

**Before the
Environmental Protection Agency
Washington, D.C. 20004**

August 31, 2017

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| In the Matter of |) | |
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| Renewable Fuel Standard Program: |) | |
| Standards for 2018 and Biomass-Based |) | |
| Diesel Volume for 2019 |) | Docket:EPA-HQ-OAR-2017-0091-0002 |
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Comments of FreedomWorks Foundation

FreedomWorks Foundation is a 501(c)(3) nonprofit and educational foundation dedicated to building, educating, and mobilizing the largest network of activists advocating the principles of smaller government, lower taxes, free markets, personal liberty, and rule of law. In doing so, FreedomWorks Foundation acts as a “service center” for the millions of citizen-leaders who make a difference in the fight for lower taxes, less government, and more freedom.

FreedomWorks Foundation appreciates the opportunity to provide comments to the Environmental Protection Agency (EPA) regarding the Renewable Fuel Standard (RFS) Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019.

One of the core projects of FreedomWorks Foundation is the Regulatory Action Center. The Regulatory Action Center is dedicated to educating Americans about the impact of government regulation on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

In line with this core project, FreedomWorks Foundation believes the proposed RFS levels for 2018 do not reflect economic reality. While encouraged that EPA is exercising some of its waiver authority regarding cellulosic biofuels, FreedomWorks Foundation believes EPA is mistaken in its attempt to keep the mandated level of conventional biofuels, or ethanol, in-line with the targets set in statute under the Energy Independence and Security Act (EISA) of 2007.

The economic reality of today does not reflect the projections of 2007, upon which RFS targets are based. As fully acknowledged by EPA, there is a threshold where ethanol levels begin to imperil the fuel supply, known as the “blend wall.” EPA’s proposed 2018 standards skirt this threshold, providing little flexibility in the case of further changes in economic conditions. FreedomWorks Foundation sees little need for EPA to attempt to comply with foolhardy goals set in 2007 considering the very realistic chance such standards will cross the ethanol blend wall.

EPA seeks comment “on whether it would be appropriate to exercise the general waiver authority in the final rule, and will evaluate comments and updated data to consider whether such an approach is warranted.” FreedomWorks Foundation’s comments are an emphatic “Yes.” EPA should exercise its general waiver authority to the greatest extent possible as RFS is a fundamentally broken program that ultimately should not exist.

Background

RFS is a program designed to incorporate increasing volumes of renewable biofuels, such as corn-based ethanol, into the domestic fuel supply as a means of reducing American dependence on foreign sources of crude oil. Congress created RFS in 2005 through the Energy Policy Act and expanded the program into its current form in 2007 via EISA. Congress mandated

in statute raw gallon figures for various categories of biofuels to be blended into the overall fuel supply through 2022. The level of ethanol set in statute for 2018 is 15 billion gallons.¹

By its very nature, RFS is emblematic of the kind of central-planning that plagues socialist economies and ultimately led to the collapse of communism in Eastern Europe and the former Soviet Union. It is thus unsurprising that RFS targets reflect economic conditions that are wildly off from reality.

One of the primary pitfalls of central-planning is the assumption that planners have sufficient knowledge to allocate resources more efficiently than the countless voluntary transactions that comprise the free market. Such is beyond improbable, if not impossible, as no single individual or group of planners could possibly collect and decipher all the necessary information that comprises the trillions of economic decisions voluntarily made each day by all the individual actors in an economy through the knowledge conveyed by the price system.

In regards to RFS, Congress predicted in 2005 and 2007 that America would continue to be reliant on foreign sources of crude oil and that overall fuel consumption would steadily increase. These were THE two critical assumptions underlying the RFS (not counting the obvious benefits delivered to special interest groups). Congress clearly lacked sufficient knowledge, as neither general prediction about the American energy market has proven true.

As a result, RFS mandates volumes of biofuels beyond not just demand, but beyond levels that are even technically achievable. Adding insult to injury, these mandates now lack their original public policy justification. Thus, it makes little sense for EPA to attempt to comply with the RFS targets set in EISA, especially since EISA grants EPA authority to waive the requirements in the event the requirements would cause economic harm.

