
**Background:** The Energy Policy Act of 2005 (EPAct 2005) established the first renewable fuels standard (RFS), which mandated that refiners blend 7.5 billion gallons of biofuels into the fuel supply by 2012. The Energy Independence and Security Act of 2007 (EISA) extended and expanded the RFS mandate, to require the blending of 36 billion gallons of renewable fuel by 2022. To give effect to the mandated volumes, EPA is required to promulgate an annual standard by November 30th of the year before the obligation.

On May 29, 2015, EPA Administrator Gina McCarthy signed a proposed rule to implement the Renewable Fuel Standards (RFS) for 2014, 2015, and 2016. The proposed rule also includes a biomass-based diesel (BBD) standard for 2017. EPA has scheduled a public hearing for June 25, 2015 in Kansas City, KS, and comments must be filed with the agency by July 27, 2015. Per AFPM’s agreement with EPA, the final rule must be signed on or before November 30, 2015. This fact sheet briefly summarizes the proposed rule and some of the most important issues.

**Topline Summary:** The following are AFPM’s high-level takeaways from EPA’s proposed rule. In general, AFPM supports EPA’s proposal to recognize the blend wall and to utilize its waiver authority, but strongly disagrees with EPA’s proposal to break the blend wall and the assumptions it makes to justify the decision to do so.

1. EPA recognizes the existence of the blend wall and is proposing to utilize its general and cellulosic waiver authorities to reduce the obligations from the statutory volumes.
2. EPA proposes to straddle the blend wall in its 2014 and 2015 proposed volumes, but explicitly breaks through the blend wall in 2016. EPA indicates that breaking through the blend wall is its intent for the 2016 volumes.
3. AFPM believes EPA is exceeding its legal authority in setting the biodiesel numbers higher than 1.28 billion gallons for 2014, 2015 and 2016 because it missed its deadlines for setting the volumes higher.
4. In conceptualizing how the blend wall could be breached, EPA drastically overestimates the amount of E85 that can be sold and assumes the market for ethanol-free gasoline would virtually disappear.
5. EPA proposes to waive the total, advanced, and cellulosic biofuel mandates by at least 20 percent in both 2015 and 2016. If finalized, these waiver would trigger EPA’s “reset” authority and require EPA to rewrite parts of the program in its 2017 rulemaking.

Further explanation on these points follow below.

**Detailed Summary:** EPA proposes to recognize the blend wall and its legal authority to use the cellulosic and general waivers to reduce the renewable fuel volumes required by the Energy Independence and Security Act of 2007 (EISA). EPA believes that the proposed rule balances infrastructure and market realities with Congress’s intent to increase the volume of renewable fuel used year-over-year. Thus, while the proposed rule reduces the statutorily-mandated renewable fuel volumes, it could drive the use of ethanol above 10 percent, especially with respect to the 2016 compliance year.
For 2014, EPA concludes that since the year is over, it should set the Renewable Volume Obligations (RVOs) at actual consumption levels. Importantly, EPA does not rely on a draw-down of banked carryover Renewable Identification Numbers (RINs) to reduce the magnitude of the waiver(s) required.

For 2015 and 2016, EPA proposes the volumes set forth in the table below, relying upon both its cellulosic and general waiver authorities. Specifically, EPA proposes using its cellulosic waiver authority to reduce both the advanced biofuel and total renewable fuel by 2.6 billion gallons in 2015 and 3.85 billion gallons in 2016. In addition, EPA proposes using its general waiver authority to reduce further the applicable volume of total renewable fuel from the statutory levels by 1.6 billion gallons in 2015 and 1.0 billion gallons in 2016. EPA states that its waivers are calculated to reflect the maximum volumes that can reasonably be expected to be produced and consumed.

The table below summarizes the proposed volumes:

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Final Rule</td>
<td>EISA</td>
<td>NPRM</td>
<td>EISA</td>
</tr>
<tr>
<td>Total</td>
<td>16.55</td>
<td>18.15</td>
<td>15.93</td>
<td>20.50</td>
</tr>
<tr>
<td>Advanced</td>
<td>2.75</td>
<td>3.75</td>
<td>2.68</td>
<td>5.50</td>
</tr>
<tr>
<td>BBD</td>
<td>1.28*</td>
<td>&gt; 1.0</td>
<td>1.63*</td>
<td>&gt; 1.0</td>
</tr>
<tr>
<td>Cellulosic</td>
<td>0.00081</td>
<td>1.75</td>
<td>0.033</td>
<td>3.00</td>
</tr>
</tbody>
</table>

*Volumes shown as ethanol-equivalent RINs, except BBD, which is shown as physical gallons (multiply by 1.5 to convert to RINs)

EPA is also proposing a BBD mandate of 1.9 billion gallons in 2017, which equates to 2.85 billion RINs.

