

**Response from Collin O'Mara to the House Committee on Energy and Commerce  
Subcommittee on Environment  
Questions for the Record of the Hearing of June 22, 2018:  
Advanced Biofuels Under the Renewable Fuel Standard**

Thank you again for the opportunity to testify, and for the additional questions you have posed. My answers are contained below.

**1. Is there a potential future scenario where Advanced Biofuels could successfully compete and participate in the market without the Renewable Fuel Standard?**

The short answer is yes. American ingenuity and innovation have always offered new and emerging technologies and products an opportunity to succeed, even in the absence of mandates such as the RFS. However, advanced biofuels are competing against not one, but two established products with powerful, mature industries behind them: petroleum fuel and first-generation biofuels. Therefore, if development of these alternative fuels remains a societal and governmental priority, then there will remain a need for some sort of government support or intervention to achieve market parity in a reasonable timeframe.

The experience of the RFS has demonstrated that its type of mandated consumption has failed to spur the development of a new industry. While an RFS-style mandate is one potential option for attempting to do so, in the presence of other types of support, the RFS would not be necessary. There are options available to improve or replace the existing structure to achieve this elusive goal. I will pose a few of these, without specifically endorsing any of them.

During the hearing, the idea of moving to a performance-based standard like California's Low Carbon Fuel Standard was discussed. Such an option would help drive investment to second-generation biofuels by giving them a clear market advantage over first-generation fuels while achieving the greatest environmental benefits.

Similarly, placing a price on carbon could drive investment into development of the cleanest fuels and away from petroleum and first-generation biofuels.

Finally, federal incentives in the form of investment tax credits, production tax credits, and/or consumer rebates, as well as meaningful federal investment in research and development, could help the advanced biofuels industry develop – particularly if coupled with other governmental regulations, preferences, or programs.

**2. What are your views on the EPA's 2016 proposed Renewables Enhancement and Growth Support (REGS) Rule?**

The National Wildlife Federation submitted comments to the proposed REGS Rule, which are included here in full as an attachment. We view all regulatory proposals through the lens of the potential impacts to wildlife populations and their habitats. Thus, these comments did not touch on the full scope of the proposal, but did point out several parts that could be problematic or damaging in this regard, and two proposals we supported. Specifically, the comments:

- Recommended careful consideration of the invasive potential of short-rotation poplar and willow species and denial of pathways that include varieties known to be, or at high risk of becoming, invasive;
- Opposed the expansion of lands eligible to produce poplar and willow from actively managed tree plantations to all agricultural lands;
- Supported maintaining the record keeping and reporting requirements for woody biomass and urged the Agency to apply these same requirements to row crops;
- Supported the use of separated food waste for the production of biomass-based diesel; and,
- Opposed the extension for consideration of applications for grandfathered facilities.

In general, we support the stated objective of the proposal, which is to modernize aspects of the RFS and its implementation, particularly in regards to advanced and alternative fuels. A number of the proposed changes would seek to expand the eligible sources of advanced and cellulosic fuels, which generally looks positive. However, we do not have the technical expertise to fully evaluate many of these changes. For instance, while we believe creating a system for providing renewable identification numbers (RINs) for electricity generated from renewable sources would be a useful step in what we see as the desired ultimate goal of replacing liquid fuels, we do not have specific comments on the best method for ascribing these RINs to the correct parties.

As our formal comments on the rule indicate, the National Wildlife Federation's primary concern is ensuring that new fuel pathways do not exacerbate competition with existing crop production for available land that drives the conversion of native and natural lands. Efforts to utilize "waste" materials can be a great option, so long as the approval process fully considers where that waste stream currently goes, and if diversion of that waste will necessitate additional crop production to replace it.

This concludes my responses to your additional questions. Please do not hesitate to contact me or my staff for additional information or clarification.

**National Wildlife Federation**

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February 16, 2017

Ms. Catherine McCabe  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C., 20460

*Submitted via regulations.gov*

**RE: Comments from the National Wildlife Federation (NWF) on U.S. Environmental Protection Agency’s Proposed Renewables Enhancement and Growth Support Rule, Docket ID No. EPA-HQ-OAR-2016-0041-0002**

Dear Acting Administrator McCabe:

The National Wildlife Federation is the nation’s largest conservation organization with more than 6 million members and supporters and fifty state and territorial affiliates, representing hunters and anglers, birders and gardeners, and outdoor enthusiasts from across America. Our mission is to unite all Americans to ensure wildlife thrive in a rapidly changing world—and we work collaboratively to conserve habitat and waterways, promote our outdoor heritage, and connect the next generation with nature.

