EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
Interstate Transport Requirements—2015 Ozone NAAQS.	Statewide	10/25/2018	12/18/2019, [Insert **Federal Register** citation].	Approves SIP for purposes of CAA section 110(a)(2)(D)(i)(I) for the 2015 Ozone NAAQS.

[FR Doc. 2019–27162 Filed 12–17–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2018–0638; FRL–10003–29–OAR]

RIN 2060–AU74

Amendments Related to Global Marine Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending its diesel fuel regulations to allow fuel suppliers to distribute distillate diesel fuel that complies with the sulfur standard that applies internationally for ships instead of the fuel standards that otherwise apply to distillate diesel fuel in the United States. The affected fuel may not be used in the United States' Emission Control Areas.

DATES: This final rule is effective on December 18, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0638. All documents in the docket are listed on the *www.regulations.gov* website. 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, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, 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: Robert Anderson, Office of Transportation and Air Quality, Environmental Protection Agency, (734) 214–4280; *anderson.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

This action relates to companies that produce and distribute distillate diesel fuel. Categories and entities that might be affected include the following:

Category	NAICS code [a]	Examples of potentially affected entities
Industry	324110	Petroleum refineries (including importers).
	424710	Petroleum bulk stations and terminals.
	493190	Other warehousing and storage-bulk petroleum storage.

[a] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely covered by these rules. This table lists the types of entities that we are aware may be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. You may direct questions regarding the applicability of this action to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What is the Agency's authority for taking this action?

EPA adopted sulfur standards for marine diesel fuel under Clean Air Act authority (42 U.S.C. 7401–7671q). The amendments in this rule are covered by that same authority.

C. What is the effective date of this action?

Section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA is issuing this final rule under Clean Air Act section 307(d), which states ''The provisions of section 553 through 557. . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' 42 U.S.C. 7607(d)(1). Thus, section 553(d) of the Administrative Procedures Act does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making the regulations contained in this final rule effective upon publication in the **Federal Register**. The regulatory amendments to 40 CFR part 80, subpart I, conditionally exempt distillate marine diesel fuel from the prohibition against distributing

distillate diesel fuel that exceeds the sulfur content limits for ultra low-sulfur diesel (ULSD) fuel and Emission Control Area (ECA) marine fuel. This action will allow for distribution of distillate diesel fuel used as global marine fuel that complies with the 5,000 ppm [1] global fuel sulfur content limit contained in MARPOL Annex VI, which goes into effect on January 1, 2020; this fuel may not be used in the U.S. ECAs. Accordingly, it is in keeping with the policy underlying the Administrative Procedures Act for the regulatory amendments to 40 CFR part 80, subpart I, to take effect upon publication in the **Federal Register**.

I. Background

The United States ratified Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI) and became a Party to this Protocol effective January 2009. To address ship sulfur oxides (SO_X) and particulate matter (PM) emissions, the Annex contains limits on the sulfur content of fuel used in global shipping. The sulfur content limit is currently 35,000 ppm, decreasing to 5,000 ppm beginning January 1, 2020. This sulfur limit is not as stringent as the limit that applies in designated Emission Control Areas (ECAs), currently set at 1,000 ppm, but is more stringent than the current global limit and is expected to lead to significant health and welfare benefits globally.[2]

The U.S. refining industry has indicated to EPA that they are well positioned to supply fuel meeting this new 2020 global marine fuel standard, for use outside of ECA boundaries.[3] They will do this by providing compliant distillate- or residual-type fuel; blended fuel may be residual or distillate. However, as explained below, they also expressed a concern that existing provisions in our Clean Air Act (CAA) diesel fuel regulations may prevent them from distributing compliant fuel in the United States. We therefore need to amend the CAA fuel regulations at 40 CFR part 80 to allow distribution in the United States of distillate fuel meeting the 2020 global marine fuel standard, for use outside of ECA boundaries. These amendments will help facilitate smooth implementation of the 2020 global marine fuel standard.

