

EPA Decision on Texas Request for Waiver of Portion of Renewable Fuel Standard (RFS)

Background

- The Governor of the State of Texas requested a fifty percent waiver of the national volume requirements for the renewable fuel standard (RFS or RFS mandate) on April 25, 2008 (read the Letter to EPA Administrator Johnson from Governor Perry).
- On May 22, 2008 EPA provided notice of the Texas request and invited public comment on all issues relevant to making a decision on Texas' request.
- EPA's public written comment period on Texas' waiver request closed on June 23, 2008. Although EPA's Air Docket (where comments are deposited into an electronic docket system available at regulations.gov – with the docket identifier number EPA-HQ-OAR-2008-0380) is continuing to process submitted comments it appears that approximately 15,000 comments were submitted.
- EPA issued a news release from Administrator Johnson on July 22, 2008 stating that the Administrator was confident that a decision on the Texas waiver request would be made in early August.
- The renewable fuel program was adopted in the Energy Policy Act of 2005, and was recently expanded in the Energy and Independence Security Act of 2007. This program requires gasoline to contain a specified volume of renewable fuel.
- Section 211(o)(7) of the Clean Air Act allows the Administrator of EPA, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the national renewable fuel standard, in whole or in part,

if the Administrator determines, after public notice and opportunity for public comment, that implementation of the RFS requirements would severely harm the economy or environment of a State, a region, or the United States.

- EPA is denying Texas' waiver request because the evidence in this case does not support a determination that implementation of the RFS mandate during the time period at issue (September 1, 2008 through August 31, 2009) would severely harm the economy of a State, region, or the United States.
- In this decision EPA is also setting forth the Agency's general expectations for future waiver requests, including the types of information and analysis that should accompany a waiver request.

Basis of EPA's Denial of Texas' Waiver Request

- EPA is authorized to grant Texas' waiver request if EPA determines that implementation of the RFS mandate would severely harm the economy of a State, region, or the United States.
- EPA interpreted the waiver provision as providing only narrow waiver authority:
 - EPA would have to determine that the implementation of the mandate itself would severely harm the economy; it is not enough to determine that implementation of RFS would contribute to such harm;
 - EPA would also have to find that there is a generally high degree of confidence that the RFS is severely harming the economy; and
 - This requirement calls for a high threshold for the nature and degree of harm that would support the issuance of a waiver based on "severe harm" to the economy of a State, region, or the United States.
- EPA examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, food prices, and fuel prices. EPA also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate.
- EPA determined that the weight of all of the evidence indicates that implementation of the RFS would have no significant impact in the relevant time frame (the 2008/2009 corn season), and the most likely result is that a waiver would have no impact on ethanol production volumes in the relevant time frame, and therefore no impact on corn, food, or fuel prices.
- EPA also determined that the evidence also indicates that even if the RFS mandate were to have an impact on the economy during the 2008/2009 corn marketing year, it would not be of a nature or magnitude that could be characterized as severe. Even in the modeled scenarios where a waiver of the RFS mandate might reduce the production of ethanol, the resulting decrease in corn prices is anticipated to be small (on average \$0.30 per bushel of corn), and there would be an accompanying

small increase in the price of fuel (on average \$0.01 per gallon in fuel costs). The average increase in corn prices in all modeled scenarios, including scenarios where the RFS mandate would and would not have an impact, was \$0.07 per bushel of corn. Such levels of potential impacts from the RFS program do not satisfy the high threshold of harm to the economy to be considered severe.

- EPA's decision is based on the facts of this case, and applied the evidence to the narrow criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and denied the waiver.