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U.S. ENVIRONMENTAL PROTECTION AGENCY

PUBLIC HEARING

PROPOSED RULE: FUELS REGULATORY STREAMLINING

DOCKET NO. EPA-HQ-OAR-2018-0227

Thursday, May 28, 2020

10:00 a.m.

Via WebEx

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- STEVEN MOORE, Chevron Oronite, LLC
- TONY PENDOLA, NC DEQ SBEAP
- SUSAN LAFFERTY, Eversheds Sutherland
- COLLEEN STEVENS, American Chemistry Council
- TREVOR HINZ, Urban Air Initiative, Inc.
- KELLY DAVIS, Renewable Fuels Association

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P R O C E E D I N G S

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Welcome, Comments and Introductions

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MS. GOODMAN: Good morning, everyone. Welcome to the EPA Public Hearing for the Proposed Rule, Fuels Regulatory Streamlining.

9

10

11

My name is Jeanne Goodman. I'm from Abt Associates, contractor to the U.S. Environmental Protection Agency.

12

13

We're now ready to begin. I will turn it over to EPA to get us started.

14

15

MR. MACHIELE: Good morning. This is Paul Machiele.

16

17

Welcome to the Public Hearing on EPA's Proposed Rulemaking for the Fuels Regulatory Streamlining Rule.

18

19

20

I am the Fuels Center Director. I'm responsible for this rulemaking. I will be chairing today's hearing.

21

Because of the current CDC recommendations as well

1 as state and local orders for social distancing to
2 limit the spread of COVID-19, this hearing is being
3 held virtually.

4 This hearing is being recorded and your comments
5 will be transcribed for the official record.

6 We thank you for your participation in spite of
7 the changed circumstances.

8 With me today and listening to the testimony on
9 this proposed rule are several of my EPA colleagues who
10 work on the Fuels Program.

11 The proposed rule was signed by Administrator
12 Wheeler on April 13th and was published in the Federal
13 Register on May 14th. The proposed rule is part of our
14 continual effort to update our regulations to ensure
15 that fuel quality standards established under the Clean
16 Air Act continue to meet the needs while minimizing the
17 burden associated with doing so.

18 We are proposing to streamline and modernize our
19 existing Part 80 Fuel Quality Regulations by
20 transferring them into a new proposed set of
21 regulations in Part 1090. In this action, we are

1 taking a holistic look at the existing Part 80
2 regulations in an attempt to consolidate the many
3 different and overlapping regulations into the proposed
4 Part 1090 regulations. That will also better reflect
5 how fuels, fuel additives, and regulated blend stocks
6 are produced, distributed, and sold in today's
7 marketplace.

8 While this action proposes changes to many aspects
9 of our Fuel Quality Programs, there are several areas
10 of the existing Part 80 regulations that would remain
11 unchanged.

12 Most importantly, this action does not change the
13 spirit of the existing fuel quality standards. This
14 action proposes to transfer the Part 80 Fuel Quality
15 standards mostly unchanged to Part 1090, though in some
16 cases we are proposing to modify the form of the
17 standards to translate them into a format more
18 conducive to streamlining the regulations and ensuring
19 in-use compliance.

20 While we are also proposing some slight
21 modifications to the Renewable Fuel Standard program,

1 primarily for administrative purposes, we are not
2 proposing substantive changes to the RFS Program.

3 We are also not proposing to remove any
4 requirement under the Clean Air Act on fuels or parties
5 that make and distribute such fuels.

6 We appreciate the thoughtful consideration of the
7 affected stakeholders throughout the development of
8 this proposal. Your input has been important in
9 helping us draft the proposal. As such, EPA is inviting
10 comment to the proposed rulemaking and we specifically
11 ask stakeholders to provide us suggested alternatives
12 in addition to highlighting areas of concern to the
13 many issues discussed in the proposal.

14 Feedback provided during this hearing, as well as
15 written comments provided in response to the proposal,
16 will inform the final rulemaking. All comments on the
17 proposed rule, whether provided at today's hearing or
18 in writing, will receive equal consideration by EPA.

19 Details on where to submit your written comments
20 can be found in the proposed rule published on May 14th
21 in the Federal Register. The comment period closes on

1 June 29, 2020.

2 Now let me go over how we will conduct this
3 hearing. We are conducting this hearing in accordance
4 with Section 307(d)(5) of the Clean Air Act, which
5 requires EPA to provide interested persons an
6 opportunity for oral presentation in addition to
7 written submissions.

8 The official record of this hearing will be kept
9 open for 30 days to provide for submission of rebuttal
10 and supplemental testimony. The hearing will be
11 conducted informally and Formal Rules of Evidence will
12 not apply.

13 I will be serving as the presiding officer at
14 today's hearing and, as such, I will strike statements
15 from the record which are irrelevant or needlessly
16 repetitious, and will apply reasonable limits on the
17 duration of statement of any witness.

18 Each speaker will have three minutes to provide
19 his or her verbal testimony. A countdown clock will
20 also be shown on the screen so speakers know how much
21 time they have left.

1 We will be calling witnesses one by one for
2 today's testimony. The order of speakers will be
3 displayed on-screen. We ask that you monitor the list
4 of speakers and be prepared to present your testimony
5 when it is your turn to speak.

6 If you would like to testify but have not yet
7 registered to do so, please send a message via the chat
8 box. We will try to accommodate everyone who wants to
9 testify.