II. Technical Discussion

There are two broad categories of marine fuel: Distillate fuel and residual fuel. The International Organization for Standardization (ISO) distinguishes these fuel types based on their kinematic viscosity (see ISO 8217:2017(E)): Residual fuel ranges from 10 to 700 mm^2/s at 50 °C while distillate fuel ranges from 1,400 to 11,000 mm^2/s at 40 °C, meaning that residual fuel is much less viscous than distillate fuel. Residual fuel also has a higher sulfur content, as it is the residue of the refining process. The ISO fuel specifications note that while sulfur content is defined by the purchaser, it is generally subject to a maximum value of 15,000 ppm for distillate fuel. There is no maximum sulfur limit that applies when selling residual fuel, and the sulfur content can be 35,000 ppm or more. MARPOL Annex VI requires any fuel used onboard a ship to not exceed 35,000 ppm when the ship is operating outside of designated ECAs, and this global marine fuel has consistently been residual fuel, not distillate fuel. Beginning in 2020, however, the lower sulfur content of global marine fuel means that compliant fuel can be distillate, residual, or blends of both. ISO does not currently have specifications for blended fuel, however they have issued ISO/PAS 23263 (2019–09), ''Considerations for fuel suppliers and users regarding marine fuel quality in view of the implementation of maximum 0.50% sulfur in 2020.'' [4] This document ''defines general requirements that apply to all 0.50 mass % sulfur (S) fuels and confirms the applicability of ISO 8217 for those fuels.''

Our CAA fuel program, contained in 40 CFR part 80, defines distillate fuel based on the T90 value of the fuel; this is the temperature at which 90 percent volume of the fuel evaporates. According to our regulations, distillate fuel has a T90 value below 700 °F. Marine distillate fuel sold or distributed in the United States under the CAA program has been subject to an EPA-established 15 ppm sulfur limit since 2012; see 40 CFR 80.510(c). In contrast, ECA marine fuel, both distillate and residual, sold or distributed in the United States has been subject to a 1,000 ppm sulfur limit since June 2014. See 40 CFR 80.510(k). This date was meant to facilitate availability of ECA fuel prior to the January 1, 2015, effective date of the 1,000 ppm fuel sulfur limit that would apply in our ECAs. Our CAA program does not contain requirements for residual fuel that is not ECA fuel.

When the United States ratified MARPOL Annex VI in 2008, we did not revise our CAA fuel program to address the global fuel standards, for two reasons. First, the international global marine standards were set at 45,000 ppm until 2012, when it would decrease to 35,000 ppm. Ship owners were expected to use lower-cost residual fuel to comply with those limits, which was not covered by our CAA program, and there were no regulatory requirements for distributing it. Second, the 2020 global marine fuel sulfur limit was subject to an IMO availability review to be completed by 2018, making it premature to adopt the 5,000 ppm limit in 2010, when we modified our CAA fuel program to incorporate the ECA program. The availability review was completed early, in 2016, and the IMO's Marine Environment Protection Committee (MEPC) confirmed the 2020 effective date.[5]

Distillate fuel is expected to play a significant role in meeting the 2020 global marine fuel standard, either as pure distillate fuel or as a component of blended fuel. This is due to the relatively high cost of removing sulfur from low-value residual fuel. U.S. fuel suppliers have informed EPA that they expect to meet the international requirement by providing either distillate fuel or distillate/residual blends; the blended fuel might have a T90 value below 700 °F. But, absent amendment, EPA's existing regulations preclude the distribution in the United States of distillate fuel above the ECA

[1] The MARPOL Annex VI global fuel sulfur limit is set at 0.50% m/m; for ease of discussion and consistency with our 40 CFR part 80 program, this rule refers to the global sulfur limit as 5,000 ppm.

[2] Designated ECAs for the United States include the North American ECA and the U.S. Caribbean Sea ECA. More specific descriptions may be found in EPA fact sheets: ''Designation of North American Emission Control Area to Reduce Emissions from Ships,'' EPA–420–F–10–015, March 2010, *https://www.epa.gov/regulations-emissions-vehicles-and-engines/designation-north-american-emission-control-area-marine;* and ''Designation of Emission Control Area to Reduce Emissions from Ships in the U.S. Caribbean,'' EPA–420–F–11–024, July 2011, *https://www.epa.gov/regulations-emissions-vehicles-and-engines/designation-us-caribbean-emission-control-area-marine.*

[3] See, for example, the website for the Coalition for American Energy Security at *https://americanenergysecurity.com.*

[4] In the introduction to this document, ISO notes that it was not possible to review the international fuel specifications contained in ISO 8217:2017, and that ISO/PAS 23263 (2019–09) was developed to assist in the transition to the 2020 global fuel sulfur standard.

