FACT SHEET: EPA’s Renewable Fuel Standard “Reset” Authority

BACKGROUND: The Energy Independence and Security Act of 2007 (EISA) provides that EPA must promulgate a rule modifying the applicable renewable fuel volumes when it exercises its waiver authority above certain thresholds. The following statutory text sets forth EPA’s reset authority:

For any of the tables in paragraph (2)(B), if the Administrator waives—

(i) at least 20 percent of the applicable volume requirement set forth in any such table for 2 consecutive years; or

(ii) at least 50 percent of such volume requirement for a single year,

the Administrator shall promulgate a rule (within 1 year after issuing such waiver) that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies, except that no such modification in applicable volumes shall be made for any year before 2016.¹

There is no agency guidance or existing precedent as to how EPA is to implement the reset. To the extent the D.C. Circuit finds the statutory language to be unambiguous, EPA must implement it as written. To the extent the court deems the statutory provision to be ambiguous, it will defer to EPA’s interpretation of how to implement the reset authority, as long as that interpretation is reasonable.

RFS RESET TRIGGERS: If EPA exercises a combination of its waiver authorities as proposed for 2014, 2015 and 2016, it will have exceeded the reset threshold for total, cellulosic, and advanced biofuels.² The following table compares the RFS statutory requirements with the volumes set forth in the proposed rule and calculates the waiver percentage for each renewable fuel category:

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EISA</td>
<td>NPRM</td>
<td>%</td>
</tr>
<tr>
<td>Total</td>
<td>18.15</td>
<td>15.93</td>
<td>12.2</td>
</tr>
<tr>
<td>Advanced</td>
<td>3.75</td>
<td>2.68</td>
<td>28.5</td>
</tr>
<tr>
<td>BBD*</td>
<td>≥ 1.0</td>
<td>1.63*</td>
<td>N/A</td>
</tr>
<tr>
<td>Cellulosic</td>
<td>1.75</td>
<td>0.033</td>
<td>98.1</td>
</tr>
</tbody>
</table>

* Volumes shown in billions of ethanol-equivalent RINs, except BBD (multiply BBD by 1.5 to convert to RINs)

RFS RESET SCOPE: EISA provides that EPA must promulgate a reset authority rule in a manner that “modifies the applicable volumes set forth in the table concerned.” This means that EPA’s issuance of waiver(s) that trigger the reset provisions of one renewable fuel category would not trigger an obligation to reset other renewable fuel categories. For example, a greater than 50 percent waiver in the cellulosic biofuel category would require EPA to reset the cellulosic standard but may not require (or even authorize EPA) to reset the total renewable fuel standard. Due to the nested nature of the RFS biofuel categories, however, EPA could try to argue that a reset of one category would apply across other nested categories. For example, a reset of cellulosic biofuel

¹ 42 U.S.C. § 7545(o)(7)(F), reprinted at Appendix A.
² EPA has proposed increasing volumes of BBD to 1.9 billion gallons in 2017, and therefore will not need to exercise its waiver authority with respect to BBD. Beginning in 2010, EPA exercised its cellulosic waiver authority at levels sufficient to trigger reset of the cellulosic biofuel volumes.
volumes may necessitate an adjustment in the advanced and total categories due to the nesting of these categories. More likely, the relationship between the nested categories would require a reset of the triggered category followed by a waiver of related categories for which reset thresholds were not triggered. This may be a moot point, as the proposed volumes, if finalized without change, would trigger each renewable fuel category independently (except BBD).

The statute also requires EPA to modify the “applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies.” Given Congress’s use of the phrase “all years,” a reasonable reading of the statute is that EPA may not reset numbers on an annual basis based on the prior year’s actual volumes in EMTS. This interpretation would be consistent with Congress’s desire to provide biofuel producers and obligated parties with certainty as to the future requirements of the program.

**RFS Reset Timing:** Once EPA issues a waiver in an amount that triggers reset, the agency is required to promulgate a reset rule within one year:

> [T]he Administrator shall promulgate a rule (within 1 year after issuing such waiver) that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies, except that no such modification in applicable volumes shall be made for any year before 2016.

Assuming that EPA finalizes the proposed 2014 – 2016 rule without change, the cellulosic, advanced and total volumetric requirements would likely have to be reset in 2017.

After reset, EPA must continue to issue annual RFS implementation rules to promulgate RVOs and may continue to exercise its waiver authorities, as appropriate.

**Factors to be Considered in Resetting the RFS Mandates:** Once the RFS waiver(s) trigger the reset authority, EPA must issue a reset rule within one year that modifies the applicable statutory volumes based upon the following six factors: (1) environmental impact; (2) energy security; (3) annual production rate of renewable fuels; (4) impact on infrastructure, including the sufficiency of infrastructure to deliver and use renewable fuel; (5) cost to consumers; and (6) other factors such as job creation, price and supply of agricultural commodities, rural development and food prices.  

EPA must apply these factors in coordination with the Secretaries of Energy and Agriculture.

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4 Id.
Appendix A

Statutory Language for Reset Authority

Reset Authority - Sec. 211(o)(7)(F)

(F) Modification of applicable volumes
For any of the tables in paragraph (2)(B), if the Administrator waives—
(i) at least 20 percent of the applicable volume requirement set forth in any such table for 2 consecutive years;
or
(ii) at least 50 percent of such volume requirement for a single year,
the Administrator shall promulgate a rule (within 1 year after issuing such waiver) that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies, except that no such modification in applicable volumes shall be made for any year before 2016. In promulgating such a rule, the Administrator shall comply with the processes, criteria, and standards set forth in paragraph (2)(B)(ii).

Factors to be Applied in Setting Renewable Volumes - Sec. 211(o)(2)(B)(ii)

(ii) Other calendar years For the purposes of subparagraph (A), the applicable volumes of each fuel specified in the tables in clause (i) for calendar years after the calendar years specified in the tables shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years specified in the tables, and an analysis of—

(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;

(II) the impact of renewable fuels on the energy security of the United States;

(III) the expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);

(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;

(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

(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.