ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2016–0544; FRL–9955–36–OAR]

Notice of Opportunity to Comment on Proposed Denial of Petitions for Rulemaking To Change the RFS Point of Obligation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petitions for rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to deny several petitions requesting that EPA initiate a rulemaking process to reconsider or change its regulations that identify refiners and importers of gasoline and diesel fuel as the entities responsible for complying with the annual percentage standards adopted under the Renewable Fuel Standard (RFS) program. EPA is providing an opportunity for the public to comment on the petitions we have received and on our proposed denial of the requests to initiate rulemaking.

DATES: Written comments must be received on or before January 23, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0544, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

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; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

(A) What should I consider as I prepare my comments for EPA?

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or email. 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.

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.

II. Background

On March 26, 2010, the EPA issued a final rule (75 FR 14670) establishing regulatory amendments to the renewable fuel standards (''RFS'') program regulations to reflect statutory amendments to Section 211(o) of the Clean Air Act enacted as part of the Energy Independence and Security Act of 2007. These amended regulations included 40 CFR 80.1406, imposing the obligation for compliance with the RFS annual standards on refiners and importers of gasoline and diesel fuel. These entities are referred to in the RFS regulations as ''obligated parties.'' Beginning in 2014, and continuing to the present, obligated parties and other stakeholders have questioned whether 40 CFR 80.1406 should be amended, and a number of them have filed formal petitions for reconsideration or revision of the definition of ''obligated party'' in 40 CFR 80.1406, or petitions for rulemaking to amend the provision. On January 27, 2014, Monroe Energy LCC (''Monroe'') filed a ''petition to revise'' 40 CFR 80.1406 to change the RFS point of obligation, and on January 28, 2016, Monroe filed a ''petition for reconsideration'' of the regulation. On February 11, 2016, Alon Refining Krotz Springs, Inc.; American Refining Group, Inc.; Calumet Specialty Products Partners, L.P.; Lion Oil Company; Ergon-West Virginia, Inc.; Hunt Refining Company; Placid Refining Company LLC; U.S. Oil & Refining Company (the ''Small Refinery Owners Ad Hoc Coalition'') filed a petition for reconsideration of 40 CFR 80.1406. On February 12, 2016, Valero Energy Corporation and its subsidiaries (''Valero'') filed a ''petition to reconsider and revise'' the rule. On June 13, 2016, Valero submitted a petition for rulemaking to change the definition of ''obligated party.'' On August 4, 2016, the American Fuel and Petrochemical Manufacturers (''AFPM'') filed a petition for rulemaking to change the definition of ''obligated party.'' On September 2, 2016, Holly Frontier also filed a petition for rulemaking to change the definition of ''obligated party.'' The petitions, comments received to date on the petitions, and EPA's draft analysis are available in a public docket that EPA has established for this Notice under Docket ID No. EPA–HQ–OAR–2016–0544.

III. What information is EPA particularly interested in?

The petitioners all seek to have the point of obligation shifted from refiners and importers, but differ somewhat in their suggestions for alternatives. Some request that EPA shift the point of obligation from refiners and importers to those parties that blend renewable fuel into transportation fuel. Others suggest that it be shifted to those parties that hold title to the gasoline or diesel fuel immediately prior to the sale of these fuels at the terminal (these parties

are commonly called the position holders), or to ''blenders and distributors.'' All petitioners argue, among other things, that shifting the point of obligation to parties downstream of refiners and importers in the fuel distribution system would align compliance responsibilities with the parties best positioned to make decisions on how much renewable fuel is blended into the transportation fuel supply in the United States. Some of the petitioners further claim that changing the point of obligation would result in an increase in the production, distribution, and use of renewable fuels in the United States and would reduce the cost of transportation fuel to consumers.