[5] Annex VI included a provision in Regulation 14.8–10 requiring an availability review, and that provision contemplated the possibility as a result of the study that parties may delay the effective date of the 2020 global marine fuel standard to 2025. The review was carried out early, in 2016, and the Parties affirmed the feasibility of meeting the 2020 marine fuel standard and decided not to delay the standard. MEPC 70/18, 11 November 2016, Report of the Marine Environment Protection Committee on its Seventieth Session, para 5.55.3: [the Committee] ''agreed to the date of 1 January 2020 as the effective date of implementation for ships to comply with the 0.50% m/m Sulphur content of fuel oil requirement, as set out in regulation 14.1.3 of MARPOL Annex VI . . .''

fuel sulfur limit. This limitation would hinder the ability of U.S. refiners to supply compliant 2020 global marine fuel to ships engaged in international transportation, because they would be limited to providing only fuel with a T90 at or above 700 °F. This means that a ship wishing to purchase fuel in the United States would be able to buy only 5,000 ppm residual fuel—if it is available; otherwise, the ship would be limited to purchasing higher-price ECA fuel or delaying its fuel purchase to the next port of call to avoid that additional cost. In addition, U.S. fuel providers wishing to participate in the global fuel market would be faced with exporting 2020 distillate global marine fuel with the higher T90 value for distribution elsewhere, which would lead to inefficiencies and increased costs, as well as loss of some portion of the U.S. share of the global fuel market.

In sum, removing the restriction on the distribution of distillate fuel between 1,000 ppm and 5,000 ppm in the United States, for use outside of ECA boundaries, will provide greater flexibility for U.S. fuel suppliers participating in the global marine fuel market, which could reduce fuel costs in that the ship operator would not be faced with either purchasing more expensive ECA fuel or going to another country to purchase fuel. This change, requested by U.S. refiners, will also provide a level playing field for all potential U.S. suppliers—those that supply distillate or blends as well as residual fuel. Such clarity will aid them in finalizing their fuel supply and distribution plans.

III. Final Action

This action amends the regulations at 40 CFR part 80, subpart I, to allow for distribution of distillate diesel fuel that complies with the 5,000 ppm global sulfur standard contained in Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI).

This action includes several regulatory changes to accommodate the supply and distribution of distillate diesel fuel as global marine fuel. Primarily we are conditionally exempting distillate diesel fuel from the prohibition against distributing distillate diesel fuel that exceeds the ULSD and ECA marine fuel sulfur standards. This exemption includes several conditions. (1) The fuel must not exceed 0.50 weight percent (0.50% m/m, which is 5,000 ppm) sulfur; (2) fuel manufacturers must designate the fuel as global marine fuel; (3) product transfer documents accompanying the fuel must identify it as global marine fuel; (4) global marine fuel must be segregated from other fuel that is subject to the diesel fuel standards in 40 CFR part 80, subpart I; (5) the fuel may not be used in any vehicles, engines, or equipment operating in the United States (including vessels operating in an ECA or ECA-associated area); and (6) manufacturers and distributors must meet conventional recordkeeping requirements. These changes largely mirror what we currently require for the manufacturers and distributors of home heating oil, which is another class of distillate fuel not subject to diesel fuel standards under 40 CFR part 80. The conditions imposed on home heating oil and the conditions we are including in this final rule are designed to prevent higher sulfur distillate fuel from being diverted into markets that are subject to 15 ppm ULSD standard or the 1,000 ppm ECA marine standard. The conditions that apply for distribution of global marine fuel include basic designation, PTD, segregation and recordkeeping requirements. These conditions are similar to those previously adopted for distribution of heating oil. The conditions for distribution of global marine fuel also require the fuel to meet a 5,000 ppm sulfur limit. This condition is designed to ensure that the exempted fuel will be used consistent with its designation as global marine fuel. This reduces the potential for higher sulfur global marine fuel to be improperly diverted to the ULSD and ECA marine fuel markets.

As noted above, the narrow set of amendments in this rule are intended to remove a regulatory obstacle to the distribution and sale in the United States of marine fuel that meets MARPOL Annex VI global sulfur standard of 5,000 ppm sulfur. In the future, after we have a better understanding of the nature of the fuel made available to comply with the 2020 global marine fuel standard (*i.e.,* whether it is mostly distillate fuel, blended fuel, or residual fuel), we may consider a supplemental rule to address any additional implementation questions with respect to residual fuel.

IV. Economic and Environmental Impacts

The purpose of the amendments is to ensure that U.S. refiners can permissibly distribute distillate marine fuel up to the 5,000 ppm sulfur limit, which will facilitate smooth implementation of the 2020 global marine fuel standard. This is likely to reduce the costs of compliant fuel for ships, although the savings impacts are impossible to estimate without knowledge of the grades of fuel that will be made available for this emerging market beginning in January 2020 and their prices. While there are minor recordkeeping costs for fuel suppliers associated with the exemption described in Section III, there are no requirements to reduce the sulfur content of global marine fuel beyond what is already required by Annex VI.

