Feature Story

EPA Releases Reduced 2014 Standards For The Renewable Fuel Standard Program

The Environmental Protection Agency released a pre-publication draft of its upcoming proposed rule setting biofuel blending targets for the Renewable Fuel Standard (RFS) program, which would reduce biofuel blending targets for the first time. This reduction would return blending targets to 2012 levels, well below the statutory volume requirements pursuant to the Clean Air Act (CAA), as amended by the Energy Independence and Security Act of 2007. EPA’s downward adjustment of RFS targets is intended to “put the program on a manageable trajectory while supporting growth in renewable fuels over time,” particularly due to the constraints posed by the ‘blendwall’ and industry inability to produce requisite amounts of cellulosic biofuel.

“Our proposed framework for addressing both availability of qualifying renewable fuels and constraints on their consumption would make use of a combination of the cellulosic waiver authority at [CAA]211(o)(7)(D)(i) and the general waiver authority at [CAA]211(o)(7)(A)…. [W]e interpret the term "inadequate domestic supply" as it is used under the general waiver authority to include consideration of factors that affect consumption of renewable fuel. We believe the framework being proposed today best approximates the multiple goals that Congress intended in the RFS program, and we would intend this framework to apply not just to 2014, but to later years as well. However, we are soliciting comment on alternative approaches as well.” In addition to the new standards, EPA is rescinding its 2011 cellulosic biofuel blending requirements. Comments are due 60 days after publication in the Federal Register.

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Heritage Foundation

The 43 Billion Hour Correction, Sam Batkins
Seven Unanswered Questions Regarding EPA’s Ethanol Rule, Catrina Rorke

The Hill

Bloomberg

Washington Post
Commodity Futures Trading Commission

CFTC Finalizes Rule Enhancing Consumer Protections, Risk Management Programs, Liquidity Standards
The Commodity Futures Trading Commission published a final rule “to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (“FCMs”). The regulations also address certain related issues concerning derivatives clearing organizations (“DCOs”) and chief compliance officers (“CCOs”). The final rules will afford greater assurances to market participants that: Customer segregated funds, secured amount funds, and cleared swaps funds are protected; customers are provided with appropriate notice of the risks of futures trading and of the FCMS with which they may choose to do business; FCMS are monitoring and managing risks in a robust manner; the capital and liquidity of FCMS are strengthened to safeguard their continued operations; and the auditing and examination programs of the Commission and the self- regulatory organizations (“SROs”) are monitoring the activities of FCMS in a prudent and thorough manner.”

Food and Drug Administration

FDA Extends Comment Period for Proposed Food Good Practices Rule Due to Regulations.gov Glitches
The Food and Drug Administration announced it is extending the comment deadline for its proposed rule Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food due to glitches in the website used to submit public comments. The good manufacturing practices, last updated in 1986, are being changed to implement hazard analysis and risk-based preventive controls for international and domestic producers. “These preventive controls would include requirements for covered facilities to maintain a food safety plan, perform a hazard analysis, and institute preventive controls for the mitigation of those hazards. Facilities would also be required to monitor their controls, verify that they were effective, take any appropriate corrective actions, and maintain records documenting these actions.” FDA estimates that these requirements will cost between $319 million – $475 million annually for covered entities. However, the Agency was unable to estimate any benefits, and instead relies on a breakeven percentage point at which the benefits of the rule will justify the costs. By this measure, the rule must prevent between 16 and 24 percent of covered food product illnesses annually. Comments are now due on November 22nd.

FDA Extends Comment Period for Proposed Food Safety Rule Due to Regulations.gov Technical Difficulties
The Food and Drug Administration announced it is extending the comment deadline for its proposed rule Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption due to glitches in the website used to submit public comments. The rule would establish minimum standards for growing, harvesting, and packaging of fruits and vegetables in order to minimize the risk of death or illness from the consumption of contaminated produce. Among other things, the rule would require standards for worker health and hygiene, water intended for agricultural uses, domesticated animals on produce plots, equipment, tools, buildings, and the documentation of the treatment of beans and seeds for sprouting. FDA estimates that these requirements will incur $630 million in costs annually for covered producers, both domestically and abroad. Additionally, FDA estimates that the benefits resulting from reducing illness and death associated with contaminated food will be $1.04 billion, representing 65 percent of all U.S. illnesses and deaths caused by the consumption of covered produce. In clarifying the scope of the rule, FDA specifies that the requirements “would not apply to produce that is rarely consumed raw, produce for personal or on-farm consumption, or produce that is not a raw agricultural
commodity.” The rule, if finalized, will be effective 60 days after publication; however, small businesses are granted and additional three years for compliance. Comments are now due on November 22nd. (Read our public comment here.)