10 Witnesses must state their name and affiliation
11 prior to making their statement. When each witness is
12 finished his or her presentation, the EPA staff will
13 have an opportunity to ask questions related to the
14 testimony. However, we will not respond to questions.

15 Witnesses are reminded that any false statements
16 or false responses to questions may be a violation of
17 law.

18 As this is our first virtual hearing, we ask for
19 your patience as we proceed. If you are not registered
20 to speak but would like to, please send a request in
21 the chat box. If you joined the listen-only phone line

1 and would like to be able to speak, please e-mail Nick
2 Parsons at parsons.nick@epa.gov. That's Parsons,
3 P-A-R-S-O-N-S dot N-I-C-K at epa.gov.

4 Thank you. I will now turn it over to EPA's
5 contractor, Abt Associates, to discuss the logistics of
6 today's hearing.

7 MS. GOODMAN: Thank you. Before we begin, we'd
8 like to go over some logistics for today's public
9 hearing.

10 As a reminder, all attendees are muted
11 automatically. We will unmute you when it is your turn
12 to speak. Please make certain that if you connected by
13 telephone that your phone is unmuted. If you are
14 having trouble, use the chat box. If you are not
15 registered to speak but would like to, please send a
16 comment in the chat box. If you joined the listen-only
17 phone line and would like to be able to speak, please
18 e-mail Nick Parsons, again P-A-R-S-O-N-S dot N-I-C-K at
19 epa.gov.

20 Now we will begin our public comments. The
21 expected speaking order is currently displayed on the

1 screen. Each speaker will have three minutes to
2 present their testimony. Please note the timer will
3 track your time. I will be introducing each speaker in
4 turn.

5 The first speaker will be Patrick Kelly. Please
6 state your name and affiliation for the record.

7 MR. KELLY: Good morning. Can you hear me okay?

8 MS. GOODMAN: We can hear.

9 MR. KELLY: Great. Thank you. Good morning. My
10 name is Patrick Kelly. I am the Senior Fuel Policy
11 Advisor at the American Petroleum Institute.

12 Do you want me to proceed or was that just a sound
13 check you were looking for?

14 MS. GOODMAN: Please proceed.

15 MR. KELLY: Okay. Thank you. API represents all
16 segments of America's oil and natural gas industry.
17 Our more than 600 member companies produce, process and
18 distribute most of the nation's energy.

19 API supports EPA's initiative to streamline and
20 modernize existing fuels regulations under 40 CFR Part
21 80. We share EPA's objective to improve the clarity

1 and reduce the complexity of EPA's gasoline, diesel,
2 and other fuels regulations which will reduce
3 compliance costs and improve compliance assurance.

4 The proposed rulemaking is a significant step
5 forward for achieving those goals while maintaining the
6 stringency of existing fuel quality standards designed
7 to protect human health and the environment.

8 API applauds EPA's staff for the countless hours
9 spent developing this proposal and the transparency the
10 agency has provided throughout the process.

11 While this rulemaking may not make headlines, I
12 want to stress that these regulatory changes are of
13 significant importance to our industry.

14 API is working with industry partners to develop
15 detailed written comments to the proposal that will be
16 submitted by the June 29th deadline.

17 We are supportive of the process and the content
18 of the proposal but several changes are needed before
19 the new regulations are finalized.

20 We also support EPA's ambition to finalize the
21 rulemaking later this year so that the revised

1 regulatory framework can take effect in the marketplace
2 on January 1st, 2021.

3 As EPA notes in the proposal, there are some areas
4 that will require a delayed implementation, allowing
5 time for stakeholders to make necessary system changes,
6 but those issues should not cause a delay for
7 implementing the broader Fuels Program changes.

8 Thank you for the opportunity to testify today and
9 I'm happy to answer any questions.

10 MS. GOODMAN: Thank you for your comments.

11 Does EPA have any questions?

12 MR. MACHIELE: No. Thank you, Patrick. We look
13 forward to your comments and if you could maybe sooner
14 rather than later give us the list of the changes that
15 you're looking for just so we make sure they're in
16 front of us as soon as you can after the hearing that
17 would be great.

18 MR. KELLY: Okay.

19 MS. GOODMAN: Thank you.

20 The next speaker will be Tim Hogan. Please state
21 your name and affiliation for the record.

1 MR. HOGAN: Good morning. I am Tim Hogan,
2 Director of Motor Fuels at the American Fuel &
3 Petrochemical Manufacturers.

4 AFPM is a national trade association whose members
5 comprise most U.S. refining and petrochemical
6 manufacturing capacity. Our members produce the fuels
7 that drive the United States economy and the chemical
8 building blocks integral to millions of products that
9 make modern life possible.

10 AFPM supports the agency's extensive multiyear
11 effort to remove expired provisions, eliminate
12 redundant compliance provisions, remove unnecessary and
13 out-of-date requirements, and consolidate regulations.

14 This project is long overdue and most welcome. We
15 support the general start date of January 1, 2021, for
16 most of the Part 1090 regulations and we urge an
17 expeditious release of the final rule in order to give
18 AFPM's members' adequate lead time.

19 AFPM supports the proposal that all winter
20 gasoline can be used without recertification, the
21 selection of 7.4 psi to satisfy the RFG VOC

1 requirement, third party retail surveys, third party
2 voluntary oversight at gasoline manufacturing
3 facilities, and continuation of the RVP enforcement
4 test tolerance, extending downstream oxygenate
5 accounting to all gasoline, an additional year for in-
6 line blending waivers, the removal of EPA's red dye
7 requirement for diesel fuel and elimination of the
8 requirement to report and test many unnecessary
9 gasoline parameters.

