



SMG Reg Watch

November 2013 / Scott R. Smith and Kori J. Andrews

Reg Watch is a periodic summary of regulations that we are currently tracking. The regulations we watch address energy, environmental, health, safety, educational issues relating to sustainability and public utilities.

This is not an all-encompassing list of all regulations being considered at the state or federal level. Contact me if you want to add additional issues, need copies of the proposed or final regulations or have questions about these or other regulations you've heard about.

DO YOU KNOW SOMEONE WHO WANTS TO RECEIVE THESE UPDATES?

Contact us at scottr.smith@smithmanage.com.

QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

Scott R. Smith, scottr.smith@smithmanage.com or koria@smithmanage.com

Scott's Thoughts

November was a busy month for Kentucky and Federal regulators. SMG has published numerous blog entries over the past month highlighting regulatory issues on the state and federal level, such as:

- There is an [update on the Floyds Fork Nutrient TMDL](#)
- A new [ASTM Standard](#) has been published
- The [Northern Long Eared Bat](#) is being considered for ESA listing.
- The State has published and submitted to EPA [Kentucky's Greenhouse Gas Policy Implications White Paper](#)
- [EPA Rules on Selenium Regulations](#)

- [KDOW to Develop a Nutrient Reduction Strategy](#)
- EPA has released its [Draft FY 2014-18 Strategic Plan](#) and
- EPA has released their Renewable Fuels Standard for 2014.

There appears to be a big deal brewing at EPA regarding regulatory changes that will impact how EPA intends to implement programs surrounding their interpretations of the "Waters of the U.S.". Their proposed rule was leaked to the public in November. Their interpretations will almost certainly increase EPA's jurisdiction over standing and barely flowing water. Anyone that operates around waters of this type can expect to be adversely impacted by this proposed regulation. Watch the development of this regulation carefully.

The Administration is proceeding with a carbon capture standard based solely on published information that has no practical basis. They overlooked or turned a blind eye to provisions contained in the Energy Policy Act of 2005 that precludes them from using research information associated with two facilities noted in the rulemaking. How desperate can they be?

As mentioned above, Kentucky is moving forward with a Nutrient Reduction Strategy. This could be tricky because of the potential to impact agriculture and the cities. We need to go slow and generate a lot more

data before we can get prescriptive in this area.

Proposed Waters of the US Changes

EPA and the U.S. Army Corps of Engineers would under a draft proposed rule assert Clean Water Act Jurisdiction on all natural and artificial tributary streams, lakes, ponds and wetlands that affect the chemical, physical and biological integrity of larger, downstream navigable waters.

EPA uses their recently released “scientific” report, (A/600/R-11/098B), *Connectivity of Streams and Wetlands to Downstream Waters; A Review and Synthesis of the Scientific Evidence* as the basis for the proposed regulations. The report was authored by EPA’s self-appointed Science Advisory Board.

State Regulation Review

The following regulations were approved in the November meeting of the Administrative Regulation Review Subcommittee on November 12, 2013.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

[807 KAR 5:001](#). Rules of procedure.

[807 KAR 5:069](#). Filing requirements and procedures for federally funded construction project of a water association, a water district, or a combined water, gas, or sewer district.

The following regulations were amended after comments:

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Brownfield's Redevelopment

[401 KAR 102:010](#). Brownfield Redevelopment Program.

[401 KAR 102:020](#). General requirements for a Property Management Plan for Brownfield Redevelopment Program.

Federal Regulation Review

Water

EPA, Public Water System Supervision Program Revision for the Commonwealth of Kentucky

Notice of tentative approval. Notice is hereby given that the Commonwealth of Kentucky is revising its approved Public Water System Supervision Program. Kentucky has adopted the following rules: Consumer Confidence Report, Ground Water and Long Term 1 Enhanced Surface Water Treatment. The EPA has determined that Kentucky’s rules are no less stringent than the corresponding federal regulations. Therefore, the EPA is tentatively approving this revision to the Commonwealth of Kentucky’s Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by December 12, 2013, to the Regional Administrator at the EPA Region 4 address shown below. The Regional Administrator may deny frivolous or

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insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by December 12, 2013, a public hearing will be held. If the EPA Region 4 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this tentative approval shall become final and effective on December 12, 2013. Any request for a public hearing shall include the following information: The name, address and telephone number of the individual, organization or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Kentucky Department for Environmental Protection, Division of Water, 200 Fair Oaks Lane, Fourth Floor, Frankfort, Kentucky 40601; and the U.S. Environmental Protection Agency Region 4, Safe Drinking Water Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303.