This proposed rule is wide-ranging, encompassing a vast array of topics. We will focus our comments on just a few pieces of the rule, though there are certainly many other parts in which we have a keen interest. In the comments below we will,

- Urge careful consideration of the invasive potential of short-rotation poplar and willow species and denial of pathways that include varieties known to be, or at high risk of becoming, invasive;

- Oppose the expansion of lands eligible to produce poplar and willow from actively managed tree plantations to all agricultural lands;
- Support maintaining the record keeping and reporting requirements listed at 40 CFR 80.1454(c) and (d) for these new pathways and urge the Agency to apply these same requirements to row crops;
- Support the use of separated food waste for the production of biomass-based diesel; and,
- Oppose the extension for consideration of applications for grandfathered facilities.

Comments are organized by section of the proposed rule.

## VI. Renewable Fuels Produced from Short-Rotation Trees

### *Section (C)(7) Lifecycle Analysis of GHG Emissions – Risk of Invasiveness*

The National Wildlife Federation thanks the Agency for continuing to consider invasiveness as part of RFS feedstock pathway determinations, and for specifically soliciting comments on mitigation of invasiveness risk for poplars and willows.

Under Executive Order 13112 (as amendment in 2016), federal agencies must “refrain from authorizing, funding, or implementing actions that are likely to cause or promote the introduction, establishment, or spread of invasive species in the United States unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.”

Based on this executive order, NWF believes that under the RFS, each feedstock species or variety (including hybrids) must individually be evaluated for invasive risk using weed risk assessments (WRAs) and the best available science. Based on the WRA results, those feedstocks or varieties at high risk of becoming invasive should not be approved as new pathways. For feedstocks that require further evaluation according to WRAs, we recommend that they be approved only on a pilot basis, with stringent best management practices required to reduce the risk of escape and ongoing monitoring and mitigation to assess invasiveness. Best management practices are also strongly recommended for low-risk non-native feedstocks to reduce risk.

We thank the agency for including clear definitions of short rotation hybrid poplar and short-rotation willow in the proposed rule, as invasion risk differs substantially between species and varieties. While we are not familiar with all of the species and varieties listed and the invasive potential of each, we know that in invasion biology, the best predictor of whether a species will be invasive in a new habitat is whether that species has been invasive in other regions where it has been introduced. We encourage the agency to take into account this information in the decision-making about approved feedstocks. For example, we would be very concerned if *P. alba* were on the list as it is a non-native species that has been documented as invasive in some

regions; similarly we would be concerned about the inclusion of *Populus x canescens*, which is a hybrid of *P. alba* and *P. tremula*.

Additionally, we urge that *P. nigra* be removed from the list, since at least one variety, *P. nigra* var *italic*, is already a known invader. At the very least, we believe that the rule should specifically exclude *P. nigra* var *italic*. We also urge that *S. viminalis* be removed from the list, as the species is a harmful enough invader in Australia that research on biocontrol agents was deemed necessary. In general, we strongly recommend that sufficient effort be made to identify whether any others of the species listed that have been invasive elsewhere

Additionally, we are concerned that the substantial evidence of hybridization in both willow and poplar genera means that there is significant potential for any species on the list to hybridize with native species within these genera, which could have impacts on native species and habitats if the hybrids prove invasive. Given this risk, we would urge the Agency to focus only on native species in these genera, which would reduce invasion risk and potentially provide wildlife habitat.

If EPA moves forward with approving these species, we urge the Agency to include robust risk management requirements that are written with the guidance of the National Invasive Species Council and relevant federal and/or state agencies. Because of the potential of the species to hybridize with native species, we also recommend a particular focus in the risk management plan on mitigating potential impacts to local ecosystems should feedstocks hybridize with native species. Finally, we believe it is critical that risk management plans include plans and funding set aside for eradication of abandoned plantations or escaped hybrids.

#### *Section (D)(3) Proposed Regulations – Registration, Recordkeeping, and Reporting Requirements*

1. **Expansion of eligible lands for tree production.** EPA proposes altering the definition of an acceptable tree plantation for the purposes of producing “renewable biomass” as defined in the Clean Air Act so as to expand the eligible lands from only those that had been actively managed as tree plantations prior to December 19, 2007, to include any “land [that] was cleared and actively managed for any agricultural purpose” on that date.