10 While we generally support the proposal, we do
11 have several concerns that we will highlight here and
12 elaborate on in our written comments.

13 AFPM is concerned about EPA's proposed disclosure
14 of certain information provided to the agency and
15 through various petitions for regulatory relief. This
16 includes the submitter's name, location of facility for
17 which relief is requested, the general nature of the
18 request, the relevant time period for the request, and
19 the extent of EPA's action to deny or grant the
20 request, and any necessary or relevant conditions.

21 The agency proposes to provide notice so each

1 submitter will have the discretion to decide whether to
2 make such a request with the understanding that EPA may
3 release certain information about the request without
4 further notice.

5 This approach is contrary to Congress' specific
6 intent and is inappropriate. Congress provided
7 hardship relief in the Clean Air Act. It's up to
8 Congress to amend these provisions or disclosure
9 without notice.

10 EPA has treated these requests as confidential for
11 many years. Disclosure has the potential to impact
12 markets. AFPM opposes this proposed position. We
13 support the continuation of the notice and requirements
14 for confidential business information in the CFR.

15 EPA proposes that mandatory RFG areas could opt
16 out of the RFG Program if certain conditions are met.
17 This would give the states the ability to determine
18 whether this program could continue in the areas that
19 are designated by statute.

20 Congress created mandatory RFG areas and it's up
21 to Congress to eliminate this provision. EPA does not

1 have the authority to remove the RFG Program for
2 mandatory RFG areas created by Congress. This statute
3 is unambiguous.

4 Rule of Law is important and this is an example of
5 an inappropriate reinterpretation of a clear statutory
6 provision. There is no latitude in the Clean Air Act
7 for this end run.

8 Thank you for this opportunity.

9 MS. GOODMAN: Thank you for your comments.

10 Does EPA have any questions?

11 MR. MACHIELE: No. Thank you, Tim, and thanks for
12 giving us the list of both the things you like and
13 concerns and I think we'll look forward to getting your
14 comments and more details as soon as we can. Thank you
15 very much.

16 EPA, other staff have any questions?

17 (No response.)

18 MS. GOODMAN: Hearing none, the next speaker will
19 be Chris Bliley. Please state your name and
20 affiliation for the record.

21 MR. BLILEY: Chris Bliley. I'm the Head of

1 Regulatory Affairs for Growth Energy. Everybody hear
2 me okay?

3 MS. GOODMAN: Yes, we can.

4 MR. BLILEY: Okay. Thanks for the opportunity to
5 virtually appear today to discuss the agency's
6 proposal.

7 Growth Energy's the largest renewable fuel
8 organization in the world, representing 103 ethanol
9 producers, 89 businesses in the ethanol value chain,
10 and tens of thousands of biofuel supporters across the
11 country.

12 Representing biofuel producers, we appreciate the
13 agency's action to reduce burdensome and duplicative
14 requirements on fuels and appreciate the process that
15 the agency has taken on this proposal.

16 I want to focus my comments today on E15. E15 is
17 currently available at more than 2,000 retail locations
18 in 29 states and now available for year-round sale.
19 Any updates to the fuel regulations should, first and
20 foremost, do no harm to the availability of this fuel.

21 While there do not appear to be major impediments

1 in the proposal, there is some confusion about the
2 language on BOB certification and downstream oxygenated
3 blending.

4 With year-round sale approved, it makes little
5 sense why the agency would have substantially different
6 BOB requirements for E10 and E15 and at a minimum let
7 downstream oxygenate blenders choose to add 15 percent
8 ethanol, they should not incur additional requirements
9 of that of a fuel manufacturer or refiner.

10 We'd ask that you work with retailers to simplify
11 any BOB recertification so that there are not
12 additional burdensome requirements added to the process
13 to sell the fuel.

14 Additionally, while we've continued to seek
15 removal of the burdensome E15 sampling requirement as
16 unnecessary, we are pleased to see that EPA is taking
17 steps to hopefully reduce costs to ethanol producers
18 and retailers.

19 As you know, since the approval of E15, a fuel
20 sampling program has been a requirement under the NIST
21 Fueling Mitigation Regulation and the costs have been

1 solely borne by ethanol producers and retailers, costs
2 that have exceeded a million dollars annually.

3 By consolidating the various sampling programs,
4 including the E15 Program, we are hopeful that a larger
5 group of participants, including fuel manufacturers and
6 refiners, will decrease the costs for everyone.

7 Finally, I would be remiss in not mentioning there
8 remain additional regulatory hurdles to the sale of E15
9 that need to be addressed. In discussions last year,
10 the EPA Administrator committed to review the E15 label
11 as well as removing hurdles to the sale of E15 through
12 existing infrastructure.

13 While these changes may not be within the scope of
14 this rulemaking, it is important that the agency follow
15 through on its commitments to help expand the
16 availability of renewable fuels.

17 Thanks in advance for your consideration and we'll
18 be working with you to provide additional written
19 comments, as well.

20 MS. GOODMAN: Thank you for your comment.

21 Does EPA have any questions?

1 MR. MACHIELE: No. Thank you, Chris. Thanks for
2 coming and testifying virtually.

3 Do any of my staff have any questions, follow-up
4 questions?

5 (No response.)

6 MR. MACHIELE: Okay. Thanks. Thanks, Chris.

7 MS. GOODMAN: I want to remind everyone that if
8 you joined in the listen-only phone line and would like
9 to speak, please e-mail Nick Parsons at
10 parsons.nick@epa.gov. That's P-A-R-S-O-N-S dot N-I-C-K
11 at epa.gov.

