



ENVIRONMENTAL PROTECTION AGENCY

[FRL-11849-01-OAR]

Notice of Denial of Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its final action entitled Denial of AFPM Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard (“AFPM Petition Denial Action”), in which EPA denied a petition from the American Fuel & Petrochemical Manufacturers (AFPM) for a partial waiver of the 2023 cellulosic biofuel standard under the Renewable Fuel Standard (RFS) program. EPA is providing this notice for public awareness of, and the basis for, EPA’s decision issued on March 15, 2024.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the volume requirements under the RFS program, in whole or in part, under specified circumstances, including when EPA finds that “there is an inadequate domestic supply” or that the RFS volume requirements “would severely harm the economy or environment of a State, a region, or the United States” (“severe economic

harm”).¹ Section 211(o)(7)(A) is structured to allow any person subject to the requirements of the RFS program to petition EPA to waive, in whole or in part, the volume requirements.

On December 22, 2023, AFPM requested that EPA issue a partial waiver of the 2023 cellulosic biofuel standard under CAA section 211(o)(7)(D) and CAA section 211(o)(7)(A)(i).² On March 4, 2024, AFPM submitted an update to its original petition.³

II. Decision

Our assessment of the volume of 2023 cellulosic RINs and 2022 cellulosic carryover RINs indicates that obligated parties will be able to readily comply with the existing 2023 cellulosic biofuel standard. Moreover, obligated parties will still be able to comply by carrying a cellulosic RIN deficit into 2024, if necessary. On the other hand, a partial waiver of the 2023 cellulosic biofuel standard would be injurious to the RFS program because it would be disruptive to program participants and could result in reduced future demand for cellulosic biofuel production. For these and all other reasons described in the AFPM Petition Denial Action, and after consultation with the Secretary of Agriculture and the Secretary of Energy under CAA section 211(o)(7)(A), the RFS program is best served by maintaining the existing 2023 cellulosic biofuel standard and we are denying the AFPM Petition.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed only in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “any other nationally applicable...final action taken by the Administrator,” or (ii) when a final action is locally or regionally applicable but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is

¹ EPA refers to the authority in CAA section 211(o)(7)(A) as the “general waiver authority.”

² AFPM, “Petition for Partial Waiver of 2023 Cellulosic Biofuel Volumetric Requirements,” December 22, 2023 (“AFPM Petition”).

³ AFPM, “AFPM’s Petition for Partial Waiver of the 2023 Cellulosic Biofuel Volumetric Requirements – Update,” March 4, 2024.

based on such a determination.” The CAA reserves to EPA the complete discretion to decide whether to invoke the exception in (ii) described in the preceding sentence.⁴

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). Whether an action is “nationally applicable” is a narrow inquiry based only on the “face” of the action.⁵ The question is whether the action itself is nationally applicable, not whether the nature and scope of the arguments raised or relief sought by a petitioner challenging the action are nationally applicable.⁶ On its face, this final action is nationally applicable because it denies a petition to waive a portion of the nationally applicable 2023 cellulosic biofuel standard promulgated in the Set Rule for all parties who qualify as obligated parties⁷ and thus are subject to the requirements of the RFS program no matter their location across the country. Parties that have registered with EPA as obligated parties under the RFS program are located in all states except Alaska, which is not subject to the RFS program.⁸ In denying this petition, EPA applied a consistent interpretation of the relevant CAA provisions and the Agency’s “common, nationwide analytical method” for evaluating the fuels available, the fuels market data, and the RIN data to determine whether a partial waiver is necessary to enable compliance with the 2023 cellulosic biofuel standard.⁹ This final action applies equally to all obligated parties.

For these reasons, this final action is nationally applicable. Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

⁴ *Sierra Club v. EPA*, 47 F.4th 738, 745 (D.C. Cir. 2022) (“EPA’s decision whether to make and publish a finding of nationwide scope or effect is committed to the agency’s discretion and thus is unreviewable”); *Texas v. EPA*, 983 F.3d 826, 834-35 (5th Cir. 2020).

⁵ *Dalton Trucking, Inc. v. EPA*, 808 F.3d 875, 881 (D.C. Cir. 2015); *Hunt Refining Co. v. EPA*, 90 F.4th 1107, 1110 (11th Cir. 2024) (“*Hunt*”).

⁶ *S. Ill. Power Coop. v. EPA*, 863 F.3d 666, 670-71 (7th Cir. 2017); *ATK Launch Sys., Inc. v. EPA*, 651 F.3d 1194, 1198-1199 (10th Cir. 2011); *RMS of Ga., LLC v. EPA*, 64 F.4th 1368, 1372-1373 (11th Cir. 2023); *Hunt*, 90 F.4th at 1110-1112.

⁷ 40 CFR 80.2 (“obligated party”), 80.1406.

⁸ CAA section 211(o)(2)(A)(i); 40 CFR 80.1407(f)(3).

⁹ *S. Ill. Power*, 863 F.3d at 671; *ATK Launch Sys.*, 651 F.3d at 1197; *Hunt*, 90 F.4th at 1112; *Oklahoma v. EPA*, --- F.4th ---, 2024 WL 799356 at *3 (10th Cir. Feb. 27, 2024).

Joseph Goffman,

Assistant Administrator, Office of Air and Radiation.

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