While we appreciate the Agency’s attempt to increase the available land for growing the feedstocks necessary for production of cellulosic fuels in a way that honors the intent of the land clearing prohibition in the statutory definition of “renewable biomass,” we are concerned that the result will be a similar end-run around that prohibition as has been documented with the growth of corn ethanol.

The majority of land in agricultural production in 2007 mostly represents the land best suited

for that use. These are the most fertile lands being farmed by business-minded farmers for generations. Following the implementation of the RFS, millions of additional acres of land were converted to agricultural use – many for the very first time – a fact confirmed by scientific research and anecdotal evidence from across the country.<sup>1</sup> This conversion occurred in spite of the law’s prohibition on conversion and the Agency’s aggregate compliance approach to enforcing it. Allowing woody biomass grown on this same base of agricultural land could once again displace the crops being grown there, leading to the conversion of land elsewhere to replace the production being supplanted. Beyond violating the intent of the “renewable biomass” definition, this indirect conversion would take place on lands less well-suited for agriculture, as was demonstrated to have occurred after 2007. These converted lands, by a wide margin, have poorer quality soil and in many cases are highly important for wildlife habitat and protection of water bodies. Thus, this definitional change could result in increased agricultural activity in ecologically sensitive areas, affecting wildlife populations, drinking water supplies, and outdoor recreation.

- 2. Record keeping and reporting requirements for planted poplar and willow.** As noted in the proposal, these trees fall outside of the aggregate compliance approach applied to field crops, and are subject to the more stringent reporting requirements listed at 40 CFR 80.1454(c) and (d). These sections of the Code require producers of renewable fuel made from trees to “keep records that serve as evidence that the land from which the feedstock was obtained was cleared prior to December 19, 2007 and actively managed on December 19, 2007.” The proposal would apply these same requirements to production of biofuels produced from poplar and willow.

We agree with this proposal. We have repeatedly urged the Agency to abandon its aggregate compliance approach to crops in favor of more stringent requirements such as those applied to woody biomass. Aggregate compliance has been an empirical failure, and we would urge the Agency to expand the record keeping and reporting requirements listed at 40 CFR 80.1454(c) and (d) to all renewable fuels covered by the RFS.

## VIII. Other Revisions to the RFS Program

### *Section C – Allowing Production of Biomass-Based Diesel From Separated Food Waste*

We support the proposal to allow for separated food waste as a feedstock for qualifying biomass-based diesel. Production of biodiesel from food waste is highly preferable to production from virgin vegetable oils and will lead to less demand for land resources to grow crops such as soybeans, as well as less demand for imports such as palm oil.

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<sup>1</sup> Lark, T. J., Salmon, J. M. & Gibbs, H. K. Cropland expansion outpaces agricultural and biofuel policies in the United States. *Environmental Research Letters* **10**, 044003 (2015).

*Section D – Registration of New and Expanded Grandfathered Volumes*

We oppose the proposal to move the final deadline for submission of grandfathering applications from the current deadline of July 1, 2013, to a new deadline of November 16, 2016. The proposal makes no compelling case for the need to continue to process and admit facilities or expansions at this time – nearly 10 full years after enactment of the law. The proposal does, however, make clear the difficulty of verifying and approving these applications given such a long lead time. Presumably, any biofuel refineries in operation or whose construction was completed by December 19, 2010, must have been producing biofuels in the subsequent years, and there can be no logical reason they did not submit grandfather applications in a timely manner. At this point in time, with the statutory volume of conventional biofuel already having been achieved, it serves the RFS program no purpose to permit additional volume that will only weaken the environmental performance of the program. We hold that any facilities wishing to enter into the program today must be fully compliant with the law's minimum requirement of a 20 percent reduction in greenhouse gas emissions relative to petroleum fuel. Extending the deadline for applications will only create unnecessary work for the Agency, which is already failing to meet many of its own statutory deadlines, and serve to undermine Congress's intent to reduce greenhouse gas emissions.

We thank you for your consideration of these comments and stand ready to answer any questions or provide further assistance as needed.

Sincerely,

David DeGennaro  
Agriculture Policy Specialist  
National Wildlife Federation