12 The next speaker will be Steven Moore. Please
13 state your name and affiliation for the record.

14 (No response.)

15 MS. GOODMAN: And we seem to have lost Steven
16 Moore. So we will let him rejoin us again, hopefully
17 in a few moments.

18 And we have Tony Pendola but Tony does not appear
19 to be connected to the audio of the meeting. So I will
20 try contacting Tony. Actually, let me try contacting
21 Steven first. Hang on, please. And that is not

1 working. Oh, Steven, you're speaking through the call-
2 in. Here we go. I believe I found you. Let me try
3 and unmute you. Go ahead. No, I am not getting you.
4 Steven, if you're able to reconnect to the meeting, I
5 will connect you that way, and Tony Pendola does not
6 appear to be connected by telephone at this point.

7 Perhaps we can go on to Susan Lafferty. Susan,
8 please state your name and affiliation for the record.

9 MS. LAFFERTY: Hi. Yes, this is Susan Lafferty.
10 I'm a Partner in the Energy Group of the law firm
11 Eversheds Sutherland.

12 My clients are refiners, component blenders, and
13 importers of gasoline and diesel. The companies are
14 obviously obligated parties under the RFS but there are
15 also many RIN generators. So my clients wear several
16 hats under the Mobile Source Program and are active
17 participants who prioritize compliance.

18 The Fuel Streamlining Proposed Rules have come a
19 very long way since the first introduction two years
20 ago and I greatly commend EPA for its efforts to this
21 end and on behalf of my clients extend our sincere

1 appreciation for their receptiveness to our inquiries
2 and feedback and comments thus far.

3 While greatly improved, I'd like to offer a few
4 comments today and then we will go into more depth in
5 our written comments.

6 The timing does concern us given the breadth and
7 depth of this proposed rule, and we are concerned that
8 an issuance of a final rule in the fall may not be
9 adequate time for implementation in January 2021. At
10 the very least, we do urge EPA to center the delays in
11 certain areas that might be necessary.

12 One concern in this area is with the new National
13 Oversight Sampling Program. Many companies heard
14 detail about this program for the first time last week
15 at a workshop which was very helpful but also outlined
16 the expensive nature of this new program that will
17 place much more burden, it seems, on fuel manufacturers
18 and also will require lots of travel and in-person
19 oversight that, at least in the next 12 to 18 months,
20 raises COVID issues that should be addressed.

21 We also have questions about why diesel is being

1 included as mandatory under the new program but is not
2 mandatory under EPA's proposal. The expenses seem
3 quite high and there are details that are uncertain,
4 such as how will pad testing be handled.

5 So, in short, we hope for more EPA fuel
6 manufacturer and RFG survey interaction here.

7 We're also concerned about a new test audit
8 requirement that we see as a burden and new cost on
9 fuel manufacturers where each refiner and importer will
10 have to have an audit done at each laboratory that it
11 works with. We think that this will be very burdensome
12 on labs and especially smaller labs and urge EPA to
13 consider having each lab retain their own single
14 auditor that they get a report from and then share with
15 their clients.

16 With regards to the RVP tolerance, downstream
17 tolerance, we agree with the 0.3 psi but think this
18 should be adopted in a clear manner in the final rule
19 or at least in the preamble.

20 Finally, I'll just touch on import testing and
21 other testing requirements. Currently, EPA's extending

1 homogeneity requirements beyond RBOB to CBOB which is a
2 new requirement. This will result in vessels needing
3 to sit and wait for test results before unloading which
4 will result in new additional costs and including
5 potential vessel demurrage.

6 Generally speaking with regards to testing, there
7 is a great deal of guidance that has been relied upon
8 since the 1990s and we urge EPA to work to incorporate
9 that guidance so as to avoid confusion when
10 implementation does occur.

11 Thank you so much for your time and I look forward
12 to continuing to work with EPA.

13 MS. GOODMAN: Thank you for your comment.

14 Does EPA have any questions?

15 MR. ANDERSON: Hi. This is Robert Anderson. I
16 have a question for Susan.

17 Hey. Susan, you made a comment that we were
18 making diesel mandatory under the new program. Could
19 you please explain that a little bit? I wasn't quite
20 sure specifically what you were talking about.

21 MS. LAFFERTY: Actually, the opposite, Robert. My

1 understanding is that the oversight program is not
2 mandatory under the proposed rule for diesel but that
3 under the National Survey Program, it would be
4 automatically included.

5 MR. ANDERSON: Okay. Thank you.

6 MS. LAFFERTY: Yeah. Thank you.

7 MS. GOODMAN: Any other comments from the EPA?

8 MR. MACHIELE: No. This is Paul Machiele. Thank
9 you, Susan, for testifying and providing your comments
10 and we look forward to working with you in the next
11 several months as we move forward hopefully quickly to
12 try to finalize this action and get it ready for
13 implementation on January 1st as well as working with
14 you and other stakeholders on trying to figure out
15 which aspects may need to have more of a delayed
16 implementation.

17 Thank you very much.

18 MS. GOODMAN: Thank you.

19 If we can go back to Steven Moore, he has called
20 back in. Steven Moore, please give your name and
21 affiliation for the record. Are you muted on your end?

1 Are you muted on the meeting?

2 (No response.)

3 MS. GOODMAN: Unfortunately, we cannot hear you.

4 I will arrange to call you, but in the meantime, let's

5 go on to Tony Pendola. Please state your name and

6 affiliation for the record.