With respect to environmental and health impacts, the amendments to the CAA fuel regulations are not expected to alter the benefits of EPA's coordinated strategy to reduce emissions from large marine diesel engines and their fuel. This is because the coordinated strategy relies, in part, on the stringent international fuel sulfur limits that apply in United States ECAs, which include the coasts of the continental United States, the main Hawaiian Islands, southeastern portions of Alaska (U.S. portions of the North American ECA), and the Commonwealth of Puerto Rico and the U.S. Virgin Islands (U.S. Caribbean Sea ECA). The ECA fuel sulfur requirements for the North American and U.S. Caribbean Sea ECAs went into force in August 2012 and January 2014, respectively, one year after they were designated by amendment to MARPOL Annex VI.[6] The global fuel sulfur program may provide additional air quality benefits, for example, in those areas of the United States where the ECA is narrow, such as southern Florida, or in areas that are not covered by the ECA, such as Guam and western and northern Alaska. Note however that those benefits would be a consequence of the MARPOL Annex VI global sulfur requirements and would therefore accrue with or without the amendments in this final rule.

V. Response to Comments

We received several comments on the proposed provisions for global marine fuel.[7] Commenters generally supported our proposal and agreed with our rationale to avoid unintended limitations on the supply and distribution of distillate global marine fuel.[8] These commenters noted that EPA

[6] See MEPC.190(60) for the amendments to Annex VI designating the North American Emission Control Area, entry into force 1 August 2011; and MEPC.202(62), designating the U.S. Caribbean Sea Emission Control Area, entry into force on 1 January 2013. Note that the ECA sulfur limits became enforceable one year after entry into force of the relevant amendments.

[7] See 84 FR 46909 (September 6, 2019).

[8] See public comments from American Fuel & Petrochemical Manufacturers (EPA–HQ–OAR–2018–0638–0020), American Petroleum Institute (EPA–HQ–OAR–2018–0026), Coalition for American Energy Security (EPA–HQ–OAR–2018–0638–0029), National Association of Clean Air Agencies (EPA–HQ–OAR–2018–0638–0025), State of Maine Department of Environmental Protection

Continued

did not intend to limit options for compliance with the 2020 global marine fuel standards when it codified the ULSD and ECA marine fuel standards in 40 CFR part 80. We appreciate comments in support of our proposed provisions for global marine fuel and are finalizing in this action provisions to allow under our CAA regulations for the supply and distribution of distillate marine fuel meeting the 2020 global marine fuel standards.

One commenter argued that the proposed rule was not in accordance with the requirements of Annex VI.[9] They contend that Annex VI does not create caps or standards for fuel—instead equivalent measures such as scrubbers are allowed to be used to achieve the same sulfur reductions and that EPA's proposal would effectively set a cap on distillate marine fuel.

As noted in the proposal, we are not setting a 0.50 weight percent sulfur standard on global marine fuel under the CAA, Annex VI, or the Act to Prevent Pollution from Ships (APPS), which is the authority for implementing and enforcing MARPOL Annex VI requirements in the United States. We already have sulfur limits established under the CAA that apply to all distillate marine fuel. This action provides an exemption to the sulfur limits established under the CAA so parties can supply and distribute distillate marine fuel for meeting the 2020 global marine fuel standard. Without this action, parties could not permissibly supply and distribute such fuel within the United States, which as other commenters noted, could have adverse effects on global marine fuel supply.

We do not believe this rulemaking would unnecessarily limit the opportunities for parties to offer fuel that exceeds the 2020 global marine fuel standard, such as for vessels with installed scrubbers. As stated in the proposal,[10] we believe the Annex VI global marine fuel standard of 3.50 weight percent that has been in place for some time was met almost exclusively with residual fuel. We believe it is unlikely that parties would refine a distillate fuel with greater than 0.50 weight percent (5,000 ppm) sulfur content to use in vessels with scrubbers when substantially cheaper residual fuel with higher sulfur levels are available for use. This rule does not preclude the availability of such fuel for vessels with scrubbers installed. Blenders at any point in the distribution system would be able to mix distillate fuel and residual fuel such that the blended fuel has more than 5,000 ppm sulfur, as long as the blended fuel has a T90 distillation point above 700 °F, since the mixture would be residual fuel according to the definitions in 40 CFR part 80.

