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EPA-HQ-OAR-2019-0136
U.S. Environmental Protection Agency
Office of Air and Radiation
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted via: www.regulations.gov

Re: **EPA-HQ-OAR-2019-0136**

Proposed Rule: Renewable Fuel Standard Program: Standards for 2020 and Biomass-based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes. 84 Fed. Reg. 36762 (July 29, 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 represent all segments of the industry. These companies are producers, refiners, suppliers, marketers, pipeline operators and marine transporters as well as service and supply companies that support all segments of the industry, and they provide most of our Nation's energy. As refiners and importers of transportation fuels, our member companies are obligated parties under the Renewable Fuel Standard (RFS) program. The RFS mandate is unworkable, and API leads an alliance of diverse interests calling on Congress to repeal or significantly reform the program. We appreciate the opportunity to comment on the proposed 2020 RFS and 2021 Biomass-based Diesel standards.

API's primary concern with the RFS is the ethanol blendwall. The majority of light-duty vehicles on the road today were not designed and warranted for ethanol blends above 10%, and there remain serious vehicle and infrastructure compatibility issues with 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 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 harm our economy. Congress provided EPA with waiver authority that should be used to reduce the RFS volumes and avoid the potential negative impacts on America's fuel supply and prevent harm to American consumers.

Costs of the RFS Program

From a societal perspective, the RFS becomes a costlier and increasingly problematic program when it is administered in a way that “forces” consumption of renewable fuels. The impacts of the market altering dynamics, induced by the RFS, especially when they occur at or above the ethanol blendwall, are analyzed in a research policy briefing by Professor Harry de Gorter¹, and submitted to the EPA docket. The analysis takes into consideration the nested structure of the RFS, linkages between gasoline and diesel fuel, and various ways that obligated parties can demonstrate compliance. Upon saturating the gasoline pool with E10 gasoline, additional RFS requirements are being met with biodiesel; de Gorter’s analysis finds that this step is costly. Specifically, as a result of the RFS, diesel fuel consumers are disproportionately and negatively impacted, and because diesel fuel is largely consumed by trucks and trains, increased costs of transportation can lead to higher prices for consumers. Combining RFS volumes with declining fuel demand projected by EIA, the policy paper finds that annual welfare costs could reach \$17 billion by 2022 and \$30 billion by 2027; these can be avoided by restructuring of the RFS.

Response to Remand of 2016 Rulemaking

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the rulemaking establishing 2014-2016 renewable fuel standards to EPA for further consideration. EPA proposes to maintain the 2016 volume requirements recognizing that revising the obligation at this time would be unduly burdensome and inappropriate. As EPA notes in the proposal, the D.C. Circuit directed that EPA balance the burden on obligated parties with the goals of the RFS program. The RFS is a forward-looking program and it is simply not possible to go back in time and induce additional demand for a prior year. EPA is well justified in taking this stance and API supports addressing the 2016 remand as EPA has proposed.

Some stakeholders have insisted that EPA increases the 2020 mandate by 500 million RINs to account for what the court deemed as a misuse of EPA’s general waiver authority for the 2016 compliance year. However, if EPA had finalized 2016 standards without invoking its general waiver authority, the agency would likely not have set the 2016 standard higher by a volume of 500 million gallons. EPA did not maximize the use of its cellulosic waiver authority on the advanced and total renewable fuel in setting the 2016 standard. EPA reduced the cellulosic volume by 4.02 billion RINs and reduced the advanced requirement by only 3.64 billion RINs. In balancing the burden on obligated parties with the goals of the program, EPA should therefore be evaluating the issue with 120 million RINs in mind, not 500 million RINs.

EPA should also consider that any volume increase attributed to the 2016 remand should apply to the total renewable volume category only. Some stakeholders at the public hearing on July 31st inappropriately advocated for addressing the court decision by allocating a volume increase across advanced and cellulosic categories; EPA should dismiss those comments.

¹ “The Social Costs and Burdens of Potential Future RFS Policies”. de Gorter, Harry. June, 2019.

Waiver Authority

- Cellulosic Waiver Authority

EPA proposes to use its cellulosic waiver authority to address the shortfalls in cellulosic biofuel availability. API supports EPA's use of the cellulosic waiver, and we support EPA's proposal to reduce the advanced biofuel standard and the total renewable fuel standard by the full amount of the cellulosic biofuel reduction.