FDA Extends Comment Period for $547 Million Rule to Verify Safety of Imported Foods
The Food and Drug Administration announced it is extending the comment period for its proposed rule, Foreign Supplier Verification Programs for Importers of Food for Humans and Animals. The proposed rule would require food importers to “perform risk-based foreign supplier verification activities… to verify that food imported into the United States is as safe as food produced and sold within the United States…The proposed [Foreign Supplier Verification Program] regulations are intended to work in tandem with other provisions of [the Food Safety Modernization Act] and the [Food, Drug, and Cosmetic] Act to … [provide] appropriate layers of protection for U.S. consumers.” Under the regulation, importers would have to conduct on-site audits or other verification methods for most foreign suppliers, with different requirements for very small suppliers and importers, importers of dietary supplements, and suppliers in countries “whose food safety system FDA has officially recognized as ‘comparable’…[or] equivalent to that of the United States.” Estimated cost of the rule is between $529 million and $547 million per year. Because the proposed rule “would not itself establish safety requirements for food manufacturing and processing, [but] would benefit the public health by helping to ensure that imported food is produced in compliance with other applicable food safety regulations,” the public health benefits are accounted for in “the preventive controls, produce safety, and other applicable food safety regulations instead of in this rule.” Comments are now due on January 27th, 2014.

Agencies

Department of Health and Human Services

HHS Publishes Notice Establishing Framework for Rating Qualified Health Plans on Exchanges
The Department of Health and Human Services published a notice establishing a framework for rating Qualified Health Plans (QHPs) offered through a healthcare Exchange, pursuant to the Patient Protection and Affordable Care Act. The rating framework is termed the Qualified Rating System, or the QRS. “The Affordable Care Act and applicable Exchange regulations establish that health plans offered through an Exchange must meet specific standards to be certified as QHPs and to offer coverage in an Exchange beginning in January 2014… We believe that the overarching goal of the QRS is based on two fundamental tenets: (1) Providing comparable and useful information regarding the quality of QHPs offered through the Exchanges to inform consumer and employer choice; and (2) facilitating regulatory oversight of QHPs with regard to the quality standards set forth in the Affordable Care Act. Consequently, we believe that the QRS should provide QHP ratings based on health care quality and outcomes, consumer experience, and cost.” Comments are due on January 21st, 2014.

Environmental Protection Agency

EPA Announces Public Hearing on Upcoming Proposed 2014 Renewable Fuel Standards
The Environmental Protection Agency announced a public hearing on its upcoming proposed rule, 2014 Standards For The Renewable Fuel Standard Program, on December 5th. EPA’s proposed rule for the first time reduces biofuel blending targets, bringing the Renewable Fuel Standard (RFS) back to 2012 levels. EPA is proposing this change to address supply concerns associated with the “blendwall”, defined as “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.”

Occupational Safety and Health Administration

OSHA Announces Public Meeting on Proposed Rule Requiring Reporting of Worker Injury & Illness Records
The Occupational Safety and Health Administration announced a public meeting on January 9th, 2014, to solicit comments from the public on its recent proposed rule, Improve Tracking of Workplace Injuries and Illnesses. The proposed rule would require employers to electronically report to OSHA the injury and illness information that employers are already required to record. This rule adds three new electronic reporting requirements to OSHA’s annual injury and illness survey. The rule doesn’t require any new recordkeeping actions by employers, but it changes employers’ obligation to report the records to OSHA. “OSHA anticipates that establishments’ electronic submission of establishment-specific injury/illness data will improve OSHA's ability to identify, target, and remove...
safety and health hazards, thereby preventing workplace injuries, illnesses, and deaths. In addition, OSHA believes that the data submission requirements of the proposed rule will improve the quality of the information and lead employers to increase workplace safety. Finally, the Agency plans to make the injury and illness data public, as encouraged by President Obama's Open Government Initiative. Online access to these data will allow the public, including employees and potential employees, researchers, employers, and workplace safety consultants, to use and benefit from the data.” Attendees are required to RSVP by December 13th.

Administrative Conference of the United States
ACUS Announces 59th Plenary Session on December 5th and 6th to Discuss Three Proposed Recommendations
The Administrative Conference of the United States announced public meetings on Thursday, December 5th and Friday, December 6th at its 59th Plenary Session to discuss three proposed recommendations and one proposed statement. The proposed recommendations to be discussed are on improving the timeliness of OIRA review, the use of social media in rulemaking, and the judicial remedy of remand without vacatur on review of agency action. ACUS is an independent federal agency that provides recommendations to the federal government for improving the administrative process.

Export-Import Bank
Ex-Im Bank Receives Application for $100+ Million to Fund Export of Business Jet Aircraft to China
The Export-Import Bank published a notice announcing the receipt of an application for a long-term loan or financial guarantee in excess of $100 million to fund the export of U.S.-manufactured business jet aircraft to China. These exports would be used for executive air transportation. Comments are due on December 16th.

Ex-Im Bank Receives Application for $100+ Million to Fund Export of GE Equipment to Saudi Arabia
The Export-Import Bank published a notice announcing the receipt of an application for a long-term loan or financial guarantee in excess of $100 million to fund the export of U.S.-manufactured cogeneration power plant equipment to Saudi Arabia. This equipment would be used to construct three cogeneration power plants to produce reliable electricity and steam. Comments are due on December 10th.

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