February 8, 2023

Re: Comments to the Environmental Protection Agency (EPA) on the Renewable Fuel Standard Program: Standards for 2023-2025 and Other Changes

87 Federal Register 80582 (Dec. 30, 2022)
Docket No: EPA-HQ-OAR-2021-0427-0421

Dear Administrator Regan:

National Taxpayers Union (NTU), R Street Institute, and Taxpayers for Common Sense (TCS) provide the following comments to the Environmental Protection Agency (EPA) on its proposal entitled "Renewable Fuel Standard Program: Standards for 2023-2025 and Other Changes," which was published at 87 Federal Register 80582 on Dec. 30, 2022. Our organizations support free markets and policies that serve the best interests of American taxpayers.

Thank you for the opportunity to offer comments on this proposed rule, which will dictate the level of biofuels consumed in our nation's fuel supply from 2023 to 2025.

Our organizations have long been critics of the Renewable Fuel Standard (RFS) program, because of the federal mandate's increased costs for taxpayers and consumers, which were highlighted in comments on previous Renewable Volume Obligation (RVO) proposals, most recently in 2022. In addition, in 2019, NTU and TCS commented on the once-finalized but later halted expansion of 15 percent ethanol (E15).

We have opposed biofuels and biomass subsidies due to their market distortions and failure to meet intended goals, such as significantly reducing greenhouse gas (GHG) emissions. Numerous other long-term liabilities and costs have been spurred by the RFS and other federal biofuels subsidies including: 1) picking winners and losers, 2) driving up food and fuel costs, and 3) influencing crop production decisions. The latter has led to the conversion of millions of acres of carbon-rich wetlands, grasslands, and forests to biofuels feedstock production.

We appreciate EPA's recognition of some of these costs and long-term liabilities in the proposed rule (and corresponding draft Regulatory Impact Analysis (RIA)), but the following comments provide reasons why final biofuel volumes for 2023-2025 should be further reduced.

Overview

EPA has no specific mandate to require volumes for conventional biofuels. The original 2007 RFS statutory volumes have ended, leaving EPA the discretion to set 2023-2025 biofuel volumes. The RFS statute states that for years after 2022, "the applicable volume of advanced biofuel shall be at least the

same percentage of the applicable volume of renewable fuel as in calendar year 2022" and " the applicable volume of biomass-based diesel shall not be less than the applicable volume listed in clause (i)(IV) for calendar year 2012." Congress, however, did not specify minimum levels of conventional ethanol that must be consumed in calendar years 2023 and beyond. As EPA acknowledges, a significant amount of corn ethanol would be expected to be consumed in the U.S. even without the RFS mandate. Therefore, in addition to the reasons listed below, EPA should reduce proposed volumes of total renewable fuel in its final rule.

Analysis of various factors must be taken into account when setting future biofuels volumes. EPA is required to review past implementation of the RFS and analyze the following factors when setting biofuels volumes in 2023 and beyond:

> (I) the impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
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> (II) the impact of renewable fuels on the energy security of the United States;
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> (III) the expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);
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> (IV) the impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
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> (V) the impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
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> (VI) the impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

Additional Information

Additional information on relevant climate change/environment, future renewable fuel production, infrastructure cost, and fuel and food cost factors (outlined above) follow in turn:

> **(I) Impacts on climate change must be considered by EPA.** One of the primary goals of the RFS was to reduce GHG emissions. However, EPA's own draft RIA found that proposed 2023-2025 volumes would ***increase***, rather than decrease, GHG emissions. EPA should reduce final 2023-2025 biofuels volumes so that government mandates aimed at reducing climate risks are not having the opposite impact. After fifteen years, the non-food-based advanced and cellulosic biofuels that Congress predicted would come to fruition have failed to become a reality. EPA's final RVO volumes should reflect this instead of proposing to make more room for mature, first-generation biofuels that do more harm than good for the climate. Independent analysts ranging from the Congressional Budget Office to the National Academies of Sciences, in addition to EPA's own analysis, show that current biofuels consumption is a dead-end for the climate.
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> **(I) Impacts on the environment must also be considered, including the conversion of wetlands, ecosystems, wildlife habitat, water quality, etc.** Peer-reviewed studies have documented the

loss of millions of acres of carbon-rich wetlands, grasslands, and forests to crop production, primarily corn and soybeans that are then used for biofuels production. EPA should reduce final volumes or else the RFS will spur more market distortions, influencing crop prices and land use decisions. A government mandate incentivizing the conversion of carbon-rich land to biofuels feedstock production, which later do more harm than good for the climate, is not what Congress intended when the Energy Independence and Security Act (EISA) was enacted. The government should not promote policies or incentives that work at cross purposes with other federal programs aimed at climate mitigation, such as agricultural conservation programs, for instance, that pay farmers to plant grassed buffers, retire sensitive land, restore wetlands, etc. EPA's own triennial reports on the environmental impacts of the RFS have found negative impacts on wildlife habitat and water, air, and soil quality due to first-generation biofuels production.