7 MR. PENDOLA: Can you hear me now?

8 MS. GOODMAN: We can.

9 MR. PENDOLA: My name is Tony Pendola. I am the

10 Small Business Ombudsman for the State of North

11 Carolina. I am also the Immediate Past Chair of the

12 National Steering Committee of Small Business

13 Environmental Assistance Program across the country and

14 I'm a liaison to EPA for that group.

15 We offer confidential, non-regulatory, and free

16 compliance assistance to small businesses as mandated

17 by Section 507 of the Clean Air Act. Our knowledge of

18 mobile sources is limited in how we're able to provide

19 three specific comments on this proposed rule.

20 First is on streamlining, the second is on ultra-

21 low sulfur diesel, and the third is on summertime

1 gasoline.

2 First, we support streamlining in general.

3 Anything you can do to make regulations easier to
4 understand and comply with is a good thing, especially
5 for small businesses.

6 Second, I believe that this rule defines ultra-low
7 sulfur diesel to have a maximum sulfur content of 15
8 parts per million. This may allow permitting agencies
9 to lower the potential to emit for sources, enabling
10 them to drop from minor or conditional major permitting
11 levels to a lower natural small permitting level or
12 below and that would be a good thing since they're only
13 stuck there because of a requirement to use five parts
14 per million as their potential to emit.

15 About five years ago, I asked then -- and this is
16 the third comment -- Acting Deputy Administrator
17 Meiburg to simplify the requirement for an agency to
18 relax the summertime gasoline RVP standards.

19 North Carolina was the first state to ask for and
20 receive a relaxation of summertime gasoline
21 requirements and from what I hear from my Division of

1 Air Quality, it was a very arduous task, took many,
2 many man hours and about two years to get that in. Of
3 course, being the first was hard, but we asked that to
4 be simplified and I believe that this rule makes that
5 much simpler to do and has a definite amount of steps
6 and very well laid-out so that other states, if they
7 have a large amount of biogenic volatile organic
8 compound sources, like we do, I know, with our
9 abundance of trees, then they may be able to relax
10 those summertime gasoline requirements and save
11 millions of dollars for their people.

12 That's all my comments.

13 MR. MACHIELE: Thank you very much, Tony, for
14 making the time to testify.

15 I'll invite my EPA colleagues to weigh in but just
16 to clarify, this rulemaking is not changing any
17 standard with respect to the ultra-low sulfur diesel
18 fuel. It's just translating them over from existing
19 standards in Part 80 to Part 1090.

20 We're in the Office of Transportation Air Quality.
21 Our fuel standard for diesel fuel applies to

1 transportation diesel fuel. There's a different set of
2 statutory authority in the requirements that apply for
3 stationary fuel.

4 My understanding is in many cases, states and
5 other organizations have been adopting our same
6 transportation standard of 15 parts per million for
7 stationary purposes, but that's separate and apart from
8 our regulations, but the market has moved over to
9 ultra-low sulfur diesel and I think almost very broadly
10 anyway, my understanding, for stationary sources.

11 I don't know if anyone on my staff wants to
12 clarify any further.

13 (No response.)

14 MR. MACHIELE: Okay. But I just wanted to point
15 that out if you're planning on providing written
16 comments. I just want to make that clear for you just
17 so you can target your comments appropriately.

18 Thank you very much for your time, Tony.

19 MS. GOODMAN: Thank you.

20 The next speaker will be Steven Moore. We're
21 going to try once again. Steven, please go ahead.

1 MR. MOORE: Can you hear me?

2 MS. GOODMAN: We can.

3 MR. MOORE: Can you hear me? Hooray. Sorry for
4 the troubles.

5 My name is Steve Moore, and I'm the Fuel Additives
6 Global Product Mine Manager for Chevron Oronite, a
7 leading developer, manufacturer, and marketer of
8 lubricant and fuel additives and chemicals. We are
9 headquartered in San Ramon, California, maintaining
10 regional offices, manufacturing sites, and technology
11 centers around the world.

12 My brief remarks today are focused on aspects
13 related to proposed changes to the requirements and
14 options for LAC certifications of gasoline detergent
15 additives.

16 We believe that new ASTM D5500-based LAC
17 certifications should be allowed as long as the
18 relevant test equipment and certification fuel are
19 available.

20 We believe that using CARB-based testing as a
21 substitute for the current LAC certification process

1 isn't really a solution to D5500 availability since it
2 uses the same test equipment.

3 We believe that allowing only current CARB or Top
4 Tier standards for new LAC certifications before the
5 completion of a new deposit control test to replace
6 D5500 is not appropriate since that introduces a
7 different minimum standard of performance between
8 existing products and newly-certified products that
9 could be in the commercial market simultaneously.

10 We believe that allowing new ASTM D6201-based
11 certifications at the correlated performance levels
12 established in SAE-981365 should be given further EPA
13 consideration as an available option to new D5500-based
14 certifications in order to maintain better parity of
15 performance standards between existing and future
16 certifications.

17 We believe that any new LAC certification
18 requirements should include at least one option that
19 has performance equivalent to the existing D5500-based
20 certification standards.

21 We believe that allowing other options that

1 reflect higher performance standards based on data
2 demonstrations, for example CARB or Top Tier standards,
3 is acceptable but not as the only options available.

4 We believe that existing LAC certifications should
5 remain valid as long as there is no fundamental change
6 in LAC requirements and has been based on updated
7 emissions performance standards or analysis, not simply
8 from changes in expediency related only to available
9 test methods.

