

EPA Finalizes New Amendments to RFS Program

The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the Renewable Fuel Standard program regulations (“the RFS2 regulations”). On June 30, 2010, EPA published a notice to withdraw several of the amendments to the RFS2 regulations that were issued via direct final rule and parallel proposal on May 10, 2010. In this final rule, EPA addresses comments received on the withdrawn provisions and takes final action regarding the withdrawn provisions based on consideration of the comments received.

Background

In the Energy Independence and Security Act of 2007 (EISA 2007), Congress amended the Clean Air Act (CAA) to expand requirements under the Renewable Fuel Standard program. The final regulations were published in the Federal Register on March 26, 2010 (75 FR 14670). Following publication, EPA discovered technical errors and areas within the final RFS2 regulations that could benefit from further clarification or modification. EPA published a direct final rule and parallel notice of proposed rulemaking on May 10, 2010, (75 FR 26026, 75 FR 26049) to make the appropriate corrections, clarifications, and modifications to the final RFS2 regulations. EPA received adverse comments on some of the amendments and subsequently published a notice to withdraw the amendments in question on June 30, 2010 (75 FR 37733). All other amendments went into effect on July 1, 2010, simultaneous with the final RFS2 regulations. This final rule addresses the comments received on the withdrawn provisions and finalizes changes to the final RFS2 regulations based on consideration of the comments received.

Key Action

The final rule amends the RFS2 regulations of 40 CFR Part 80 Subpart M to correct regulatory language that was inconsistent or that inadvertently misrepresented EPA’s intent as reflected in the preamble to the final RFS2 regulations. Some amendments

clarify how regulated parties can demonstrate compliance with regulatory requirements, while others address grammatical or typographical errors. Most importantly, the final rule:

- revises the definition of “permitted capacity” to clarify that a grandfathered renewable fuel production facility must use permits issued or revised on or before December 19, 2007, for facilities that commenced construction on or before December 19, 2007, or issued or revised on or before December 31, 2009, for ethanol facilities that commenced construction after December 19, 2007, and on or before December 31, 2009, and are fired with natural gas, biomass, or a combination thereof;
- specifies the extent to which a corn starch-based ethanol producer must use any of five advanced technologies in order for non-grandfathered ethanol to qualify for RIN generation;
- clarifies that RINs generated on or after July 1, 2010, may only be generated and transferred using the EPA Moderated Transaction System (EMTS) and will not be identified by a 38-digit code; and,
- permits sellers five business days and buyers up to ten business days from a RIN transaction date to submit transaction information to EMTS.

For More Information

For more information on this proposal, please visit the RFS website at:

<http://www.epa.gov/otaq/fuels/renewablefuels>

To submit a question on the RFS program, and to view Frequently Asked Questions, please visit:

<http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/index.htm>