[EPA, Extension of Comment Period for the Water Quality Standards Regulatory Clarifications Proposed Rule](#)

Proposed rule; extension of comment period. The Environmental Protection Agency (EPA) is

extending the comment period for the proposed rule "Water Quality Standards Regulatory Clarifications". EPA is extending the comment period in response to stakeholder requests for a 30-day extension.

DATES: Comments must be received on or before January 2, 2014. The comment period was originally scheduled to end on December 3, 2013.

[Air](#)

[EPA, Notice of Availability for Public Review and Comment: Draft EPA Climate Change Adaptation Implementation Plans](#)

Notice: Scientific evidence demonstrates that the climate is changing at an increasingly rapid rate, outside the range to which society has adapted in the past. Climate change can pose significant challenges to the EPA's ability to fulfill its mission. The U.S. Environmental Protection Agency is committed to identifying and responding to the challenges that a changing climate poses to human health and the environment. It is essential therefore, that the EPA adapt to climate change in order to continue fulfilling its statutory, regulatory and programmatic requirements, chief among these protection of human health and the environment. Adaptation will involve anticipating and planning for changes in climate and incorporating considerations of climate change into many of the Agency's programs, policies, rules and operations to ensure they are effective under changing climatic conditions. Adaptation also necessitates close coordination between EPA and its many partners and stakeholders. In February 2013, EPA published

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its draft *Agency Climate Change Adaptation Plan* (draft *Plan*) in response to the President's October 2009 Executive Order (E.O. 13514—“Federal Leadership in Environmental, Energy, and Economic Performance”) and the March 2011 “Implementing Instructions to all Federal Department and Agencies.” The *Plan* is being finalized based upon comments received during a 60-day public review and comment period earlier in 2013. EPA's Program and Regional Offices have produced draft *Climate Change Adaptation Implementation Plans* (“*Implementation Plans*”) that provide more detail on how they will carry out the work called for in the Agency-wide Plan. Today, EPA announces the availability of public review drafts of its draft *Implementation Plans*; one for each of its ten Regions and seven National Programs. The draft *Implementation Plans* will be available for a 60-day public review and comment period. The public review drafts of EPA's draft *Implementation Plans* have been posted to a public docket and they are available on the Agency Web site at this URL address: <http://epa.gov/climatechange/impacts-adaptation/fedprograms/EPA-impl-plans.html>. The Docket for public comment can be found on the Federal Government Regulations Web site (<http://www.regulations.gov/#!home>). It is Docket Number EPA-HQ-OA-2013-0568.

DATES: The public should respond to the EPA with comment via the public docket no later than January 3, 2014. Only comments received by the deadline will be considered by the Agency in finalizing its plan.

EPA, Revisions to Reporting and Recordkeeping Requirements, and Proposed

Confidentiality Determinations Under the Greenhouse Gas Reporting Program

Proposed rule; extension of public comment period: The EPA is announcing an extension of the public comment period for the proposed rule titled “Revisions to Reporting and Recordkeeping Requirements, and Proposed Confidentiality Determinations under the Greenhouse Gas Reporting Program.”

DATES: The public comment period deadline for the proposed rule published on September 11, 2013 (78 FR 55994), has been extended from November 12, 2013 to November 26, 2013. Comments must be received on or before November 26, 2013.

EPA, Ambient Air Monitoring Reference and Equivalent Methods: Designation of Five New Equivalent Methods

Notice of the designation of five new equivalent methods for monitoring ambient air quality. Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, five new equivalent methods, one for measuring concentrations of PM10, one for measuring concentrations of PM10-2.5, two for measuring PM2.5, and one for measuring NO2 in the ambient air.

