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EPA-HQ- OAR-2017-0091  
U.S. Environmental Protection Agency  
Office of Air and Radiation  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

*Submitted via: [www.regulations.gov](http://www.regulations.gov)*

Re: **EPA-HQ- OAR-2017-0091**  
**Proposed Rule: Renewable Fuel Standard Program: Standards for 2018 and Biomass-based Diesel Volume for 2019**

The American Petroleum Institute (API) is the national trade association that represents all aspects of America's oil and natural gas industry. Our more than 625 corporate members - from the large major oil and gas companies to the small independents - come from all segments of the industry. They are producers, refiners, suppliers, marketers, pipeline operators and marine transporters as well as service and supply companies that support all segments of the industry. We appreciate the opportunity to comment on this important issue. They provide most of the nation's energy and are backed by a growing grassroots movement of more than 30 million Americans. As refiners and importers of transportation fuels, our member companies are obligated parties under the Renewable Fuel Standard (RFS) program and subject to its requirements. The RFS mandate is unworkable, and API leads a chorus of diverse interests calling on Congress to repeal or significantly reform the program.

API provides these comments in addition to comments submitted separately to the docket that were developed jointly with the American Fuel & Petrochemical Manufacturers (AFPM). This separate submittal to the docket contains additional information that reflects views of API and our members on issues that were not addressed in the comments submitted jointly with AFPM.

API's primary concern with the RFS is the ethanol blendwall. There are serious vehicle and infrastructure compatibility issues with ethanol blends above 10%. The increases in gasoline demand that were projected at the inception of the RFS have not materialized, nor has the commercialization of cellulosic biofuels progressed at the rate congress envisioned back in 2007. The statutory volumes set in the Energy Independence and Security Act of 2007 are unattainable and maintaining these mandated levels could result in fuel supply disruptions that damage our economy. Congress provided EPA with waiver authority to reduce the RFS volumes, thereby avoiding the potential negative impacts on America's fuel supply and preventing harm to American consumers.

### RFS Point of Obligation

API supports EPA's proposed *Denial of Petitions for Rulemaking To Change the RFS Point of Obligation* of November 2016. The RFS has significant structural flaws, and moving the point of obligation will not alleviate them; it will simply reallocate the problems to a different group of fuel supply chain participants and negatively impact particularly the relatively small and mid-size businesses that would be newly designated as obligated parties. A change would create additional uncertainty in the RFS program and in the market for Renewable Identification Number (RIN) credits. It will increase program complexity and will require significant resources and cost by EPA and the regulated entities, especially during the rulemaking and transition periods. For all these reasons, EPA should not change the RFS point of obligation.

API commented extensively to EPA's proposed denial (EPA-HQ- OAR-2016-0544) and we again provide those comments as Attachment A.

### Small Refineries and Small Refiners

EPA requests comment on how to account for small refinery exemptions in setting annual percentage standards. It is no longer appropriate for EPA to grant RFS compliance exemptions to small refineries or small refiners. As originally enacted, legislation that created the RFS granted statutory relief to small refineries for a defined period of time ending in 2010. Congress granted EPA authority to exempt refiners beyond 2010 based on economic hardship on a case-by-case basis. In fact, granting waivers introduces additional RIN market uncertainty that is potentially disruptive to obligated parties' compliance planning.

EPA's proposal notes that Congress recently directed EPA to follow the Department of Energy's (DOE) recommendations which are based on the original 2011 Small Refinery Exemption study.<sup>1</sup> The 2011 DOE report ranks various structural and economic factors to determine their potential to create disproportionate impacts on small refiners. Many of the factors listed created short term disadvantages that have been, or should have been, resolved over time as refiners have adjusted their operations to comply with the RFS requirements. For example, the study weighs a refiner's local market acceptance of E10, which is now universally available nationwide. The factors reviewed point to how outdated the report has now become. Today, refiners have had ample time to adjust their businesses to operate under the burden of the RFS. As EPA follows the direction of Congress to rely on the DOE report when evaluating exemption requests, it is also necessary for EPA to incorporate an improved understanding of the market response to the RFS and to discount outdated elements of the DOE report.

In EPA's proposal<sup>2</sup> to deny changing the point of obligation, the agency did not find that the RFS program caused disproportionate harm on merchant or small refineries. This point makes abundantly clear the inappropriateness of any future small refiner exemptions. To the extent that the costs of complying with the RFS program are included in the market value of products sold, then an exempt party not subject to the same costs as their competitors is not avoiding a hardship, but rather is being provided with a windfall.

EPA has established that if a small refinery exemption is granted prior to promulgating a final RFS rule for a given year, then applicable percentage standard calculations are adjusted such that renewable fuel volumes are spread across a smaller pool of gasoline and diesel. This creates an unlevel playing field and

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<sup>1</sup> Small Refinery Exemption Study An Investigation into Disproportionate Economic Hardship, Office of Policy and International Affairs, U.S. Department of Energy. March 2011.