10 Historical industry data suggests that products
11 passing the D5500 performance requirements for EPA LAC
12 certification will also pass the current PFI injector
13 peak clean performance requirements. We support
14 dropping the requirements for PFI injector peak clean
15 testing.

16 Chevron Oronite also plans to provide written
17 feedback to EPA reiterating these statements and/or
18 provide other feedback and we thank the EPA for the
19 opportunity to share our feedback and our perspective.

20 Thank you. That concludes my remarks.

21 MS. GOODMAN: Thank you for your comment.

1 Does EPA have any questions?

2 MR. MACHIELE: I don't have any questions at this
3 point in time. Steven, thank you very much and we'll
4 look forward to your written testimony.

5 Do any of my staff want to ask any questions on
6 this?

7 (No response.)

8 MR. MACHIELE: Okay. Thank you very much, Steven.

9 MS. GOODMAN: Thank you.

10 The next speaker will be Colleen Stevens.
11 Colleen, please state your name and affiliation for the
12 record.

13 MS. STEVENS: Sure. Hi, good morning. This is
14 Colleen Stevens, Director at the American Chemistry
15 Council.

16 The ACC's Fuel Additive Task Group or FATG
17 represents the fuel additive manufacturers responsible
18 for most, if not all, the detergent additive
19 certifications associated with this proposed rule.

20 The FATG has previously submitted voluntary
21 feedback in support of the EPA's streamlining process

1 and compliments the agency on its engagement of
2 stakeholders throughout.

3 In this testimony, I will overview one objection
4 and one suggestion that the FATG will plan to expound
5 upon in written comments.

6 The proposed implementation date of the new Part
7 1090 regulations is January 1, 2021, at which time the
8 BMW ASTM D5500 test will no longer be permitted to
9 certify detergent additives as EPA lowest additive
10 concentrations or LAC.

11 The FATG opposes the elimination of the BMW D5500
12 test for LAC certification on that date and asks that
13 it remain an option until a new test of similar
14 stringency is available.

15 The use of the Ford 2.3 liter ASTM D6201 test, as
16 incorporated and talked here, or a CARB-based test
17 method, will likely result in an increase to LAC treat
18 rates. The FATG previously submitted feedback showing
19 that on average CARB treat rates are 38 percent higher
20 and Top Tier treat rates are 90 percent higher than EPA
21 LAC.

1 FATG believes the proposed rule does increase the
2 stringency and creates a new standard for all gasolines
3 that are required to contain detergent additives. EPA
4 has not analyzed or met the statutory requirements to
5 raise the standard.

6 FATG is concerned that the absence of a test of
7 similar stringency to the BMW D5500 would be a barrier
8 to innovation for new additives. New additives
9 developed with more severe testing options for 2.3
10 liter or CARB method will have to verify to a higher
11 treat rate.

12 FATG is concerned with the acceptance by the
13 marketplace of new additive products certified with the
14 higher treat rate than what's currently in use. So
15 long as the BMW D5500 test and EPA certification fuel
16 are available, there's no defensible reason why the EPA
17 should cease allowing the existing BMW D5500 LAC
18 certification.

19 Furthermore, the option to use a CARB-based test
20 method and does not address the issue of availability
21 of BMWs. It uses the same vehicle.

1 The FATG requests that the EPA provide another
2 option to certify a new additive as EPA LAC and
3 establish a Ford 2.3 liter D6201-based LAC option with
4 suitable based fuel and adequate-sized fuel passing
5 level of less than 135 milligrams per valve average.

6 A 200 milligram per valve BMW D5500 result is
7 equivalent to a 135 milligram per valve Ford 2.3 result
8 as described in the SAE paper, 981365, entitled A
9 *Statistical Review of Available Data Correlating the*
10 *BMW and Ford Intake Valve Deposit Tests.*

11 This option is consistent with the EPA's reasoning
12 that the Ford 2.3 liter engine is more available than
13 the BMW vehicle.

14 Thank you for the opportunity to testify this
15 morning. The FATG looks forward to submitting written
16 comments. Thanks.

17 MS. GOODMAN: Thank you for your comments.

18 Does the EPA have any questions?

19 MR. MACHIELE: I do not. Thank you very much,
20 Colleen, for taking the time to testify.

21 MS. STEVENS: Thank you.

1 MR. MACHIELE: Thank you very much. We'll look
2 forward to the written testimony and continuing the
3 dialogue.

4 MS. GOODMAN: Thank you very much.

5 As a reminder, if you joined the listen-only phone
6 line and would like to speak, please e-mail Nick
7 Parsons at parsons.nick@epa.gov. That's P-A-R-S-O-N-S
8 dot N-I-C-K at epa.gov.

9 The next speaker will be Trevor Hinz. Please
10 state your name and affiliation for the record.

11 MR. HINZ: Can everyone hear me?

12 MS. GOODMAN: We can.

13 MR. HINZ: Hello?

14 MS. GOODMAN: Yes, we can hear you.

15 MR. HINZ: Okay. Super. Good morning. My name
16 is Trevor Hinz, and I am the Director of Urban Air
17 Initiative, a nonprofit focused on developing cleaner
18 fuels to reduce harmful gasoline-related air pollution.

19 I would like to start by praising the rule's
20 commendable goal of reducing red tape and updating
21 outdated regulations. Everyone benefits when

1 businesses can devote more of their resources to
2 meeting the needs of their customers instead of the
3 needs of regulators.

