

Comments of the American Coalition for Ethanol

at the

**Public Hearing for Proposed Renewable Fuel Standards for 2018, and the
Biomass-Based Diesel Volume for 2019**

Docket Number EPA-HQ-OAR-2017-0091

By

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On behalf of the American Coalition for Ethanol (ACE), thank you for the opportunity to testify today.

ACE is a grassroots advocacy organization, powered by rural Americans from all walks of life who have built an innovative industry that delivers homegrown biofuel and food for a growing world. Our 500 members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry.

We are pleased to use this time to highlight a few of the issues that we will be detailing in our written comments to the proposed rule. I will be focusing on four issues: (1) conventional biofuel levels; (2) discussion of the general waiver authority as it relates to “inadequate domestic supply”; (3) the use of the reset provisions; and (4) updating the greenhouse gas modeling for corn ethanol as it relates to Brazilian sugarcane ethanol.

Conventional Biofuel Levels

We are extremely pleased that the proposed rule maintains the 15-billion-gallon volume for conventional renewable fuel. The ethanol industry has a current production capacity of 16.1 billion gallons with another 113 million gallons of capacity under construction. The industry’s operating production levels stand at 15.66 billion gallons which easily exceeds the domestic supply necessary to meet the 15 billion level called for in the statute.

Ethanol production remains a critical market for U.S. corn farmers. According to the United States Department of Agriculture (USDA), surplus stocks of corn will swell to a 30-year high of 2.4 billion bushels and corn prices will fall to a 10-year low in 2017. Working capital has declined to its lowest level since 2002. Net farm income has dropped from \$124 billion in 2013 to an expected \$62 billion in 2017.

Enactment of the RFS in 2005 restarted a teetering rural economy in the early 2000s. Ensuring a properly functioning RFS and increasing demand for renewable fuels in 2018 and beyond is critical to the economic success of the rural economy. Maintaining 15 billion gallons in 2018 is imperative to this effort.

Application of the General Waiver Authority

We also would like to acknowledge that the proposed rule does not rely on the general waiver authority related to “insufficient domestic supply” which was impermissibly applied by EPA in previous rulemakings.

Starting in 2013, economic insecurity spread across rural America because the Obama Administration led EPA to implement the RFS off-track by reducing annual renewable volume obligations below levels by improperly using the general waiver authority related to “insufficient domestic supply.”

As the D.C. Court of Appeals ruled last week, “EPA erred in how it interpreted the ‘inadequate domestic supply waiver provision. ... It does not allow EPA to consider the volume of renewable fuel that is available to ultimate *consumers* or the *demand-side* constraints that affect the consumption of renewable fuel by consumers.”

As the Court concisely states “[t]he central problem with EPA’s ‘supply equals demand’ argument (in addition to the text of the statute, of course) is that it runs contrary to how the Renewable Fuel Standard is supposed to work.”

The Court reaffirmed Congress’ intent that the RFS’s “increasing requirements are designed to force the market to create ways to produce and use greater and greater volumes of renewable fuel each year. EPA’s interpretation flouts that statutory design: instead of the statute’s volume requirements forcing demand up, the lack of demand allows EPA to bring the volume requirements down.”

To that end, the Court stated that it is impermissible for EPA to consider availability of renewable fuel to market actors downstream from refiners, importers and blenders such as retailers or consumers. EPA cannot consider constraints on infrastructure to distribute fuel from blenders to gas stations, the number of retail outlets that offer renewable fuel blends, pricing of renewable fuel, prevalence of vehicle engines that can use renewable fuel, and marketing efforts of those promoting renewable fuel products.

While the proposed rule does not reduce total volumes based on the legally flawed interpretation of “insufficient domestic supply,” the rule does extensively review inappropriate demand side factors such as gasoline demand, retail stations, vehicle engines, pricing, and marketing efforts in its determination to not use the authority.

EPA’s discussion of assessing attainable volumes based on these factors in the proposed rule (pages 34229 through 34232 of the Federal Register) is legally barred and should be struck from the final rule. We further encourage EPA to affirmatively acknowledge in the final rule that it shall only consider supply to refiners, blenders, and importers such as the availability of feedstocks, the production capacity of renewable fuel producers, and imports from foreign producers.

Use of Reset Provisions

As the D.C. Court of Appeals stated, the intent of the RFS's "increasing requirements are designed to force the market to create ways to produce and use greater and greater volumes of renewable fuel each year." EPA must not use the lack of demand as justification to bring volume requirements down.

We are concerned that this proposed rule is a step toward using the RFS authority to reset the statutory levels if there is a reduction in total volumes of more than 20 percent in two subsequent years. As mentioned, corn ethanol production capacity already exceeds the implied levels called for in the proposed rule. Any effort to reset RFS levels below what can be produced by the industry runs counter to the statute.

That said, EPA should focus its attention in helping clear obstacles to using the ethanol supply being made available to refiners, importers and blenders. One such issue is removing the regulatory barrier for using E15 year-round. EPA's current interpretation of Reid Vapor Pressure (RVP) handcuffs retailers in conventional gasoline areas because it inexplicably prevents retailers from selling E15 in summer months even though it is less-emitting and lower cost than E10 and E0. We encourage EPA to address this issue expeditiously in order to help refiners, importers and blenders in the expansion of renewable fuel use.

Sustainability and Greenhouse Gas

With enactment of the RFS, EPA was required to conduct modeling of the lifecycle GHG emissions for various categories of renewable fuels. At that time, EPA estimated corn ethanol's carbon intensity was approximately equal to gasoline and that it would take until 2022 to be 20 percent below gasoline.

The efficiency at which corn is grown and ethanol fuel is manufactured is constantly improving and Argonne's scientists continue to update its modeling. Their estimation that corn ethanol carbon intensity was 20 percent below gasoline by 2010 is now more than 45 percent below gasoline. In addition to Argonne's GREET corn ethanol modeling, the USDA contracted with ICF International to conduct an independent analysis of the GHG emissions of corn-based ethanol. The report was released in January of 2017. ICF estimated that in 2014, lifecycle corn ethanol GHG emissions were 43 percent below 2005 gasoline. ICF also estimated that by 2022, top performing corn ethanol facilities' carbon intensity could be 70 percent below EPA's 2022 estimation.

This is noteworthy given proposed rule's discussion of the difficulty in accurately estimating imports of Brazilian sugarcane ethanol and its relationship to Advanced and Total renewable fuel volumes. Varied levels of imports of sugarcane ethanol year to year is one of the factors cited for lowering the Advanced and Total volume levels while at the same time sending signals to U.S. corn ethanol producers not to rely on the RFS

to further expand. We encourage EPA to update its greenhouse gas modeling for corn starch ethanol. We believe it will show comparably, if not better, reductions in GHG emissions than sugarcane ethanol. As a result, EPA would not need to lower the Total renewable fuel volumes based on uncertain sugarcane ethanol, but instead free up the marketplace to use a clean, U.S. produced product with significant GHG savings.

Miscellaneous

We briefly want to note our support for not reopening comment on the Point-of-Obligation issue. We believe that EPA is correct in having the obligation lie with refiners and importers.

We also encourage EPA to review its proposed cellulosic levels. We believe that the proposed rule underestimates the volume which can be produced and that reducing the levels from 311 million gallons in 2017 to 238 million gallons in 2018 is inappropriate. We will be providing more extensive comments on this topic, among others, after consulting with our members.