

Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program

Summary and Analysis of Comments

Chapter 1 General

Assessment and Standards Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency



RFS Summary and Analysis of Comments

1 GENERAL

1.1	Supports Rule.....	1-1
1.2	Opposes Rule	1-3
1.3	Goals of the RFS Program	1-4
1.3.1	Environmental Assessment.....	1-4
1.3.2	Bias Towards Existing Technologies.....	1-4
1.3.3	Other Program Issues.....	1-5

1 GENERAL

What We Proposed:

The following comments relate in general to the Notice of Proposed Rulemaking (NPRM). The comments in this chapter are not on any specific aspect of the proposed rule; rather, they are directed to the general substance of the proposal. More detailed comments on specific provisions of the proposal can be found in later chapters of this Summary and Analysis of Comments.

For more information on the proposed rule, see the Federal Register at 71 FR 55552, published on September 22, 2006 [[link to: http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-7887.pdf](http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-7887.pdf)].

1.1 Supports Rule

What Commenters Said:

We received many comments supporting the proposed rule. Commenters generally stated that they support further development of the U.S. biofuels market to ensure less dependence on foreign oil. Some commenters stated that they believe that EPA worked cooperatively and effectively with all stakeholders. Some commenters also commended EPA for the development of a workable proposed RFS program concept, stating that they believe that EPA has followed the intention of the legislative provisions set out by the Energy Policy Act and has proposed a reasonable framework for the Renewable Fuels Standard program.

However, many of these commenters stated that, although they support the proposed rule, they believe that further work and/or additional study is needed before the rule is finalized. Each commenter offered various suggestions on how they believed that the rule could be improved, these comments are summarized in the following chapters of this Summary and Analysis document. These comments include suggested edits on the general structure of the RFS program, the Renewable Identification Number (RIN) program, compliance requirements, and impacts of the program.

Letters:

American Coalition for Ethanol (ACE) OAR-2005-0161-0218
American Petroleum Institute (API) OAR-2005-0161-0185
American Society for Testing Materials (ASTM) OAR-2005-0161-0235 (hearing)
Baker Commodities Inc. OAR-2005-0161-0003 through -0006, -0173
Biodiesel Coalition of Texas (BCOT) OAR-2005-0161-0186

Biodiesel Industries of Greater Dallas Fort Worth (BIGDFW) OAR-2005-0161-0211

Biotechnology Industry Organization (Industrial and Environmental Section) (BIO IES) OAR-2005-0161-0199

BlueFire Ethanol OAR-2005-0161-0200, -0224

BP Products North America OAR-2005-0161-0221, -0230

Chevron OAR-2005-0161-0193

ConocoPhillips OAR-2005-0161-0194, -0219

DuPage County Board OAR-2005-0161-0166

DuPont OAR-2005-0161-0168

Environmental Defense OAR-2005-0161-0172, -0223

ExxonMobil Refining & Supply Co. OAR-2005-0161-0197

Flint Hills Resources (FHR) OAR-2005-0161-0222

Griffin Industries, Inc. OAR-2005-0161-0189

Harms Oil Company OAR-2005-0161-0220

Independent Fuel Terminal Operators Association (IFTOA) OAR-2005-0161-0213

Imperium Renewables, Inc. (IRI) OAR-2005-0161-0178

Kinder Morgan Liquid Terminals (KMLT) OAR-2005-0161-0231

Magellan Midstream Partners OAR-2005-0161-0208

Marathon Petroleum Company (MPC) OAR-2005-0161-0175

Methanol Institute (MI) OAR-2005-0161-0171

Missouri Department of Natural Resources (MDNR) OAR-2005-0161-0217

National Restaurant Association (NRA) OAR-2005-0161-0174

National Wildlife Federation (NWF) OAR-2005-0161-0209

Natural Gas Vehicles for America OAR-2005-0161-0201

National Biodiesel Board (NBB) OAR-2005-0161-0212

National Corn Growers Association (NCGA), American Farm Bureau Federation (AFBF), and National Council of Farmer Cooperatives (NCFC) OAR-2005-0161-0188