4 Unfortunately, the proposed rule falls short of
5 its commendable goal because it fails to remove
6 counterproductive red tape for fuel retailers in my
7 home state of Kansas and elsewhere.

8 Let me explain. For well over a decade, fuel
9 retailers have been safely using blender pumps to sell
10 mid-level ethanol blends, like E20 and E30, for use in
11 flex fuel vehicles.

12 EPA expressly approved this practice in 2006,
13 telling fuel retailers that blends, such as E20 and
14 E30, for use in FFVs are covered under the emission
15 certification for an E85 FFV, thus are not prohibited
16 under the Clean Air Act. But more recently, EPA has
17 ignored its prior guidance and cast doubt on the
18 legality of using blender pumps to make mid-level
19 blends.

20 In 2014, EPA first erroneously asserted that mid-
21 level blends are regulated gasoline under its fuel

1 quality regulations. Two years later, EPA took a step
2 further and asserted that retailers who dispense mid-
3 level blends are gasoline refiners under its
4 regulations.

5 While EPA proposed regulations that would have
6 fixed the problem, it has never adopted those rules.
7 The result is that under EPA's new law, fuel retailers
8 would be subject to enormous compliance burdens
9 designed for full-fledged refineries. For example,
10 refiners must sample and test each batch of gasoline
11 they sell for compliance with EPA's fuel quality
12 standards, but each refinery batch amounts to tens of
13 thousands of gallons.

14 By contrast, retailers sell just about a dozen
15 gallons of fuel per customer. As EPA has acknowledged,
16 requiring retailers to sample and test mid-level blends
17 each time a customer fills a vehicle fuel tank is
18 impractical and completely unworkable.

19 It's also pointless as mid-level blends made with
20 certified gasoline and denatured fuel ethanol are
21 guaranteed to have lower sulfur, benzene, and

1 volatility levels than the E10 they displace from the
2 market, improving the quality of gasoline.

3 Regulating retailers as if they were refiners
4 through improved and constrained interpretations of the
5 law is nonsensical and unfair to retailers who have
6 relied on EPA's past guidance to invest in blender
7 pumps.

8 Imagine a traffic cop told you it was okay to
9 cross the street and then threatened you with enormous
10 fines once you got to the other side. That is what EPA
11 has done here but on a much larger scale.

12 To resolve the problem, Urban Air Initiative,
13 along with other partners, has filed an administrative
14 petition asking EPA to fix the problem it created
15 through its erroneous interpretation of gasoline and it
16 has also sued in court.

17 EPA could resolve this problem by interpreting the
18 current definition of gasoline to exclude mid-level
19 blends used in flex fuel vehicles or by finalizing the
20 reforms it proposed in 2016. It should stop kicking
21 the can down the road.

1 But instead of fixing the problem, the proposed
2 Fuels Regulatory Streamlining Rule would make this
3 problem far worse through an over-inclusive definition
4 of gasoline.

5 Under the proposed rule, gasoline would now for
6 the first time include any fuel intended or used to
7 power a vehicle or engine designed to operate on
8 gasoline, except for gaseous fuel.

9 That definition would include not just mid-level
10 blends but also E85. E85 is used to power flex fuel
11 vehicles which are designed to operate on gasoline.
12 That makes no sense.

13 If EPA wants to regulate E85 and mid-level blends
14 sold for use in flex fuel vehicles as gasoline, it
15 should say so openly and it should do so through
16 regulations that are tailored to work for this market,
17 not through regulations tailored to the gasoline
18 environment.

19 In the alternative, EPA should amend this proposed
20 definition of gasoline to exclude fuels sold only for
21 use in flex fuel vehicles and not just gaseous

1 vehicles.

2 Urban Air Initiative will file more detailed
3 written comments. Thank you for your time this
4 morning.

5 MS. GOODMAN: Thank for your comment.

6 Does EPA have any questions?

7 MR. MACHIELE: No, I don't have any questions.

8 Thank you, Trevor, for your testimony and taking the
9 time to testify here today. This is a topic that we've
10 had a fair amount of discussion on and I think we'll
11 continue to have discussion on. We look forward to
12 receiving your written comments. Thank you very much.

13 Any questions from any of my staff?

14 (No response.)

15 MR. MACHIELE: Okay.

16 MS. GOODMAN: Very well. The next speaker will be
17 Kelly Davis. Please state your name and affiliation
18 for the record.

19 MS. DAVIS: Good morning. Can you hear me?

20 MS. GOODMAN: We can.

21 MS. DAVIS: Good morning. My name is Kelly Davis,

1 and I am Vice President for Regulatory Affairs at the
2 Renewable Fuels Association or RFA.

3 RFA is a leading trade organization for America's
4 ethanol industry. Its mission is to advance the
5 development and production and use of ethanol by
6 strengthening America's ethanol industry and raising
7 awareness about the benefits of renewable fuels.

8 We appreciate the opportunity to share our
9 thoughts on current proposed rules for Fuel Regulatory
10 Streamlining.

11 Like others, we appreciate the hard work that OTAQ
12 staff has put into this proposal to clarify and
13 streamline its complicated fuel regulations, removing
14 expired provisions. Eliminating redundancy with the
15 compliance provisions and replacing them with a single
16 set of provisions certainly helps make a clearer and
17 more concise rule.

18 First, I'd like to comment on the proposed
19 definition of gasoline, as well, which is a topic
20 commonly discussed within the liquid fuels technical
21 community.

