



July 22, 2015

Gina McCarthy, Administrator  
United States Environmental Protection Agency  
EPA Docket Center  
Docket ID No. EPA-HQ-OAR-2015-0111  
Mail Code 2821T  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

**Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel  
Volume for 2017; Proposed Rule**

Dear Administrator McCarthy:

National Farmers Union (NFU) appreciates the opportunity to present the U.S. Environmental Protection Agency (EPA) with comments on the Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Proposed Rule. NFU has nearly 200,000 family farmer, rancher, and fishermen members nationwide and organized divisions in 33 states. We have supported family agriculture and rural communities since 1902 because “the family farm is the keystone of a free, progressive, democratic national society, as well as a strong America, and is the basis of a safe, secure and stable food system.”<sup>1</sup> These comments will explain why the Renewable Fuel Standard Program (RFS) is important in terms of climate resiliency and the changes to the proposed volume standards for advanced biofuels and total renewable fuels that are needed to achieve the goals of the program.

**I. The Importance of the RFS**

The proper execution of the RFS is vital to the American people and economy for two main reasons. First, the renewable transportation fuels promoted by the RFS have immense potential to reduce climate-influencing greenhouse gas (GHG) emissions from the transportation sector, which means implementing effective volume standards is one of the most important actions the Administration can take to mitigate climate change. Second, the production of the renewable fuels promoted by the RFS carries important economic benefits. The program decreases U.S. reliance on foreign transportation fuels. The RFS has also driven much-needed and substantial reinvestment in our rural communities, and

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<sup>1</sup> Policy of the National Farmers Union,” March 2015. <http://www.nfu.org/nfu-2015-policy/2066>

has the potential to perpetuate even more investment. Unfortunately, the policy and regulatory uncertainty that can be expected from the proposed volume standards jeopardize existing investment in biofuels production and could create so much uncertainty that investment could be more difficult to attract than if the RFS had never been implemented in the first place.

#### A. Climate Resiliency

The fact that climate change poses threats to the American economy, as well as the physical safety of the American people and global population, is well-documented and overwhelmingly agreed to by the scientific community.<sup>2</sup> In addition to these alarming concerns, NFU must highlight the hazards climate change carries for American agriculture and the specific problems a changing climate will create for family agriculture.

The U.S. offers the most secure food system in the world<sup>3</sup> and is a substantial contributor to the global food supply. This achievement begins with farmers and will be jeopardized when farmers' ability to produce is disrupted. Such disruption is anticipated due to climate change. *Climate Change and Agriculture in the United States: Effects and Adaptation*, a report by the United States Department of Agriculture (USDA), isolated a number of challenges climate change presents to farmers. These challenges include: lowered productivity due to increases in temperature and precipitation variability; increased temperature stress on livestock; changing pest, weed, and disease pressures; disturbances in pollinator services and soil maintenance; and more frequent extreme weather events.<sup>4</sup> It will take time and effort for American agriculture to adapt to these changes, and in the meantime the overall amount

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<sup>2</sup> USDA Blog, "Secretary Vilsack Announces Partnerships with Farmers and Ranchers to Address Climate Change," April 23, 2015. Secretary Vilsack Announces Partnerships with Farmers and Ranchers to Address Climate Change - See more at: <http://blogs.usda.gov/2015/04/23/secretary-vilsack-announces-partnerships-with-farmers-and-ranchers-to-address-climate-change/#sthash.cgKaou03.dpuf>

<sup>3</sup> "The Global Food Security Index," The Economist Group, <http://foodsecurityindex.eiu.com/Country/Details#United%20States>.

<sup>4</sup> Walthall, C.L., J. Hatfield, P. Backlund, L. Lengnick, E. Marshall, M. Walsh, S. Adkins, M. Aillery, E.A. Ainsworth, C. Ammann, C.J. Anderson, I. Bartomeus, L.H. Baumgard, F. Booker, B. Bradley, D.M. Blumenthal, J. Bunce, K. Burkey, S.M. Dabney, J.A. Delgado, J. Dukes, A. Funk, K. Garrett, M. Glenn, D.A. Grantz, D. Goodrich, S. Hu, R.C. Izaurralde, R.A.C. Jones, S-H. Kim, A.D.B. Leaky, K. Lewers, T.L. Mader, A. McClung, J. Morgan, D.J. Muth, M. Nearing, D.M. Oosterhuis, D. Ort, C. Parmesan, W.T. Pettigrew, W. Polley, R. Rader, C. Rice, M. Rivington, E. Rosskopf, W.A. Salas, L.E. Sollenberger, R. Srygley, C. Stöckle, E.S. Takle, D. Timlin, J.W. White, R. Winfree, L. Wright-Morton, L.H. Ziska. 2012. *Climate Change and Agriculture in the United States: Effects and Adaptation*. USDA Technical Bulletin 1935. Washington, DC. 186 pages. At 1. [http://www.usda.gov/oce/climate\\_change/effects\\_2012/CC%20and%20Agriculture%20Report%20%2802-04-2013%29b.pdf](http://www.usda.gov/oce/climate_change/effects_2012/CC%20and%20Agriculture%20Report%20%2802-04-2013%29b.pdf)