National Petrochemical and Refiners' Association (NPRA) OAR-2005-0161-0170, -0232

Natural Resources Defense Council (NRDC) OAR-2005-0161-0229

National Renewable Energy Laboratory (NREL) OAR-2005-0161-0179

Neste Oil Holding Inc. OAR-2005-0161-0191

Organic Fuels OAR-2005-0161-0190, -0233 (hearing)

Private Citizens (*various*)

Renewable Energy Action Project (REAP) OAR-2005-0161-0204

Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

Shell Oil Company/Motiva Enterprises OAR-2005-0161-0215

SilvaGas, Inc. OAR-2005-0161-0161

Sutherland Asbill Brennan OAR-2005-0161-0210

Tyson Foods, Inc. OAR-2005-0161-0216

Union of Concerned Scientists (UCS) OAR-2005-0161-0226

Our Response:

RFS Summary and Analysis of Comments

These comments are generally supportive of the RFS program design and its goal of increasing the volume of renewable fuels that are required to be used in vehicles in the U.S. as required in Section 211(o) of the Clean Air Act (CAA) as amended by the Energy Policy Act.

1.2 Opposes Rule

What Commenters Said:

We also received some comments which stated that they did not support the proposed rule. One commenter stated that it believed that the NPRM spent too much time discussing the legislation and future prospects for biofuels, but lacked significant information on operational costs.

CHS commented that its concerns are centered on the likelihood of an ethanol glut in the Mid-continent exacerbated by the proposed rule that may have negative consequences. The commenter stated that it believes that the simplified RFS program could have the unintended consequences of actually contributing to the creation of this glut; and that the proposed rule does not go far enough to promote the national program that Congress intended.

The National Association of Convenience Stores and the Society of Independent Gasoline Marketers of America (NACS/SIGMA) commented that they did not support the adoption of the RFS in the Energy Policy Act. The commenters stated that, philosophically, motor fuel marketers are opposed to government mandates on fuel composition, whether the mandate is for renewable fuels or for oxygenates in gasoline; the commenters expressed their doubt that the government's judgment is superior to the markets'.

Ethanol Products commented that it believes that the mechanics of the proposal posed some unintended complications for its company, and similar companies. The commenter also stated that it has concerns about the proposed RIN trading by refiners, as it believes that this could undermine the program if refiners do not meet the minimum requirements of the law each year. The commenter urged EPA to rethink the rule so that refiners can not use the rule to reduce ethanol demand.

Letters:

CHS Inc. OAR-2005-0161-0203

Ethanol Products OAR-2005-0161

National Association of Convenience Stores and Society of Independent Gasoline
Marketers of America (NACS/SIGMA) OAR-2005-0161-0234

Our Response:

In general, EPA has little flexibility with respect to addressing comments expressing opposition to the program as mandated by Congress. Regarding the design of the RFS program, our final rule reflects an intensive collaborative effort with stakeholders to ensure that the provisions in the Energy Policy Act are implemented while also ensuring that the program is simple, flexible, and enforceable. Comments on specific elements of the RFS program, such as RINs, are addressed in subsequent chapters of this Summary and Analysis Document.

1.3 Goals of the RFS Program

1.3.1 Environmental Assessment

What Commenters Said:

The Missouri Department of Natural Resources encouraged EPA to complete a full environmental assessment.

Letters:

Missouri Department of Natural Resources (MDNR) OAR-2005-0161-0217

Our Response:

We did in fact conduct an analysis of the environmental impacts of the increased use of renewable fuels. Our preliminary results were presented in the NPRM, and our final analysis is provided in Chapters 3 through 6 of the Regulatory Impact Analysis (RIA). Additional and more comprehensive investigations will continue in the context of several other studies that the Energy Act requires EPA to conduct over the next several years.

1.3.2 Bias Towards Existing Technologies

What Commenters Said:

Ethanol Feed and Fuel commented that it believes that the proposed rule contains a bias towards existing technology which could stifle or limit technological advances in the reduction of fossil fuel use and the RIN program will place a few obligated parties in control of a significant portion of the RINs produced. The commenter stated that it believes this indicates a bias in favor of existing technologies, large scale production facilities and obligated parties. The commenter further stated that it believes that changes need to be made to the rule such that it does not dampen small business initiatives by favoring the larger entrenched operations (producers or obligated parties).

