



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2020-0322; FRL-10011-04-OAR]

### Notice of Receipt of Petitions for a Waiver of the 2019 and 2020 Renewable Fuel Standards

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

**ACTION:** Request for comment on petitions received.

**SUMMARY:** EPA has received a number of petitions last year for a waiver of the Renewable Fuel Standard (RFS) obligations that apply in 2019 and 2020. These petitions argue that recent events warrant EPA exercising its general waiver authority on the basis of severe economic harm. In late March, a group of small refineries requested a waiver of the 2019 and 2020 obligations of their individual small refineries. In April and May, the Governors of several states submitted three separate petitions for waivers of the nationwide volumes. The Clean Air Act grants EPA the discretion to waive the requirements of the RFS program in whole or in part if the Administrator determines, after notice and comment, that implementation of the applicable annual volume requirements would severely harm the economy or environment of a State, region, or the United States. EPA is inviting comment on the petitions we have received.

**DATES:** *Comments:* Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may send your comments, identified by Docket ID No. EPA-HQ-OAR-2020-0322, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> (our preferred method) Follow the online instructions for submitting comments.
- E-mail: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2020-0322 in the subject line of the message.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov>, including any

personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room will be closed to public visitors beginning at the close of business on March 31, 2020 (4:30 pm) to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there will be a delay in process mail and no hand deliveries will be accepted. For further information on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Lauren Michaels, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4640; email address: [michaels.lauren@epa.gov](mailto:michaels.lauren@epa.gov)

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), leading to the publication of major revisions to the regulatory requirements on March 26, 2010.<sup>1</sup> EISA's stated goals include moving the United States (U.S.) toward "greater energy independence and security [and] increas[ing] the production of clean renewable fuels."<sup>2</sup>

The statute includes annual volume targets and requires EPA to translate those volume

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<sup>1</sup> 75 FR 14670, March 26, 2010.

<sup>2</sup> Pub. L. No. 110-140, 121 Stat. 1492 (2007) ("EISA").

targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that obligated parties must meet every year. EPA promulgated a rulemaking establishing the RFS volume obligations for 2019 that was published in the *Federal Register* on December 11, 2018.<sup>3</sup> EPA promulgated a rulemaking establishing the RFS volume obligations for 2020 that was published in the *Federal Register* on February 6, 2020.<sup>4</sup> In those rulemakings, EPA waived the statutory volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel utilizing EPA's cellulosic waiver authority; determined the biomass-based diesel volume for the subsequent year; and established annual percentage standards for obligated parties. Under the RFS program, obligated parties, typically gasoline or diesel refiners or importers, are required to meet annual percentage standards to be in compliance.

Section 211(o)(7)(A) of the CAA provides the Administrator the discretion to waive the national quantity of renewable fuel required under the RFS program, 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 his own motion. The Administrator may do so only after consultation with the Secretary of Agriculture and the Secretary of Energy, and after public notice and opportunity for comment. A waiver may be issued if the Administrator determines that implementation of the RFS volume requirement would severely harm the economy or environment of a State, region, or the United States, or that there is an inadequate domestic supply. EPA has previously interpreted this waiver authority in prior denials of requests for a waiver of the RFS volume requirements<sup>5</sup> and in annual rulemakings.<sup>6</sup>

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<sup>3</sup> 83 FR 63704.

<sup>4</sup> 85 FR 7016.

<sup>5</sup> See 73 FR 47168 (August 13, 2008) and 77 FR 70752 (November 27, 2012).

<sup>6</sup> See, e.g., Renewable Fuel Standard Program - Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes: Response to Comments, EPA-420-R-19-018; see also *American Fuel & Petrochemical Manufacturers v. EPA*, 937 F.3d 559, 580 (D.C. Cir. 2019) (upholding EPA's interpretation of the severe economic harm waiver authority in the 2018 RFS rulemaking).

## II. Petitions Before the Agency

Last year EPA received several petitions from a group of small refineries and several states seeking a waiver under CAA section 211(o)(7)(A) on the basis of severe economic harm. These petitions are described below.

A group of small refineries submitted a petition to the Administrator, dated March 30, 2020, requesting a waiver of the 2019 and 2020 RFS obligations. These parties seek a waiver of their individual renewable volume obligations (RVOs). They argue that EPA must grant the waiver under CAA section 211(o)(7)(A) to avoid severe economic harm to the States and regions in which they operate. The petition argues that the harm to their individual small refineries is caused by the coronavirus pandemic and the ensuing drop in transportation fuel demand; the court decision in *Renewable Fuels Association v. EPA*, 948 F.3d 1206, (10<sup>th</sup> Cir. 2020) (*RFA*), if the decision is implemented nationwide; and a rise in RIN prices. The petition also puts forth a new legal interpretation allowing EPA to waive individual obligations under the general waiver authority; EPA's prior interpretations of the general waiver authority only allowed a reduction in the nationwide volume requirements. EPA also received a petition from a single small refinery, dated December 30, 2020, requesting a waiver of its 2019 and 2020 RFS obligations. This petition provided similar justifications as the above described petition.