In the draft analysis available in the docket referenced above (Docket ID No. EPA–HQ–OAR–2016–0544), we present our rationale for proposing to deny the requests to initiate a rulemaking on the issue. In evaluating this matter, EPA's primary consideration is whether or not a change in the point of obligation would improve the effectiveness of the program to achieve Congress's goals. At the same time, EPA believes that a change in the point of obligation would be a substantial disruption that has the potential to undermine the success of the RFS program, as a result of increasing instability and uncertainty in programmatic obligations. We believe that the proponents of such a change bear the burden of demonstrating that the benefits are sufficiently large and likely that the disruption associated with such a transition would be worthwhile.

We believe that the current structure of the RFS program is working to incentivize the production, distribution, and use of renewable transportation fuels in the United States, while providing obligated parties a number of options for acquiring the RINs they need to comply with the RFS standards. We do not believe that petitioners have demonstrated that changing the point of obligation would likely result in increased use of renewable fuels. Changing the point of obligation would not address challenges associated with commercializing cellulosic biofuel technologies and the marketplace dynamics that inhibit the greater use of fuels containing higher levels of ethanol, two of the primary issues that inhibit the rate of growth in the supply of renewable fuels today. Changing the point of obligation could also disrupt investments reasonably made by participants in the fuels industry in reliance on the regulatory structure the agency established in 2007 and reaffirmed in 2010. While we do not anticipate a benefit from changing the point of obligation, we do believe that such a change would significantly increase the complexity of the RFS program, which could negatively impact its effectiveness. In the short term we believe that initiating a rulemaking to change the point of obligation could work to counter the program's goals by causing significant confusion and uncertainty in the fuels marketplace. Such a dynamic would likely cause delays to the investments necessary to expand the supply of renewable fuels in the United States, particularly investments in cellulosic biofuels, the category of renewable fuels that Congress envisioned would provide the majority of volume increases in future years.

In addition, changing the point of obligation could cause restructuring of the fuels marketplace as newly obligated parties alter their business practices to purchase fuel under contract ''below the rack'' instead of ''above the rack'' to avoid the compliance costs associated with being an obligated party under the RFS program. We believe these changes would have no beneficial impact on the RFS program or renewable fuel volumes and would decrease competition among parties that buy and sell transportation fuels at the rack, potentially increasing fuel prices for consumers and profit margins for refiners, especially those not involved in fuel marketing. EPA is also not persuaded, based on our analysis of available data, including that supplied by petitioners, by their arguments that they are disadvantaged compared to integrated refiners in terms of their costs of compliance, nor that other stakeholders such as unobligated blenders are receiving windfall profits.

EPA specifically requests comments that address whether or not changing the point of obligation in the RFS program would be likely to significantly increase the production, distribution, and use of renewable fuels as transportation fuel in the United States, as well as any data that can substantiate such claims. We also seek comment on any of the issues discussed here and in the more complete draft analysis of the petitions available in the docket referenced above, including EPA's authority to place the point of obligation on distributors and position holders; the significance of limiting the number and nature of obligated parties; the number of parties that are currently blenders or position holders; the extent to which blenders and position holders may be small businesses for whom designation as an obligated party would be particularly burdensome; whether it is likely that current renewable fuel blenders and/or position holders would reposition themselves in the market to avoid RFS obligations if designated as obligated parties and the likely impact of such repositioning; the significance of transitional issues and potential regulatory uncertainty that would result from changing the point of obligation; and the extent to which a change in the point of obligation could lead to unintended market changes or consequences.

Dated: November 10, 2016.

Janet McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

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BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 438

[CMS–2402–P]

RIN 0938–AT10

Medicaid Program; The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses changes, consistent with the CMCS Informational Bulletin (CIB) concerning ''The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems,'' published on July 29, 2016, to the pass-through payment transition periods and the maximum amount of pass-through payments permitted annually during the transition periods under Medicaid managed care contract(s) and rate certification(s). The changes prevent increases in pass-through payments and the addition of new pass-through payments beyond those in place when the pass-through payment transition periods were established in the final Medicaid managed care regulations.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. December 22, 2016.

ADDRESSES: In commenting please refer to file code CMS–2402–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.