One commenter noted that EPA staff claimed the proposed rule was needed so EPA can enforce the 2020 global marine fuel standard.[11] The commenter argued that the proposed rule is not needed to enforce the 2020 global marine fuel standard and that EPA, the U.S. Coast Guard, and Department of Justice can enforce the 2020 standard under APPS.

We agree with the commenter that this rule is not necessary to enforce distillate marine fuel requirements under the CAA or take enforcement actions related to the Annex VI standards under APPS. The purpose of this action is to allow parties to supply and distribute distillate global marine fuel under the CAA and is unrelated to our authority to enforce global marine fuel standards under APPS. We consider such comments related to enforcement of MARPOL Annex VI under APPS outside the scope of this final rule. However, we note that in addition to allowing distribution of distillate marine fuel to meet the 2020 global marine fuel standards, the amendments will help to avoid contamination of the distillate marine fuel subject to a sulfur standard by exempting distillate marine fuel used to meet the 2020 global marine fuel standards.

One commenter argued that the proposed rule is outside the scope of EPA's authority to impose regulatory requirements and standards under the CAA and APPS.[12] The commenter noted that nothing in the CAA or APPS provides EPA with the authority to regulate the sulfur content of fuel used entirely outside the United States. The commenter also suggested that EPA staff suggested EPA's proposal was intending to establish requirements under APPS. Finally, the commenter suggested that EPA's proposal exceeds any authority granted to it under MARPOL.

We disagree with the commenter's suggestion that EPA lacks authority to propose an exemption to existing regulatory requirements under the CAA. We have imposed standards and requirements for all distillate marine fuel introduced into commerce in the United States under CAA section 211 at 40 CFR part 80, subpart I.[13] This action does not impose new standards under the CAA as the commenter suggests. As noted in the proposal [14] and in public comments from other stakeholders,[15] this rule is necessary to allow parties to supply and distribute distillate 2020 global marine fuel that, prior to this amendment, was prohibited under previous rulemakings limiting distribution of distillate marine fuel with sulfur content exceeding standards under 40 CFR part 80. We are not taking this action under APPS or IMO Annex VI, so comments related to our authority under APPS or IMO Annex VI are outside the scope of this action.

One commenter contended that the proposed rule was overly complex because it imposed designation and documentation requirements (through PTDs) for distillate global marine fuel instead of simply excluding all fuel used as bunker fuel outside of U.S. waters from the 40 CFR part 80 diesel fuel standards.[16] The commenter pointed to EPA's treatment of stationary distillate fuel and exported distillate fuel as examples of cases where EPA has excluded fuel from the diesel fuel standards of 40 CFR part 80. We disagree that the rule is overly complex. The exemption for 2020 distillate global marine fuel functions in the same way that other exemptions to the diesel fuel standards function under the regulations at 40 CFR part 80, subpart I. This includes identifying the fuel as exempt (using designations on PTDs), ensuring that the fuel is segregated from fuel that is subject to the diesel sulfur standards, and keeping records to demonstrate that the fuel was appropriately designated and distributed as allowed under the regulations. Other exemptions to the diesel fuel standards of 40 CFR part 80, subpart I, also require that such fuel is used for the purpose that the fuel is exempt (or prohibit the use of such fuel for a different purpose).[17] In the case of

(EPA–HQ–OAR–2018–0638–0034), and the Truck and Engine Manufacturers Association (EPA–HQ–OAR–2018–0638–0033).

[9] See public comments from Eversheds Sutherland (EPA–HQ–OAR–2018–0638–0031).

[10] See 84 FR 46910 (September 6, 2019).

[11] See public comments from Eversheds Sutherland (EPA–HQ–OAR–2018–0638–0031).

[12] See public comments from Eversheds Sutherland (EPA–HQ–OAR–2018–0638–0031).

[13] See 66 FR 5134 (January 18, 2001) and 69 FR 39164 (June 29, 2004).

[14] See 84 FR 46919 (September 6, 2019).

[15] See public comments from American Fuel & Petrochemical Manufacturers (EPA–HQ–OAR–2018–0638–0020), American Petroleum Institute (EPA–HQ–OAR–2018–0026), Coalition for American Energy Security (EPA–HQ–OAR–2018–0638–0029), National Association of Clean Air Agencies (EPA–HQ–OAR–2018–0638–0025), State of Maine Department of Environmental Protection (EPA–HQ–OAR–2018–0638–0034), and the Truck and Engine Manufacturers Association (EPA–HQ–OAR–2018–0638–0033).

[16] See public comments from Eversheds Sutherland (EPA–HQ–OAR–2018–0638–0031).