Subsequently, several Governors submitted three separate petitions under CAA section 211(o)(7)(A) on the basis of severe economic harm. These petitions ask EPA to lower the nationwide renewable volume obligations. They argue that reduced gasoline and diesel demand due to the coronavirus pandemic has harmed refiners, and that the 2020 RFS volume requirements are and will continue to inflict further harm on these parties. Specifically, the Governor of Louisiana submitted a petition to the Administrator, dated April 7, 2020, seeking a waiver of the RFS obligations by an amount commensurate with the current projected shortfall in national gasoline and diesel consumption. The Governors of Oklahoma, Texas, Utah, and Wyoming submitted a single similar petition, dated April 15, 2020; unlike the Louisiana petition,

this petition does not specify the volume that should be waived.

Finally, the Governor of Pennsylvania submitted a similar petition on May 11, 2020, seeking a waiver of the RFS volume requirements. The Pennsylvania petition alleges that increasing annual RFS volume obligations severely harmed Pennsylvania and the East Coast region, and that such harm was compounded both by the Tenth Circuit's *RFA* decision, and the coronavirus pandemic and ensuing fall in gasoline and diesel demand.

Several organizations and individuals, including the environmental group National Wildlife Federation (NWF), and Members of Congress, have submitted letters expressing support for the granting of a waiver. Other organizations and individuals, including the Renewable Fuels Association and various mayors, have submitted letters expressing opposition to the granting of a waiver. These petitions and related letters are available in the docket for this action. Should we receive additional petitions and letters, we will also add those petitions and letters to the docket and consider them together with requests already received. We encourage commenters to carefully review both the petitions and the letters in the docket in formulating their comments.

EPA is seeking comment on the above-described petitions and the discrete issues the petitions raise, including:

- In general, whether the petitioners have satisfied the criteria for granting a waiver that EPA previously set forth and/or whether EPA should modify those criteria as requested by the petitioners;<sup>7</sup>
- Whether the petitioners have demonstrated severe economic harm to a State, a region, or the United States;
- Whether the petitioners have demonstrated a sufficient causal nexus between the RFS volume requirements and such harm (including whether that nexus is actual causation, significant contribution, or some other relationship);

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<sup>7</sup> See 73 FR 47168 (August 13, 2008) and 77 FR 70752 (November 27, 2012).

- Whether the petitioners have accurately assessed the impacts of a waiver on other directly and indirectly affected persons (including but not limited to biofuel producers, farmers, consumers of transportation fuel, and any affected petroleum refiners and importers), and how such impacts should affect EPA's decision on the petitions;
- Whether, as requested by the petition from the group of small refineries, EPA may target relief to certain refineries under the general waiver authority; and
- Ultimately, whether EPA should exercise the general waiver authority in response to any of the petitions. If the commenter believes EPA should waive volumes, we ask that the commenter identify the specific obligation that should be waived (e.g., the 2019 or 2020 RFS volume obligations), the amount of the waiver, and any other details of the remedy desired.

We strongly encourage commenters to include data, specific supporting examples, and technical analysis, to the extent feasible.

EPA also received a letter from the National Wildlife Federation suggesting that relief could be granted on the basis of severe environmental harm. The NWF letter suggests there is evidence of environmental harm due to land conversion to cropland resulting in habitat loss and climate change, agricultural runoff and resulting water quality impacts, an increase in water use to irrigate crop fields, and increasing smog and corresponding impacts on air quality due to increasing ethanol content in gasoline. We also solicit comment on the discrete issues raised by this letter and whether the evidence presented in the letter would support a waiver on the basis of severe environmental harm.

EPA is publishing and seeking comment on these petitions to foster public dialogue on these issues and to inform our future decision-making. At this time, we are not reconsidering or

otherwise reexamining the 2019 or 2020 RFS rulemakings or any other prior action,<sup>8</sup> or soliciting comment on any issues beyond those specifically raised by the petitions and the NWF letter in support.<sup>9</sup> We are also not proposing to either grant or to deny any of the petitions.

**Dated:** January 7, 2021.

**Anne L. Austin,**

*Principal Deputy Assistant Administrator,*

*Office of Air and Radiation.*

[FR Doc. 2021-01017 Filed: 1/15/2021 8:45 am; Publication Date: 1/19/2021]

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<sup>8</sup> See *Nat'l Mining Ass'n v. United States Dep't of the Interior*, 70 F.3d 1345, 1351 (D.C. Cir. 1995) (“The decision to publish a petition for rulemaking ... is not evidence of a reexamination of the policy at issue in the petition.”); *P & V Enterprises v. U.S. Army Corps of Engineers*, 516 F.3d 1021, 1026 (D.C. Cir. 2008) (“an agency must be able to initiate a public dialogue without inadvertently reopening established precedent, or its communications with the public would be unnecessarily stifled”).

<sup>9</sup> For example, we are not soliciting comment on EPA’s small refinery exemption policy, the point of obligation, the generation of RINs for exported fuel, or any other issue beyond those discrete issues raised by the petitions and the NWF letter.