diesel fuel users because such users are concerned about clearing their tanks of marked LM diesel fuel by June 1, 2012. This new rule allows marked 500 ppm LM diesel fuel to transition normally through the fuel

³¹ “Control of Emissions for Air Pollution From Nonroad Diesel Engines and Fuel; Final Rule,” Section V.C.1.c., “The Period From June 1, 2012 Through May 31, 2014, 69 FR 39083, 39084 (June 29, 2004).

distribution and use system, consistent with the original intent of the nonroad diesel rule preamble. Today's rule allows 500 ppm LM diesel fuel at any point in the fuel distribution and end use system to contain more than 0.10 milligrams per liter of SY 124 through November 30, 2012.

We are implementing a single transition date applicable at all points in the fuel distribution and use system rather than a separate date applicable through retail and wholesale-purchaser-consumer (WPC) facilities and another date applicable at all locations including the tanks attached to locomotive and marine equipment because we believe that a stepped compliance schedule is not necessary and a single transition date provides the most flexibility for regulated parties. We expect that the marker will typically transition out of retailer and WPC LM diesel storage tanks well in advance of November 30, 2012. We further expect that users of LM diesel fuel can coordinate with retail and WPC facilities regarding deliveries of marked 500 ppm LM diesel fuel to ensure that the fuel in storage tanks attached to LM equipment is in compliance by November 30, 2012.

Today's rule also amends the regulation to clarify the transition of the solvent yellow 124 marker out of heating oil beginning June 1, 2014. Specifically, today's rule amends the regulations to clarify that after December 1, 2014, EPA will no longer have any requirements with respect to the use of the solvent yellow 124 marker. This is consistent with the intent expressed in our original nonroad diesel fuel rulemaking. We do not believe these changes will adversely impact emissions.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 CFR § 51735 (October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821 (January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this notice of proposed rulemaking and direct final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. § 3501 *et. seq.* The Information Collection Request (ICR) document prepared by EPA related to the amended heating oil definition has been assigned EPA ICR number 2462.01 and the ICR document prepared by EPA for diesel fuel produced by transmix producers has been assigned EPA ICR number 2463.01. Supporting statements for these proposed ICRs have been placed in the docket. The proposed information collections are described in the following paragraphs.

This action contains recordkeeping and reporting (registration and product transfer documentation) that may affect parties who produce or import renewable fuels subject to the revised definition of heating oil. EPA expects that very few parties will be subject to additional recordkeeping and reporting. We estimate that up to 11 parties (*i.e.*, RIN generators, consisting of up to 10 producers and one importer) may be subject to the proposed information collection over the next several years.³² We estimate an annual reporting burden of 21 hours per respondent and an annual recordkeeping burden of 24

³² We project that the number of effected parties will remain essentially constant over time.

hours, yielding a total per respondent burden of 45 hours.³³ Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR § 1320.3(b).

This action also contains provisions related to diesel fuel that is produced by transmix processors. We have proposed reporting requirements that would apply to transmix processors (all of whom are refiners) and other parties (such as carriers or distributors) in the distribution chain who handle diesel fuel produced by transmix producers. The collected data will permit EPA to: (1) Process compliance plans from transmix producers; and (2) Ensure that diesel fuel made from transmix meets the standards required under the regulations at 40 CFR Part 80, and that the associated benefits to human health and the environment are realized. We estimate that 25 transmix processors and 150 other parties may be subject to the proposed information collection.³⁴ We estimate an annual reporting burden of 28 hours per transmix processor (respondent) and 8 hours per other party (respondent); considering all respondents (transmix producers

³³ This includes the time to train staff, formulate and transmit responses, and other miscellaneous compliance related activities.

³⁴ This is based on current transmix production. Although the total volume of transmix produced in the fuel distribution system may decline in parallel with the projected decrease in overall petroleum-based fuel use, we anticipate that the number of transmix processors will remain essentially constant since their number is dependent on the configuration of the petroleum-based fuel distribution system.

and other parties) who would be subject to the proposed information collection, the annual reporting burden, per respondent, would be 11 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR § 1320.3(b).

The amendments to the fuel marker requirements for locomotive and marine diesel fuel in today's rule do not contain any new recordkeeping and reporting requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes the ICRs described above, under Docket ID number EPA-HQ-OAR-2012-0223. Submit any comments related to the ICR to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB

at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after **[Insert date of publication in the Federal Register.]**, a comment to OMB is best assured of having its full effect if OMB receives it by **[Insert date 30 days after publication in the Federal Register.]**.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR § 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any new requirements on small entities.