[17] For example, 40 CFR 80.501(b) excludes a fuel only if the fuel is exported. If the fuel is not

exports specifically, parties must designate the distillate fuel for export (see 40 CFR 80.598(a)(2)) on PTDs (see 40 CFR 80.590(a)(6) or (b)(2)) and keep records of such designations and PTDs (see 40 CFR 80.592(a)(1) and 80.602(a)(1)). We imposed these provisions on exports in prior rulemakings to help ensure that exported distillate fuel did not contaminate distillate fuel that is subject to diesel fuel standards. We have the same concerns with distillate global marine fuel since parties could distribute such fuel with distillate fuel subject to the diesel fuel standards. Therefore, we are imposing necessary and reasonable conditions for parties claiming an exemption for distillate global marine fuel consistent with how we currently treat exempted fuel under 40 CFR part 80, subpart I.

One commenter suggested that EPA's proposal misinterpreted its 40 CFR part 80 regulations by noting that distribution of distillate marine fuel containing more than 1,000 ppm sulfur content could not be supplied and distributed as global marine fuel.[18] The commenter pointed to substitute PTD language requirements for high-sulfur fuel used in marine vessels under MARPOL Annex VI, Regulations 3 and 4 as an example of how EPA misinterpreted its regulations to limit the sulfur content of distillate marine fuel. The commenter also suggested that the classification of a distillate fuel determines whether the fuel is subject to EPA's diesel fuel requirements. The commenter states that since EPA staff recognized that distillate fuel is sometimes not subject to EPA's requirements (*e.g.,* distillate fuel used for power generation), that EPA's regulations at 40 CFR part 80 do not cover high-sulfur distillate fuel used in marine engines.

We also disagree with the suggestion that because stationary distillate fuel does not have to meet the diesel fuel standards of 40 CFR part 80, a category of distillate marine fuel is not subject to the diesel fuel requirements under 40 CFR part 80 and that a fuel is only subject to the regulation if a party classifies the fuel as a fuel that is subject to the regulatory requirements. While the regulatory provisions in 40 CFR part 80 may not cover all distillate products, the regulations clearly apply to distillate fuel intended for use, made available for use, and used in marine engines. The regulations at 40 CFR 80.2(aaa) and (ppp) broadly define both distillate fuel and locomotive or marine (LM) diesel fuel. Furthermore, the regulation at 40 CFR 80.501 clearly specifies that marine diesel fuel and other types of distillate fuel are subject to the provisions of 40 CFR part 80, subpart I.[19] These definitions and the regulations that cover which types of fuel are subject to our regulations are not based solely on how the fuel is classified, as suggested by the commenter, but also on how the fuel is intended for use, made available for use, and ultimately used. For example, the definitions of ''marine diesel fuel'' and ''ECA marine fuel'' make clear that the definition covers the specified fuel ''used, intended for use, or made available for use'' (40 CFR 80.2(ppp) and (ttt)). Thus, claiming that a distillate fuel was intended for use in stationary internal combustion engines and then making that fuel available for use or using that fuel in a marine engine would still subject that fuel to the marine diesel fuel requirements. The regulations at 40 CFR part 80 require that such fuel must either meet the appropriate diesel sulfur standard or be exempted from the applicable standards, subject to certain conditions.

We also disagree that the allowance of substitute language for high-sulfur fuel used in marine vessels under MARPOL Annex VI, Regulations 3 and 4 implies that distillate marine fuel containing more than 1,000 ppm is exempt from the regulations at 40 CFR part 80, subpart I. First, for a party to use the substitute PTD language for marine fuel at 40 CFR 80.590(b)(5)–(7), the party and the fuel would need to be subject to the provisions under 40 CFR part 80, subpart I. Second, the commenter misunderstands that these language provisions are in place for residual fuel (which is covered under the regulations at 40 CFR part 80 when used as ECA marine fuel) to demonstrate that they are not subject to diesel fuel and ECA marine standards and can only be used in vessels that can lawfully use that fuel. That does not mean that the fuel and parties that supply and distribute such fuel are not subject to the requirements or exempt from diesel fuel standards.

Two commenters asked EPA to clarify whether residual fuel would be affected by the proposed provisions.[20] These commenters suggested minor revisions to the definition of global marine fuel and the proposed regulations to clarify EPA's intent to apply the exemption provisions only to distillate fuel already subject to 40 CFR part 80 requirements. As noted in the proposal[21] and in Section II of this preamble, 40 CFR part 80, subpart I, does not impose new standards on residual fuel, which makes an exemption unnecessary. We do not intend to introduce residual fuel regulations as part of this action. We agree with commenters' suggestions to clarify the scope of the proposed changes to 40 CFR part 80, subpart I, and have made corresponding changes to the regulations in response to these comments.

