

Regulatory Announcement

EPA Completes Regulations Clarifying the Default Standard for 2006 Under the Renewable Fuel Standard Program

The U.S. Environmental Protection Agency (EPA) is adopting the default standard for renewable fuel as set forth in the Energy Policy Act of 2005. The Energy Policy Act amended the Clean Air Act by establishing a national renewable fuel program designed to significantly increase the volume of renewable fuel that is blended into gasoline, starting with calendar year 2006. The Act directs EPA to issue regulations by August 8, 2006, and provides that if EPA has not adopted such regulations by that date, then 2.78 percent of the gasoline sold or dispensed to consumers for calendar year 2006 must be renewable fuel. Given the short time frame available and the need to provide certainty to industry, EPA is finalizing a limited set of regulations that would interpret and clarify the statutory default provision of 2.78 percent so it can be implemented as intended for 2006.

Background

Section 1501 of the Energy Policy Act of 2005 (Energy Act or the Act) amended the Clean Air Act by adding a new provision establishing a national renewable fuel program (also known as the Renewable Fuel Standard program or RFS program). This program is designed to significantly increase the volume of renewable fuel that is blended into gasoline, starting with calendar year 2006. The Act directs EPA to issue regulations

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EPA does not believe that it can meet the August 2006 statutory deadline. The issues that need to be resolved in adopting such comprehensive regulations are complex, making it important for EPA to receive input from the various stakeholders which will require significant amounts of time and effort, including analysis of important issues such as feasibility, costs, emissions inventory impacts, and benefits. This work cannot be completed in the context of a final rulemaking by August 2006 which must be preceded by a notice and comment period. At the same time, it is critical that industry be informed of how to demonstrate compliance prior to August 2006 since the program begins in January 2006. The default provisions in the Act are not self-explanatory, nor do they identify the responsible parties or the method by which they must demonstrate compliance. EPA is therefore establishing a limited set of regulations that would interpret and clarify the statutory default provision for 2006. The rule would provide certainty to the parties involved as to what their responsibilities are for 2006, and will help to provide a smooth transition to the long-term RFS program.

Action EPA is Taking in 2006

EPA interprets the default standard for 2006 with regulations identifying the liable parties as refineries, importers, and blenders of gasoline. Compliance with the default standard, however, will be determined on a collective, rather than an individual, basis for 2006. Under this approach, refineries, blenders, and importers together will be responsible for meeting the default 2.78 percent standard, and compliance with this standard will be calculated over the pool of gasoline sold to consumers. An individual refinery, blender, or importer will not be responsible for meeting the 2.78 percent standard for the specific gasoline it produces. EPA will determine compliance after 2006 using gasoline and renewable fuel consumption data available from the Energy Information Administration, supplemented by information readily available from other sources. If EPA determines that the default standard had not been met in 2006 on this collective basis, any deficit will be carried forward and applied as an adjustment to the standard for 2007. The regulations implementing the default standard for 2006 will not include any provisions for credit generation or trading, given the collective nature of the obligation.

Reason for EPA's Action

The rulemaking required to implement the full RFS program, including both program design and the various analyses necessary, will require a substantial effort involving many stakeholders. For instance, it will require EPA to undertake an analysis of small business impacts under the Small Business Regulatory Enforcement Flexibility Act (SBREFA), provide public notice and an opportunity for comment, including an opportunity for a public hearing, a Regulatory Impact Analysis, and ultimately a final rule. This process cannot occur prior to the start of the RFS program in January 2006, nor does EPA anticipate that it can be completed by the one-year deadline set in the Act. Therefore, the statutory default standard of 2.78 percent will apply to calendar year 2006.

The regulated community may not be able to interpret and implement the default standard provided in the Act without additional guidance from EPA. For example, although the Act provided that the default standard of 2.78 percent apply in 2006, in the event that EPA did not complete regulations implementing the full renewable fuel program, the default standard provision does not specify the liable parties. Absent an EPA rulemaking, the resulting uncertainty associated with the default standard would create confusion and risks a problematic initial implementation of the RFS program. Allowing the default standard to go into effect without EPA guidance could potentially result in significant disruptions in the gasoline and renewable fuel production, blending, and distribution systems.

In addition to meeting the need for clarity in the limited time frame available, we believe that the collective approach to compliance for 2006 is reasonable given our expectation that the default standard will be met on a collective basis in 2006 even without imposition of any RFS obligations. Estimates from the U.S. Department of Agriculture and Department of Energy project total ethanol production for 2006 to be above 4.0 billion gallons, which also meets the 2.78 percent default standard. The Renewable Fuel Association has also indicated that total ethanol production capacity already exceeds 4 billion gallons and that additional production capacity currently under construction exceeds 1.2 billion gallons. If the default standard is not met on a collective basis for 2006, a deficit carryover provision will allow for make-up of any shortfall by adjusting the applicable collective industry standard in 2007 commensurately.

EPA's Action for 2007 and Beyond

The default standard of 2.78 percent provided in the Act applies exclusively to calendar year 2006, and the collective compliance approach will likewise apply only to 2006. For 2007 and beyond, EPA will determine and publish the applicable renewable fuel standard for each year and develop a RFS credit trading program per statutory direction. This rule will specifically identify liable parties, lay out the compliance program including record-keeping and reporting requirements, and delineate all elements of the credit trading program. All these and many other issues impacting the full RFS program will be addressed in a subsequent EPA rulemaking and are not discussed in the direct final rule.

Public Participation Opportunities

This rule is being released as a direct final rule because we view it as a non-controversial action and anticipate no adverse comment. However, comments can be submitted under a parallel NPRM. For instructions on submitting written comments, please see the *Federal Register* notice, which is available from the Web site below or from the EPA Air Docket (202-566-1742; please refer to Docket No. OAR-2005-0161). You can access the rule and related documents on EPA's Office of Transportation and Air Quality (OTAQ) Web site at:

www.epa.gov/otaq/renewablefuels

For More Information

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