

**FINAL REPORT OF THE FUELS AND LUBRICANTS SUBCOMMITTEE (FALS)
FOCUS GROUP ON THE EPA STREAMLINING RULE**

June 30, 2021

To: William Striejewski, Chair, NCWM Fuels and Lubricants Subcommittee (FALS)

From: FALS Focus Group on EPA Streamlining Rule

RE: Final Report of the FALS Focus Group on the EPA Streamlining Rule

BACKGROUND

On December 4, 2020, the U. S. Environmental Protection Agency published a Final Rule, Fuels Regulatory Streamlining, (85 FR 78412). The purpose of the rule was to update and modernize EPA's existing gasoline, diesel, and other fuel regulations and remove inconsistencies. Under the EPA Fuels Regulatory Streamlining Rule, the majority of fuels provisions were migrated from 40 CFR Part 80 to a new 40 CFR Part 1090. Most of the EPA Fuels Streamlining provisions in the new Part 1090 became effective January 1, 2021.

In response to the EPA Fuels Regulatory Streamlining Rule, FALS formed an EPA Streamlining Focus Group (FG) in January of 2021. The purpose of the Focus Group was to review Handbook 130 and determine what updates are necessary to align NIST Handbooks with the December 2020 EPA Streamlining Rule.

The members of the FALS Streamlining Focus Group are as follows:

Marilyn J. Herman, Herman & Associates, Chair
Stephen Benjamin, North Carolina Department of Agriculture and Consumer Services
Kelly Davis, Renewable Fuels Association (RFA)
Steven Harrington, Oregon Department of Agriculture
Randy Jennings, Consultant, General Interest
Stephen Kirby, General Motors
Joseph Sorena, Chevron
Charlie Stutesman, Kansas Department of Agriculture
Rebecca Richardson, MARC IV
Jim Rocco, Petroleum Marketers Association
Lisa Warfield, NIST Advisor

REVIEW OF NIST HANDBOOK 130 FOR EPA STREAMLINING RULE

In order to identify what revisions were necessary, the members of the EPA Streamlining Focus Group conducted an extensive review of the relevant NIST and EPA documents:

NIST

- HB 130, "Uniform Fuels and Automotive Lubricants Regulation"
- HB 130, "Uniform Regulation for the Method of Sale of Commodities"
- HB 130, "Uniform Fuels and Automotive Lubricants Inspection Law"

EPA

- 40 CFR Part 80
- 40 CFR Part 1090
- EPA Final Rule, "EPA Fuels Streamlining", Federal Register, Volume 85, No. 234, December 4, 2020

Members of the FALS Streamlining Focus Group reviewed the above documents, and prepared written comments as to what needed to align with the Federal EPA Rule. On May 7, 2021, the Focus Group met to discuss their review, and what changes should be made to the NIST Handbook 130 regulations.

Unlike other standards such as ASTM D4814, NIST HB 130 is not EPA “centric”, and only refers to the Code of Federal Regulations citation for an EPA fuel program and does not incorporate actual EPA language or requirements into NIST HB 130. Where there are references to the CFR, the current Handbook 130 points to the CFR as needing to comply with certain EPA requirements. Since EPA has now renumbered those provisions, the Focus Group is proposing to update those references to 40 CFR Part 1090.

KEY FINDINGS

After a thorough review of NIST Handbooks, the FALS EPA Streamlining Focus Group identified certain CFR references that need to be updated.

The FALS Streamlining FG identified four updates in the Uniform Fuels and Automotive Lubricants Regulation and three updates in the Uniform Method of Sale of Commodities Regulation that require a change. A review of the Uniform Fuels and Automotive Lubricants Inspection Law indicated that no changes are required, since there are no CFR references.

The FALS Streamlining Focus Group concluded that these references require an update from 40 CFR Part 80 to 40 CFR Part 1090, since EPA has now renumbered those provisions. The justification for this update is to align NIST HB 130 with the latest EPA Fuels Regulatory Streamlining Rule so that state regulatory officials adopting the Handbooks or using them as guidance have an updated version and are referring to the correct regulations as part of their state fuel enforcement program. In addition, EPA is planning on eliminating the majority of 40 CFR Part 80 so these portions of the CFR will become obsolete.

The NIST Advisor has pointed out that some states may adopt an earlier version of NIST HB 130. When this occurs, under the Uniform Weights and Measures Law, Section 12.(e), the state Director has the power to grant an exemption from the provision of the Act or any regulations promulgated pursuant thereto when appropriate to the maintenance of good commercial practices with the states.

The Focus Group discussed the fact that although there may be some differences in EPA Product Transfer Document (PTD) requirements between Part 80 and Part 1090, the Focus Group considers updating these references to 40 CFR Part 1090 would be editorial since the language in the Handbook continues to simply incorporate EPA requirements by reference.

