



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2012-0546; FRL-9910-24-OAR]

RIN 2060-AS21

Regulation of Fuels and Fuel Additives: 2013 Cellulosic Biofuel Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the 2013 cellulosic biofuel standard published on August 15, 2013. This action follows from EPA having granted two petitioners' requests for reconsideration of the 2013 cellulosic biofuel standard. EPA granted reconsideration because one of the two companies that EPA expected to produce cellulosic biofuel in 2013 announced soon after EPA signed its final rule that it intended to produce substantially lower volumes of cellulosic biofuel in 2013 than it had earlier reported to EPA. Since the cellulosic biofuel standard was based on EPA's projection of cellulosic biofuel production in 2013, EPA deemed this new information to be of central relevance to the rule, warranting reconsideration. On reconsideration, EPA is directed to base the standard on the lower of "projected" production of cellulosic fuel in 2013 or the cellulosic biofuel applicable volume set forth in the statute. Since data are available to show actual production volumes for 2013, EPA's "projection" and proposal are based on actual cellulosic biofuel production in 2013. This action only affects the 2013 cellulosic biofuel standard; all other RFS standards remain unchanged. EPA is proposing a revised cellulosic biofuel standard of 0.0005% for 2013. In the "Rules and Regulations" section of this Federal Register, we are making this same amendment as

a direct final rule. If we receive no adverse comment, the direct final rule will go into effect and we will not take further action on this proposed rule.

DATES: A request for a public hearing must be received by [Insert date 15 days after date of publication in the Federal Register]. If a public hearing request is received, EPA will publish a document in the Federal Register indicating the time and place for the hearing. If a public hearing is held, written comments must be received within 30 days after the date of the hearing. If no public hearing is held then comments must be received on or before [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-00546, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov.
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., 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-2012-0546. 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, 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 or e-mail. The 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 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 additional instructions on submitting comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The 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 Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; Telephone number: 734-214-4131; Fax number: 734-214-4816; E-mail address: macallister.julia@epa.gov, or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214-4333; E-mail address OTAQ@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing a proposed rule?

EPA is proposing to amend the 2013 cellulosic biofuel standard that was finalized in “Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards; Final Rule,” (August 15, 2013; 78 FR 49794). This action follows from EPA having granted, on January 23, 2014, requests for reconsideration of the 2013 cellulosic biofuel standard submitted by the American Petroleum Institute and the American Fuel & Petrochemical Manufacturers. In granting reconsideration, EPA determined that petitioners had met the statutory criteria of section 307(d)(7)(B) of the Clean Air Act, since petitioners had identified new information of central relevance that became available after the comment period closed but within the time period specified for parties to seek judicial review. A direct final rule that would make the same changes as those proposed in this document appears in the “Rules and Regulations” section of this Federal Register. The EPA is taking direct final action because we view this action as noncontroversial. We have explained our reasons for granting reconsideration in the preamble to the direct final rule.

If we receive no relevant adverse comment or hearing request on the direct final rule, we will not take further action on this proposed rule. If EPA receives relevant adverse comment or a

hearing request, we will publish a timely withdrawal in the Federal Register of the direct final rule. We will address all public comments in any subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule see the ADDRESSES section of this document.

The proposed changes to the regulatory text are identical to those presented in the direct final rule published in the “Rules and Regulations” section of this Federal Register. For further information, including a detailed explanation and rationale for the proposal and the text of the proposed regulatory revisions, see the direct final rule published in the “Rules and Regulations” section of this Federal Register.

II. Does this Action Apply to Me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS ¹ Codes	SIC ² Codes	Examples of Potentially Regulated Entities
Industry	324110	2911	Petroleum Refineries
Industry	325193	2869	Ethyl alcohol manufacturing
Industry	325199	2869	Other basic organic chemical manufacturing
Industry	424690	5169	Chemical and allied products merchant wholesalers
Industry	424710	5171	Petroleum bulk stations and terminals
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers
Industry	454319	5989	Other fuel dealers

¹ North American Industry Classification System (NAICS)

² Standard Industrial Classification (SIC) system code

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding section.

III. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI

Do not submit confidential business information (CBI) to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to

be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Docket Copying Costs

You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

There are no new information collection requirements associated with the proposed standards in this rulemaking. The proposed standards would impose no new or different reporting requirements on regulated parties. The existing information collection requests (ICR) that apply to the RFS program are sufficient to address the reporting requirements in the proposed regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of

small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule reconsiders the annual volume requirement for cellulosic biofuel for 2013 which is being reduced from the total of 6 million ethanol-equivalent gallons finalized in the 2013 RFS annual rule and published on August 15, 2013 to 810,185 ethanol-equivalent gallons. The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this proposed rule will not impose any additional requirements on small entities beyond those already analyzed.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action implements mandate(s) specifically and explicitly set forth by the Congress in Clean Air Act section 211(o) without the exercise of any policy discretion by EPA. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely proposes to revise the 2013 cellulosic biofuel standard to reflect actual production in 2013 for the RFS program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes to revise the 2013 annual cellulosic biofuel standard for the RFS program and only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply proposes to revise the 2013 annual cellulosic standard for renewable fuel under the RFS program.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

V. Statutory Authority

Statutory authority for this proposed action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545.

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Diesel fuel, Environmental protection, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: April 22, 2014

Gina McCarthy,
Administrator.

[FR Doc. 2014-10134 Filed 05/01/2014 at 8:45 am; Publication Date: 05/02/2014]