EPA, Availability of FY 12 Grantee Performance Evaluation Reports for the Eight States of EPA Region 4 and 17 Local Agencies

Notice of availability; Clean Air Act Section 105 grantee performance evaluation reports. EPA's grant regulations require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional

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consistency require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; **Commonwealth of Kentucky Energy and Environment Cabinet**; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation) and 17 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Environmental Protection and Growth Management Department, FL; City of Jacksonville Environmental Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Orange County Environmental Protection Division, FL; Palm Beach County Health Department, FL; Pinellas County Parks and Conservation Resources, FL; **Louisville Metro Air Pollution Control District, KY**; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Shelby County Health Department, TN; Knox County Department of Air Quality Management, TN; and Metropolitan Government of Nashville and Davidson County Public Health Department,

TN). The 25 evaluations were conducted to assess the agencies' Fiscal Year 2012 performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Air Emission Standards for Tanks, Surface Impoundment and Containers \(Renewal\)](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), "Air Emission Standards for Tanks, Surface Impoundment and Containers (40 CFR Part 264, Subpart CC, and 40 CFR Part 265, Subpart CC) (Renewal)" (EPA ICR No. 1593.09, OMB Control No. 2060-0318), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through December 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 2013, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A full description of the ICR is provided, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before December 18, 2013.

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EPA, [Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan \(SIP\) Provisions for the 1997 Fine Particle \(PM2.5\) National Ambient Air Quality Standard \(NAAQS\) and 2006 PM2.5 NAAQS](#)

Proposed rule. On January 4, 2013, in *Natural Resources Defense Council (NRDC) v. EPA*, the D.C. Circuit Court (Court) remanded to the EPA the “Final Clean Air Fine Particle Implementation Rule” (April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM2.5)” final rule (May 16, 2008) (collectively, “1997 PM2.5 Implementation Rules”). The Court found that the EPA erred in implementing the 1997 PM2.5 National Ambient Air Quality Standards (NAAQS) pursuant solely to the general implementation provisions of subpart 1 of Part D of Title I of the Clean Air Act (CAA or Act), without also considering the particulate matter-specific provisions of subpart 4 of Part D. The Court’s ruling remanded the rules to the EPA to address implementation of the 1997 PM2.5 NAAQS under subpart 4. This proposed rulemaking identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM2.5 standards, the deadlines for states to submit attainment-related and new source review (NSR) state implementation plan (SIP) elements required for these areas pursuant to subpart 4, and the EPA guidance that is currently available regarding subpart 4 requirements. The proposed deadlines for 1997 and 2006 PM2.5 attainment-related SIP submissions and NSR

requirements for nonattainment areas would replace previous deadlines that were set solely pursuant to subpart 1. Specifically, the EPA is proposing to identify the initial classification of current 1997 and/or 2006 PM2.5 nonattainment areas as “moderate,” and the EPA is proposing to set a deadline of December 31, 2014, for submission of remaining required SIP submissions for these areas, pursuant to and considering the application of subpart 4. This rulemaking affects eight nonattainment areas in five states.

DATES: *Comments.* Comments must be received on or before December 23, 2013.

EPA, [Notice of Availability of the Environmental Protection Agency’s 2011 Emissions Modeling Platform](#)

Notice of data availability (NODA). The Environmental Protection Agency (EPA) is providing notice that the 2011 Emissions Modeling Platform data are available for public review and comment. The 2011 Emissions Modeling Platform consists of emissions inventory data, supporting data, and methods that are used to process the 2011 National Emissions Inventory (NEI) and related data into a form that can be used for air quality modeling. The platform, or portions of the data that make up the platform, may be used by the Office of Air and Radiation in several contexts, including the development of rules related to the transport of air pollution and the National Ambient Air Quality Standards. The platform may also be used for other studies such as the National Air Toxics Assessment. The EPA is requesting comment on the 2011 Emissions Modeling Platform, including the emissions

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inventories and on the supporting data and methods. A docket has been established to track the comments.

DATES: Comments must be received on or before March 31, 2014. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on submitting comments and on the provided data.

