

DC Disrupted

Fueling the Future: Renewable Fuels
Under the Trump Administration

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Trump 2.0 And Renewable Fuels: Key Topics

- Trump's Executive Order on Energy
- RFS Basics
- EPA's "Set" Rules
- Small Refinery Exemptions
- E15
- Cellulosic Waivers
- Tariffs
- Tax Credits

“Unleashing American Energy”

- January 20: President Trump issues EO 14154, “Unleashing American Energy,” on his first day in office
- Stated goals:
 - Unleash affordable and reliable energy and natural resources
 - Promote domestic energy production
 - Lower energy costs for consumers and create jobs
- The EO directs the heads of federal agencies to take regulatory action to promote several different types of energy resources, including biofuels.

Basics of the Renewable Fuel Standard

- The RFS is the primary tool by which the federal government incentivizes domestic production of renewable transportation fuel, heating oil, and jet fuel.
- Originally passed in 2005 as part of the Energy Policy Act (“RFS1”), the RFS was substantially amended and strengthened in 2007 as part of the Energy Independence and Security Act (“RFS2”).
- Policy drivers:
 - 1. Domestic job and industry growth (focus on energy, agricultural sectors)
 - 2. Energy security
 - 3. Reduction in greenhouse gas emissions
- Additionally, the RFS currently enjoys strong bipartisan support in Congress, particularly from midwestern senators and representatives.

Basics of the Renewable Fuel Standard

1. Mandates & Renewable Volume Obligations (RVOs)

- The program sets annual Renewable Volume Obligations (RVOs) requiring refiners, blenders and importers of petroleum-based fuels to blend specific amounts of renewable fuels into the fuel supply.
- EPA sets volume requirements based on fuel availability and environmental goals.

2. Renewable Identification Numbers (RINs)

- Each gallon produced or imported generates RIN, which acts as a credit.
- Obligated parties (refiners, importers) must acquire enough RINs to meet RVOs.
- Companies that blend more renewable fuel than required can sell excess RINs, creating a market-based compliance system.

Basics of the Renewable Fuel Standard

3. Types of Renewable Fuels

- The program classifies fuels into categories based on their greenhouse gas (GHG) reduction potential:
 - Cellulosic Biofuel (D3 RINs): Derived from non-food feedstocks (e.g., corn stover, switchgrass)
 - Biomass-Based Diesel (D4 RINs): Biodiesel and renewable diesel
 - Advanced Biofuel (D5 RINs): Non-corn ethanol, other renewable fuels
 - Conventional Renewable Fuel (D6 RINs): Mostly corn-based ethanol

EPA's "Set" Rules

- Up until 2022: Congress wrote the annual volumes into the statute: Clean Air Act (CAA) Section 211(o)(2)(B)(i).
- Starting in 2023: Congress handed the pen to EPA and empowered it with discretion to set the annual volumes based on consideration of six factors (the "Set Factors"): CAA Section 211(o)(2)(B)(ii).
- **Upshot:** Up until 2022, the RFS gave the ethanol industry relative stability because Congress determined the volumes. Now EPA has much more discretion to determine the annual volumes.
- These are the same factors that EPA was required to apply if EPA "waives" the statutory volumes set by Congress by more than 50% in any one year or more than 20% in two consecutive years – CAA Section 211(o)(7)(F) (EPA's "Reset" Authority)

Set Factors

- Currently, the Clean Air Act requires EPA to consider the following factors when establishing RVOs:
 1. 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;
 2. The impact of renewable fuels on the energy security of the U.S.;
 3. The expected annual rate of future commercial production of renewable fuels and advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);

Set Factors

4. The impact of renewable fuels on the infrastructure of the U.S., including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
6. 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.

EPA's Broad Discretion

- May 2023: U.S. Court of Appeals for the D.C. Circuit issued a ruling on the “Reset Rule,” EPA revision of the annual standards set by Congress for 2020-2022
- Importantly, it was the first decision on how much discretion courts would afford EPA in analyzing and applying the “Set Rule Factors”
- The court sided with EPA and concluded the agency enjoys broad discretion in setting the standards.
 - The court recognized that the RFS still “requires the petroleum industry to introduce increasing volumes of renewable fuel from year to year into the nation’s transportation fuel supply” and to do so each year.
- Many of the same groups challenging EPA’s reset authority went on to challenge EPA’s interpretation of its authority to establish annual standards starting in 2023 (Set Rule 1).

Set Rule 1 Litigation

- In August of 2023, EPA promulgated its first “Set Rule” with volumes for 2023 through 2025. As expected, it was challenged by multiple parties, some of whom thought it went too far, and others who felt it did not go far enough.
- Petitioners included environmental groups, refineries and certain renewable interests.
- The D.C. Circuit heard oral argument in the case on November 1, 2024, but a decision has yet to be issued.
- Unlike the current challenges to other regulatory rules, neither the petitioners nor the Trump administration have moved to pause the case.

