

Yellow Marker 2012 Transition Guidance

Q: Will all locomotive and marine diesel fuel containing less than 500 ppm sulfur (500 ppm LM diesel fuel), which also contains 0.10 milligram per liter or more of solvent yellow 124 marker (SY-124) on or after June 1, 2012, be deemed heating oil and be prohibited from use in any motor vehicle or nonroad diesel engine (including locomotive, or marine diesel engines)?

A: The nonroad diesel regulations at 40 CFR 80.510(f) state that on or after June 1, 2012, “[a]ny diesel fuel that contains greater than or equal to 0.10 milligram per liter of [SY-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).” The preamble in the nonroad diesel rule, however, makes clear that EPA intended to allow 500 ppm LM diesel fuel to contain greater than 0.10 milligram per liter of SY-124 after June 1, 2012. The nonroad diesel regulations at 40 CFR 80.510(f) are not consistent with the preamble and fail to provide a transition schedule with respect to the SY-124 requirements for 500 ppm LM diesel fuel.

Compliance with the regulations as written could force substantial quantities of marked 500 ppm LM diesel fuel to be removed from wholesale purchaser consumer and fuel supplier storage tanks and then trucked to either a heating oil market or to a refinery for reprocessing. This would result in increased compliance costs to industry, increased trucking emissions, and potential disruptions to the supply of LM diesel fuel. Therefore, EPA’s Office of Air and Radiation (OAR) intends to amend the regulations to allow 500 ppm LM diesel fuel to contain greater than 0.10 milligram per liter of SY-124 through November 30, 2012. Beginning December 1, 2012, 500 ppm LM diesel fuel at all locations will be required to contain no more than 0.10 milligram per liter of SY-124, consistent with the original intent of the nonroad diesel rule preamble.

The EPA’s Office of Enforcement and Compliance Assurance has exercised its enforcement discretion as a bridge to OAR’s rulemaking, and will not pursue

enforcement for violations of 40 CFR 80.510(f) for fuel marked with more than 0.10 milligram per liter of SY-124 and designated as 500 ppm sulfur LM diesel fuel that was introduced into the fuel distribution system prior to June 1, 2012. The enforcement discretion will remain in effect until either (1) 11:59 P.M. EST, November 30, 2012, or (2) the effective date of the final rule governing SY-124 marker in 500 ppm LM diesel fuel.

A copy of the letter granting enforcement discretion as a bridge to OAR's rulemaking can be found at:

http://cfpub.epa.gov/compliance/resources/policies/civil/caa/details.cfm?CAT_ID=&SUB_ID=95&templatePage=10&title=Clean%20Air%20Act%20Mobile%20Source%20Policies%20and%20Guidance