Environmental Health and Safety

OSHA, [Updating OSHA Standards Based on National Consensus Standards; Signage](#)

Proposed rule; withdrawal: OSHA is withdrawing the proposed rule that accompanied its direct final rule revising its signage standards for general industry and construction.

DATES: Effective November 4, 2013, OSHA is withdrawing the proposed rule published June 13, 2013 (78 FR 35585).

OSHA, [Incorporation by Reference; Accident Prevention Signs and Tags; Correction](#)

Correcting amendments: This document contains corrections to the final regulations, which were published in the **Federal Register** of Thursday, June 13, 2013 (78 FR 35559). The regulations update OSHA's general industry and construction signage standards by adding references to the latest American National Standards Institute (ANSI) standards on specifications for accident prevention signs and tags.

DATES: Effective on November 6, 2013.

OSHA, [Updating OSHA Standards Based on National Consensus Standards; Signage](#)

Final rule; confirmation of effective date. On June 13, 2013, OSHA published in the **Federal Register** (78 FR 35559) a direct final rule that revised its signage standards for general industry and construction by updating the references to national consensus standards approved by the American National Standards Institute, a clearinghouse that verifies that the criteria for approval of consensus standards have been met. OSHA stated in that **Federal Register** notice that it would withdraw the companion proposed rule and confirm the effective date of the direct final rule if the Agency received no significant adverse comments on the direct final rule. Since OSHA received no such significant adverse comments, the Agency now confirms that the direct final rule became effective as a final rule on September 11, 2013.

DATES: The direct final rule published on June 13, 2013 (78 FR 35559), became effective as a final rule on September 11, 2013. For the purposes of judicial review, OSHA considers November 6, 2013, the date of issuance of the final rule.

OSHA, [Improve Tracking of Workplace Injuries and Illnesses](#)

Proposed rule: The purpose of this rulemaking is to improve workplace safety and health through the collection of useful, accessible, establishment specific injury and illness data to which OSHA currently does not have direct, timely, and systematic access. With the information acquired through this proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and

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abate workplace hazards. OSHA is proposing to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule amends the regulation on the annual OSHA injury and illness survey of ten or more employers to add three new electronic reporting requirements. The proposed rule does not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule also does not add to or change the recording criteria or definitions for these records. The proposed rule only modifies employers' obligations to transmit information from these records to OSHA or OSHA's designee.

DATES: *Comments:* Comments must be submitted by February 6, 2014.

Other

EPA, [Draft FY 2014–2018 EPA Strategic Plan; Availability](#)

Notice of availability, request for public comments. The U.S. Environmental Protection Agency (EPA) is announcing the availability of the *Draft FY 2014–2018 EPA Strategic Plan* for public review and comment, as part of the periodic update required by the Government Performance and Results Act (GPRA) Modernization Act of 2010 (Pub. L. 111–352). The agency anticipates the final *Strategic Plan* will be submitted to Congress in February 2014.

The *Strategic Plan* provides the Agency's long-term direction and strategies for advancing human health and the environment. For this notice, the EPA is seeking comment from individual citizens, states, tribes, local government, industry, the academic community, non-governmental organizations, and all other interested parties. The agency is particularly interested in feedback addressing strategies contained in the goal narratives, cross-cutting fundamental strategies, and strategic measures. The agency made targeted revisions to our existing Plan that seek to advance efforts to address our changing climate, protect our precious water and land resources, and advance chemical safety. The Plan seeks to outline how EPA will make a visible difference in communities across the country by advancing sustainability, innovation and providing sound scientific advice, technical and compliance assistance and other tools that support states, tribes, cities, towns, rural communities, and the private sector. Under this Plan, EPA will continue to improve the way we do business, engaging closely with our public sector partners at all levels and the regulated community to achieve environmental benefits in the most pragmatic, collaborative, and flexible way possible—for our children and future generations. In addition, the EPA is proposing new FY 2014–2015 Agency Priority Goals—a key component of the Administration's performance management system—to align more closely with our highest priorities, including improving the health of communities across the country and tackling the issue of climate change.

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DATES: Comments must be received on or before January 3, 2014.

