

Q: The regulations at 40 CFR 80.570 state labeling requirements, however it is unclear whether or not these labels apply to pumps dispensing kerosene. The IRS regulations currently state required labels for kerosene pumps.

Pumps that dispense dyed kerosene are labeled, pursuant to IRS regulations at 26 CFR 48.4082-2(a), with “DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE.” Pumps that dispense clear kerosene that is untaxed must be blocked and labeled, pursuant to 26 CFR 48.6427-10(b)(1)(iii), with “UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY.” Are these labels adequate for EPA’s pump labeling requirements?

A: *Kerosene meets the definition of diesel fuel since it is a distillate fuel that is suitable for use in diesel engines and it is considered No. 1 diesel fuel (40 CFR 80.2(x)). Since it is diesel fuel, the applicable sulfur standards and pump labeling requirements depend on how it is distributed and used.*

There are two situations presented. In one case the kerosene is dyed and distributed from pumps labeled “DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE” pursuant to the IRS labeling requirements of 26 CFR 48.4082-2. In the other case, the kerosene is undyed and distributed from a blocked pump that is labeled “UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY” pursuant to the IRS labeling requirements of 26 CFR 48.4082-2.

In both cases, EPA will assume it is not intended for use or made available for use as motor vehicle diesel fuel absent evidence that shows otherwise. This kerosene would therefore not be subject to the sulfur standards for highway diesel fuel and would not be subject to the pump labeling requirements for highway diesel fuel at § 80.570(a) or (b). However if the kerosene was in fact sold, dispensed, or offered for sale to highway vehicles it would then be motor vehicle diesel fuel and the kerosene would be subject to the sulfur standards and the pump would be subject to the labeling requirements for highway diesel fuel.

Given the statement on the kerosene pumps that the diesel fuel is for “nontaxable use only,” EPA will assume that this kerosene is being sold, dispensed, or offered for dispensing for nonroad equipment. The pump is therefore subject to the labeling requirements of § 80.570(c) unless the kerosene meets the sulfur standards for highway fuel. While EPA would evaluate the specific circumstances of a situation to determine the applicability of the pump labeling requirements, it is reasonable to assume that these kerosene pumps are subject to the labeling requirements of § 80.570(c) absent clear evidence otherwise.

Under § 80.570(c), the pump labels need to contain certain specified information, such as the statement that the diesel fuel “may exceed 500 ppm sulfur.” The pump label statements required by IRS do not satisfy the various requirements of § 80.570(c).

EPA does have authority to approve alternative pump labels, and has approved alternative labels for kerosene pumps. The following labels may be used for kerosene pumps as an alternative to the labels specified in § 80.570.

(1) Alternate labeling language for 40 CFR 80.570(a):

For clear, taxed kerosene-

ULTRA-LOW SULFUR KEROSENE (15-ppm Sulfur Maximum)

Required for use in all model year 2007 and later highway diesel vehicles and engines.

Recommended for use in all diesel vehicles and engines.

For clear, untaxed kerosene at blocked pumps-

**ULTRA-LOW SULFUR KEROSENE
(15-ppm Sulfur Maximum)**

Undyed and untaxed.

Not for use in highway diesel vehicles and engines.

(2) Alternate labeling language for 40 CFR 80.570(b):

For clear, taxed kerosene-

LOW SULFUR KEROSENE (500-ppm Sulfur Maximum)

WARNING

Federal law *prohibits* use in model year 2007 and later highway vehicles and engines.

Its use may damage these vehicles and engines.

For clear, untaxed kerosene at blocked pumps-

LOW SULFUR KEROSENE (500-ppm Sulfur Maximum)

Undyed and untaxed.

Not for use in highway diesel vehicles and engines.

May Damage 2007 or later model year diesel engines.

(3) Alternate labeling language for 40 CFR 80.570(c):

NON-HIGHWAY KEROSENE (May Exceed 500-ppm Sulfur)

WARNING

Federal law *prohibits* use in highway vehicles or engines. Its use may damage these vehicles and engines