



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2012-0632; FRL – 9721-7]

### Request for Comment on Letters Seeking a Waiver of the Renewable Fuel Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is seeking comment on letters requesting a waiver of the renewable fuel standard and matters relevant to EPA's consideration of those requests. Governors of the States of Arkansas and North Carolina submitted separate requests for a waiver. Section 211(o)(7)(A) of the Clean Air Act allows the Administrator of the EPA to waive the national volume requirements of the renewable fuel standard program in whole or in part if implementation of those requirements would severely harm the economy or environment of a State, a region, or the United States, or if the Administrator determines that there is inadequate domestic supply of renewable fuel.

**Dates:** *Comments.* Written comments must be received on or before [insert 30 days after publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0632, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- E-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2012-0632, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue,

NW., Washington, DC 20460. Please include a total of two copies.

- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0632. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Dallas Burkholder, Office of Transportation and Air Quality, Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105; telephone number: (734) 214-4766; fax number: (734) 214-4050; email address: burkholder.dallas@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. How Can I Access the Docket and/or Submit Comments?**

EPA has established a public docket for this Notice under Docket ID No. EPA-HQ-OAR-2012-0632 which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Air and Radiation Docket is 202-566-1742.

Use [www.regulations.gov](http://www.regulations.gov) to obtain a copy of the waiver requests, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the docket ID number identified in this document.

**II. Background**

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the Energy Policy Act of 2005 (EPAAct), which added provisions in section 211(o) of the Clean Air Act (CAA, or “Act”), for a renewable fuel program, commonly referred to as RFS1. The statutory provisions for the RFS program were subsequently modified through

the Energy Independence and Security Act of 2007 (EISA), and EPA published revised regulatory requirements on March 26, 2010 (75 FR 14670) (referred to as RFS2). The transition from the RFS1 requirements of EPAct to the RFS2 requirements of EISA generally occurred on July 1, 2010. EISA establishes annual national renewable fuel volumes required through 2022 for four categories of renewable fuel: cellulosic biofuel, biomass based diesel, advanced biofuel, and total renewable fuel. Though EISA establishes a schedule of increasing national volume mandates over time, it also requires the Administrator to set the specific volume requirements for refiners and importers annually. The applicable volume standards under the RFS program for the 2012 compliance year were published in the Federal Register on January 9, 2012 (77 FR 1320).

Under the RFS program, obligated parties, typically gasoline or diesel refiners or importers, are required to meet specific applicable percentage standards to be in compliance. Renewable identification numbers, or RINs, are assigned by the renewable fuel producer to each gallon of qualifying renewable fuel and serve as a means for demonstrating compliance by the obligated parties. Aside from using sufficient current-year RINs to demonstrate compliance in a given year, obligated parties may also choose (a) to use available RINs from the prior year towards the current year's requirement, up to a 20 percent cap, and/or (b) to carry forward a deficit into the next compliance year.

Section 211(o)(7) of the Act allows the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the national volume requirements of the RFS, in whole or in part, upon petition by one or more States, or by any party subject to the requirements of the RFS program. The Administrator may also waive the volume requirements on her own motion. A waiver may be issued if the Administrator determines, after public notice

and opportunity for comment, that implementation of the RFS volume requirement would severely harm the economy or environment of a State, a region, or the United States, or that there is an inadequate domestic supply. If a waiver is granted, it can last no longer than one year but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

### **III. What is today's action?**

Governors of the States of Arkansas and North Carolina submitted separate letters requesting a waiver of required volumes of renewable fuel under the RFS program. EPA is seeking comment on the requests and matters relevant to EPA's consideration of the requests. Section 211(o) of the Act requires the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to approve or disapprove a petition for a waiver of the RFS volume requirements within 90 days after the date on which the petition is received by the Administrator.

The Governor of Arkansas submitted a letter dated August 13, 2012 requesting EPA "waive an appropriate volume of renewable fuel, pursuant to Section 211(o)(7)" of the Act. The letter includes statements regarding this year's drought, crop price increases, and impacts in various economic sectors, including the poultry and cattle sectors. The letter submitted by the Governor of North Carolina, dated August 14, 2012, requests that "the applicable volume of renewable fuel be waived" under the Act and also includes statements regarding drought conditions in the United States and economic impacts in the State.

Other organizations and individuals – including among others the Governors of the States of Delaware and Maryland, the National Pork Producers Council, the Dairy Farmers of America,

and various Members of Congress – have also submitted letters either requesting the Administrator utilize her authority to waive RFS volume requirements or expressing support for the granting of a volume waiver. All of these letters are available in the docket; any additional similar requests submitted to EPA will also be docketed and considered together with requests already received.

EPA is issuing this notice to solicit comments and information on the waiver requests, and the views of the public on whether the statutory basis for a waiver of the national RFS requirements has been met and, if so, whether EPA should exercise its discretion to grant a waiver.

#### **IV. Has EPA Received RFS Waiver Requests in the Past?**

In 2008, the Governor of the State of Texas requested a fifty percent waiver of the national volume requirements for the RFS. EPA denied Texas' waiver request because the evidence in that case did not support a determination that implementation of the RFS mandate during the time period at issue (September 1, 2008 through August 31, 2009) would have severely harmed the economy of a State, region, or the United States (73 FR 47168, August 13, 2008). EPA's 2008 denial of a waiver discusses the analytical approach used to make the determination, our legal interpretation of the relevant statutory language, and other information that may be useful to commenters. It also provides additional discussion of the types of information we would expect in a waiver request.

EPA's determination in response to Texas' waiver request was supported by technical analysis conducted using a model developed by researchers at Iowa State University (ISU). The 2008 analysis evaluated the impact of a waiver of the volume standard by comparing

the circumstances with and without a waiver, to identify the impact associated with implementation of the RFS program in the relevant time period. The 2008 Texas waiver determination discusses the reasons EPA utilized the ISU model and provides a brief description of how it operates.

The 2008 Texas waiver determination was the first EPA action in response to a petition under 211(o)(7) of the Act, and as a result the 2008 decision addresses a number of questions regarding the scope of that authority. This includes a discussion of how EPA interpreted the provision's language regarding severe economic harm. We encourage interested parties to review that discussion and provide comment on our interpretation in the context of the 2012 waiver requests.

## **V. What specific information is EPA seeking?**

EPA requests comment on any matter that might be relevant to EPA's review of and actions in response to the requests, specifically including (but not limited to) information on:

- (a) whether compliance with the RFS would severely harm the economy of Arkansas, North Carolina, other States, a region, or the United States;
- (b) whether the relief requested will remedy the harm;
- (c) to what extent, if any, a waiver would change demand for ethanol and affect prices of corn, other feedstocks, feed, and food;
- (d) the amount of ethanol that is likely to be consumed in the U.S. during the relevant time period, based on its value to refiners for octane and other characteristics and other market conditions in the absence of the RFS volume requirements; and

(e) if a waiver were appropriate, the amount of required renewable fuel volume appropriate to waive, the date on which any waiver should commence and end, and to which compliance years it would apply.

Commenters should include data or specific examples in support of their comments in order to aid the Administrator in evaluating the requests for a waiver and determining what action if any is appropriate in light of all of the circumstances.

Dated: August 20, 2012.

Gina McCarthy,  
Assistant Administrator,  
Office of Air and Radiation.

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