

EPA Issues Proposed Anti-Backsliding Determination for Renewable Fuels

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Under Section 211(v) of the Clean Air Act, EPA was required to complete “a study to determine whether the renewable fuel volumes required by [Section 211(o)] will adversely impact air quality as a result of changes in vehicle and engine emissions of air pollutants.” On May 29, 2020, EPA released its so-called [anti-backsliding study](#), which evaluated two scenarios for calendar year 2016. The first scenario evaluated actual ethanol and biodiesel volumes as implemented under the Renewable Fuel Standards (“RFS”) in Section 211(o), and the second scenario evaluated ethanol and biodiesel use approximating 2005 levels, prior to the enactment of the RFS. The study found, among other things, that under the “with-RFS” scenario, certain air pollutants, such as ozone and nitrogen dioxide, were present at increased concentrations compared to the “pre-RFS” scenario in some areas of the country, while other air pollutants, such as benzene and carbon monoxide, were present at reduced concentrations compared to the “pre-RFS” scenario in some areas of the country.

Based on the results of the anti-backsliding study, EPA [proposed](#) to determine that “no additional appropriate fuel control measures are necessary to mitigate adverse air quality impacts of required renewable fuel volumes.” EPA’s determination is largely based on the benefits of EPA’s Tier 3 Motor Vehicle Emissions and Fuel Standards, which took effect in 2017. EPA concluded that its Tier 3 standards “have lowered the sulfur content of gasoline and tightened the emissions standards for on-road motor vehicles” and “are projected to reduce concentrations of ozone, PM_{2.5}, NO₂, toxics (such as acetaldehyde, formaldehyde, acrolein, benzene, 1,3- butadiene, and naphthalene), and other pollutants into the future.” EPA’s proposed determination will be subject to public comment for 30 days after it is published in the *Federal Register*.

Biofuels industry groups have criticized the anti-backsliding study and EPA’s determination, saying that EPA’s methodology used in the study was flawed. In a May 29, 2020 statement, industry group Growth Energy stated that EPA’s proposed determination “side-steps the wide body of evidence supporting a clear scientific consensus around the clean air benefits of homegrown ethanol.”

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