The amendments to the diesel transmix provisions would lessen the regulatory burden on all affected transmix processors and provide a source of lower cost locomotive and marine diesel fuel to consumers. The relatively minor corrections and modifications this rule do not impact small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of \$100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249 (November 9, 2000)). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS2 and diesel sulfur regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885 (April 23, 1997)) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this rule is not likely to have adverse energy effects because we do not anticipate adverse energy effects related to the additional generation of RINs for home heating oil or the reduced regulatory burden for transmix processors. This rule will facilitate the use of 500

ppm sulfur locomotive and marine (LM) diesel fuel, which contains the SY 124 marker that is already in the fuel distribution and use system consistent with EPA's original intent. Today's action will avoid the potential need to remove marked 500 ppm LM diesel fuel from the system for reprocessing, and the associated increased costs and potential disruption to the supply of LM diesel fuel.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. § 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These amendments will not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources. We have determined that proposed amendments to the diesel transmix provisions and marker provisions for locomotive and marine diesel fuel under the diesel sulfur program would have a neutral or positive impact on diesel vehicle emissions.³⁵

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801 *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. § 804(2).

IX. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. § 7545. Additional support for the procedural and compliance

³⁵ See section VI and VII of today’s notice for details of this analysis.

related aspects of today's rule, including the recordkeeping requirements, come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. §§ 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Transmix, Energy, Forest and Forest Products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: September 17, 2012.

Lisa P. Jackson, Administrator

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

Subpart I—[Amended]

2. Section 80.510 is amended by revising paragraph (f) to read as follows:

§ 80.510 What are the standards and marker requirements for NRLM diesel fuel and ECA marine fuel?

* * * * *

(f) Marking provisions. From June 1, 2012 through November 30, 2014:

- (1) Except as provided for in paragraph (i) of this section, prior to distribution from a truck loading terminal, all heating oil shall contain six milligrams per liter of marker solvent yellow 124 from June 1, 2012 through May 31, 2014.
- (2) All motor vehicle and NR diesel fuel shall be free of marker solvent yellow 124, and all LM diesel fuel shall be free of marker solvent yellow 124 beginning December 1, 2012.
- (3) From June 1, 2012 through November 30, 2012, any diesel fuel that contains greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 shall be deemed to be either heating oil or 500 ppm

sulfur LM diesel fuel and shall be prohibited from use in any motor vehicle or nonroad diesel engine (excluding locomotive, or marine diesel engines).

- (4) From December 1, 2012 through November 30, 2014, any diesel fuel that contains greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 shall be deemed to be heating oil and shall be prohibited from use in any motor vehicle or nonroad diesel engine (including locomotive, or marine diesel engines).
- (5) Except as provided for in paragraph (i) of this section, from June 1, 2012 through November 30, 2014, any diesel fuel, other than jet fuel or kerosene that is downstream of a truck loading terminal, that contains less than 0.10 milligrams per liter of marker solvent yellow 124 shall be considered motor vehicle diesel fuel or NRLM diesel fuel, as appropriate.
- (6) Any heating oil that is required to contain marker solvent yellow 124 pursuant to the requirements of this paragraph (f) must also contain visible evidence of dye solvent red 164.
- (7) Beginning December 1, 2014 there are no requirements or restrictions on the use of marker solvent yellow 124 under this subpart.

* * * * *

- 3. Section 80.511 is amended by revising paragraphs (b)(4) and (b)(10) to read as follows:

**§ 80.511 What are the per-gallon and marker requirements that apply to
NRLM diesel fuel, ECA marine fuel, and heating oil downstream of
the refiner or importer?**

* * * * *

(b) * * *

(4) Except as provided in paragraphs (b)(5) through (8) of this section, the per-gallon sulfur standard of §80.510(c) shall apply to all NRLM diesel fuel beginning August 1, 2014 for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, shall apply to all NRLM diesel fuel beginning October 1, 2014 for retail outlets and wholesale purchaser-consumer facilities, and shall apply to all NRLM diesel fuel beginning December 1, 2014 for all locations. This paragraph (b)(4) does not apply to LM diesel fuel produced from transmix or interface fuel that is sold or intended for sale in areas other than those listed in §80.510(g)(1) or (g)(2), as provided by §80.513(f).

* * * * *

(10) For the purposes of this subpart, on any occasion where a distributor directly dispenses fuel into vehicles or equipment from a mobile facility such as a tanker truck, the distributor shall be treated as a retailer, and the mobile facility shall be treated as a retail outlet.

4. Section 80.513 is amended as follows:
 - a. By revising the section heading.
 - b. By revising the introductory text.
 - c. By revising paragraph (e).
 - d. By adding a new paragraph (f).

§ 80.513 What provisions apply to facilities that process transmix?

