

Focus on Fuels

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Fuels Regulations Streamlining

Fuels regulations' streamlining by the EPA is in process and the effort should be applauded by everyone impacted by the regulations. The streamlining effort encompasses regulations that date back to the 1970s for fuel manufacturer and fuel additive manufacturer registration and reporting. Other programs that would be impacted are volatility restrictions on gasoline, sulfur and benzene in gasoline, NOx, Toxics and VOC emission controls, detergent additive regulations in gasoline, oxygenate requirements in gasoline (not related to the renewable fuel program), recordkeeping, reporting and product transfer document requirements. It is essentially all fuel programs enacted since 1990 with the exception of the renewable fuel program.

The current regulations grew like an uncontrolled weed. They were written at different times by multiple authors on subjects whose significance has also changed in the past 20-25 years. The current effort includes a diluted form of regulatory negotiation, or Reg/Neg, used when the reformulated gasoline program was developed in the early 1990s. EPA has asked for input from interested parties on how to simplify the regulations without losing any of the regulatory impact. To understand the streamlining process and objectives, we need to first look at the current regulations and how they came to be.



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TM&C Services in Fuel Regulations

TM&C provides a full range of services in its fuels regulatory practice. Some of these services are listed below.

- Preparing, reviewing and submitting fuels reports, including CDX submissions.
- Facility audits for compliance with fuels programs.
- Interaction with EPA to pose fuels-related questions.
- Industry specialist assistance for required

Fuels Regulations Streamlining

The Regulatory Process

Fuels regulations are promulgated by the federal government, or by the states or through state implementation plans (SIPs) which are federally enforceable. Most of the states rely on the federal statutes and the limits set by the standards described in ASTM D4814 for gasoline and ASTM D975 for diesel. In practice, compliance with federal regulations which includes SIPs is the most closely watched due to the potential penalty for noncompliance. Understanding the process and application of federal regulations is important to understanding the complexity of the current rules.

Federal regulations are a result of legislation passed by Congress. Typically, a law is passed and is left to the specific regulatory agency to

- gasoline attestations.
- Industry specialist assistance for in-line blending audits.
- Assistance in setting up a fuels compliance group/program.
- Personnel reviews of compliance-related groups.
- Compliance status reviews and recommendations.
- Negotiations/consultation during EPA enforcement actions.
- 3rd-Party Engineering reviews.
- Due diligence reviews of facilities and companies in RFS RINs Program.

"flesh" out the broad and sometimes very specific legislative directions. In the case of the fuels regulations that originated in the Clean Air Act Amendments of 1990, the process also included a determined attempt to solicit input from all interested parties including the automobile manufacturers, oil industry and renewable fuel industry.

The initial draft of regulations is typically issued in a notice of proposed rulemaking or NPRM. The NPRM generally includes a preamble that describes the rulemaking process, different ideas on what the regulations should include and which of the ideas the EPA has adopted in the NPRM and why. The preamble is a very important part of the rulemaking process because it helps to interpret the "spirit" of the regulations or the intent of the authors in the inevitable event that some activity is not addressed directly in the regulations. The second part of an NPRM is the actual proposed regulations. This is obviously very important because these are the specific rules everyone will be required to live by when finalized. The NPRM includes a request for input on the proposed regulations. The NPRM also includes a deadline for responses to the NPRM before EPA finalizes the regulations. Ultimately, the NPRM is followed by a Final Rulemaking or FRM. The format of the FRM is the same as the NPRM with updates in consideration of comments received from the NPRM.

However, just like the infomercials on TV, "Wait!," we aren't done yet in determining how the rules might be interpreted and enforced. Rules governing an activity as complex as the transportation fuel business, can never be written to directly address all situations that might occur. As a result, post FRM publication, there will be a period that might stretch from weeks into several years when specific questions are asked by the regulated parties and answered by the regulating agency; in this case, the EPA. To promote an equal playing field, EPA will publish questions received and its answers in a Questions and Answers document. In the case of the fuel regulations, Q&As have been written for many issues not directly addressed by the regulations. These Q&As include hundreds of pages. If you think we're done here explaining where the federal guidance comes from, you are wrong.

In spite of the final rules and questions and answers there are still some unanswered issues that are addressed through letters issued by the EPA that might address enforcement tolerance or other issues not yet clarified. These letters can be difficult to find and unless you know something has been clarified, you wouldn't even know to look for the guidance document. Finally, EPA has a help desk for parties to ask questions not specifically addressed in the regulations or not subsequently clarified in Q&As or guidance documents. These byzantine rules are a perfect opportunity for regulatory simplification or streamlining.

