

WHAT HAPPENS TO THE RENEWABLE FUEL STANDARD (RFS) AFTER 2022?

Recent statements made by some lawmakers, presidential candidates, and media pundits indicate that confusion abounds regarding the fate of the Renewable Fuel Standard (RFS) after 2022. Here are the facts about administration of the RFS program after 2022:

- **The RFS does not “phase out” or “sunset” at the end of 2022.** In adopting the Energy Independence and Security Act of 2007 (EISA), Congress specified RFS volumetric requirements through the year 2022 for total renewable fuels, advanced biofuels, cellulosic biofuels, and biomass-based diesel. For years after 2022, the law clearly states that required volumes of each renewable fuel “shall be determined by the [U.S. Environmental Protection Agency] Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture...” In other words, the law requires EPA to set RFS volumes for 2023 and beyond.
- **RFS volumes for 2023 and beyond must be established by late 2021.** For years after 2022, the law states that the EPA Administrator “shall promulgate rules establishing the applicable volumes...no later than 14 months before the first year [e.g., 2023] for which such applicable volume will apply.”
- **EPA must abide by certain statutory requirements in setting post-2022 volumes.** Some have suggested that EPA has “free rein” to set post-2022 RFS volumes anywhere it wants. This is untrue, as the statute prescribes some criteria for determining post-2022 volumes.
 - First, EPA’s post-2022 volumes must be informed by an analysis of the impacts of renewable fuels on: air quality, climate change, ecosystems, wildlife habitat, water quality/supply, energy security, commercialization rates of advanced biofuels, infrastructure issues, consumer fuel costs, job creation and economic development, commodity prices, and consumer food prices.
 - Second, the law states that required volumes of advanced biofuel in 2023 and beyond can be no lower (in percentage terms) than the 2022 advanced biofuel volume finalized by EPA.
 - Third, the law requires that post-2022 cellulosic biofuel volumes must be set at levels that will not require EPA to use its cellulosic waiver authority to reduce annual volume requirements.
 - Fourth, post-2022 required volumes of biomass-based diesel can be no lower than the 2012 requirement of 1.0 billion gallons.
- **As is currently the case, there is no specific requirement for corn ethanol in the RFS provisions for years after 2022.** It is a common misconception that the current RFS specifically requires the use of corn ethanol. In reality, there is no requirement to use corn ethanol to meet RFS obligations. Rather, corn ethanol is just one of many “renewable fuels” that may be used to meet the undifferentiated volumetric requirements of the RFS—which are limited to 15 billion gallons beginning in 2015. The statute does not contain specific criteria for setting volume requirements for “undifferentiated renewable fuel” post-2022.