



AMERICAN PETROLEUM INSTITUTE

Tier 3 Gasoline Rulemaking

Good morning. I am Patrick Kelly with the American Petroleum Institute. API is the national trade association representing all segments of the U.S. oil and natural gas industry. Its more than 500 members – including large integrated companies, exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms – provide most of the nation’s energy. The industry also supports 9.2 million U.S. jobs and 7.7 percent of the U.S. economy, delivers \$86 million a day in revenue to our government, and since 2000, has invested over \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

America’s petroleum refining industry is a strategic and valuable asset for the United States. Maintaining a strong domestic refining industry is critical to the nation’s economic security. This rulemaking could have significant impacts on domestic refiners, which are already heavily regulated.

API opposes this discretionary rulemaking as we have serious doubts as to the Agency’s justification for it. We have been insisting that EPA demonstrate a scientific justification for two and a half years. API commissioned research on the costs and benefits associated with further reductions in gasoline sulfur. We found some clear conclusions: The proposed standard will yield little immediate or longer term air quality benefits. And, reducing average sulfur from 30 parts per million to 10 parts per million will impose enormous costs. Further reducing gasoline sulfur is not necessary for meeting more stringent vehicle emissions standards, and automakers are unlikely to introduce vehicle emission technology that is enabled by the lower sulfur fuel.



AMERICAN PETROLEUM INSTITUTE

EPA is pursuing a flawed process in developing this rule. It is outrageous for EPA to hold public hearings as the docket continues to be populated with supporting information. It is invalid for EPA to hold these hearings in advance of the publishing the rule in the Federal Register.

EPA must follow the Clean Air Act's procedural requirements. Section 307 sets clear requirements for the rulemaking process that begins with EPA first publishing a proposed rule in the Federal Register.¹ In this publication, EPA shall specify the comment period.² EPA cannot set a deadline for public comments on a proposal that has not yet been published, and the supplemental publication that merely identifies the hearing dates and locations is a clear attempt to circumvent public participation in the rulemaking process.

Clean Air Act section 307 also requires that EPA must include with the Federal Register publication, the factual data on which the proposed rule is based; the methodology used in obtaining the data and in analyzing the data; and the major legal interpretations and policy considerations underlying the proposed rule.³ In short, this means all the information EPA uses as the basis for the rule must be made available. As of last week, over 700 new documents have been added to the docket, leaving no time to analyze the information to provide meaningful input.

Once the proposed rule is published, the comment deadline should be revised, another public hearing needs to be scheduled, and it must be held long enough after publication to allow for public review of all of EPA's data and analyses. The availability of a prepublication rule cannot be used as a reason to truncate the review period.

¹ Section 307(d)(3).

² *Id.*

³ *Id.*



AMERICAN PETROLEUM INSTITUTE

Reducing gasoline sulfur to an average of 10 parts per million is expensive. Research API shared with the Agency shows nearly 10 billion dollars in capital costs. The annual compliance cost is 2.4 billion dollars; or 6 to 9 cents per gallon marginal cost. EPA uses a cost estimate based on average cost that ignores the important role the marginal cost plays in gauging the market response to the regulation. EPA should not consider these costs in a vacuum. Refiners need to balance these costs with the cumulative costs of other federal and state regulations. Our domestic refiners are put at a competitive disadvantage against foreign refiners.

EPA's 3-year lead-time is grossly inadequate. Six years is workable; five years is the absolute minimum. Three years is insufficient time to design, permit, construct, and startup the equipment needed to produce the fuel. Three years is inadequate to ensure against potential market disruptions. Technology and maintenance improvements at refineries have steadily progressed and refiners are able to operate for about 5 years before a turnaround is required. Refinery turnaround is most efficient time to make the changes that will be required for Tier 3. EPA's 3 year lead time means that normal refinery maintenance schedules will likely be disrupted to make the necessary changes for Tier 3 – potentially impacting gasoline supply and increasing the costs to make the Tier 3 changes.

EPA claims to have offered "flexibilities" in the proposed rule that purportedly reduce the burden of compliance. Small refinery exemptions are of limited utility if a pipeline company does not accept gasoline exceeding the standard; a situation that occurred in the Tier 2 introduction. The cost reduction benefits from averaging, banking and trading of credits in the Tier 3 rule are not comparable to Tier 2. The opportunity to generate



AMERICAN PETROLEUM INSTITUTE

credits is limited by a refinery's ability to significantly reduce sulfur levels with their existing equipment and configuration. Tier 2 sulfur credits remain in circulation. To determine the extent that an ABT program provides a benefit, EPA should publish aggregate, (non-company or region specific) data on remaining Tier 2 credit balances. With such a short lead-time, the opportunity to generate sufficient credits to cover both the Tier 2 requirements and bank credits for Tier 3 between now and January 1, 2017 will be limited. To the extent that a refinery is unable to secure any Tier 3 credits, they will have to be able to meet the proposed 10 ppm average sulfur standard starting in 2017.

API will be submitting more detailed comments in our written response, and am happy to answer any questions.