For purposes of this section, transmix means a mixture of finished fuels, such as pipeline interface, that no longer meets the specifications for a fuel that can be used or sold without further processing. This section applies to refineries (or other facilities) that produce diesel fuel from transmix by distillation or other refining processes but do not produce diesel fuel by processing crude oil. This section only applies to the volume of diesel fuel produced by such a processor using these processes, and does not apply to any diesel fuel produced by the blending of blendstocks. For the purposes of this section, pipeline interface means the mixture between different fuels that abut each other during shipment by pipeline.

* * * * *

- (e) From June 1, 2012 through June 1, 2014, NRLM diesel fuel produced by a facility that processes transmix is subject to the standards of §80.510(c), except that LM diesel fuel produced from transmix is subject to the sulfur standard of §80.510(a).

This paragraph (e) does not apply to NRLM or LM diesel fuel that is sold or intended for sale in the areas listed in §80.510(g)(1) or (g)(2).

- (f) Beginning June 1, 2014, LM diesel fuel produced from transmix is subject to the sulfur standard of §80.510(a), provided that the conditions in this paragraph are satisfied. Diesel fuel produced from transmix that does not meet the conditions in this paragraph is subject to the sulfur standard in §80.510(c).
- (1) The fuel must be produced from transmix.
 - (2) The fuel must not be sold or intended for sale in the areas listed in §80.510(g)(1) or (g)(2).
 - (3) A facility producing 500 ppm LM diesel fuel must obtain approval from the Administrator for a compliance plan. The compliance plan must detail how the facility will segregate any 500 ppm LM diesel fuel produced subject to the standards under §80.510(a) from the producer through to the ultimate consumer from fuel having other designations. The compliance plan must identify the entities that handle the 500 ppm LM through to the ultimate consumer. No more than 4 separate entities shall handle the 500 ppm LM between the producer and the ultimate consumer. The compliance plan must also identify all ultimate consumers to whom the refiner supplies the 500 ppm LM diesel fuel. The compliance plan must detail how misfueling of 500 ppm LM into vehicles or equipment that require the use of 15 ppm diesel fuel will be prevented.

- (i) Producers of 500 ppm LM diesel fuel must be registered with EPA under §80.597 prior to the distribution of any 500 ppm LM diesel fuel after June 1, 2014.
- (ii) Producers of 500 ppm LM must initiate a PTD that meets the requirements in paragraph (f)(3)(iii) of this section.
- (iii) All transfers of 500 ppm LM diesel fuel must be accompanied by a PTD that clearly and accurately states the fuel designation; the PTD must also meet all other requirements of §80.590.
- (iv) Batches of 500 ppm LM may be shipped by pipeline provided that such batches do not come into physical contact in the pipeline with batches of other distillate fuel products that have a sulfur content greater than 15 ppm.
- (v) The volume of 500 ppm LM shipped via pipeline under paragraph (f)(3)(iv) of this section may swell by no more than 2 % upon delivery to the next party. Such a volume increase may only be due to volume swell due to temperature differences when the volume was measured or due to normal pipeline interface cutting practices notwithstanding the requirement under paragraph (f)(3)(iv) of this section.
- (vi) Entities that handle 500 ppm LM must calculate the balance of 500 ppm LM received versus the volume delivered and used on an annual basis.

(vii) The records required in this section must be maintained for five years, by each entity that handles 500 ppm LM and be made available to EPA upon request.

(4) All parties that take custody of 500 ppm LM must segregate the product from other fuels and observe the other requirements in the compliance plan approved by EPA pursuant to paragraph (f)(3) of this section.

5. Section 80.572 is amended by revising the section heading and paragraph (d) to read as follows:

§ 80.572 What labeling requirements apply to retailers and wholesale purchaser-consumers of Motor Vehicle, NR, LM and NRLM diesel fuel and heating oil beginning June 1, 2010?

* * * * *

(d) From June 1, 2010 and beyond, for pumps dispensing LM diesel fuel subject to the 500 ppm sulfur standard of §80.510(a):

LOW SULFUR LOCOMOTIVE AND MARINE DIESEL FUEL (500 ppm Sulfur Maximum)

WARNING

Federal law prohibits use in nonroad engines or in highway vehicles or engines.

* * * * *

6. Section 80.597 is amended by revising paragraph (d)(3)(ii) to read as follows:

§ 80.597 What are the registration requirements?

* * * * *

(d) * * *

(3) * * *

(ii) Fuel designated as 500 ppm LM diesel fuel.

7. Section 80.598 is amended by revising paragraph (b)(9)(ii) to read as follows:

§ 80.598 What are the designation requirements for refiners, importers, and distributors?