¹Bracmort, Kelsi, “The Renewable Fuel Standard: An Overview,” Congressional Research Service, August 1, 2017. <https://fas.org/sgp/crs/misc/R43325.pdf>

RFS vs. Reality

The statutory RFS targets are based on projections of the American fuel market made in 2007. In the years directly following, the domestic fuel market, and economy in general, underwent the most radical changes in a generation.

In 2007, the Energy Information Agency (EIA) predicted flat production in domestic liquid fuels. EIA predicted in its Annual Energy Outlook for 2007 that crude oil production would rise only slightly from 5.18 million barrels per day in 2005 to 5.91 in 2015.² Instead, production has steadily increased since 2010, rising to roughly 9.41 million barrels per day in 2015.³ EIA was off by a staggering 59 percent due to the explosion in domestic production, driven by fracking and horizontal drilling, which had not yet materialized by 2007.

EIA further predicted in 2007 the US would not only remain a net energy importer through 2030, but that the gap would widen by 50 percent over 2005 levels.⁴ EIA now predicts the US will become a net energy exporter potentially before 2020!⁵

EIA was also radically off in terms of domestic gasoline consumption. Not surprisingly, the 2007 projections did not account for the looming Great Recession of 2008-2009. EIA predicted motor gasoline consumption to rise from 9.16 million barrels per day in 2005 to 9.53 in

²Annual Energy Outlook (AEO) 2007, Energy Information Agency, February 2007. [https://www.eia.gov/outlooks/archive/aeo07/pdf/0383\(2007\).pdf](https://www.eia.gov/outlooks/archive/aeo07/pdf/0383(2007).pdf)

³Energy Information Agency: U.S. Field Production of Crude Oil, released July 31, 2017. <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MCRFPUS2&f=A>

⁴AEO 2007. [https://www.eia.gov/outlooks/archive/aeo07/pdf/0383\(2007\).pdf](https://www.eia.gov/outlooks/archive/aeo07/pdf/0383(2007).pdf)

⁵EIA's AEO 2017 projects the United States to be a net energy exporter in most cases, Energy Information Agency, January 5, 2017. <https://www.eia.gov/todayinenergy/detail.php?id=29433>

2010 and 10.18 by 2015.⁶ Instead, consumption, measured in terms of product supplied *fell* to 8.99 by 2010 and recovered only slightly to 9.18 by 2015.⁷

The data makes clear that the primary objective of RFS, reducing American reliance on foreign sources of oil, is now a mute issue. Domestic production skyrocketed and America is set to become a net-energy exporter within a decade. Programs without an objective should be wound-down and eliminated on this criteria alone. Where RFS becomes particularly problematic is the data demonstrating that fuel consumption has remained flat since 2007 and not increased as predicted.

The Blend Wall

RFS gradually increases the level of mandated biofuels each year and is based on mistaken projections of rising overall fuel consumption. The fact that fuel consumption has remained technically flat overall since 2010 means the mandated volume of biofuels is increasing relative to the overall supply at an accelerated and unanticipated rate. This presents a serious issue with the level of ethanol in the nation's fuel supply known as the blend wall. This is a phenomenon EPA has fully acknowledged.⁸

Most engines and fuel infrastructure are not designed to safely operate with fuel exceeding 10 percent ethanol content or E-10. Automakers⁹, AAA¹⁰, and fuel distributors¹¹ have

⁶AEO 2007. [https://www.eia.gov/outlooks/archive/aeo07/pdf/0383\(2007\).pdf](https://www.eia.gov/outlooks/archive/aeo07/pdf/0383(2007).pdf)

⁷Energy Information Agency: Petroleum & Other Liquids, Supply and Disposition, Motor Gasoline, released July 31, 2017. https://www.eia.gov/dnav/pet/pet_sum_snd_a_epm0f_mbbldpd_a_cur-1.htm

⁸Hattem, Julian, "EPA: Ethanol limit 'has been reached'," The Hill, December 11, 2013.

