

EPA Final Rule for 2014-2016 RVOs

EPA published its final rule for 2014-2016 Renewable Volume Obligations (RVOs) on November 30, 2015. As expected, the final rule raises most RVOs above the levels originally proposed by EPA in May. However, the final rule maintains the same questionable application of EPA’s general waiver authority that appeared in the proposal. Specifically, EPA has interpreted “inadequate domestic supply” to somehow include the capacity of oil companies to *distribute* required volumes of biofuels. The final rule also continues to ignore carryover RINs as a component of “available supply,” contrary to previous EPA actions. This memo summarizes the final RVOs and discusses a number of key issues from the final rule.

1. Final RVO Levels

The tables below compare the final RVOs for each year to the proposed volumes, as well as the original statutory levels. Green values represent increases from the proposal; red indicates a decrease; and black indicates no (or immaterial) change. All volumes are in billions of ethanol-equivalent gallons.

<u>2014</u>	<u>Statutory</u>	<u>Proposed</u>	<u>Final</u>
Advanced Biofuel	3.750	2.680	2.670
Cellulosic Biofuel	1.750	0.033	0.033
BBD (x1.54)*	1.500	2.510	2.492
Other Advanced	0.500	0.137	0.143
Total Renewable Fuel	18.150	15.930	16.280
Conventional (e.g. corn ethanol)	14.400	13.250	13.610
<i>*Actual volumes: Statutory=min. 1.000; Proposed=1.630; Final=1.630</i>			
<u>2015</u>	<u>Statutory</u>	<u>Proposed</u>	<u>Final</u>
Advanced Biofuel	5.500	2.900	2.880
Cellulosic Biofuel	3.000	0.106	0.123
BBD (x1.54)*	1.500	2.620	2.664
Other Advanced	1.000	0.174	0.093
Total Renewable Fuel	20.500	16.300	16.930
Conventional (e.g. corn ethanol)	15.000	13.400	14.050
<i>*Actual volumes: Statutory=min. 1.000; Proposed=1.700; Final=1.730</i>			
<u>2016</u>	<u>Statutory</u>	<u>Proposed</u>	<u>Final</u>
Advanced Biofuel	7.250	3.400	3.610
Cellulosic Biofuel	4.250	0.206	0.230
BBD (x1.54)*	1.500	2.770	2.926
Other Advanced	1.500	0.424	0.454
Total Renewable Fuel	22.250	17.400	18.110
Conventional (e.g. corn ethanol)	15.000	14.000	14.500
<i>*Actual volumes: Statutory=min. 1.000; Proposed=1.800; Final=1.900</i>			

2. Rationale for Final RVOs and Waiver Application

EPA based the 2014 and 2015 RVOs upon its best estimates of the net number of RINs generated during each compliance year that will remain available for compliance. While the advanced biofuel, biomass-based diesel (BBD), and cellulosic RVOs for **2014** changed very little from the originally proposed levels, the conventional renewable fuel (e.g., corn ethanol) required was increased by 360 million gallons. This is the result of EPA correcting an error it made with regard to calculating RIN retirements associated with ethanol exports. RFA raised this issue at the Kansas City public hearing and in written comments.

EPA's final RVOs for **2015** saw slight increases to the cellulosic and BBD requirements, and a decrease to the implied requirement for other advanced biofuels (e.g., sugarcane ethanol). Meanwhile, conventional renewable fuel saw an increase of 600+ million gallons. This increase is largely reflective of year-to-date RIN generation data, higher-than-expected U.S. gasoline demand and ethanol blending, and a larger-than-anticipated contribution from non-ethanol conventional biofuels.

As for the **2016** RVOs, EPA states that "...challenges associated with growth in the supply of renewable fuels preclude attainment of the statutory volumes in 2016. Constraints including but not limited to the E10 blendwall, are real and can only be partially overcome by a responsive market in the near term." Thus, EPA applies a combination of its cellulosic waiver authority and its "general" waiver authority to lower all RVOs below statutory levels. In lowering the conventional renewable fuel total from 15.0 to 14.5 bg, EPA interprets the terms "inadequate domestic supply" under the general waiver as somehow applying to distribution capacity rather than physical volumes. In comments and testimony following EPA's proposal, RFA and many other stakeholders challenged EPA's interpretation and use of its general waiver authority.

3. Carryover RINs

EPA's final rule also fails to treat carryover RIN stocks as "available supply" that could help meet the required volume obligations. RFA and others argued that some carryover RINs could be used to bridge the "gap" between physical gallons blended in 2016 and the 15 bg statutory requirement for conventional biofuels. EPA disagreed, stating that "We have decided for this rulemaking to treat carryover RINs in the manner proposed and not establish volume requirements that would be expected to require obligated parties to draw down the current bank of carryover RINs so as to achieve compliance." EPA's treatment of carryover RINs in the final rule is completely inconsistent with its approach in other RFS rulemakings and administrative actions.

4. “Re-set” Provision

Unlike the proposal, EPA’s final rule volumes do not trigger the so-called “re-set” authority for total renewable fuels (including conventional). However, the final rule *does* trigger the re-set authority for advanced biofuels, which was widely expected. The re-set provision allows EPA to rewrite the volumetric requirements for the remainder of the RFS schedule if specific volume categories have been waived by 20% or more in two consecutive years (or 50% or more in one year). However, it remains unclear from the final rule how, or whether, EPA will apply this re-set authority to advanced and cellulosic biofuel requirements post-2016. The tables below show the percentages by which the advanced and total RVOs were reduced compared to statutory levels. Volumes are in billions of gallons of ethanol-equivalent.

<u>2015</u>	<u>Statute</u>	<u>Proposed Rule</u>		<u>Final Rule</u>	
	Volume	Volume	Waiver %	Volume	Waiver %
Advanced	5.50	2.90	-47.3%	2.88	-47.6%
Total	20.50	16.30	-20.5%	16.93	-17.4%

<u>2016</u>	<u>Statute</u>	<u>Proposed Rule</u>		<u>Final Rule</u>	
	Volume	Volume	Waiver %	Volume	Waiver %
Advanced	7.25	3.40	-53.1%	3.61	-50.2%
Total	22.25	17.40	-21.8%	18.11	-18.6%