- General Waiver Authority

EPA has waiver authority to further reduce the renewable fuel volume requirements below the levels proposed, and below the levels achieved by maximizing the use of EPA's cellulosic waiver authority. General waiver authority provided by Congress allows EPA to waive the standards "in whole or in part" based on a determination that "implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States."² This determination can be made based on the renewable fuel volumes statutorily set by Congress, which for 2019 are a total of 28 billion RINs of biofuels. EPA has recognized that the statutory volume requirements are unattainable, and API agrees. NERA Economic Consulting studied the impact of implementing the statutory volume requirements and found that the negative economic impact was severe.³ API continues to urge EPA to exercise its general waiver authority to reduce the volume requirements based on the severe economic harm rationale as we have articulated in detail to EPA, most recently in comments to the 2018 RVO rulemaking.⁴

Treatment of Carryover RINs

EPA should set volume standards that are achievable in the market and do not require obligated parties to use carryover RINs to demonstrate compliance. Carryover RINs provide flexibility for obligated parties to meet unforeseen events and facilitate market functionality, functions recognized by EPA in this proposal and in previous annual RFS rulemakings. API supports EPA's decision to not rely on carryover RINs in setting renewable volume standards for 2020. We remain concerned that high advanced biofuel standards could result in a drawdown of the RIN "bank" and recommend that EPA set standards that preserve the carryover RINs inventory by further reducing the advanced and total biofuel requirements.

Cellulosic Biofuel Volume for 2020

- EPA's Legal Obligations

EPA is required by statute to project the availability of cellulosic biofuel available in 2020. The D.C. Circuit clarified that EPA is obligated to take "neutral aim at accuracy" and reflect "on the success of earlier applications."⁵ In the proposed rule EPA states "As an initial matter, it is *useful* to review the accuracy of

² CAA §211(o)(7)(A)

³ NERA Economic Consulting, Economic Impacts Resulting from Implementation of the RFS2 Program (2012, 2015).

⁴ EPA-HQ-OAR-2017-0091-3645

⁵ *API v. EPA*, 706 F.3d 474, 746-477 (D.C. Cir. 2013).

EPA’s past cellulosic biofuel projections.” In fact, the D.C. Circuit made clear that reflecting on past projections is an *obligation* EPA must fulfill.

API supports using demonstrated actual production in establishing the mandate for the subsequent year. Some stakeholders are advocating for higher cellulosic standards to account for other issues, such as the 2016 remand, “E”RINs (i.e. RINs to represent renewable electricity use in transportation), or other factors. EPA should dismiss these suggestions and use demonstrated actual production and availability of cellulosic biofuel and cellulosic RINs in setting the next year’s mandate.

- Projected Production of Cellulosic Biofuels

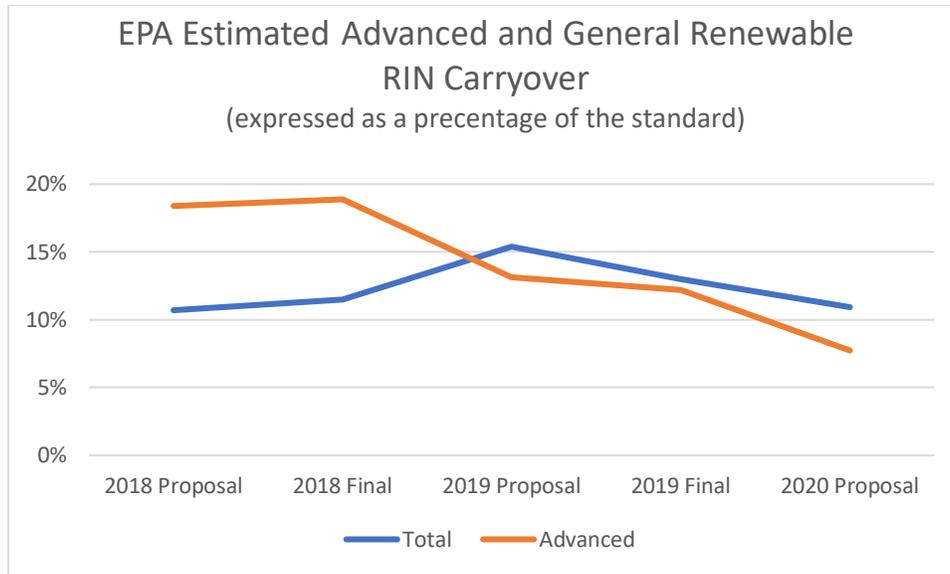
EPA is proposing a methodology similar to the methodology projecting cellulosic availability in 2019. EPA evaluated potential liquid cellulosic production on a facility-by-facility basis, and production of cellulosic biogas on an industry-wide basis. This methodology is appropriate in setting the 2020 standards due to the instability of liquid cellulosic production has experienced in the past several years as compared to the relative maturity of cellulosic biogas production technology. EPA should reevaluate this methodology annually as these and other cellulosic production technologies develop and mature.

