



## **Renewable Fuel Standard (RFS)**

The primary reason Congress enacted the RFS was to reduce greenhouse gas (GHG) emissions by requiring oil refiners to blend increasing volumes of renewable fuels in the motor fuel they make. By this measure, the RFS is a success. According to the Renewable Fuels Association (RFA), ethanol-blended gasoline in 2019 helped reduce transportation GHG emissions by 54.1 million metric tons, the equivalent of removing 11.5 million cars from the road for an entire year. Ethanol also displaces petroleum-based aromatics in gasoline, cutting toxic emissions which harm humans.

Congress was also convinced the RFS would support new value-added markets for farmers and jobs in rural America. Congress was right. The RFA reports that in 2019 a typical ethanol plant added about \$1.20 of additional value to every bushel of corn processed through the production of ethanol, distillers' grain, and corn distillers' oil. What's more, the U.S. ethanol industry supported nearly 70,000 direct jobs, over 280,000 indirect and induced jobs, and generated \$43 billion to U.S. gross domestic product in 2019. American consumers have also benefited from the RFS because it provides lower-cost and cleaner fuel options at the pump. In 2019, premium gasoline was 16 percent more expensive than regular gasoline in the wholesale market and a lofty 29 percent more expensive at retail – reaching the highest levels in at least two decades. However, ethanol is helping to hold down the cost of both regular and premium gasoline. According to a study by Dr. Philip K. Verleger, Jr. consumers saved an average of 22 cents per gallon from 2015 through 2018 as a result of the use of ethanol.

### EPA Mismanagement of the RFS Hurts Farmers and the Rural Economy

Unfortunately, mismanagement of the RFS by the Environmental Protection Agency (EPA) has undermined the progress of the program and caused economic pain for farmers and rural communities.

Under President Obama, EPA bowed to oil refiners and waived RFS blending obligations below statutory levels due to the so the U.S. Court of Appeals for the DC Circuit ruled EPA violated the statute and ordered the restoration of 500 million gallons back to the 2016 RFS compliance year. So far EPA has not followed the court order.

Under President Trump, EPA has retroactively granted 85 small refinery exemptions (SREs) for refineries, erasing over 4 billion gallons worth of RFS blending obligations for the 2016 through 2018 compliance years. While designed for small refineries, companies such as ExxonMobil and Chevron have benefited from EPA's hardship waivers. Refiners are reporting double-digit profits, but the heart of America is being left behind. The best way to spur market-based demand for farmers and improve economic conditions in rural America is to increase the production and use of renewable fuels. This is even more critical given the uncertainty created by trade wars and efforts to renegotiate existing trade pacts.

ACE has joined with other groups to challenge EPA's abuse of the SREs in court, and in January 2020, we welcomed a court victory with the U.S. Court of Appeals for the Tenth Circuit's decision to strike down three exemptions that were improperly issued by EPA. The Court's ruling highlighted how EPA abused the SRE provision of the RFS in broader terms to unfairly enrich the oil industry which now should have far-reaching implications on the legitimacy of other refinery waivers and limit how they can be used moving forward. However, as of the beginning of August, we're still waiting for EPA to apply the precedent set by the ruling nationwide.



ACE is also challenging EPA in the DC Circuit with its allies by urging EPA to reallocate waived gallons from SREs granted retroactively and specifically challenging the legitimacy of 31 SREs EPA granted for 2018.

Further, in 2020, it was brought to light that EPA is considering retroactive waiver petitions for compliance years 2018 to as far back as 2011 under the RFS. The “gap-filings” are designed to reconstitute a continuous string of exemptions for select oil companies “to be consistent with the Tenth Circuit decision,” thus circumventing court limits on new oil industry handouts at the expense of farmers and biofuel producers. As of August 5, EPA is considering 58 “gap year” waivers, in addition to 28 pending petitions for the 2019 and 2020 RFS compliance years.

We need EPA to restore the 500 million gallons of remanded volume as ordered by the DC District Court in 2017 and nationally apply the Tenth Circuit Court precedent regarding SREs by denying most of the pending waivers for the 2019 RFS compliance year and the “gap year” waivers.

#### Refinery Waivers Remove the Incentive to Blend Ethanol

According to RFA, U.S. ethanol production fell to 15.8 billion gallons in 2019, 300 million gallons below 2018 — despite new capacity coming online. Even with EPA approving E15 year-round in 2019, the domestic ethanol blend fell below 10 percent at times during the winter and spring as the market responded to demand destruction caused by SREs. An oil refiner can comply with the RFS in one of two ways. It can buy and blend ethanol with the gasoline it makes, or, it can purchase RFS compliance credits, called Renewable Identification Numbers (RINs), from another refiner that blends more ethanol than required under the law. A RIN is equivalent to one gallon.

Ethanol RIN credit prices averaged approximately 70 cents in 2016 and 2017. But in 2018 and 2019, as EPA retroactively granted 85 SREs and allowed the refineries to keep the compliance credits, a surplus of RINs led to a collapse in prices. Low RIN prices took pressure off refiners to blend ethanol. As EPA’s waivers took pressure off refiners to blend in 2018 and 2019, ethanol prices fell to record lows and many farmer and locally-owned ethanol plants were forced to reduce output or shutdown.

In 2020, with the economy ground to a halt to slow the spread of the coronavirus, ethanol demand has fallen even more drastically. During March and April, more than half of U.S. ethanol production capacity came offline, high-skill jobs were shed, livestock and food processing customers faced supply disruptions, and ethanol producers’ working capital vanished. Ethanol use could fall by more than 3 billion gallons in 2020, eliminating the market for at least a billion bushels of U.S. corn, and representing an over \$10 billion loss in ethanol sales, dropping the industry’s contribution to GDP by nearly one-third. As an industry that came into 2020 already beat down by EPA’s mismanagement of the RFS, trade wars, poor markets and bad weather, the combination of Russia and Saudi Arabia flooding the market with cheap oil and the steep and sudden drop in ethanol demand as the coronavirus pandemic brought the economy to a standstill has landed a direct hit on the ethanol industry, unlike anything it’s ever faced.

#### Get the RFS Back on Track

Sometime in 2020, EPA is expected to propose a rule to “reset” RFS volumes for years 2021 through 2022. The reset is triggered because volumes for advanced and cellulosic biofuel have fallen short of the statutory levels set by Congress.



EPA is also slated to release its proposed 2021 RVOs, but this has been delayed. We need EPA to use the opportunity in upcoming rulemakings to help correct past RFS missteps.

#### What Happens to the RFS after 2022?

While there is no expiration date or sunset in the RFS statute, the calendar years for which Congress specified statutory volumes for total renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel end in 2022 and EPA is given greater discretion to set future volumes.

EPA has limited discretion with the RFS after 2022. The statute requires EPA to determine future volumes, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the RFS preceding 2022, the expected annual rate of future production of renewable fuels, and an analysis of the impact of the production and use of renewable fuels on the environment, energy security, infrastructure, cost to consumers, job creation, the price and supply of ag commodities, rural economic development, and food prices.

The reset stipulates that advanced biofuel volume can be no lower in percentage terms than the 2022 volume law requires EPA to promulgate rules establishing post-2022 volumes would apply, EPA must promulgate rules in the 2021 calendar year.

While ACE believes EPA could not reduce ethanol volumes after 2022 without negative impacts on many of the factors the agency is required to analyze in setting the volumes, it is also true that under Presidents Obama and Trump, EPA has abused the law to find ways to reduce blending obligations for refiners.