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CLIENT ALERT

EPA Finalizes E15 Expansion, Scaled-Back RIN Market Reforms under the Renewable Fuel Standard

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On Friday, the U.S. Environmental Protection Agency (EPA or "the Agency") released the pre-publication version of its final rule expanding summer use of E15 and implementing new—though significantly scaled back—provisions affecting Renewable Identification Numbers (RINs) reporting and disclosure. (RINs are used to demonstrate compliance with the Renewable Fuel Standard (RFS)). Both actions could have an impact on fuel and RIN markets in the near term given that E15 provisions are effective May 30th and RIN provisions are to be effective 30 days following Federal Register publication of the rule. New disclosure and reporting requirements kick in on January 1, 2020. Key aspects of the final rule can be summarized as follows:

E15:

As widely expected, EPA changed its long-standing interpretation of the Clean Air Act to allow E15 (a blend of 85 percent gasoline and 15 percent ethanol) to qualify for a 1 pound-per-square–inch (psi) fuel volatility waiver from May 1 to September 15 of each year. Effective immediately, gasoline/ethanol fuel blends containing from 9 to 15 percent ethanol will only need to meet a 10 psi volatility standard, instead of a statutory 9 psi requirement. Gasoline and other gasoline/ethanol blends outside of the 9 to 15 percent blending range must still meet the 9 psi volatility standard in order to be sold during the summer months.

RIN Market Reform:

Reiterating statements it made when proposing a series of four RIN-market-reform measures in late March, EPA concluded that it has yet to see "data-based evidence" substantiating concerns of RIN market manipulation, and, as a result, determined that it need only finalize two measures aimed at enhancing the Agency's ongoing RIN market monitoring and analysis.

Specifically, the only measures that EPA included within the final rule signed on May 31st will require:

- Public disclosure when holdings of separated D6 (conventional corn ethanol) RINs surpass tiered thresholds calculated by EPA to exceed "normal business practices," thereby reflecting an "intent to exert inappropriate market influence." As a result, parties will be required to calculate daily RIN holdings at least once per quarter, and include within quarterly reports to EPA a "yes" or "no" certification as to whether separate D6 RIN holdings exceeded the designated thresholds on any given day during the quarterly reporting period. Entities certifying "yes" will then be identified publicly on EPA's website.
- Enhanced reporting to EPA, including information on RIN prices and the underlying structure of RIN transactions.

Significantly, EPA withheld action on the range of other reforms the Agency proposed, including limitations on who would be allowed to purchase separated D6 RINs, limitations on the length of time certain non-obligated parties would be permitted to hold separated D6 RINs, and requirements to comply with RIN retirement obligations on a quarterly basis. EPA noted that it will continue to collect more data and conduct further analysis, including through the engagement of a third party, regarding RIN market concerns.

While EPA has succeeded in publishing the rule in time for the summer driving season, its ultimate impact may be decided by the courts. Provisions allowing for a 1 psi volatility waiver for E15 will be subject to litigation in the U.S. Court of Appeals (D.C. Circuit) and other changes to the RIN system may also be challenged in that forum. Attention will now turn to a cascading set of additional RFS proposals expected to follow in the coming weeks and months, including proposed RFS standards for 2020 and a proposed regulatory “reset” of statutorily imposed renewable fuel volumes.

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