Advanced Biofuels

API supports EPA’s proposal to maximize its application of the cellulosic waiver to the advanced biofuel category. Unfortunately, the cellulosic waiver authority does not go far enough in reducing the advanced biofuel requirement. The advanced biofuel requirement increased by 630 million RINs in 2019, and EPA proposes to further increase it by 120 million RINs in 2020 by increasing the cellulosic obligation.

Aggressive advanced standards increase reliance on costly biofuels (e.g., biodiesel, renewable diesel) and also result in drawdown of carryover RINs. At the time the 2018 standards were finalized, the carryover of advanced biofuel RINs was estimated by EPA at 810 million RINs, or approximately 19% of the advanced biofuel requirement.⁶ In the 2020 proposal, EPA now estimates this number at 390 million RINs or approximately 8% of the advanced biofuel requirement, less than half of the RIN carryover into 2018 (see chart below). EPA should retain carryover RINs as a program buffer to manage unforeseen events, assess overall RFS program costs, and lower the advanced biofuel requirement.

⁶ “Carryover RIN Bank Calculations for 2018 Final Rule,” Docket ID: EPA-HQ-OAR-2017-0091-4989

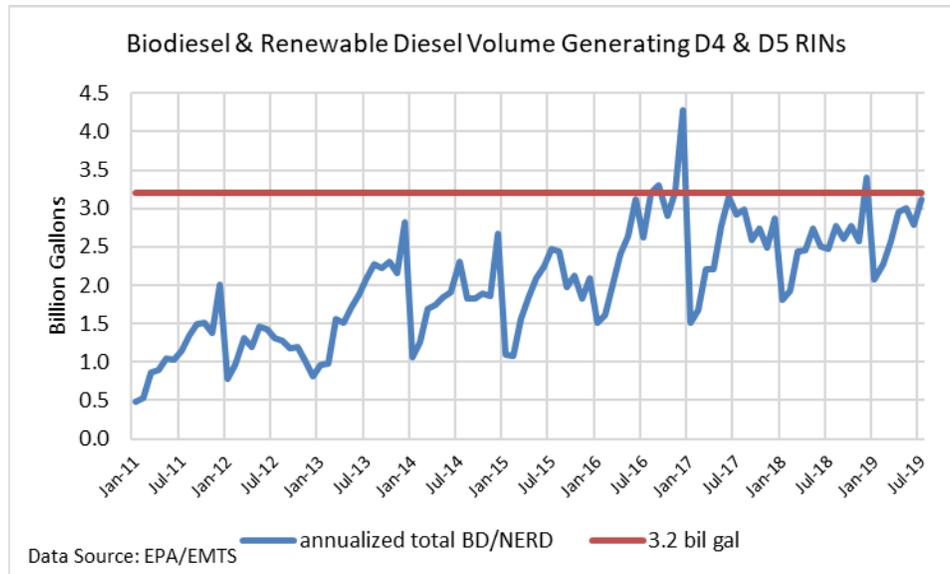


The total advanced renewable fuel volume needs to be reduced to avoid potentially dramatic consequences in the biodiesel and renewable diesel feedstock market. The proposal for the 2020 RFS determines that 3.2 billion gallons of biodiesel and renewable diesel (both conventional and advanced) could be required to achieve compliance with the total renewable fuel volume of 20.04 billion RINs. This would require a relatively large increase from 2018’s 2.44 billion gallons. EPA previously received to the docket an analysis⁷ of RFS biodiesel and renewable diesel volumes and potential impacts to the U.S. vegetable oil market. This analysis discussed the potential negative impacts of increasing RFS volumes for biodiesel and renewable diesel to a range requiring 3 to 4 billion gallons, which encompasses the 2020 RFS proposal.

