

RFS2 takes effect July 1, deadlines extended

With the new rule for the renewable fuels standard due to take effect July 1, companies such as SGS North America Inc. might be just what many ethanol facilities are seeking. The Oklahoma-based SGS will provide written verification of the electronic application including feedstocks used, production processes, coproducts produced, process energy fuel types and locations of origin and baseline volumes as specified in U.S. EPA's air permits. After an on-site visit, SGS will review important documents and create a written report and cover letter verifying the information asked for in the EPA's electronic registration process. Many companies like SGS that have experience in the area of renewable fuel regulations and compliance might agree with Howie Nelson, SCS's business development manager for alternative fuels of SGS. "We are able to save producers both time and money in this critical step," Nelson said. The independent engineering reviews are required for all plants, even those previously registered under RFS1, and are a prerequisite for being assigned renewable identification numbers (RINs) on a plant's ethanol production.

Adding to available resources, the Renewable Fuels Association has created a checklist for producers. "RFS2 Registration Requirements: What All Producers Need to Know," is a 31-page document highlighting key points for registering. Of all the information covered in the checklist, a few main factors remain critical, including the new deadline for grandfathered plants, and the recognition of the only, and ultimate decision maker on the status of a plant to deal with RINs—the EPA.

The deadline for grandfathered plants has been pushed back to Dec. 31 by the EPA, giving plants that were in production or had commenced construction before Dec. 18, 2007, more time to complete the required engineering review. "In an effort to reduce demand on engineering resources in the interim between promulgation of rule and July 1, 2010, the agency would allow grandfathered facilities an additional six months," the EPA explains in the "Question and Answers on Changes to the Renewable Fuel Standard Program (RFS2)," section on their Web site.

Extending the deadline for most producers might not provide total relief from the pressure of registering. "EPA agreed to extend the deadline for the submission of engineering reviews in recognition of the fact that independent engineering expertise may be in short supply, given the six-month interval between the issuance of the final rule and the due date for registrations," said Patricia Sharkey, partner and environmental lawyer for McGuireWoods LLP. "There is a lot of data that must be assembled, and interpretation of the requirements defines what data you submit," Sharkey said. "Many companies are relying on consultants and lawyers to get this right, so the extension for third-party reviews isn't that helpful."

Part of the problem not addressed by the extended deadline Sharkey said, is the fact that the EPA has the final interpretation on the reviews. It isn't clear what will happen if a biofuels producer submits data by July 1 that hasn't been verified, Sharkey said. Also unclear is the possibility a reviewer disagrees with a producer's interpretation. "Such a dis-

agreement could affect the validity of the RINs and could even lead to an EPA enforcement action," Sharkey said. "Facts are facts, but there are also many aspects of the registration rules that people can interpret differently."

Establishing a plant's capacity for registration purposes under the RFS2 rule may also impact some producers. The baseline volume sets the maximum number of qualified RINs that will be issued to that facility and won't necessarily equal current name plate capacity, "but rather is established by conditions limiting production in a facility's air pollution control permit or, if that is not available, by the facility's peak annual production over the prior five years," Sharkey said.

Even with past production levels indicating what a plant's future may be, some say there may be consequences stemming from the registration process. Tammy Klein, executive director for the Global Biofuels Center said if the system gets too complicated, some producers might just look to export their product to Europe. Data from the USDA, the Department of Commerce and the Census Bureau indicates greatly increased U.S. ethanol exports in 2010. In March 2010 the U.S. exported more than 45 million gallons of ethanol, and for the first quarter of 2010, exports exceeded 83 million gallons. Klein echoed a comment by Sharkey regarding the RFS2 process going forward. "The question," Klein said, "is whether the industry will be able to do it."

—Luke Geiver