<http://thehill.com/policy/energy-environment/192753-epa-ethanol-limit-has-been-reached>

⁹"Who Can Use E-15?" WGN survey, December 2014. <https://tribwgnv.files.wordpress.com/2014/12/e-15-manufacturers-responses.pdf>

¹⁰Strauss, Gary, "AAA Warns E15 gasoline could cause car damage," USA Today, November 30, 2012. <https://www.usatoday.com/story/news/nation/2012/11/30/aaa-e15-gas-harm-cars/1735793/>

all warned that higher blends, such as E-15, can damage engines, void warranties, and harm fuel pumping equipment.

Further, there is limited demand for higher-blend fuels even in the tiny market of users who own “flex-fuel” vehicles, or those which can safely run on blends higher than E-10. Ethanol’s energy content is less than that of pure gasoline. Thus, flex-fuel owners are unlikely to choose higher blends as they simply do not receive as many miles per gallon as from pure gasoline or E-10.

Blending issues can also increase gas prices. Since RFS regulations are issued as a percentage standard by EPA, individual producers are incentivized to reduce their overall amount of product supplied in order to increase the percentage that the gallons of biofuels they do sell comprise of total sales. Further, instead of producing higher-blends for the domestic market, producers may be incentivized to export lower-blend product. This risks unnecessary scarcity in America’s fuel market, driving prices higher.

EPA’s proposed 2018 RFS levels put ethanol relatively close to the targets set in the 2007 statute. As a result, the proposed ethanol percentage is 10.62 percent.¹² While the flex-fuel market may cover the difference, this standard grants producers exceptionally little breathing-room. The industry has made such perfectly clear. The American Petroleum Institute’s Director for Downstream and Industry Operations, Frank Macchiarola, testified before EPA the following on August 1 of this year:

¹¹ NACS 2013 Retail Fuels Report.
http://www.nacsonline.com/YourBusiness/FuelsReports/GasPrices_2013/Pages/Challenges-Remain-Before-E15-Usage-Is-Widespread.aspx

¹² Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019.
<https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0091-0002>

“EPA is proposing a standard that exceeds 9.7% ethanol in the gasoline pool. A small tolerance below 10% is needed to account for the difficulty of blending ethanol into every gallon...E15 and E85 are **not** answers to the ethanol blendwall. EPA presumes demand for these blends will drive total ethanol volumes to exceed 10% of gasoline supply in 2018. History demonstrates that motorists have largely rejected E85 because – according to AAA data – the fuel economy penalty ends up costing consumers more money in the long run. It is unreasonable for EPA to assume any significant near-term ethanol volume increases from E15 or E85. EPA’s unrealistic market scenarios fail to account for the significant retail investments that are needed, particularly when only 8 percent of vehicles on the road were designed to use E85, and only about 15% (including FFV’s) were designed to use E15.”¹³

Conclusion

It makes no sense for EPA to propose levels anywhere close to the targets set in statute. The targets reflect economic conditions radically different than reality and thus hold no real meaning. America’s dependence on foreign sources of crude oil is a concern of the past thanks to increased domestic crude oil production, not biofuels. Further, RFS target levels risk poisoning the fuel supply. EPA is needlessly adding weight to the camel’s back by not exercising its

¹³RFS Public Hearing: API Testimony, Frank Macchiarola, Group Director for Downstream and Industry Operations, American Petroleum Institute, Washington DC, August 1, 2017. <http://www.api.org/news-policy-and-issues/testimony-and-speeches/2017/08/01/macchiarola-testimony-rfs-public-hearing>

general waiver authority to the greatest extent possible. Forcing as much of a broken system on American consumers simply for the sake it means the proposed 2018 RFS levels are nothing more than a stunt. American consumers deserve better.

EPA should revise the 2018 proposal to include a broad general waiver and ensure the new ethanol levels do not cross 9.7 percent of the total fuel supply. Otherwise the Trump administration will be bending to the incorrect prognostications of Congress instead of sending a clear message that RFS is just another blunder of central-planning needing to be torn down.

Respectfully submitted,

Ken Cuccinelli II

Director and General Counsel

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Patrick Hedger

Foundation Program Manager