One commenter asked for clarification on when designation and segregation would apply to distillate global marine fuel.[22] In this action we are finalizing the proposed condition that, for distillate global marine fuel to be exempt from the diesel sulfur requirements, the distillate global marine fuel would need to be designated as global marine fuel and segregated from fuel subject to the regulatory requirement from the point of production to the point where the fuel is supplied to marine vessels that would use the fuel. The same commenter asked for clarification that 2020-compliant fuel is allowed and that distillate fuel with sulfur content above 5,000 ppm could be sold as bunker fuel.[23] As discussed above, this rule would not preclude the sale or distribution of residual fuel used to meet the 2020 standard, and we do not expect production of distillate marine fuel with sulfur content above 5,000 ppm, as it would be too costly.

Commenters also requested that EPA complete this action in a timely manner to avoid disruption in the supply and distribution of distillate global marine fuel ahead of the January 1, 2020 implementation date for the global marine fuel sulfur standard.[24] Commenters noted that failure to modify the regulations to allow for the supply and distribution of distillate global marine fuel would have significant cost impacts and send signals of uncertainty to parties wishing to supply and distribute product to meet the demand for distillate global marine fuel in the United States. We appreciate the need to provide regulatory certainty and believe it is in the public interest to

exported and instead used as diesel fuel in the United States, such fuel would be subject to applicable diesel fuel requirements under EPA's regulations.

[18] See public comments from Eversheds Sutherland (EPA–HQ–OAR–2018–0638–0031).

[19] See 40 CFR 80.501(a)(2) and (6).

[20] See public comments from American Petroleum Institute (EPA–HQ–OAR–2018–0638–0026) and Eversheds Sutherland (EPA–HQ–OAR–2018–0031).

[21] See 84 FR 46910 (September 6, 2019).

[22] See public comments from Eversheds Sutherland (EPA–HQ–OAR–2018–0638–0031).

[23] Id.

[24] See public comments from American Petroleum Institute (EPA–HQ–OAR–2018–0638–0026) and American Fuel and Petrochemical Manufacturers (EPA–HQ–OAR–2018–0638–0020).

allow parties to supply and distribute distillate global marine fuel ahead of the January 1, 2020, implementation deadline. We are therefore making the regulatory changes for distillate global marine fuel effective on the date this action is published in the **Federal Register**.

VI. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0308. We believe this action does not impose any new information collection burden as this action will provide clarity and additional flexibility to U.S. fuel suppliers providing distillate global marine fuel.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action will provide clarity and additional flexibility to U.S. fuel suppliers providing distillate global marine fuel. We have therefore concluded that this action will have no adverse regulatory impact for any directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and affects suppliers of global marine fuel. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This action's assessment of the environmental impact of the rule contained in Section IV shows that the rule will have no adverse impact. This action will therefore not affect children's health.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As discussed in Section IV, we do not expect this action to alter the benefits of EPA's coordinated strategy to reduce emissions from large marine diesel engines and their fuels.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Greenhouse gases, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 10, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth above, EPA is amending 40 CFR part 80 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, 7521, 7542, 7545, and 7601(a).

■ 2. Section 80.2 is amended by adding paragraph (aa) to read as follows:

§ 80.2 Definitions.

* * * * *

(aa) *Global marine fuel* means diesel fuel, distillate fuel, or residual fuel used, intended for use, or made available for use in steamships or Category 3 marine vessels while the vessels are operating outside the boundaries of an Emission Control Area (ECA). Global marine fuel is subject to the provisions of the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI. Note that this part regulates global marine fuel only if it qualifies as a distillate fuel.

* * * * *

■ 3. Section 80.501 is amended by redesignating paragraphs (a)(6) and (7) as paragraphs (a)(7) and (8), adding a new paragraph (a)(6), and revising paragraph (b) to read as follows:

§ 80.501 What fuel is subject to the provisions of this subpart?

(a) * * *

(6) Distillate global marine fuel.

* * * * *

(b) *Excluded fuel.* The provisions of this subpart do not apply to—

(1) Distillate fuel that is designated for export outside the United States in accordance with § 80.598, identified for export by a transfer document as

required under § 80.590, and that is exported.

(2) Residual global marine fuel.

■ 4. Section 80.590 is amended by revising the section heading and paragraph (a) introductory text and adding paragraph (a)(7)(viii) to read as follows:

§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil, distillate global marine fuel, ECA marine fuel, and other distillates?