Achieving 3.2 billion gallons of biodiesel and renewable diesel would require a year-long sustained level of production that has only been achieved sporadically in the past. The chart below illustrates annualized production of D4 and D5 RIN generating biodiesel and renewable diesel. With exception for brief periods in 2016 (when the prospectively enacted biodiesel tax credit was set to expire) and December 2018, volumetric production of biodiesel and renewable diesel has fallen short of the sustained level required to reach annual production of 3.2 billion gallons.

It is concerning that setting RFS standards relying on up to 3.2 billion gallons of biodiesel and/or renewable diesel represents a national average blend percentage that exceeds broadly acceptable levels. Based upon EPA’s volumetric projections for 2020, 3.2 billion gallons biodiesel and/or renewable diesel equate to a national average blend of 6 percent of diesel demand, when manufacturers of many diesel vehicles and equipment do not recommend using a diesel fuel blend with more than 5% biodiesel.

⁷ “Analysis of Potential RFS Volumes for Biodiesel,” Advanced Economic Solutions, August, 2017.



Production capacity and utilization could be pushed to extreme limits to achieve 3.2 billion gallons.

Production capacity: EPA points out that capacity is not a limiting factor, but growth in production capacity has not kept pace with increased BBD demanded by the RFS.

- Domestic biodiesel production capacity, as reported by EIA, has increased more slowly than RFS blending requirements. For example, annual biodiesel production capacity during 2009-2011 was relatively stable at 2 billion gallons. Current production capacity⁸ is reported at 2.5 billion gallons, an increase of 25%.
- EPA reports⁹ total capacity for U.S. facilities registered to generate biodiesel and renewable diesel RINs at 4.2 billion gallons in 2018 and facilities actually generating RINs had production capacity of 2.9 billion gallons. Registered capacity of 4.2 billion gallons in 2018 matches peak capacity EPA reported for 2016.

Capacity utilization: Increasing biodiesel volumes required to meet the RFS will depend on bringing idled production capacity on-line. Presuming the most economic gallons are produced first, idled capacity represents the costlier gallons that can be produced. This marginal price increase can affect the broader domestic biodiesel price, which ultimately increases costs for consumers. Based upon 4.2 billion gallons of production capacity, reaching 3.2 billion gallons would require an average utilization rate of 76%. This level of capacity utilization has not been achieved. During the last year that the biodiesel tax credit was enacted prospectively, capacity utilization averaged 64%, which helped push D4 and D5 RIN values approximately 40 to 60 cents higher than current values.

A review of feedstocks for biodiesel and renewable diesel illustrate potential constraints or unintended consequences that exist in achieving production of 3.2 billion gallon of conventional and advanced

⁸ <https://www.eia.gov/biofuels/biodiesel/production/>

⁹ David Korotney, U.S. EPA, Office of Transportation and Air Quality, "Market impacts of biofuels in 2020", July 3, 2019.

biodiesel and renewable diesel. On average 7.3 pounds¹⁰ of plant oil or animal fat/by-product is required for production of 1 gallon of biofuel. An increase of 760 million gallons, compared to 2018, would require an increase of approximately 5.6 billion pounds of feedstock. Historically, major sources of feedstock included: corn oil, canola oil, animal fats/by product, and soybean oil.

Corn oil: production began to increase dramatically around 2011¹¹ as some ethanol plants installed corn oil extraction capacity. However, extracted corn oil accounts for a small fraction of the corn kernel and is derived as a by-product from the ethanol production process. Monthly data reported by USDA indicates that corn oil production has been in a general downward trend since peaking in 2017.

Canola oil: Although oil content of canola is larger than soybeans or corn, domestic supplies of canola oil are relatively small. Planted area of approximately 2 million acres is concentrated in the Northern tier of North Dakota and Montana. In recent years, 25% to 30% of canola oil supplies were imported. Canola oil usage for biodiesel production appears to have reached a peak in 2017 and the growth rate in canola oil supplies has slowed down since 2016.