of production and food prices are likely to fluctuate. Some production losses may become long-lasting or permanent. The security of a sustainable food supply, one that puts adequate and adequately-nutritious food within reach of all people regardless of race, color, national origin, or income, is threatened by climate change.

Even with as much uncertainty as surrounds the economic impact of climate change on agriculture, it is clear that the risk to those who rely on farmers for food is unprecedented in modern times. The USDA report stated “ultimately climate change effects will depend on how production and consumption systems adjust, or adapt, in response to those biophysical effects,” but also noted that “even in the short-term, climate change will likely increase the incidence of global hunger through effects on the world’s poorest and most at-risk populations.”<sup>5</sup>

EPA should pursue GHG emission reductions at every opportunity to try to mitigate climate change as much as possible. The RFS offers tremendous capacity to reduce GHGs by encouraging the use of transportation fuels that emit fewer GHGs than petroleum-based transportation fuels. EPA asserts that the EISA volume standards will cut GHG emissions by 138 million metric tons by 2022.<sup>6</sup> To achieve these emissions reductions, EPA should implement the biofuel volume standards Congress agreed to in the Energy Independence and Security Act (EISA). The volume standards in the proposed rule must be adjusted because they forego GHG emission reductions in the immediate term and impede future growth by holding investment at bay and validating the unwarranted use of waiver authority.

In addition to the direct climate advantages the volume standards in the EISA would create, the volume standards are important to maintain because farmers and rural communities are enormously important to building climate resiliency. The RFS is an important tool for initiating other essential conversations around climate and agriculture with producers. Farmers will need to consider information on how climate change will impact their operations in order to make decisions that will maintain the security of our food supply. Farmers may also be able to make production decisions that mitigate climate change by reducing or sequestering greenhouse gasses, or that alleviate some of the symptoms of climate change, such as soil enhancement efforts that help with irregular rainfall. If policymakers hope such actions might be adopted by enough farmers to create a positive impact, it would be very helpful to establish trust with farmers and rural communities around climate change by maintaining the EISA’s proposed volume standards. That policy stability would allow farmers to participate in climate resiliency in a way

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<sup>5</sup> *Id.* at 118.

<sup>6</sup> <http://www.epa.gov/climatechange/EPAactivities/regulatory-initiatives.html>

that directly adds value to their operations and communities, securing their receptiveness to future conversations around climate.

### *B. Rural Communities*

The economic benefits the RFS provides for rural communities are both immediate and long-term. Immediate benefits include investment in conventional and advanced ethanol plants, many of which are farmer-owned and all of which create good jobs in rural America. Encouraging more biofuels plants and requiring strong production from existing plants creates more jobs, secures existing jobs, and provides a stable tax base that will allow rural communities to flourish. A formal economic paper commissioned by the Renewable Fuels Association determined that the ethanol industry contributed nearly \$53 billion to the U.S. Gross Domestic Product<sup>7</sup> and supported over 379,000 jobs in 2014<sup>8</sup>, despite the policy challenges the industry faced that year.

In addition to the sustainability of the food system, climate change's impact on agriculture may hazard the sustainability of American communities. Climate change, through its impact on agriculture, places communities in harm's way because the consequences of climate change are likely to be greater for family farmers than other agricultural producers. According to a report by USDA, "Current climate change effects are challenging agricultural management and are likely to require major adjustments in production practices over the next 30 years."<sup>9</sup> The severity of the necessary adjustments increases the likelihood that they will be expensive. In many cases, the expense of farming in a changing climate will drive out family farmers with insufficient capital or access to investors and bar new entrants from starting farm businesses by increasing the initial investment needed, leaving their land available for farm consolidation. These major adjustments will also require policy shifts that, if not executed carefully and equitably, may also place family farmers at risk and encourage farm consolidation.

The loss of family farmers presents serious challenges to the economic sustainability of rural communities. As farmers leave and farmland consolidates, businesses and community institutions lose customers and tax revenue, weaken, and eventually close, causing other institutions and businesses in the community to do the same. Rural residents are left without access to critical services or jobs. To the extent that climate change contributes to this process, it presents a serious environmental justice issue to family farmers and rural residents. The RFS helps keep family farmers farming in two distinct and

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<sup>7</sup> Urbanchuk, John M. *Contribution of the Ethanol Industry to the Economy of the United States in 2014*, at 8. [http://ethanolrfa.3cdn.net/94596be2e72251b795\\_nkm6ii26n.pdf](http://ethanolrfa.3cdn.net/94596be2e72251b795_nkm6ii26n.pdf)

<sup>8</sup> *Id.* at 9.

