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Via http://regulations.gov

Thank you for the opportunity to submit comments[1] on the Environmental Protection Agency's (EPA) proposed Renewable Fuel Standards (RFS) for 2018 and Biomass-Based Diesel (BBD) Volume for 2019.[2]

EPA proposes a BBD volume target of 2.1 billion gallons for 2019—the same target as in 2018. That is controversial, because farm state interests and their representatives, such as Sen. Chuck Grassley (R-Iowa), are castigating EPA for "flatlining" the BBD blending target.[3]

Nonetheless, and to its credit, EPA requests comment on whether to reduce the BBD target in 2019 rather than hold it constant.

Enhancing U.S. energy independence and security is the central goal of the 2007 statute that amended the Clean Air Act to expand the RFS program, and Section 211(o)(2)(B)(ii) of the Act specifically directs EPA to consider the potential energy security impacts when setting annual BBD volume targets.[4] Such consideration is timely, EPA argues, because "In recent years increasing volumes of renewable fuels have been imported and used by obligated parties to comply with their RFS obligations." Indeed, in 2016, imports of advanced biodiesel and renewable diesel reached 739 million gallons—almost 39 percent of that year's 1.9 billion-gallon BBD target.[5]

"Due to their origin outside the United States, imported renewable fuels may not have the same impact on energy independence as those produced domestically," EPA observes. Accordingly, EPA requests

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[1] Note to readers: This version of the comment letter corrects some typos the author did not catch before submitting it to EPA.

[2] EPA, Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Proposed Rule, 82 FR 34206, July 21, 2017, https://www.gpo.gov/fdsys/pkg/FR-2017-07-21/pdf/2017-14632.pdf

[3] News Releases, "Klobuchar, Grassley Lead Bipartisan Group of Senators in Calling for Strong Renewable Fuel Standard for 2018 as Environmental Protection Agency Finalizes Rule," October 5, 2017, https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=D2DE268D-BABF-422A-9F90-A2397E4C9A67. The rhetoric is a tad over the top. "Flatlining" implies death—by analogy, termination of the RFS and reduction of the BBD target to zero.

[4] 82 FR 34211

[5] EPA, Final Renewable Fuel Standards for 2017, and the Biomass-Based Diesel Volume for 2018, https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuel-standards-2017-and-biomass-based-diesel-volume

comment on "whether and to what degree" energy security concerns "could support" the use of its statutory authorities to reduce the BBD target below the level proposed for 2018 and 2019.[6]

This comment letter offers the following contrarian argument. Energy security was a spurious rationale for the RFS even in the mid-2000s, and is now obsolete. Nonetheless, BBD imports have increased as the RFS targets have increased. EPA should do everything within its statutory authority to scale back the RFS, which substitutes central planning for free markets, corporate welfare for consumer welfare, and involuntary service for freedom of contract. No one likes being hoist on his own petard, but the same energy security mantra long used to justify windfall profits for biofuel interests may now support reducing regulatory stringency.

RFS: Energy Security Anachronism

Congress enacted the RFS in 2005 and expanded it in 2007. That period was a high watermark of U.S. oil import dependence. The expert consensus at the time held that America was fated to become ever more dependent on imported oil and natural gas. Many believed the world had entered a period of peak oil with catastrophe imminent unless governments take action to move America and the world "beyond petroleum."

A lot has changed in the past decade. Advances in unconventional oil and gas production transformed North America into a major hydrocarbon producing region. Imports as a share of U.S. petroleum consumption declined from 60 percent in 2005 to 40 percent in 2012 to 25 percent in 2016.[7] The largest single source of U.S. petroleum imports is friendly, stable, democratic Canada, which sells us more oil than all OPEC nations combined.[8] Just this week, U.S. crude oil and petroleum product exports reached record levels—more than 6 million barrels per day.[9] Since 2016, the United States has been the world's largest producer of petroleum and natural gas hydrocarbons.[10] America is well on the way to achieving President Trump's goal of "energy dominance."[11]

In 2007, legislators did not know how rapidly advances in directional drilling and hydraulic fracturing would change the U.S. and global energy outlooks. The gloomy energy forecasts of the mid-2000s have been thoroughly falsified by events.

