

CRS Insights

EPA Delays Decision on 2014 Renewable Fuel Standard to 2015

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The Environmental Protection Agency (EPA) [announced](#) in November 2014 that it will delay issuing a long-awaited final 2014 Renewable Fuel Standard (RFS) until 2015. The RFS sets the annual minimum use requirements for biofuels in the nation's transportation fuel supply. EPA is required by statute to announce the RFS for various categories of biofuels by November 30 of the preceding year, which for 2014 would have been November 30, 2013. The agency has missed such deadlines before, but not by such a wide margin ([Table 1](#)). In announcing the delay, the agency cited "significant comment and controversy" over its proposal for a reduction in biofuel use mandates for 2014.

At this date, EPA has also missed the November 30, 2014, deadline for issuing the 2015 RFS.

Congress established the RFS (RFS1) in the Energy Policy Act of 2005 ([P.L. 109-58](#)). Two years later, in 2007, Congress enacted the Energy Independence and Security Act of 2007 ([P.L. 110-140](#)), or RFS2, greatly expanding and accelerating the use mandate for biofuels. RFS2 also created separate use mandates for four categories of renewable fuel: total renewable fuels; advanced biofuels; biomass-based diesel; and cellulosic biofuels.

As RFS administrator, the EPA calculates the total volume of renewable fuel that is to be used in a year, expressed as a percentage of the expected total gasoline and diesel fuel use. It then calculates a separate ratio (Renewable Volume Obligation, RVO) for each of the four individual categories of biofuel. Obligated users of biofuels, consisting of gasoline and diesel fuel refiners, blenders, and importers, must demonstrate that they have included in their total annual fuel sales a quantity of biofuels equal to the RVO that EPA issues with the annual RFS rule (CRS Report R40155, [Renewable Fuel Standard \(RFS\): Overview and Issues](#)). EPA has authority to waive the RFS requirements in whole or in part if it determines there is inadequate domestic supply to meet the mandate, or if implementing it would severely harm the economy or environment of a state, a region, or the nation. EPA also may waive, in whole or in part, the specific sub-mandates for cellulosic biofuel and biomass-based diesel fuel. As these sub-mandates are included in the totals for advanced biofuel and total renewable fuel, EPA may choose to factor any reductions in these sub-mandates into the totals for advanced biofuels and total renewable fuel (CRS Report RS22870, [Waiver Authority Under the Renewable Fuel Standard \(RFS\)](#)).

2014 Proposal Lowers RFS Volumes

On November 29, 2013, EPA published a proposed rule for the 2014 RFS that would have lowered the total RFS to 15.21 billion gallons, well below the 18.15 billion gallons called for in the statute and also below the 16.55 billion gallon blend mandate for 2013 ([Table 1](#)). EPA cited limits on the volume of ethanol that can be consumed due to constraints on the supply of higher ethanol blends in gasoline, and limits on the availability of advanced biofuels, as its rationale for reducing the total RFS for 2014 and, within it, the advanced biofuel category. [Table 1](#) provides a partial picture of the RFS, and compares statutory volumes with final blending requirements.

Table 1. Renewable Fuel Standard (RFS2) under EISA 2007

(in billions of gallons)

	2012		2013		2014		2015
	Statute	Final	Statute	Final	Statute	Proposed	Statute
Total	15.2	15.2	16.55	16.55	18.15	15.21	20.50

renewable fuel

Cap on corn-starch ethanol	13.2	13.2	13.8	13.8	14.4	13.0	15.0
Total advanced biofuel ^a	2.0	2.0	2.75	2.75	3.75	2.2	5.50
Cellulosic	0.5	0.0105 ^b	1.0	0.0008	1.75	0.017	3.0
Biomass-based diesel	1.0	1.0	1.0	1.28	1.0	1.28	1.0
Date of Final Rule	November 2011	December 2011	November 2012	August 2013 ^c	November 2013	To be determined	November 2014

Source: EISA ([P.L. 110-140](#)), Section 202.

- a. Includes cellulosic, biomass-based diesel and other "advanced" biofuels.
- b. RFS Final Rule 2012, Federal Register, January 9, 2012. Subsequently vacated under *API v. EPA*.
- c. Cellulosic biofuel RVO revised via direct final rule on May 2, 2014.

Reactions among stakeholders and lawmakers to EPA's decision to delay the 2014 final rule covered a broad range of opinion. The [Renewable Fuels Association](#) (RFA), representing the ethanol industry, lamented the decision-making delay, but hailed what it interpreted as a decision to walk away from a proposal that it viewed as being "wrong" on numerous counts. [Press reports](#) indicated that the RFA expected EPA to set the RFS for 2014 at actual blend levels. The [National Biodiesel Board](#) asserted that repeated delays are undermining the industry and urged EPA to issue a final rule quickly. The [American Fuel & Petrochemical Manufacturers](#) issued a notice of intent to sue EPA for failure to issue the 2014 RFS, and asserted that the lengthy delay is one reason Congress needs to repeal or significantly reform the program. The [American Petroleum Institute](#) said the delayed ruling demonstrates that the RFS has become "unworkable" and "must be repealed."

Some Members of Congress criticized EPA's decision to delay the final rule, citing the uncertainty it would perpetuate in the market, but opinions diverged over the decision's implications. Senator Debbie Stabenow [characterized](#) the proposed rule as "deeply flawed," adding that the advanced biofuels industry needed long-term certainty. Senator James Inhofe [concluded](#) that the RFS is "broken" and the new Congress needs to address it. Representatives Fred Upton, Ed Whitfield, and John Shimkus [asserted](#) that EPA cannot "ignore the law and the deadlines established by Congress," adding that the decision highlights "significant challenges facing the RFS." Representative Colin Peterson [stated](#) the volume cuts in the proposed rule were "unacceptable," while Representative Cheri Bustos [expressed](#) hope that the delay would allow EPA to change course from its "devastating initial proposal."

Possible Issues for Congress

The decision to delay the final rule for the 2014 RFS into 2015 has provoked criticism from Members of Congress who hold diverse viewpoints on the utility of the RFS, as well as from numerous industry stakeholders with a direct interest in the administration of the program. Given that the EPA has missed the November 30 deadline in recent years, and that the delays have grown longer, some in Congress might want to review what costs this may impose on regulated parties and other biofuels stakeholders; whether there are actions EPA might take to reduce delays in future years; and whether a legislative response is needed to facilitate an efficient and timely process.