<sup>9</sup> Walthall, C.L., J., et al at 119.

important ways: it contributes to climate change mitigation, helping family farmers avoid the most costly consequences of climate change, and offers family farmers direct value for helping build climate resiliency by stabilizing prices for biofuel feedstocks and opening investment opportunities in biofuel plants. EPA would best pursue these important goals by adjusting the proposed biofuel volume standards to match the standards in the EISA.

EPA's proposed rule contains volume standards for advanced biofuel and total renewable fuel that are lower than the standards agreed to by Congress in the EISA. Though EPA should set both standards at the statutory levels contained in the EISA, EPA offered distinct reasons for lowering each standard. Below, NFU asserts why the statutory volume standards for both categories of biofuel should be implemented in the final rule.

## **II. Advanced Biofuel Proposed Volume Standards**

Given the RFS' importance in building climate resiliency and rebuilding rural economies discussed above, it is of critical importance that the volume standards EPA issues match those Congress agreed to in the EISA. This is true of the advanced biofuel volume requirement as well as the total renewable fuel volume standard. Advanced biofuels are especially important to the climate resiliency goals of the RFS because they hold enormous potential for lowering GHG emissions from the transportation sector. While conventional biofuels certainly carry a GHG emissions advantage over transportation fuels derived from fossil sources, and while that advantage continues to grow as new efficiencies in conventional biofuel production are realized, advanced biofuels offer even more GHG emission reductions.

While the advanced biofuels industry has not been able to produce enough renewable fuel to satisfy the volume targets set by Congress in the EISA, lowering volume targets to the level set by EPA in the proposed rule will not give advanced biofuel producers, or their prospective investors, the market certainty needed to bring advanced biofuels manufacturing to the capacity Congress sought when passing the EISA. The branded oil industry wields tremendous power over the transportation fuels offered to the public. EPA, in several instances throughout its preamble to the proposed rule, acknowledges that the branded oil industry has prevented consumers owning FFV vehicles from finding retail outlets to fuel their vehicles with higher biofuel blends, artificially stymying demand for the environmentally superior product advanced biofuel manufacturers help create. Lowering volume standards to the extent embodied in the proposed rule rewards branded oil companies for this behavior and creates additional obstacles to the investment needed to expand these proven advanced biofuel manufacturing technologies to the extent needed to fulfill the volume standards set by Congress.

In order to avoid rewarding branded oil companies for their concerted efforts to undermine the will of Congress and block the economic and environmental benefits the EISA would otherwise achieve, EPA must hold fast to the advanced biofuel volume standards proposed in the EISA. Should EPA determine it to be strictly necessary, the Agency can offer other relief, such as carryover credits and deficits, to the obligated parties, or at least set the final advanced biofuel volume standards closer to those in the EISA than in the proposed rule. This would assure prospective investors, many of whom are on the very threshold of extending the necessary funds to advanced biofuel manufacturers, that the Administration is committed to attaining the environmental benefits their capital could help achieve.

### **III. Total Renewable Fuel Proposed Volume Standards**

As discussed above, NFU asserts that the proposed advanced biofuel volume standards EPA sets forth in the proposed rule are too low. However, even if EPA refuses to raise the proposed advanced biofuel targets in the final rule, EPA must not lower the total renewable fuel proposed volume standards to the extent it would in the proposed rule. EPA maintains the ability to encourage much of the change needed in retail consumer transportation fuel infrastructure by holding fast to the volume standards set forth in the EISA, creating sufficient certainty for advanced biofuel manufacturers even if the volume standards for advanced biofuels are ultimately lowered.

The preamble to the proposed rule states, “we do not believe that it would be consistent with the energy security and greenhouse gas reduction goals of the statute to reduce the applicable volume of renewable fuel set forth in the statute absent a substantial justification for doing so.”<sup>10</sup> Ideally, the total renewable fuel standard would include the full advanced biofuel standard embodied in the EISA. If EPA insists on lowering the advanced biofuel standard, EPA can still achieve many of the goals of the RFS and pave the path to higher advanced biofuel volume standards in the future by keeping the total renewable fuel standard at the EISA level and allowing conventional biofuels to make up the difference. Finally, if EPA will not allow conventional biofuels to compensate for the reduction to the advanced biofuel volume standard, EPA must not lower the total renewable fuel volume standard any more than the amount the advanced biofuel standard is reduced.

