

Regulatory Announcement

Proposed Boutique Fuels List Under Section 1541(b) of the Energy Policy Act and Request for Public Comment

The Energy Policy Act of 2005 (EPAAct) requires the U.S. Environmental Protection Agency (EPA) to publish a Federal Register notice listing fuels that were approved in all State Implementation Plans (SIPs) as of September 1, 2004. The list includes the states and Petroleum Administration for Defense Districts (PADDs) where the fuels are used. Publication of the list is intended to reduce the number of different fuels required around the country and thus increase the fungibility of fuels.

Background

The EPAAct requires EPA, in consultation with the Department of Energy, to determine the total number of fuels approved into all SIPs as of September 1, 2004. The EPAAct also requires EPA to publish a list of such fuels (often referred to as “boutique fuels”), including the states and PADDs in which they are used, for public review and comment. EPA is publishing the list, as required by Congress, along with an explanation of the Agency's rationale in developing it.

Under the Clean Air Act, state fuels programs respecting a fuel characteristic component that we have regulated under section 211(c)(1) are preempted. EPA may waive preemption through approval of the fuel program into a SIP. Approval into a SIP requires that the fuel program is necessary to achieve the National Ambient Air Quality Standard

(NAAQS). “Necessary” means that no other reasonable measures exist that would bring about timely attainment.

The EPO Act places additional restrictions on our authority to waive pre-emption by approving a state fuel into a SIP. These restrictions are: 1) we may not approve a state fuel program into a SIP if it would cause an increase in the “total number of fuels” approved into SIPs as of September 1, 2004; 2) if approval would not increase the “total number of fuels,” we must find that the new fuel will not cause supply or distribution problems or have significant adverse impacts on fuel “producibility” in the affected or contiguous areas; and 3) we may not approve a state fuel unless that fuel is already approved in at least one SIP in the applicable PADD.

The EPO Act requires EPA to determine the “total number of fuels” in order to generate a list for public comment. The term “total number of fuels” is not defined in the EPO Act. EPA believes that it may be interpreted in two basic ways: by a fuel type interpretation or by a state specific interpretation. Under a fuel type interpretation, the total number of fuels is determined by the number of different types of fuels. Under a State specific interpretation, each individual state fuel is counted.

As explained in detail in the *Federal Register* notice, EPA prefers the fuel type interpretation. We believe this approach appropriately balances the concerns at the heart of the EPO Act provision while preserving some ability for states to adopt state fuel programs that can be useful in attaining the NAAQS. To aid the public in commenting, we have generated a fuels list based upon each interpretation - a list comprised of seven different types of fuels, as well as a list comprised of the 12 individual state fuels.

Health and Environmental Impacts

The clean air and human health benefits of fuels programs will continue to be realized. Many fuels programs are designed to address ground level ozone or “smog” and to reduce toxic emissions from the fuel burned in cars and trucks. Smog threatens millions of Americans each year with respiratory problems, and is particularly dangerous to children, who are increasingly at risk to asthma attacks.

Fungibility of Fuels

The boutique fuel provision in the EPO Act makes an effort to reduce the number of different fuels required around the country and thus increase

the fungibility of fuels. Most fuels travel through common carrier pipelines based upon general specifications, most of which are dictated seasonally and by regulation. Terminals have limited storage tanks. The proliferation of different fuels creates a serious challenge to production, distribution, and storage, especially during times of disruption such as refinery shutdowns or weather related damage. The list and the EPA's limitations placed upon EPA's ability to approve future fuels in SIPs are intended by Congress to limit further expansion of boutique fuels.

For More Information

You can access the *Federal Register* Notice on EPA's Office of Transportation and Air Quality Web site at:

www.epa.gov/otaq/boutique.htm

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