



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

The Honorable James Sensenbrenner, Jr.
Vice Chairman
House Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515-4905

Dear Congressman Sensenbrenner:

I am responding to your July 19, 2012, letter regarding the U.S. Environmental Protection Agency's implementation of the Renewable Fuels Standard (RFS) program, specifically the requirement for setting the cellulosic biofuel standard.

Detailed responses to your questions are provided in the enclosure. As explained in those responses, the process that the EPA has used to project available volumes of cellulosic biofuels for the next year is fully consistent with the authority and requirements in the Energy Independence and Security Act of 2007. The law enacted by Congress clearly contemplates that there will be a degree of uncertainty associated with setting the annual standards, as these values are forward looking. The fact that the current production rate of cellulosic biofuel is below the EPA's projections for the year does not change the fact that the original volume projection reflected a reasonable assessment of anticipated domestic production and import, based on the best information available to the Agency.

Thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", is positioned above the typed name.

Gina McCarthy
Assistant Administrator

Enclosure

Enclosure – Responses to Questions in July 19, 2012, Letter from Congressman Sensenbrenner

1. Does the EPA believe it has the statutory authority to deviate its projection of available cellulosic ethanol from the actual estimates of how much will be available? If so, how does the EPA square this with EISA?

The statute requires the EPA to reduce the required volume of cellulosic biofuel from the volume specified in the statute to the projected volume available. The EPA is thus required to make a projection of cellulosic volume for the next year. The EPA uses a transparent public notice and comment process to set these yearly standards. The direction and authority under EISA allows the EPA to consider a variety of sources of information to make this projection, including the estimates provided by EIA. This authority is described more fully in the response to Question #3 below.

Further, as stated in the final rule setting the required volume of cellulosic biofuel for 2012, "While the cellulosic biofuel standard that we set should be within the range of what can be attained based on projected domestic production and import potential, the standard that we set helps drive the production of volumes that will be made available." (77 FR 1325). Thus the volume of cellulosic biofuel that becomes available in the following year depends in part on the projection that the EPA makes and then uses to set the applicable volume requirement for that year. The process that the EPA has used to project available volumes for the next year is thus fully consistent with the authority and requirements in EISA.

2. If the EPA concedes that cellulosic biofuel is not being produced on a commercial level, then how do you justify having any cellulosic biofuel requirement on the refiners? Is the EPA neglecting its ethical obligation to set realistic expectations on industry?

In directing the EPA to project cellulosic biofuel production for purposes of setting the annual cellulosic biofuel standard, Congress did not specify what degree of certainty should be reflected in the projections. The fact that the current production rate of cellulosic biofuel is below the EPA's projections for the year does not change the fact that the original volume projection reflected a reasonable assessment of anticipated domestic production and import, as described in response to Question 3. Moreover, since four months remain in the 2012 compliance year, it remains to be seen what volumes of cellulosic biofuel will become available by the end of the year.

3. What specific data did the EPA rely on to deviate from the EIA estimate? Please provide documents to support this deviation.

As described in the final rule setting the 2012 cellulosic biofuel volume requirement, the EPA fully considered the cellulosic biofuel estimate provided by the EIA in its projection for 2012, and supplemented this estimate with additional information on progress that the cellulosic biofuel industry had been making to date, comments in response to the proposed rule, and our own assessment of information provided by the cellulosic biofuel industry on their projections for 2012. The difference between the EIA and the EPA estimates was quite small, at 6.9 and 8.65 million gallons respectively, especially in the context of the statutory target of 500 million gallons (the difference is only 0.3% of the Congressional target).

The final rule setting the 2012 standards also explained the reasons for the difference in our projections as compared to EIA's estimate. We explained that our projection was designed to take into account uncertainties in a manner that best furthers the objectives of the statute. The EIA, when making their projections, would not be expected to consider the broader objectives of the Clean Air Act since it is not the EIA's responsibility to set the applicable CAA standards. This fact is reflected in EIA's general use

of standard utilization factors of 10% and 25% in deriving its projections for companies that have not yet commenced production, but are expected to do so during the first two quarters of the year for which the projection is being made. Such utilization factors are not based on the levels that each company is actually likely to achieve based on company-specific information, but instead on historical production rates for facilities in their first year of production. Thus, the EIA approach does not take into account what is reasonably achievable based on more company-specific information on facility startup dates and volume ramp up schedules. We believe that taking such company-specific information into account is appropriate to make our volume projections.

As directed by the statute, when making our determinations for the cellulosic biofuel volume estimates, we worked closely with EIA and were well aware of the parameters that went into their estimates. We took the EIA parameters into account as well as additional company specific information collected during our review process. The company-specific information that the EPA used was provided either verbally by company contacts, or from information that each company had already made publically available. A complete discussion of our assessment of these sources of information, how we took into account the EIA estimate, and how we determined the final volume requirement for 2012 cellulosic biofuel can be found in the final rule published on January 9, 2012.¹

4. If the EPA's goal is, as it wrote, to create market incentives, how does the EPA justify a specific threshold? What data can be used to support an aspirational requirement?

The volume requirement must be achievable based on a reasonable projection of domestic production and imports, and we based our projection on reasoned assessments of each facility's construction schedule, capacity, and expectations for startup and ramp-up to full production.

If the projected available volume was based only on production volumes that had already been achieved, as some stakeholders have advocated, this would effectively assume no growth in cellulosic biofuel production in the year for which a projection is made. This would be an unrealistic assumption for any new and growing industry. Thus, basing projections only on proven production levels would be unlikely to provide the market incentives that are needed to meet Congressional goals in establishing cellulosic biofuels as a growing part of the RFS program. Options, such as the purchase of cellulosic waiver credits and deficit carryover, were established by Congress to provide flexibility to obligated parties to demonstrate compliance.

The EPA did not set the required volume of cellulosic fuel at an aspirational level. The EPA investigated each and every potential cellulosic biofuel producer and individually assessed their production plans. This information formed the basis of the EPA's projection. Stakeholders had an opportunity through the notice and comment process to submit information or data to refute the company-specific information that the EPA described in its proposed rule, but did not do so.

The statute clearly contemplates that there will be a degree of uncertainty associated with setting the annual standards, as these values are forward looking. For an industry, whether it be an emerging one like the cellulosic biofuels one, or a mature one like the oil industry, market factors, technology complications or unforeseen barriers will determine how accurate production forecasts actually are when reviewed after the fact.

¹ Federal Register / Vol. 77, No. 5 / Monday, January 9, 2012 / Rules and Regulations