

Energy Independence and Security Act of 2007

Reference section related to use of blends other than 10%

SEC. 251. WAIVER FOR FUEL OR FUEL ADDITIVES.

11 *Section 211(f)(4) of the Clean Air Act (42 U.S.C.*
12 *7545(f)) is amended to read as follows:*
13 *“(4) The Administrator, upon application of any*
14 *manufacturer of any fuel or fuel additive, may waive the*
15 *prohibitions established under paragraph (1) or (3) of this*
16 *subsection or the limitation specified in paragraph (2) of*
17 *this subsection, if he determines that the applicant has es-*
18 *tablished that such fuel or fuel additive or a specified con-*
19 *centration thereof, and the emission products of such fuel*
20 *or fuel additive or specified concentration thereof, will not*
21 *cause or contribute to a failure of any emission control de-*
22 *vice or system (over the useful life of the motor vehicle,*
23 *motor vehicle engine, nonroad engine or nonroad vehicle in*
24 *which such device or system is used) to achieve compliance*
25 *by the vehicle or engine with the emission standards with*
respect to which it has been certified pursuant to sections
2 *206 and 213(a). The Administrator shall take final action*
3 *to grant or deny an application submitted under this para-*
4 *graph, after public notice and comment, within 270 days*
5 *of the receipt of such an application.’’.*

Energy Law Creates New Hurdles For EPA Approval Of Mid-Level Ethanol © 2008 - Inside Washington Publishers January 9, 2008

The new energy law requires EPA to conduct a notice-and-comment rulemaking on any waiver request it receives to boost the ethanol content of gasoline above 10 percent, revoking a Clean Air Act process that allowed the agency to approve higher blends of ethanol in conventional gasoline by default.

Small- and outdoor-engine makers sought the provision in the law due to their concerns about a pending waiver request from Minnesota that could boost ethanol in gasoline to 20 or 30 percent and potentially harm their engines. President Bush signed the law into effect Dec. 19.

Specifically, the bill modifies Clean Air Act section 211(f)(4), which says that if EPA fails to act on any fuel waiver request within 180 days it would be granted by default. The

amendment, originally sponsored by Reps. John Shadegg (R-AZ) and Charlie Melancon (D-LA), says EPA must now approve or deny a waiver request within 270 days through a notice-and-comment rulemaking process, and that it must test higher blends of ethanol on vehicles and non-road engines as part of any waiver decision.

One industry source says the provision is a common-sense approach to addressing the issue of boosting ethanol in conventional gasoline.

The source says there was no significant opposition to the provision, which was included as an amendment to the House-passed energy bill but not part of the Senate version.

The provision was rejected in the Senate last summer after farm state lawmakers objected on behalf of Sen. John Thune (R-SD), who has been trying to boost ethanol above E-10 (10 percent ethanol-to-gasoline blends) over concerns about a so-called ethanol wall that will limit demand for an ever-increasing supply.

Thune's efforts to speed the EPA waiver process have been largely unsuccessful, and the senator continues to express concern that the E-10 mandate, combined with limited availability of E-85 (85 percent ethanol-to-gasoline blend) used in flex-fuel vehicles, will force a glut of ethanol with nowhere to go.

Thune's office could not be reached for comment.

The industry source says that senior House and Senate Democrats working on the final energy bill supported the provision, ensuring its inclusion in the final version of the bill. "Within the counsel staff leadership, there was no significant opposition. We knew this provision was good," the source adds.

Sen. James Inhofe (R-OK), the ranking member of the Senate environment committee, also supports the changes to the waiver process, and last year introduced stand-alone legislation after his energy bill amendment was rejected in the Senate. His bill was seen as an effort to boost the chances the amendment could be included in a final bill, despite the fact it was omitted from the Senate version.

The Outdoor Power Equipment Institute (OPEI) issued a Dec. 21 statement applauding the bill's inclusion of the E10 waiver amendment.

"The OPEI supports the use of ethanol and other renewable fuels, but in order to protect consumers, we must ensure that new fuels won't cause existing equipment to malfunction or cause injury," the statement says. "Requiring EPA to test the impact of new fuels before they are introduced will improve air quality and help protect millions of Americans who use gas-powered vehicles and equipment that are not designed to use mid-level ethanol blends."

EPA MUST CONDUCT RULEMAKING BEFORE APPROVING E-15 OR E-20 BLENDS: New energy legislation signed by President Bush in December makes it more difficult for states to authorize new ethanol mandates between E-10 and E-85. The little noticed provision in

the energy bill changes the way the EPA authorizes states' request to deviate from established federal ethanol standards. Prior to the legislation, any state seeking to adopt an ethanol standard different from the federal standards was required to file a waiver request from the EPA. In turn, the EPA would have 180 days to consider the waiver. The waiver would be deemed approved if the agency failed to act within 180 days.

The new law stipulates that EPA must approve or deny a waiver request within 270 days through a notice and comment rulemaking. Moreover, the agency must first test the requested blend as part of the waiver process to determine compatibility with both on-road and off-road engines. Outdoor engine manufacturers fought for the new law based on concerns that states were ready to ramp-up ethanol mandates to levels that were incompatible with smaller gasoline engines used for home generators and yard equipment. The new EPA waiver review process prevents states from seeking ethanol blends that may work perfectly well in motor vehicles but be incompatible with lawn equipment. The new rulemaking requirement will slow significantly state efforts to move to E-15, E-20 and higher mandates.