<sup>2</sup> <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100PUF0.pdf>

effectively increases compliance obligations for remaining obligated parties. It becomes particularly troublesome when EPA is late in promulgating final rules, which decreases time for planning and operational decision making by the obligated parties to meet more stringent RFS requirements. As the blendwall has become binding on the domestic fuel market, if EPA grants a small refiner exemption, then the agency should uniformly lower the overall RFS volume requirement by an equivalent amount rather than spreading the burden created by the exempted refiner across the refining industry.

When EPA decides to grant small refinery exemptions retroactively, an exempted obligated party may own RINs but have no obligation to turn them into the EPA to demonstrate compliance. Presuming these RINs represent incremental RINs needed by remaining obligated parties, this potentially puts the exempted party into a financially advantageous position.<sup>3,4</sup> In the case where exempted refiners hold surplus RINs, API suggests that these refiners should not be permitted to carryover RINs into the following compliance year to ensure these RINs are made available to the market for compliance. This can be achieved by removing the ability to demonstrate compliance with a prior year RIN if that refiner was exempted in the prior year. This limitation is justified by EPA's need to ensure the integrity of the RIN market.

#### AES Report

In recent RFS rulemakings, EPA set very aggressive targets for biomass-based diesel and advanced renewable standards. While we recognize EPA has directionally altered its thinking for the 2019 proposal, the total volume requirement in 2018 will force additional biodiesel use beyond the biomass-based diesel standard volume requirement. We urge EPA to maintain reasonable standards in setting RFS volume obligations, and to consider the impacts of aggressive standards that result in increasing reliance on biodiesel fuel. API contracted with Advanced Economic Solutions (AES) to evaluate the broader impacts of setting volume standards that require 3 and 4 billion gallons of biodiesel consumption, respectively, and in both cases, with or without a tax credit for biodiesel blenders. AES completed its report in August 2017 and it is provided as Attachment B to these comments.

The AES analysis found several negative consequences from aggressive increases in the RFS volume requirements. For instance, AES found that increasing biodiesel production from soybean oil could affect its use in food consumption and cause market disruptions across the agriculture, food, and fuel sectors. RFS volumes mandates that require 4 billion gallons of biodiesel would result in soybean oil price increases, the need for additional soybean acreage, and increased costs for food and diesel fuel.

#### Conclusion

API believes that the RFS program is outdated and broken, and we support bipartisan efforts in Congress to repeal or significantly reform the program. The key assumptions made in 2007 when the Energy Independence and Security Act (EISA) was enacted have since proven to be wrong. Congress expected 1) continued growth in fuel demand, 2) increased reliance on imported petroleum, and 3) rapid development of next-generation advanced and cellulosic biofuel technologies. These expectations have not been borne out by reality. Instead, as a result of technological advances by the domestic oil and natural gas industry, U.S. energy security has improved significantly, and petroleum imports have declined. Ethanol and other biofuels have only marginally contributed to these successes. According to

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<sup>3</sup> <http://phx.corporate-ir.net/phoenix.zhtml?c=196835&p=IROL-secToc&TOC=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9vdXRsaW5lLnhtbD9yZXBvPXRIbmsmaXBhZ2U9MTE1ODE3MDYmc3Vic2lkPTU3&ListAll=1&sXBRL=1>

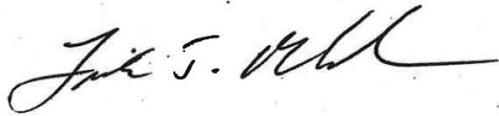
<sup>4</sup> <http://ir.alonusa.com/press-releases/detail/1948/alon-usa-energy-inc-reports-first-quarter-2017-results>

the Department of Energy's Energy Information Administration (EIA), the RFS "played only a small part in reducing projected net import dependence."<sup>5</sup>

API recognizes that Congressional action is needed to fix the RFS. In the meantime, EPA must implement the program based on a clear regulatory framework. We urge EPA to set its final 2018 RFS obligations at or below 9.7% ethanol in gasoline, an amount that allows for E0 sales and recognizes the vehicle and infrastructure constraints that limit the sale of E15 and E85.

API and our member companies appreciate the opportunity to comment on this proposed rule. If you have any questions or concerns, please contact me at (202) 682-8167.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Macchiarola". The signature is fluid and cursive, with a long horizontal stroke at the end.

Frank J. Macchiarola  
Group Director,  
Downstream & Industry Operations

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<sup>5</sup> Howard Gruenspecht, Deputy Administrator, Energy Information Administration Before the Committee on Environment and Public Works. February 24, 2016