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STRIKING A BALANCE BETWEEN ENVIRONMENTAL PROTECTION AND THE ECONOMY

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In 2015, the EPA adopted burdensome standards for fuel producers to attain in order to reach compliance credit requirements for the years 2006-2022.^[i] Thus, the EPA's renewable fuel volume requirement may prove to be too strenuous on fuel producers and the United States economy in the coming years. The original statutory requirements for producers, as an aggregate, are to blend a minimum of 20.5 billion gallons of biofuel into the fuel supply in 2015 and 22.25 billion gallons in 2016.^[ii] However, with potentially negative economic effects, the EPA has proposed to reduce these standards.^[iii] The EPA's proposed reduction is too drastic and does not follow the original intent for passing this regulation.

Fuel producers attempted to challenge the EPA blending volume requirements under the statute in *Monroe Energy*.^[iv] The D.C. Court of Appeals determined that the EPA did not abuse its discretion in setting the standards, and that the standards were reasonable estimates of what could be produced and consumed.^[v] This conclusion was reached, even though the EPA acknowledged that the demand would be 1.4 billion gallons less than the blending standard minimums, but that difference would be made up in the following year through credits.^[vi]



(<http://www.climatechwiki.org/technology/agriculture-biofuel-production>)

After litigation failed, the fuel producers found success earlier this year by influencing the EPA to introduce an amendment to the standards.^[vii] The amendment reduces the aggregate biofuel blend minimums to a more economically reasonable amount.^[viii] The new EPA proposed rule (RIN 2060-AS2) reduces the standards mentioned above to 16.3 billion and 17.4 billion in the years 2015 and 2016 respectively.^[ix] The deadline for accepting or denying the proposal that will reduce the fuel blending volume minimums is November 30, 2015.^[x]

The EPA probably conceded due to potential economic dangers of continuing the original standards. In this case, if the current production blending standards are continued, rejecting the new proposed rule, the only way producers will be able to meet their standard is to reduce the overall production of fuel.^[xi] Some studies suggest that this reduction could be as much as thirty percent.^[xii] Basic economics principles applied to this estimate indicate that if supply drops by thirty percent, while the demand remains the same, there will be significant increases in the price for the market to reach equilibrium.^[xiii] A 2012 study estimated this economic cost to the United States Gross Domestic Product could have negative implications of \$770 billion in 2015.^[xiv] This shocking estimate, is most likely based on increased transportation costs that affect almost every aspect of the U.S. economy.^[xv]

The EPA has been adamant about maintaining the original intent of the standard, which is to encourage and require the growth of biofuel production.^[xvi] There are many benefits to the increased production of biofuels.^[xvii] First, biofuels are renewable sources of energy that can be used to supplement and further reduce the dependence on fossil fuels.^[xviii] Secondly, emissions from biofuel blends are less toxic to the environment and will help the U.S. reach its reduced carbon emission goals, and hope to lessen the effects of global climate change.^[xix] If the standards were not scheduled to increase over time, there would be little incentive for the fuel production companies to invest in biofuel production technology, except to the extent that the free market demanded it.^[xx] From the producer's standpoint, it is illogical to make a product that does not sell.^[xxi] Having governmental agencies coaching and requiring uneconomical standards on production does not allow the corporations to fulfill their duty to create profits for shareholders.

The purpose of implementing the biofuel mixing standards based on volume was not to force production companies to cut production to meet standards, but instead to make a transition to using more biofuels to reduce fossil fuel dependence.^[xxii] The EPA should not have reduced the standards to the extent that they have proposed. Almost five billion gallons for 2015, 2016, and presumably the following years, will reduce the standard minimum blending volume.^[xxiii] The reduction is economically necessary, however, the EPA should not retreat to this extent on the standards they calculated and set. This will discourage investment into biofuels in the coming years, and continue our nation's dependence on fossil fuels. The EPA should reject the proposed rule RIN 2060-AS2 and propose a new, adequately challenging, but attainable medium for production standards. This would show the EPA is still intent on encouraging development, but is reasonable when it comes to economic feasibility.

In conclusion, the predicted negative economic implications have not ripened, but the EPA has recognized potential issues stemming from the original standards by proposing the new standards. The EPA must accept or reject the new rule proposed for the reduced blending standards by November 30, 2015.^[xxiv] Regardless of the EPA's decision in November, biofuels are a viable alternative fuel that should continue to be developed and produced on an increased level so the U.S. can become less dependent on non-renewable fossil fuels and further reduce our impact on the environment.

[i] See Renee Schoof, *API Issues Report Critical of Renewable Fuel Standard*, Bloomberg BNA (Sep. 9, 2015), [http://news.bna.com.ezproxy.law.uky.edu/bwdm/display/alpha.adp?mode=topics&letter=B&frag_id=75399249&item=1628&prod=bwdm; see also 42 U.S.C. § 7545\(o\)\(2\)\(B\)\(i\)\(I\) \(2010\).](http://news.bna.com.ezproxy.law.uky.edu/bwdm/display/alpha.adp?mode=topics&letter=B&frag_id=75399249&item=1628&prod=bwdm; see also 42 U.S.C. § 7545(o)(2)(B)(i)(I) (2010).)

[ii] 42 U.S.C. § 7545(o)(2)(B)(i)(I) (2010).

[iii] Schoof, *supra* note i.

[iv] *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 916 (D.C. Cir. 2014).

[v] *Id.* at 916.

[vi] *Id.*

[vii] Schoof, *supra* note i.

[viii] *Id.*

[ix] *Id.*

[x] *Id.*

[xi] Schoof, *supra* note i.

[xii] *Id.*

[xiii] *See id.*

[xiv] *Id.*

[xv] *Id.*

[xvi] *See id.* (the new proposed rule also includes yearly increases in blend volume, as the original statute did).

[xvii] *Id.*

[xviii] *Id.*

[xix] *Id.*

[xx] *See id.* (“The gasoline market cannot immediately absorb larger amounts of E85.”).

[xxi] *See* Andrew Childers, *EPA Proposes Reduction in Biofuels Required for Blending in Fuel Supply*, Bloomberg BNA (June 1, 2015), <http://www.bna.com/epa-proposes-reduction-n17179927216/> (the demand for E85 is only .15% of all gasoline consumption).

[xxii] *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 912 (D.C. Cir. 2014).

[xxiii] Schoof, *supra* note i.

[xxiv] *Id.*

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