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[6] 82 FR 34212

[7] EIA, How much oil consumed by the United States comes from foreign countries? https://www.eia.gov/tools/faqs/faq.php?id=32&t=6 (accessed 10/19/2017)

[8] Canada provides 38 percent of total U.S. oil imports, OPEC, 34 percent. EIA, How much oil does the United States import and export? https://www.eia.gov/tools/faqs/faq.php?id=727&t=6 (accessed 10/19/2017)

[9] EIA, Crude oil and petroleum product exports reach record levels in first half of 2017, https://www.eia.gov/todayinenergy/detail.php?id=33372&utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosgenerate&stream=politics

[10] EIA, United States remains world's top producer of petroleum and natural gas hydrocarbons, June 7, 2017, https://www.eia.gov/todayinenergy/detail.php?id=31532

[11] White House Press Release, "President Donald J. Trump Unleashes America's Energy Potential," June 27, 2017, https://www.whitehouse.gov/the-press-office/2017/06/27/president-donald-j-trump-unleashes-americas-energy-potential

Even back then, the dreaded "oil weapon" was hyperbole, as a peer-reviewed study by two Cato Institute scholars explains.[12] Oil is a global commodity that routinely moves around the world in tankers. OPEC nations could not cut off petroleum supplies to the United States unless they were prepared to stop selling to the rest of the world. The gas lines and shortages of the 1970s were self-inflicted, the result of domestic price and supply controls, not the 1973 Arab oil embargo or the OPEC production cutbacks. In addition, analysis of the relevant data reveals no correlation between OPEC profits and Islamic terror. Indeed, oil revenues are unnecessary to terrorism, which is a relatively low-budget form of warfare. As the Cato study puts it, "The fact that a few hundred thousand dollars paid for the 9/11 attacks suggests that the limiting factor for terrorism is expertise and manpower, not money."

RFS Promotes Imports

Whether reasonable on the merits or not, EPA by law must consider energy security when setting BBD targets, and the statute's basic assumption is that domestic energy production enhances security while increased dependence on imports does the reverse.

According to EPA, the United States imported 731 million gallons of advanced biodiesel and renewable diesel in 2016, up from 382 million gallons in 2015 and 259 million gallons in 2014.[13] As noted, imports met a whopping 39 percent of the 2016 BBD obligation.

According to EPA, "These significant imports were likely the result of a strong U.S. demand for advanced biodiesel and renewable diesel, supported by both the RFS standards, the LCFS in California, and the biodiesel blenders tax credit." Because the blenders tax credit has not been renewed, EPA assumes "imported volumes of biodiesel and renewable diesel will not increase from the volumes imported in 2017."[14] In addition, in August, the U.S. Commerce Department slapped heavy anti-dumping penalties on Argentine and Indonesian biodiesel producers, the chief source of BBD imports to the United States.[15]

Nonetheless, a significant gap between domestic production and the BBD targets may persist in 2018 and 2019. Total January to July BBD production in 2017 (854 million gallons) is actually a bit smaller than the corresponding total in 2016 (860 million gallons).[16]

EPA Should Use All Lawful Means to Restrain RFS Targets

One reason EPA offers for not increasing the BBD target in 2019 is that it wants to preserve "space under the advanced biofuel standard for non-BBD biofuels" to compete. Increasing the "BBD set-aside"

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[12] Jerry Taylor and Peter Van Doren, "The Energy Security Obsession," Cato Institute, 6 Georgetown Journal of Law & Public Policy 475, 2008, https://object.cato.org/sites/cato.org/files/articles/taylor_vandoren_energy_security_obsession.pdf

[13] 82 FR 34224

[14] 82 FR 34226

[15] Jim Lane, "US slaps Argentine, Indonesian biodiesel producers with huge anti-dumping penalties," Biofuels Digest, August 23, 2017, http://www.biofuelsdigest.com/bdigest/2017/08/23/us-slaps-argentine-indonesian-biodiesel-producers-with-huge-anti-dumping-penalties/

[16] EIA, Monthly Biodiesel Production Report, September 29, 2017, Table 1, U.S. Biodiesel Production Capacity and Production, https://www.eia.gov/biofuels/biodiesel/production/table1.pdf

"may result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement."[17]

Consider what that explanation implies. If every increase in the BBD quota leaves less room for other fuels to compete within the advanced biofuel category, then every increase in the total RFS leaves less room for non-renewable fuels to compete in the economy as a whole. Every gallon of renewable fuel guaranteed for sale by the RFS displaces petroleum motor fuel by roughly the same amount.

The statutory goal of the RFS is to squeeze 36 billion gallons of renewable fuel into the marketplace by 2022, with up to 35 billion gallons blended with gasoline for passenger vehicles. That target won't be met and becomes increasingly unrealistic each year. But suppose it were doable. Thirty-five billion gallons is about one-quarter of the projected size of the total gasoline market in 2022.[18] The RFS aims to deny petroleum fuels the opportunity to compete for one out every four gallons of motor fuel households buy.

Few companies could thrive or even survive if Congress required them, in advance, to cede one quarter of the market to their competitors. What would we think of a Super Bowl in which one team is forbidden to go on offense during the first quarter of the game?