(a) This paragraph (a) applies on each occasion that any person transfers custody or title to MVNRLM diesel fuel, heating oil, distillate global marine fuel, or ECA marine fuel (including distillates used or intended to be used as MVNRLM diesel fuel, heating oil, global marine fuel, or ECA marine fuel) except when such fuel is dispensed into motor vehicles or nonroad equipment, locomotives, marine diesel engines or steamships or Category 3 vessels. Note that 40 CFR part 1043 specifies requirements for documenting fuel transfers to certain marine vessels. For all fuel transfers subject to this paragraph (a), the transferor must provide to the transferee documents which include the following information:

* * * * *

(7) * * *

(viii) *Distillate global marine fuel.* ''For use only in steamships or Category 3 marine vessels operating outside the boundaries of an Emission Control Area (ECA), consistent with MARPOL Annex VI.''

* * * * *

■ 5. Section 80.598 is amended by revising paragraphs (a)(2)(i)(G) and (b)(8)(iii) to read as follows:

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

(a) * * *

(2) * * *

(i) * * *

(G) Exempt distillate fuels such as distillate global marine fuels under § 80.605, fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(b) * * *

(8) * * *

(iii) Exempt distillate fuels such as distillate global marine fuels under § 80.605, fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

■ 6. Amend § 80.602 by revising the section heading and paragraphs (a) and (b)(4)(i) to read as follows:

§ 80.602 What records must be kept by entities in the NRLM diesel fuel, ECA marine fuel, distillate global marine fuel, and diesel fuel additive production, importation, and distribution systems?

(a) *Records that must be kept by parties in the NRLM diesel fuel, ECA marine fuel, distillate global marine fuel and diesel fuel additive production, importation, and distribution systems.* Beginning June 1, 2007, or June 1, 2006, if that is the first period credits are generated under § 80.535, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports nonroad, locomotive or marine diesel fuel, or ECA marine fuel (beginning June 1, 2014) subject to the provisions of this subpart, must keep all the records specified in this paragraph (a). The recordkeeping requirements for distillate global marine fuel in this paragraph (a) start January 1, 2020.

(1) The applicable product transfer documents required under §§ 80.590 and 80.591.

(2) For any sampling and testing for sulfur content for a batch of NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur standard or any sampling and testing for sulfur content of any fuel subject to the provisions of this subpart as part of a quality assurance testing program, and any sampling and testing for cetane index, aromatics content, marker solvent yellow 124 content or dye solvent red 164 content of NRLM diesel fuel, ECA marine fuel, NRLM diesel fuel additives or heating oil:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the testing; and

(iii) The results of the tests for sulfur content (including, where applicable, the test results with and without application of the adjustment factor under § 80.580(d)), for cetane index or aromatics content, dye solvent red 164, marker solvent yellow 124 (as applicable), and the volume of product in the storage tank or container from which the sample was taken.

(3) The actions the party has taken, if any, to stop the sale or distribution of any NRLM diesel fuel, distillate global marine fuel, or ECA marine fuel found not to be in compliance with the sulfur standards specified in this subpart, and the actions the party has taken, if any, to identify the cause of any noncompliance and prevent future instances of noncompliance.

(b) * * *

(4) * * *

(i) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, distillate global marine fuel, ECA marine fuel, or heating oil, as applicable.

* * * * *

■ 7. Section 80.605 is added to read as follows:

§ 80.605 Global marine fuel exemption.

(a) The standards of this subpart do not apply to distillate global marine fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in steamships or Category 3 marine vessels when operating outside of ECA boundaries.

(b) The exempt fuel must meet all the following conditions:

(1) It must not exceed 0.50 weight percent sulfur ($5.0 \cdot 10^3$ ppm).

(2) It must be accompanied by product transfer documents as required under § 80.590.

(3) It must be designated as specified under § 80.598.

(4) It must be segregated from non-exempt fuel at all points in the distribution system.

(5) It may not be used in any vehicles, engines, or equipment other than those referred to in paragraph (a) of this section.

(c) Fuel not meeting the conditions specified in paragraph (b) of this section is subject to the standards, requirements, and prohibitions that apply for MVNRLM diesel fuel. Similarly, any person who produces, imports, sells, offers for sale, supplies, offers for supply, stores, dispenses, or transports distillate global marine fuel without meeting the recordkeeping requirements under § 80.602 may not claim the fuel is exempt from the standards, requirements, and prohibitions that apply for MVNRLM diesel fuel.

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