While acknowledging that the RFS standards it sets must be achievable, EPA also states that the volumes must “reflect the power of the market to respond to the standards we set to drive positive change in renewable fuel production and use.” At various places in the proposed rule, EPA references its intention to increase the use of renewable fuels, in particular, advanced biofuels.

**The Blend Wall:** EPA recognizes that the ethanol blend wall is an obstacle to implementing the statutorily mandated levels of renewable fuel; however, the proposed rule does not specifically reference AFPM’s proposal to limit ethanol consumption to 9.7 percent of the gasoline consumption to preserve the demand for E0 and address blending variability and other uncertainties. Instead, for 2014, EPA set RFS levels based on the generation of RINs last year. For 2015 and 2016, EPA projected use of E0, E10, E15 and E85 in setting the level of the proposed total renewable fuel.

Based on the Energy Information Administration’s (EIA) forecast of gasoline consumption and EPA’s assumptions concerning the amount of ethanol that will be blended under the cellulosic and advanced biofuel categories, the proposed rule would mandate the following percentage of ethanol in the gasoline supply:

**The Blend Wall – AFPM’s Calculation of Proposed Ethanol Content as a Percentage of Gasoline Supply:**

<table>
<thead>
<tr>
<th>Type of Ethanol</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corn-Based Ethanol (conventional)</td>
<td>9.71%</td>
<td>9.68%</td>
<td>10.18%</td>
</tr>
<tr>
<td>Conventional + Advanced*</td>
<td>9.86%</td>
<td>9.86%</td>
<td>10.53%</td>
</tr>
</tbody>
</table>
* Assumes that the Advanced Biofuel mandate is met using sugarcane-based ethanol in addition to the amounts of cellulosic and BBD mandated. To the extent that a portion of the Advanced Biofuel mandate is met with excess BBD, the actual percentage of ethanol used would fall somewhere between the estimates provided in the two rows.

EPA acknowledges that the proposal would exceed the blend wall in 2016, but indicates that the additional 840 million gallons of renewable fuel needed to meet the 2016 proposed volumes could be achieved by increased ethanol consumption (e.g., E85) or increased biomass-based diesel consumption.

**E0 Demand** – EPA recognizes that there will continue to be demand for E0, citing recreational marine engines and other small nonroad engines, but concludes that E0 will not have “a significant impact on ethanol consumption in 2016, particularly in light of the offsetting effect of E15 volumes...” EPA expects the volumes of E0 to decline from 9.3 billion gallons in 2014 to 130 million gallons in 2014.

**E15 Demand** – EPA acknowledges that the volume of E15 consumed through 2016 is likely to be small. The agency points to blending and dispensing infrastructure constraints and poor pricing relative to E10 as the reasons limiting E15 and E85 consumption in 2014. EPA does not address potential liability concerns, but does state in a footnote that low E15 consumption “may also be a function of vehicle warranties which do not explicitly permit the use of E15.” The preamble to the rule does not describe the potential liabilities for fuel retailers, a point we will highlight in our formal comments. The agency noted that even if the number of stations offering E15 increased rapidly in 2015 and 2016, such increases would probably not increase total ethanol consumption by more than 5 - 10 million gallons. Given these constraints, EPA does not rely on increased E15 consumption to support higher volumes in 2016.

**E85 Demand** – Given the small amount of E15 that will be consumed, efforts to increase ethanol beyond the blend wall will depend upon E85 consumption. EPA reports that E85 consumption in 2013 was 130 million gallons and between 100 and 200 million gallons in 2014. EPA acknowledges the small number of Flexible Fuel Vehicles (FFVs) with access to E85 as a constraint on additional ethanol consumption (only two percent of stations carry E85 and currently only about six percent of vehicles on the road can use E85), and that price is a key factor in driving E85 demand. EPA indicates in the proposal that higher RIN prices could incentivize the use of additional E85, projecting that the E85 market could reach 600 million gallons under favorable pricing conditions.

---

1 EIA reported 2014 net production of E85 as 76.5 million gallons. It is unclear where the EPA estimate is derived from.
2 EIA estimated that a retail price discount of 22% is needed to overcome the energy penalty of E85 relative to E10 – the average discount in 2014 was 13.8%.