What is Being Streamlined?

EPA has published a very rough draft of the streamlined rules they are considering. The characterization as "rough" cannot be overemphasized. The draft was put together very quickly and was only assembled to give everyone something to begin the discussion. The discussion draft can be seen at, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100U140.pdf>. The EPA, in response to industry comments, has already acknowledged

significant differences from the draft.

The streamlining effort is very extensive and touches on essentially all fuels regulations except the renewable fuel program. In fact, the streamlining effort actually does intersect with the RFS program in a few places, but it does not propose modifications to the RFS program. Some of the areas addressed are detailed below.

Reformulated and Anti-dumping Gasoline

The reformulated and anti-dumping gasoline regulations are very extensive and have been modified drastically over the past 25 years. Some of the features of the program include, segregation of types of gasoline (RBOB, CBOB etc.), emission limits based on a complex model, gasoline property limits based on the development of the complex model, surveys to assure the emission limits are being met, and specific areas where the reformulated gasoline must be used. The streamlining effort seeks to recognize that the same emission benefits can be accomplished without the segregation and complex model considerations. Briefly, the current VOC emissions calculation for summertime reformulated gasoline will be replaced with a vapor pressure limit of 7.4 RVP. In addition, all winter gasoline will be designated as reformulated gasoline in order to accommodate the legislative requirement that RFG be supplied to specific ozone nonattainment areas. The streamlining will also remove limitations on mixing reformulated and conventional gasolines.

Volatility Regulations (Vapor Pressure)

In the late 1980s and early 1990s the EPA proposed and finalized rules that limited the vapor pressure of gasoline in the summer time at 7.8 psi in areas that were ozone nonattainment and 9.0 psi in all other areas. Vapor pressure was already controlled commercially by the standards in ASTM D4814 and still is in the winter time. Also, several state implementation plans limit RVP in gasoline at levels less than the federal standard. The streamlining proposal would be to continue the existing limitations with the addition of a 7.4 psi limit on summertime RFG. The streamlining effort has little impact on volatility regulations.

Gasoline Detergent Additization

The current regulations require registration of all gasoline detergent additives, addition of a specific level of detergent additives, and monthly reports that are kept internally to verify that additization occurred. The streamlining effort currently calls for a continuation of all of the important points of the current regulations with the exception that the detailed volumetric additization records or VARs no longer need to be prepared monthly; however, the information contained in the VARs must still be generated and available if requested by the EPA.

Reporting

The EPA currently requires significant reporting to keep track of a lot of information required to verify complex model calculations. Under the streamlining draft, reporting for crude refiners would be simplified to sulfur, benzene, RVP in the summer and oxygenates if included in compliance calculations. Component blenders would also be required to report some distillation properties. EPA is also proposing to require

laboratories to submit statistical quality control documentation as part of the annual reporting.

Sulfur and Benzene

Sulfur and benzene in gasoline are limited in the current regulations and would continue to be limited under the draft proposal. It is quite unlikely that these limits will change under this streamlining effort.

Registration

The draft streamlining document includes registration of blender grade butane and pentane producers. This is significant since they are not regulated parties under the current regulations. In addition, EPA is considering combining commercial and noncommercial butane into a single "blender grade" which requires 95% pure butane. This essentially eliminates all but the current commercial butane from use by a butane blender using the shortcut provisions for butane blending.

Surveys

The streamlining draft proposes eliminating the current RFG survey and replacing it with a national survey to sample reformulated and conventional gasoline. In addition, EPA is proposing a sampling and testing survey twice a year for each laboratory certifying gasoline.

Timing

The EPA is targeting to have the regulations finalized by the fourth quarter of 2019 with full implementation by January 1, 2020. It seems like a long way off, but the timing is quite aggressive based on the typical time it takes to modify the fuel supply system.

The Bottom Line

The proposed streamlining effort is timely and likely to be very positive for regulated parties and the country in general without diminishing the positive environmental impacts of the transportation fuels regulations. However, once the rules are finalized, there is likely to be several years while the industry sorts out how the regulations apply. The devil's in the details and at this point; there are no details. Remember, it has taken years for the current regulations to be interpreted and rarely a month goes by that some new question is asked and answered.

Don't forget, these changes are at least a year and a half away and you still need to follow the current, sometimes confusing regulations. Turner, Mason & Company is here to provide guidance. We will also stay current as the draft regulations are finalized. If you have any questions, contact us



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