In summary, the FALS Focus Group proposes the following recommended updates to HB 130 to update CFR References from the prior 40 CFR Part 80 to the new 40 CFR Part 1090:

HB 130 “Uniform Fuels and Automotive Lubricants Regulation”

The following changes are recommended:

- **Section 2.1.2. Gasoline-Ethanol Blends**
 - Update reference from 40CFR 80.27(d) to 40 CFR 1090.215(b)
- **Section 3.2.5 Documentation for Dispenser Labeling Purposes**
 - Update references from 40 CFR 80.1503 to 40 CFR 1090.1110
- **Section 3.2.6 EPA Labeling Requirements**
 - Update reference from 40 CFR 80.1501 to 40 CFR 1090.1510

HB 130 “Uniform Regulation for the Method of Sale of Commodities”

The following changes are recommended:

- **Section 2.20.2 Documentation for Dispenser Labeling Purposes**
 - Update references from 40 CFR 80.1503 to 40 CFR 109.1110
- **Section 2.20.3 EPA Labeling Requirements**
 - Update reference from 40 CFR 80.1501 to 40 CFR 1090.1510

Attached is a document indicating the proposed revisions as inline edits to the 2020 edition of HB 130.

RECOMMENDATION

The FALS EPA Streamlining Focus Group recommends that the corrections identified in this report be made as expeditiously as possible. Outdated references to the Code of Federal Regulations (CFR) have the potential to create enforcement confusion within the regulatory community as numerous states adopt the most recent version of NIST HB 130 and others rely on NIST HB 130 as guidance.

The Streamlining Focus Group recommends that the changes proposed herein be considered editorial by the Laws and Regulations Committee as there are no additions or deletions to the current language, but rather just updates to where the newly numbered CFR references may be found. If possible, it would be helpful if these could be included in the 2022 Edition of NIST HB 130 in order to enable Handbook 130 to contain the current references.

Respectfully Submitted,

The FALS EPA Streamlining Focus Group

Marilyn J. Herman, Herman & Associates, Chair
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ATTACHMENT

Proposed Updates to Handbook 130 From FALS EPA Streamlining Focus Group

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PROPOSED UPDATES TO HANDBOOK 130 FROM FALS EPA STREAMLINING FOCUS GROUP
June 30, 2021

HANDBOOK 130 – 2020

G. UNIFORM FUELS AND AUTOMOTIVE LUBRICANTS REGULATION

Section 2. Standard Specifications

2.1. Gasoline and Gasoline-Oxygenate Blends.

2.1.2. Gasoline-Ethanol Blends. – When gasoline is blended with denatured fuel ethanol, the denatured fuel ethanol shall meet the latest version of ASTM D4806, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,” and the blend shall meet the latest version of ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” with the following permissible exceptions:

- (a) The maximum vapor pressure shall not exceed the latest version of ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” limits by more than 1.0 psi for blends from June 1 through September 15 as allowed by EPA per 40 CFR ~~80.27(d)~~ **1090.215(b)**.

(Amended 2016, 2018, and 2019)

Section 3. Classification and Labeling for Sale

3.2. Automotive Gasoline and Automotive Gasoline-Oxygenate Blends (Including Racing Gasoline).

3.2.5. Documentation for Dispenser Labeling Purposes. – For automotive gasoline, automotive gasoline-oxygenate blends or racing gasoline, the retailer shall be provided, at the time of delivery of the fuel, on product transfer documents such as an invoice, bill of lading, shipping paper, or other documentation:

- (a) Information that complies with 40 CFR ~~80.1503~~ **1090.1110** when the fuel contains ethanol.

(Added 2014)

- (b) For fuels that do not contain ethanol, information that complies with 40 CFR ~~80.1503~~ **1090.1110** and a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygenate content of at least 1.0 % by volume in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify either the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen) or alternatively, use the phrase “contains MTBE or other ethers.”

(Added 2014)

3.2.6. EPA Labeling Requirements. – Retailers and wholesale purchaser-consumers of gasoline shall comply with the EPA pump labeling requirements for gasoline containing greater than 10 volume percent (v%) up to 15 volume percent (v%) ethanol (E15) under 40 CFR ~~80.1501–1090.1510~~. (For additional information, refer to Section 3.8.2. FTC Labeling Requirements.)

(Added 2012) (Amended 2018)

B. UNIFORM REGULATION FOR THE METHOD OF SALE OF COMMODITIES

2.20. Gasoline-Oxygenate Blends.

2.20.2. Documentation for Dispenser Labeling Purposes. – The retailer shall be provided, at the time of delivery of the fuel, on product transfer documents such as an invoice, bill of lading, shipping paper, or other documentation:

- (a) Information that complies with 40 CFR ~~80.1503~~ **1090.1110** when the fuel contains ethanol.
- (b) For fuels that do not contain ethanol, information that complies with 40 CFR ~~80.1503~~ **1090.1110** and a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify either the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen) or alternatively, use the phrase “contains MTBE or other ethers.”

2.20.3. EPA Labeling Requirements. – Retailers and wholesale purchaser-consumers of gasoline shall comply with the EPA pump labeling requirements for gasoline containing greater than 10 volume percent (v%) up to 15 volume percent (v%) ethanol (E15) under 40 CFR ~~80.1501~~ **1090.1510**. (For additional information, refer to Section 2.30.2. FTC Labeling Requirements.

(Added 2018)