

Renewable Fuel Standard: Establishment & Current Events

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The Renewable Fuel Standard (“RFS”) requires all transportation fuel sold in the United States to contain a minimum volume of biofuel. It was originally established in the Energy Policy Act of 2005, and expanded by the Energy Independence and Security Act of 2007. Obligated parties, including refiners or importers of gasoline and diesel fuel, are responsible for complying with the RFS, while the Environmental Protection Agency (“EPA”) is responsible for administering it. Part of that administration includes setting the volume of renewable fuel that will be required for the coming year, and evaluating which renewable fuels are eligible for the RFS program.

Under the RFS, a renewable fuel must be used for specific purposes and must meet certain environmental and biomass feedstock criteria. Further, the mandated minimum fuel volume must be met using both conventional biofuel, such as cornstarch ethanol, and advanced biofuel, such as cellulosic ethanol. The requirement for advanced biofuel can be met with three types of fuel: cellulosic biofuel, biomass-based diesel, and other advanced biodiesels.

EPA monitors compliance with the RFS via a tradable credit system. Participating parties submit credits known as renewable identification numbers (“RIN”) to EPA, reflecting the number of gallons allowed in their annual renewable volume obligation (“RVO”). The RVO represents each party’s total annual gasoline and diesel fuel sales multiplied by the blending ratios announced by EPA. Each gallon of biofuel used is assigned a RIN, which can then be bought, sold, or traded. The larger refineries are capable of collecting RINs by mixing biofuel directly into their fuel supply. Smaller refiners typically need to purchase RINs to meet their RFS requirements.

Currently, there is much debate over the RIN system. Because many smaller refiners must purchase RINs, an unregulated market has been unintentionally created. Although RINs were initially only a few cents, their price has fluctuated wildly, and has sometimes been as high as \$1.40. On March

1, 2018, President Trump met with Senators Ted Cruz and Pat Toomey along with other legislators and stakeholders from oil-refining and ethanol-producing states to address this problem. The meeting resulted in a proposal to place a 10-cent cap on RINs in exchange for year-round sales of fuel containing 15 percent ethanol (most fuel is currently blended with 10 percent ethanol). So far, the biofuel industry has opposed this approach based on the claim that it would ultimately reduce consumption of ethanol.

In addition to calls for a new approach to the RIN system, some environmental groups have been pushing for an overhaul of the RFS to reduce the amount of ethanol requirements and increase the amount of advanced biofuels used. However, prominent supporters of cellulosic ethanol and other advanced biofuels claim that this proposal is essentially a partnership between environmental groups and oil companies intent on undermining the future of ethanol.

Another controversy arises due to RVO requirements. The RFS originally set a benchmark of 4 billion gallons of renewable fuels in 2006, climbing to 36 billion gallons by 2022. Since 2014, that target has not been met. However, EPA does have the power to waive the RFS requirements if certain statutory conditions are met. In years subsequent to 2014, EPA has repeatedly exercised its cellulosic biofuel waiver authority to reduce the volume required for cellulosic biofuel. While many in the biofuel industry argue that EPA abused its waiver authority by setting RVOs lower than the statutory minimums, according to EPA the waiver is based on the cellulosic biofuel industry's inability to produce the required volume amounts.

The final section of the waiver provision is referred to by some as the "reset" provision. If triggered, the provision requires EPA to modify the applicable volumes of the RFS. Specifically, a reset may be triggered if EPA lowers the renewable fuel mandate, the advanced biofuel mandate, the cellulosic biofuel mandate or the biomass-based diesel mandate by at least 20% for two consecutive years.

The 2018 final rule reduced the renewable fuel mandate beyond the statutory levels by more than 20%. The proposed rule for 2019 was released on June 26, 2018. It proposes a reduction of the advanced biofuel volume requirement and the cellulosic biofuel volume requirement, while also using the cellulosic waiver authority to reduce both the advanced biofuel volume requirement and the cellulosic biofuel volume requirement. The total waiver amounts to over 20%, making the reset a possibility. However, the proposed 2019 rule does not discuss the potential reset option. As a result, it is unknown whether the EPA will trigger the reset provision, or if it will implement a reset rule if the provision is triggered. Whatever EPA decides to do with regard to the reset provision in 2019 will not be known for sure until the final 2019 rule is published in November.

Despite pressure to reform the RFS coming from all sides, it is unclear when or if one will take place. With so many conflicting ideas, it is difficult to tell which avenue of reform Congress will be likely to take.

SOURCES:

Congressional Research Service: The Renewable Fuel Standard (RFS): An Overview (July 31, 2018)

Congressional Research Service: The Renewable Fuel Standard (RFS): Waiver Authority and Modification of Values (February 5, 2018)

Renewable Fuel Association: Renewable Fuel Standard

U.S.News: Rethinking the Renewable Fuel Standard (March 7, 2018)

The Hill: A “Win-Win” on the Renewable Fuel Standard (August 10, 2018)

The Heartland Reform Institute: Senators Consider Renewable Fuel Standard Reform (March 23, 2018)

STATUTES:

Energy Policy Act of 2005, 42 U.S.C. 15801 §§ 101 – 1840

Energy Independence and Security Act of 2007, 42 U.S.C. 17001 §§ 201 – 210

REGULATIONS:

40 C.F.R. Part 80, Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019

PROPOSED: 40 C.F.R. Part 80, Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020

ADDITIONAL RESOURCES:

National Agricultural Law Center: Renewable Energy