1 The definition of gasoline being proposed has
2 extended the requirements to meet the ASTM D4814,
3 Standard Specification for Automotive Spark Ignition
4 Engine Fuel. We feel this is potentially problematic.

5 RFA has actively participated in the ASTM process
6 to develop and refine fuel performance specifications
7 for over 30 years. It's a voluntary consensus
8 standards body and can take years to reach consensus
9 for updates to this standard specification.

10 For example, E15 was approved for use by the EPA
11 in 2011 but ASTM deliberated for over five years to
12 complete the updates to include E15 within the
13 standard.

14 We feel EPA should remove this requirement to
15 avoid any further delays or roadblocks for any future
16 fuels.

17 Second, we are pleased to see that the proposed
18 consolidation of the existing Fuel Compliance Surveys
19 into one national survey program.

20 RFA has been working for years to reduce the costs
21 and burdens associated with the mandatory E15 survey.

1 Ethanol manufacturers have incurred unnecessarily large
2 costs to fund the required survey and for testing of
3 ethanol contents, summer RVP, and compliance with a
4 mandatory label.

5 While we continue to question the need for an E15
6 survey program moving forward, we are encouraged that
7 EPA is at least taking steps to reduce the costs and
8 administrative burden.

9 It is obvious that overall the projected cost
10 reductions associated with this proposed rulemaking
11 principally benefit petroleum refiners but ethanol
12 producers are pleased. This expanded national survey
13 program proposal should help ethanol producers lower
14 their survey costs, as well.

15 Third, we strongly support the long-awaited and
16 necessary proposal to remove the certified detergency
17 requirements for the gasoline portion of E85. This is
18 something we've been encouraging EPA to do for many
19 years.

20 Certain detergents are not completely soluble in
21 high ethanol content blends. Further, there is

1 evidence that detergents may not provide any benefit
2 and may even exacerbate deposit formation. More work
3 needs to be done in this detergent additive work as
4 related to higher ethanol blend fuels.

5 Moving forward, we would like to see minimum
6 higher ethanol content for detergency certification
7 requirements to assure that increasing ethanol contents
8 do not cause solubility problems with these additives.

9 Finally, I'd like to discuss E15 labeling
10 requirements. Last fall, President Trump committed
11 that EPA would begin a rulemaking to streamline
12 labeling requirements for E15 and eliminate other
13 marketplace and regulatory barriers for the sale of
14 E15.

15 This rulemaking would have been the perfect
16 opportunity to do that and because this is a proposal,
17 it is not too late.

18 We encourage EPA to include provisions eliminating
19 or substantially revising the E15 pump label in its
20 final rule.

21 Additionally, RFA would like to request additional

1 changes to the new Part 190 to help with the economic
2 efficiency of fuel product choice pump offerings.
3 Natural gasoline is a preferred gasoline component for
4 E85 and numerous blender pumps have been installed but
5 currently natural gasoline is not an allowable E85
6 blend stock if the E85 is used to blend E15.

7 Action to include language for the use of state
8 regulators to interpret and enforce this is now taking
9 place at the National Conference of Weights and
10 Measures and we strongly feel EPA should remedy this
11 issue while this streamlining rule is open.

12 We would like to specifically request including a
13 regulatory pathway for ethanol producers and natural
14 gas liquid producers to enable natural gasoline for use
15 as a gasoline component in E85 at a blender pump in
16 order to blend a compliant E15.

17 EPA proposed the method for doing this in the REGS
18 proposal that was never finalized. We encourage you to
19 revisit that.

20 Similar to the Tier III Pathway for EPA sulfur
21 certification for DFE, regulatory procedures could be

1 simply added for a certification process for sulfur,
2 benzene, CHONS, and volatility for the use of natural
3 gasoline in this manner.

4 This will enable a pathway that achieves an
5 equivalent level of environmental assurance as gasoline
6 for the blender pump use of natural gasoline as
7 gasoline component in E85 or E15 in order to maximize
8 consumer benefits of economic efficiency and
9 flexibility and a level playing field in the
10 marketplace.

11 We thank you for the opportunity to speak this
12 morning and will provide further detailed written
13 comments.

14 MS. GOODMAN: Thank you for your comment.

15 Does EPA have any questions?

16 MR. MACHIELE: I do not. Kelly, thank you very
17 much again for coming and testifying, not necessarily
18 coming but for testifying this morning. I think we
19 understand the issues that you're raising and we're
20 going to look forward to more detail when you provide
21 them in the written comments.

1 Any questions or comments from the staff?

2 (No response.)

3 MS. GOODMAN: At this time we have no one else

4 scheduled to speak.

5 If there is no anyone who did not register to

6 speak but would like to speak, please use the chat box

7 to identify yourself.

8 We will now pause to see if anyone else would like

9 to make a statement.

10 (Pause.)

11 MS. GOODMAN: We are now at the end of our

12 session.

13 EPA, are you ready to adjourn the virtual hearing?

14 MR. MACHIELE: Yes, I would again like to thank

15 everyone who spoke during today's virtual hearing and

16 for your patience with us as we had our first go at a

17 virtual hearing.

18 The hearing is now concluded at this time and we

19 look forward to your written comments. I know the

20 comment period is short but we also want you to submit

21 them as soon as possible to give us as much time as

1 possible to take them into consideration before we
2 finalize the rule.

3 Thank you again and at this time, at 10:52 a.m.,
4 the hearing is now adjourned.

5 (Whereupon, at 10:52 a.m., the hearing was
6 adjourned.)