(III) EPA must assess future commercial production of renewable fuels. When the RFS was enacted, Congress envisioned 16 billion gallons of cellulosic biofuels derived from non-food-based feedstocks to be consumed in the US by 2022. Actual production of cellulosic biofuels has failed to meet lofty volume mandates set in the RFS. With a proposed cellulosic biofuel standard of just 720 million gallons in 2023, this represents just ***five*** percent of the 16-billion-gallon cellulosic mandate envisioned by Congress. The advanced biofuel mandate proposal for 2023 of 5.82 billion gallons represents just 28 percent of the 21-billion-gallon advanced biofuel mandate set by Congress. With half of biodiesel production being met with soybean oil, the biofuels industry as a whole has failed to deliver non-food-based biofuels to fill these government mandates. In 2010, EPA projected that the 16-billion-gallon cellulosic biofuel mandate would be comprised of feedstocks such as perennial grasses, agricultural residues, and a smaller amount of municipal solid waste. This simply hasn't come to fruition, and EPA's final biofuel volumes should be adjusted accordingly.

(IV) EPA must assess the impact of renewable fuels on US infrastructure, which impacts taxpayer costs. Additional federal costs are associated with biofuel infrastructure upgrades, in addition to biofuels production overall. EPA should take these costs into account when finalizing 2023-2025 renewable volume obligations. Federal cellulosic and biodiesel tax credits, which amount to more than $3 billion annually, are currently in place through the end of 2024. New clean fuel tax credits will come into effect in 2025, and the sustainable aviation fuel credit begins in 2023. The U.S. Department of Agriculture (USDA) recently announced $300 million for biofuels infrastructure programs, in addition to $3 million spent on ethanol blender pumps and related projects through the Rural Energy for America Program (REAP) from 2011-2014. The Inflation Reduction Act of 2022 added $500 million for these types of projects. A duplicative federal tax credit – the Alternative Fuel Refueling Property Credit - also exists for certain biofuel infrastructure projects. These taxpayer costs should be fully considered in EPA's final decision on the RVO rule.

(V) EPA must analyze impacts on the cost of transportation fuel due to the use of renewable fuels. In its proposed rule, EPA estimates 2023-2025 biofuels volumes, if finalized, would increase fuel costs. Fuel costs could increase further if commodity prices (primarily for corn and soybeans) rise. U.S. fuel prices recently rose to record highs. Government policies, including the RFS, should not further increase fuel costs for consumers.

(VI) The impact of the use of renewable fuels on other factors, such as the price of food and agricultural commodities, must be analyzed. The RFS has a history of increasing crop prices,

which in turn impacts global food price volatility. With nearly 40 percent of the U.S. corn crop used for ethanol and an increasing portion of soybean oil used for biofuels, crop prices and land use decisions will only be further influenced by government biofuels policies in 2023 and subsequent years. USDA's January 2023 World Agricultural Supply and Demand Estimates (WASDE) report projects that the percentage for soybean oil used for biofuels will increase to 44 percent in the 2022/23 marketing year, up from 36 percent just two years ago. The portion of soybean oil and other vegetable oils diverted to renewable diesel, biodiesel, and other biofuels is expected to increase in the future, putting more pressure on not just soybean prices, but other commodity prices and food prices as well.

Conclusion

For these and other reasons, EPA's final RVOs should be set at levels that do not cause market distortions that could lead to further loss of carbon-rich land to crop production, greater GHG emissions, additional taxpayer spending on biofuels, higher fuel prices, more volatile food prices, and other impacts on taxpayers and consumers. This applies to the eRIN proposal as well, meaning EPA should not finalize e-RIN regulations without fully understanding the potential impact on taxpayers, consumers, lifecycle GHG emissions[1], food/fuel prices, and other factors outlined above.

If final 2023-2025 biofuel volumes are not reduced, not only will the RFS's goals fail to be met, but the mandate will do more harm than good for the climate, water and soil quality, and wildlife habitat, while also increasing fuel and food costs during a time of higher inflation. This will place additional burdens on consumers and taxpayers and expand the negative impacts of a program that works at cross purposes with other federal initiatives aimed at climate mitigation, agricultural conservation, and other public goals. Furthermore, forcing more biofuels into the marketplace leads to other taxpayer costs, such as certain biofuel infrastructure subsidies which do nothing to mitigate long-term climate risks.

We thank you for considering our comments on the Agency's proposed biofuel volumes for 2023-2025. Please let us know if you have any questions.

Sincerely,

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[1] For instance, biomass sources cannot be considered to be carbon neutral. https://sgp.fas.org/crs/misc/R41603.pdf