EPA, [Public Hearing for the 2014 Standards for the Renewable Fuel Standard Program](#)

Announcement of public hearing. The EPA is announcing a public hearing to be held for the proposed rule 2014 Standards for the Renewable Fuel Standard Program, which EPA will publish separately in the **Federal Register**. The hearing will be held in Washington, DC on December 5, 2013. In the separate notice of proposed rulemaking EPA has proposed amendments to the renewable fuel standard program regulations to establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced in the U.S. or imported in the year 2014. In addition, the separate proposal includes a proposed biomass-based diesel applicable volume for 2015.

DATES: The public hearing will be held on December 5, 2013 at Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202 (phone number 703-413-6718). The hearing will begin at 9 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should notify the contact person listed in the notice by November 26, 2013.

Fish and Wildlife Service. [Endangered and Threatened Wildlife and Plants; Review of Native Species That are Candidates for Listing as Endangered or Threatened; Annual Notice](#)

[of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions](#)

Notice of review. In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates for or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species. The CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number (LPN) to each species or to determine that species should be removed from candidate status. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms) for each candidate species. Overall, this CNOR recognizes no new candidates, changes the LPN for three candidates, and removes three species from candidate status. Combined with other decisions for individual species that were published separately from this CNOR in the past year, the current number of species that are candidates for listing is 146. This

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document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period October 1, 2012, through September 30, 2013. We request additional status information that may be available for the 146 candidate species identified in this CNOR.

DATES: We will accept information on any of the species in this Candidate Notice of Review at any time.

EPA, [2014 Standards for the Renewable Fuel Standard Program](#)

Proposed rule. Under section 211(o) of the Clean Air Act, the Environmental Protection Agency is required to set the renewable fuel percentage standards each November for the following year. EPA proposes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all motor vehicle gasoline and diesel produced or imported in the year 2014. For cellulosic biofuel, the statute specifies that EPA is to project the volume of production and must base the cellulosic biofuel standard on projected available volume if it is less than the applicable volume set forth in the Act. EPA is proposing a cellulosic biofuel volume for 2014 that is below the applicable volume specified in the Act. The statute also provides EPA the discretion to adjust the volumes of advanced biofuel and total renewable fuel under certain conditions. Relying on its Clean Air Act waiver authorities, EPA is proposing to adjust the applicable volumes of advanced biofuel and total renewable fuel to address projected

availability of qualifying renewable fuels and limitations in the volume of ethanol that can be consumed in gasoline given practical constraints on the supply of higher ethanol blends to the vehicles that can use them and other limits on ethanol blend levels in gasoline. These adjustments are intended to put the program on a manageable trajectory while supporting growth in renewable fuels over time. Finally, the statute requires EPA to determine the applicable volume of biomass-based diesel to be used in setting annual percentage standards under the renewable fuel standard program for years after 2012. EPA is proposing the applicable volume of biomass-based diesel that would apply in 2014 and 2015. EPA is requesting comment on a variety of alternative approaches and on a range of inputs and methodologies relevant for setting the applicable standards.

DATES: Comments must be received on or before January 28, 2014.

EPA, [Notice of Receipt of Petitions for a Waiver of the Renewable Fuel Standard](#)

Notice: EPA has received a number of petitions for a waiver of the renewable fuel standards that would apply in 2014. The American Petroleum Institute (API) and the American Fuel & Petrochemical Manufacturers (AFPM) submitted a joint petition to the Administrator, dated August 13, 2013, on behalf of their members requesting a partial waiver of the 2014 applicable volumes under the RFS. Subsequently, several refining companies submitted individual petitions to the Administrator that also request a waiver of the 2014 applicable volumes. Section 211(o)(7)(A)

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of the Clean Air Act allows the Administrator of the EPA to waive the national volume requirements of the renewable fuel standard program in whole or in part if the Administrator determines that implementation of those requirements would severely harm the economy or environment of a State, a region, or the United States, or that there is inadequate domestic supply. EPA is inviting comment on all issues relevant to the petitions for a waiver that have been submitted. Comments submitted in response to a related **Federal Register** notice proposing the 2014 volume requirements will be considered to also have been submitted to the docket for this notice.

DATES: Comments must be received on or before January 28, 2014.

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