By creating "set-asides" for various types of biofuel, the RFS protects politically-favored producers from full-throated marketplace competition. It's the consumer who loses. Although ethanol is cheaper by the gallon than gasoline,[19] it has one-third less energy.[20] At today's relative prices, the typical motorist, depending on the size of the vehicle, would have to spend $100-$500 more each year to fill up with E85 instead of regular gasoline.[21] In recent years the annual price penalty has been as big as $1,450.[22] If high-ethanol blends actually saved consumers money, they would demand it, and the ethanol industry itself would invest in the blender pumps and storage tanks required to serve that market. Instead, they lobby Congress to compel refiners to build the infrastructure for them.

Of course, the biofuel industry claims the RFS is the best thing since sliced bread. But if ethanol or biodiesel is such a great product, why do we need a law to make us buy it?

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[17] 82 FR 34240

[18] 35 billion gallons is about 24.4 percent of current gasoline consumption. EIA, How much gasoline does the United States consume? https://www.eia.gov/tools/faqs/faq.php?id=23&t=10 (accessed 10-19-2017). EIA projects gasoline demand to rise somewhat but begin declining by 2020. EIA, Annual Energy Outlook 2017, p. 50, https://www.eia.gov/outlooks/aeo/pdf/0383(2017).pdf

[19] Official Nebraska Government Website, Ethanol and Unleaded Gasoline Average Rack Prices, September 2017, http://www.neo.ne.gov/statshtml/66.html

[20] Department of Energy and Environmental Protection Agency, FuelEconomy.Gov, https://www.fueleconomy.gov/feg/ethanol.shtml

[21] FuelEconomy.Gov, https://www.fueleconomy.gov/feg/flextech.shtml (accessed 10-19-2017). For regular gasoline vs. E85 cost comparisons, click on "Find Flexible Fuel Vehicles."

[22] FuelEconomy.Gov, 2014 Chrysler Town and Country, http://www.globalwarming.org/wp-content/uploads/2015/05/E85-vs-Regular-Gasoline-May-13-2015.jpg

Like other central planning schemes, the RFS is fraught with unintended consequences, including adverse impacts on wildlife habitat,[23] air quality,[24] water quality,[25] and food prices.[26] The RFS may also increase net greenhouse gas emissions relative to the gasoline it displaces.[27]

But even if the RFS worked exactly as advertised, it would still be a system of legal plunder. The RFS literally compels one set of companies to purchase, process, and create a market for other companies' products. It requires one set of companies to involuntarily serve others. That is not the American way.

To see the anomaly, imagine the shoe were on the other foot. Suppose Congress proposed to enact WVOs (wheat volume obligations) requiring corn farmers to buy and sell annually increasing quantities of wheat. Or IVOs (input volume obligations) requiring corn farmers to purchase annually increasing quantities of specific seeds, fertilizers, and farm machinery—those deemed "sustainable" by the EPA. The howls from RFS supporters would be loud and furious, and justifiably so.

EPA, of course, should only operate within the scope of its authority. But to the extent it has flexibility in determining how aggressively to administer the RFS, the agency may find value in the foregoing discussion of how the RFS departs from the normal business practices of a free society.

Respectfully submitted,

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[23] Statement of Collin O'Mara, President, National Wildlife Federation, hearing on Renewable Fuel Standard, House Energy and Commerce Subcommittee on Energy and Power, June 22, 2016, http://docs.house.gov/meetings/IF/IF03/20160622/105101/HHRG-114-IF03-Wstate-OMaraC-20160622.pdf

[24] Statement of Jason Hill, Professor Bioproducts and Biosystems Engineering, hearing on Renewable Fuel Standard, House Science Subcommittees on Energy and Oversight, June 23, 2015, http://www.globalwarming.org/wp-content/uploads/2015/08/Jason-Hill-Testimony-House-Science-July-23-2015.pdf

[25] National Oceanic and Atmospheric Administration, "Gulf of Mexico 'dead zone' is the largest ever measured," August 2, 2017, http://www.noaa.gov/media-release/gulf-of-mexico-dead-zone-is-largest-ever-measured

[26] Tufts University Global Development and Environment Institute, Food vs. Fuel: U.S. Biofuels and the Global Food Crisis, http://www.ase.tufts.edu/gdae/policy_research/FoodVsFuel.html

[27] Jason Hill, Liaila Tajibaeva, Stephen Polasky, Climate Consequences of Low-Carbon Fuels: The United States Renewable Fuel Standard, Energy Policy, Volume 97, October 2016, pp. 351-353, http://www.sciencedirect.com/science/article/pii/S0301421516303962