Letters:

Ethanol Feed and Fuel OAR-2005-0161-0180

RFS Summary and Analysis of Comments

Our Response:

The RFS program has been designed collaboratively with the industry to ensure that it is flexible and allows all valid renewable fuels to be used for compliance purposes. Any producer or importer of renewable fuels can generate RINs, and the process for determining the number of gallon-RINs that can be generated for each gallon is consistent across all renewable fuels. New companies, regardless of their size, can participate in the RIN trading program.

Moreover, there are about 140 refiners in addition to importers who will be obligated parties, and the largest is responsible for only a few percent of nationwide gasoline volumes. Thus no one obligated party can control the RIN market, and parties in need of RINs, in addition to parties that wish to participate in the RIN market, will have many avenues through which they can acquire RINs.

1.3.3 Other Program Issues

What Commenters Said:

The National Wildlife Federation commented that it strongly supports efforts to transition the nation towards a greater reliance on renewable fuels, and it welcomes the proposal and recognizes the value of insuring this reliance on renewable fuels. The commenter stated, however, that to achieve real public benefit the rule should be structured to: 1) effectively displace reliance on fossil fuels; 2) be complementary to efforts to monitor, track and trade, and reduce GHG emissions; 3) be sustainable and preserve air, soil, and water quality, public health, wildlife, and overall biodiversity; and 4) encourage development of a domestic industry that can efficiently meet these criteria.

The National Corn Growers Association (NCGA), the American Farm Bureau Federation (AFBF), and the National Council of Farmer Cooperatives (NCFC) commented that they believe that EPA must keep the intent of the program in mind (Congress' primary intent was to promote the use of renewable fuels through mandatory, minimum volumes used annually). The commenters further stated that they believe that the RFS program should include provisions to ensure that EPA has sufficient information to track compliance with the standard.

Letters:

National Wildlife Federation (NWF) OAR-2005-0161-0209

National Corn Growers Association (NCGA), the American Farm Bureau Federation (AFBF), and the National Council of Farmer Cooperatives (NCFC) OAR-2005-0161-0188

Renewable Fuels Association (RFA) OAR-2005-0161-0192, -0228 (hearing)

Our Response:

According to the Energy Policy Act, the primary goal of the RFS program is to ensure that a minimum amount of renewable fuel is used in the U.S. These volumes are specified for the years 2006 through 2012; for 2013 and beyond, the nationwide fraction of renewable fuel in gasoline can be no smaller than it was in 2012. However, there are also provisions in the Energy Policy Act that allow the actual volumes of renewable fuel consumed in a given year to differ in some small ways from the volumes specified in the Act. As described more fully in our response to comments in Section 5.6, these provisions include credit trading, deficit carryover, the 2.5 credit value for cellulosic biomass and waste-derived ethanol, and the use of gasoline consumption estimates to set the annual standard. Within this context, we believe that our final RFS program ensures that the requirements of the Energy Policy Act will be met, and that it will help insure reliance on renewable fuels.

Through our collaborative process with stakeholders, the final RFS program design provides the certainty that at least a minimum amount of renewable fuel will be used in the U.S. The final program also ensures that the compliance and trading program provides certainty to the marketplace and minimizes cost to the consumers; the program preserves existing business practices for the production, distribution, and use of both conventional and renewable fuels; the program is designed to accommodate all qualifying renewable fuels; all renewable volumes produced are made available to obligated parties for compliance; and finally, the Agency has the ability to easily verify compliance to ensure that the volume obligations are in fact met. A full description of the RFS program, including the reasons for specific elements, can be found in Sections III through V of the preamble to the final rule.

We also conducted a variety of analyses to determine the impacts of increased use of renewable fuels on cost, emissions of regulated pollutants, greenhouse gas emissions, petroleum imports, and fossil fuel consumption. These analyses and evaluations are presented in the RIA.