As discussed above, conventional biofuels emit less GHGs than fossil fuels. GHG emissions reductions can be achieved by allowing conventional biofuels to make up the advanced biofuel volume deficit and keeping the statutory total renewable fuels volume standards in place. It would also push the branded

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<sup>10</sup> Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Proposed Rule, 80 Fed. Reg. 33100, 33110 (June 10, 2015)(amending 40 C.F.R. pt. 80).

transportation fuel industry to make the adjustments needed to accommodate greater volumes of advanced biofuels, paving the way to secure the superior GHG emission advantages of advanced biofuels in the future.

If EPA exercises general waiver authority in setting the total renewable fuel volume standard in the final rule as it does in the proposed rule, the Agency will undermine the RFS' ability to provide the biofuels industry with any reliable measure of certainty for the remainder of the program. If this occurs, biofuel developers will have an even more difficult time securing investment that they are already experiencing due to the enormous delays in finalizing the 2014 volume standards.

EPA's arguments that it is entitled to exercise general waiver authority due to "inadequate domestic supply" is not justified by the EISA.<sup>11</sup> There is no language present in the statute to lead EPA to the conclusion that the Agency may consider fuel infrastructure or other constraints that may limit the ultimate consumers' access to renewable fuels. The RFS was designed to force branded transportation fuel companies to make the infrastructure and other changes necessary to accommodate the renewable fuel volume standards embodied in the EISA. Branded transportation fuels as an industry have failed to fulfill these requirements levied by Congress and must not be rewarded for their stubborn resistance. As EPA notes in the preamble to the proposed rule, parties obligated under the RFS can work with distributors and marketers to make higher biofuel blends available to the ultimate consumers; the current FFV fleet does not currently have adequate access to utilize its maximum biofuel potential.<sup>12</sup> The statute was designed to force the obligated parties to do so to accommodate the statutory biofuel volume standards.

#### IV. Conclusion

The volume standards in the proposed rule do not match the goals EPA claims to pursue through its execution of the RFS. In the Executive Summary that preceeds the Proposed Rule, EPA asserts that the proposed volume standards "are expected to spur further progress in overcoming current constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to substantial growth over time in the production and use of higher-level ethanol blends and other qualifying renewables."<sup>13</sup>

Unfortunately, EPA's expectations are mistaken. EPA fails to consider the severe and difficult- to-reverse damage done to the biofuels industry through the inexcusable delays in issuing the 2014 volume

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<sup>11</sup> *Id.* at 33111-33113.

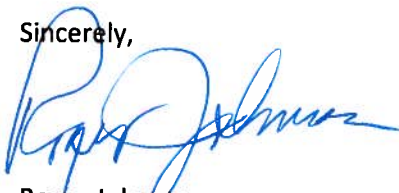
<sup>12</sup> *Id.* at 33126

<sup>13</sup> *Id.* at 33100.

standards. In light of this damage, it does not make sense that lower volume targets than those set forth in the popular, bipartisan statute will lead to growth in production and use of higher-level ethanol blends. The proposed, lower volume standards demonstrate to industry that taking steps to increase consumer choice and pursue worthwhile environmental goals can be avoided, even when mandated by Congress. Instead, holding industry to the proposed targets would demonstrate the Administration's stable, reliable commitment to biofuels and allow the biofuels and transportation fuels industries the certainty required to attract capital investment and build out the infrastructure needed to offer consumers the opportunity to utilize higher-level ethanol blends. It would allow the parties concerned to plan ahead with more reliability than annual determinations, bringing more biofuels into the transportation fuel offerings with less disruption for American consumers. The preamble to the proposed rule acknowledges the need for longer-term certainty than annual volume targets allow, asserting that as the reason for offering the 2016 volume standards now along with the 2014 and 2015 volume standards.<sup>14</sup> Ignoring the fact that the 2016 volume standard will hardly be issued before 2016, EPA's attempt to offer certainty for the biofuels industry is far less effective than establishing a habit of properly deferring to the volume standards in the EISA. EPA should not attempt to use waiver authority unless severe environmental or economic consequences hang in the balance. EPA would then allow the biofuels industry to be confident in the statutory volume standards for the remainder of the program, giving investors the stability they need to grow the industry and achieve the economic and environmental goals the program was designed to attain.

For these reasons, NFU respectfully asks EPA to issue a final rule implementing volume standards that match those Congress set in the EISA. Those standards will drive investment in advanced biofuel production and rural communities and contribute to climate resiliency. NFU stands ready to offer any support and assistance EPA may find helpful regarding these matters. Thank you for your consideration of these comments.

Sincerely,



Roger Johnson  
President

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<sup>14</sup> *Id.* at 33123.