Set Rule 2

- The next round of RVOs in “Set Rule 2” is expected later this month or next month, with an agency goal of finalizing by the end of this year.
- The Trump administration’s potential support for higher ethanol blends, including E15, could continue to facilitate the growth of annual standards under the next Set Rule.
- Federal courts are likely to afford EPA broad discretion in setting the annual standards based on the Set Factors, just as the Court did in the Reset Rule and is likely to do in Set Rule 1.
- While EPA’s broad discretion led to higher volumes finalized in the Set Rule 1, that same discretion could also be used to attempt flatlining or reducing renewable volumes as part of Set Rule 2.
- But according to the DC Circuit, whatever standards are set should be consistent with the judicially-recognized purpose of the RFS – to continuously increase the volumes of renewable fuel to be introduced into the U.S. transportation fuel supply each year.

E15

- Most gasoline currently sold in the United States today is E10 (10% ethanol), but EPA has approved of E15 in all vehicles since 2001.
- However, the Clean Air Act currently does not allow blends higher than E10 nationwide, due to limits on fuel volatility in the summer months.
- President Trump's Declaration of a National Energy Emergency directed the EPA and DOE to "consider issuing emergency fuel waivers to allow the year-round sale of E15 gasoline to meet any projected temporary shortfalls in the supply of gasoline across the Nation."
- There is bipartisan support in Congress for a legislative fix to facilitate year-round E15 sales without the need for a waiver.

Small Refinery Exemptions (SREs)

- SREs = a statutory exemption from the obligations of the RFS for any refinery that processes less than 75,000 barrels per day of crude oil and suffers disproportionate economic hardship.
- Renewable fuel producers complain that the exemptions destroy the demand for renewable fuels and depress the prices of renewable fuels and renewable fuel credits (RINs).
- Prior to Trump 1.0, only a handful of SREs were granted each year, and they were granted only prospectively, allowing EPA to roll the exempted volumes were rolled into the obligations of other non-exempt refineries.
- Under Trump 1.0, SREs were granted retroactively. The RINs were refunded to exempted refineries—leaving a shortfall in the renewable fuel volumes set by Congress.

Small Refinery Exemptions (SREs)

- Under Biden, blanket denials of SREs were issued under the theory that RIN costs were passed through to the consumer and therefore refineries do not experience economic hardship. But federal courts of appeal rejected this approach.
- Under Trump 2.0, we expect a substantial number of SREs to be granted, but the key issue will be whether and to what extent EPA estimates and projects those exemptions (as it did in 2020) and redistributes those volumes among non-exempt refiners.

Cellulosic Biofuel Waiver

- The Biden Administration set aggressive cellulosic standards for 2023 – 2025.
- The RNG industry did not produce sufficient fuel to meet the 2024 cellulosic standard. It may be even more difficult for the industry to meet the 2025 standard because there is very little CNG/LNG transportation fuel capacity left.
- The latter half of 2024 saw dramatic increases in D3 RIN production, but the industry is still on track to underperform the cellulosic standard by approximately 50 million RINs. Significant uncertainty whether the industry will be able to meet the 2024 mandate.
- If waiver credits are issued, this would establish a likely cap on D3 RIN prices of approximately \$2.50 per RIN.
- The market appears to be forecasting that Trump is likely to waive the 2025 cellulosic standard (or have his hand forced by the courts) and issue waiver credits.
- This appears likely. The Trump administration has already delayed compliance with the 2024 Cellulosic RVO, so it can reevaluate its position on cellulosic standards.

The Impact of Tariffs on Renewable Fuels

- Tariffs on Canada and Mexico are currently in a significant state of flux, but could have meaningful impact on ethanol, renewable diesel, RNG and feedstock (corn/soybean) imports from Canada. Please contact us to discuss given the fluidity of the situation.
- USTR action to require certain percentages of exports to be on US flag vessels could significantly negatively impact renewable fuel exports from the United States.
- On February 13, President Trump issued a statement at “Demand[ing] Fair, Reciprocal Trade” and raising the concern that other countries are tariffing U.S. imported goods at higher rates than the U.S. reciprocates.

The Impact of Tariffs on Renewable Fuels

- The first example provided in President Trump's statement concerned Brazilian tariffs on U.S.-produced ethanol imports, which are now 18%.
 - The Brazilian government has noted in response that this difference is explained by the fact that most Brazilian ethanol comes from sugar cane (as opposed to corn), and the U.S. currently imposes significant tariffs on foreign sugar.
- President Trump has announced general plans to implement reciprocal tariffs on April 2, 2025, though it is unclear if Brazilian ethanol will be included in this action.

Biofuels Tax Credits

- Overview of Relevant Federal Tax Credits
- IRC Section 45Z – Clean Fuel Production Credit (“CFPC”)
 - Initial guidance released by the Biden Administration on January 10, 2025.
- IRC Section 45V – Clean Hydrogen Production Credit (“CHPC”)
 - Guidance finalized by the Biden Administration on January 10, 2025.
- IRC Section 45Q – Credit for Carbon Oxide Sequestration (“45Q Credit”)
- IRC Section 40A – Blenders Tax Credit (“BTC”)
- IRC Section 40B – Credit for Sustainable Aviation Fuel (“SAF”)
- IRC Section 48 – Investment Tax Credit for Qualified Biogas Property (“ITC”)