Regulatory Announcement

EPA Decision to Deny Requests for Waiver of the Renewable Fuel Standard

Background

- This summer, in light of drought conditions affecting the country, Governors from several States requested a waiver of the national volume requirements for the renewable fuel standard program (RFS).

- On August 30, 2012, EPA provided notice of the waiver requests and invited public comment on issues relevant to making a decision on the requests.

- EPA's public written comment period on the waiver requests closed on October 11, 2012. Nearly 30,000 comments were submitted.

- The renewable fuel program was adopted in the Energy Policy Act of 2005, and was expanded in the Energy and Independence Security Act of 2007. This program requires that transportation fuel sold in the United States contain a minimum 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 RFS under certain criteria. The waiver could be issued if the Administrator determines -- after a notice and comment period -- that implementation of the RFS requirements would severely harm the economy or environment of a State, a region, or the United States.

- EPA recognizes that this year's drought has created significant hardships in many sectors of the economy, particularly for livestock producers. However, the agency's extensive analysis makes clear that Congressional requirements for a waiver have not been met and that waiving the RFS would have little, if any, impact on ethanol demand or energy prices over the time period analyzed.

United States
Environmental Protection
Agency

Office of Transportation and Air Quality
EPA-420-F-12-075
November 2012

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Basis of EPA's Decision

- EPA is authorized to grant a waiver request if the agency 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 in a manner consistent with its prior response to a 2008 RFS waiver request from Texas. The provision provides 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, and food 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's analysis shows that it is highly unlikely that waiving the RFS volume requirements will have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices We analyzed 500 scenarios, and in 89% of them we see no impacts from the RFS program at all.
- Looking across all 500 scenarios, including those 11% of scenarios where RFS requirements would have an impact on the corn and other markets, the average impact on corn prices is only 7 cents a bushel, less than a one percent change in corn prices.
- EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore by law must deny the waiver.