* * * * *

(b)***

(9)***

(ii) Until June 1, 2014, any distillate fuel containing greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 required under §80.510(d), (e), or (f)

must be designated as heating oil except that from June 1, 2010, through November 30, 2012, it may also be designated as LM diesel fuel as specified under §80.510(e).

* * * * *

8. Section 80.601 is amended by revising paragraph (a)(2) to read as follows:

§ 80.610 What acts are prohibited under the diesel fuel sulfur program?

(a)***

(2) Beginning June 1, 2007, produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport any diesel fuel for use in motor vehicle or nonroad engines that contains greater than 0.10 milligrams per liter of solvent yellow 124, except for 500 ppm sulfur diesel fuel sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported for use in LM. from June 1, 2010 through November 30, 2012 for use only in locomotive or marine diesel engines that is marked under the provisions of §80.510(e).

* * * * *

9. Section 80.1401 is amended by revising the definition of “Heating Oil” to read as follows:

§ 80.1401 Definitions.

* * * * *

Heating oil means either of the following:

(1) A #1, #2, or non-petroleum diesel meeting the definition set forth in §80.2(ccc); or

(2) A fuel oil that, pursuant to §§ 80.1450(b)(1)(ix) and (d)(4), 80.1451(b)(1)(ii)(T), 80.1453(d) and 80.1454(b)(7), is demonstrated to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort, is capable of flowing at 60 degrees Fahrenheit and 1 atmosphere of pressure, and is not used for any other purpose.

* * * * *

10. Section 80.1426 is amended by revising paragraph (a)(1)(ii) introductory text and adding (a)(1)(iii) to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

(a) * * *

(1) * * *

(ii) Is demonstrated to be produced from renewable biomass pursuant to the reporting requirements of §80.1451 and the recordkeeping requirements of §80.1454; and

(iii) Was produced in compliance with the registration requirements of §80.1450, the reporting requirements of §80.1451, the recordkeeping requirements of §80.1454, and all other applicable regulations of this subpart M.

* * * * *

11. Section 80.1450 is amended by adding new paragraph (b)(1)(ix) to read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(ix) For a producer of fuel oil meeting paragraph (2) of the definition of heating oil in §80.1401:

(A) An affidavit from the producer of the fuel oil stating that the fuel oil for which RINs are generated will be sold for the purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

(B) Affidavits from existing final end users of the fuel oil stating that the fuel oil for which RINs are generated is being used for purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

* * * * *

12. Section 80.1451 is amended by adding a new paragraph (b)(1)(ii)(T) to read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(T) Producers of fuel oil that meets the paragraph (2) of the definition of heating oil in §80.1401, shall report, on a quarterly basis, all the following for each volume of fuel oil:

(1) Total volume of fuel oil produced and sold to end users, in units of U.S. gallon, and the respective heating content of the fuel oil, in units of BTU per U.S. gallon.

(2) Total volume of fuel oil for which RINs were generated, in units of U.S. gallon, and the respective quantities of fuel oil sold to end users, names and locations of the buildings in which the fuel oil was used to heat interior spaces of those buildings to control ambient climate for human comfort, and the RIN numbers assigned to each batch of fuel oil.

(3) For each batch of transferred fuel oil for which RINs are generated that the renewable fuel producer claims to meet paragraph (2) of the definition of heating oil in §80.1401 and is sold for those purposes, affidavits from the end user of the fuel that includes, but not limited to, the following information:

- (i) Quantity of fuel oil received from producer.
- (ii) Quantity of fuel oil used for purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.
- (iii) Date the fuel oil was received from producer.
- (iv) Blend level of the fuel oil in petroleum based fuel oil when received (if applicable).
- (v) Quantity of assigned RINs received with the renewable fuel, if applicable.
- (vi) Quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

* * * * *

13. Section 80.1453 is amended by adding a new paragraph (d) to read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

* * * * *

(d) For fuel oil meeting paragraph (2) of the definition of heating oil in §80.1401, the PTD which is used to transfer ownership or custody of the renewable fuel shall state: “This volume of renewable fuel is designated and intended to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or any other purpose, pursuant to 40 CFR § 80.1460(g).”

14. Section 80.1454 is amended by adding new paragraph (b)(7) to read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(b) * * *

(7) Copies of all contracts which describe the fuel oil under contract with each end user.

* * * * *

15. Section 80.1460 is amended by adding a new paragraph (g).

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(g) *Failing to use a renewable fuel for its intended use.* No person shall use qualifying fuel oil that meets paragraph (2) of the definition of heating oil in §80.1401 in an application other than to heat interior spaces of homes or buildings to control ambient climate for human comfort.

* * * * *

[FR Doc. 2012-23713 Filed 10/05/2012 at 8:45 am; Publication Date: 10/09/2012]