Animal fats: During 2016 to 2018, an average of 10.5 billion pounds of animal fats and grease were produced and an average of 1.2 billion pounds were used in domestic biodiesel production. However, rendered products have multiple high value end use demands other than biofuels. The supply of rendered products is likely not very responsive to price because animal fats and by-products have relatively low value compared to the entire animal. An increase in demand from the biofuel sector could likely have negative impacts on other sectors that rely upon animal fats and by-products as production inputs or ingredients.

Soybean oil: Historically, soybean oil has been the single largest feedstock used for producing biodiesel in the U.S. Since inception of the RFS, production of soybean oil has increased approximately 30% to around 24 billion pounds. Soybean oil utilized for biodiesel production has tripled, to more than 8 billion pounds, but soybean oil for non-biodiesel consumption has remained relatively firm at more than 14 billion pounds. Additional demand pull on soybean oil for biodiesel could require diversion from non-fuel (i.e. food) uses. The oil content of soybeans is relatively low and the value it contributes to soybean crushing has been declining in recent years. This presents a potential limitation to large increases in domestic supplies of soybean oil.

In summary, the domestic feedstocks needed to reach 3.2 billion gallons of biodiesel or renewable diesel production may be limited by a variety of practical or economic constraints. This raises concern that the RFS standards proposed for 2020 are too high.

Total Renewable Fuels

EPA should structure the volume requirements to acknowledge the limitations of the ethanol blendwall. The implied conventional biofuel volume should not exceed the amount of ethanol expected to be supplied as E10 plus realistic estimates of ethanol demand from E15 and E85. EIA data show that E85

¹⁰ Calculation based on feedstock input and biodiesel production reported at: www.eia.gov/biofuels/biodiesel/production/.

¹¹ <http://www.ethanolproducer.com/articles/9755/corn-oil-makes-the-grade>

demand is only about one-tenth of one percent of gasoline demand,¹² and EPA mentions that E15 is available at only about 1,300 stations nationwide.¹³ Furthermore, there is consumer demand for E0 (e.g. boaters, motorcyclists, small-equipment, historic-vehicle owners and consumers who simply prefer to purchase E0 for their modern cars, sport utility vehicles and trucks) which EPA should take into account when setting the conventional volumes.

Biomass-based Diesel Volume for 2021

EPA should set reasonable 2021 biomass-based diesel standards. Not only is an increase in the standard not needed, but EPA should consider that a lower standard may be appropriate. In its consideration, EPA should focus on domestic production, realistic utilization rates, and existing supply uncertainties that include countervailing duties and the blenders tax credit.

EPA should also consider that the BBD renewable fuel category is nested within the advanced renewable fuel category and how sub-category specification has the effect limiting or constraining the volume of production or investments in other advanced renewable fuels without changing the total number or RINs required. A review of historical biodiesel statistical and EMTS data reveals that, since inception of the RFS, D4 RIN generation and retirements to demonstrate compliance have exceeded annual BBD RFS requirements. Because of the ethanol blendwall, and its associated constraints, actual BBD volumes blended are likely driven by other parameters of the RFS, which EPA¹⁴ has previously acknowledged and further re-affirms in the current proposed rule.

The biodiesel tax credit is currently not available for 2020 or 2021 and tariffs remain on imports of biodiesel from Argentina and Indonesia. Since 2013, the U.S. has been a net importer¹⁵ of biodiesel and on average of nearly 30% of D4 and D5 RINs originated from non-domestic sources, since 2013. These are significant factors that put upward pressure on costs in supplying biodiesel for blending to meet RFS requirements.

The proposal to increase BBD to 2.43 billion gallons, finalized for 2020 and proposed for 2021, is contrary to EPA's stated desire of maintaining opportunities for other advanced biofuels¹⁶, reducing costs, and maintaining flexibility. This desired flexibility will be limited by EPA's proposal to unnecessarily specify a BBD standard that exceeds statutory minimums. Furthermore, reducing the BBD volume is not inconsistent with statutory specifications that call for increasing volumes of cellulosic, advanced, and total renewable fuel categories.

¹² U.S. Department of Energy, Energy Information Administration. Petroleum & Other Liquids Data: U.S. Refinery and Blender Production of Motor Gasoline, Finished, Conventional, Greater Than Ed55; U.S. Renewable Fuel & Oxygenate Plant Net Production of Finished Gasoline; U.S. Refinery and Blender Net Production of Finished Motor Gasoline; U.S. Product Supplied of Finished Motor Gasoline.

¹³ "E15 Station Count 2-3-19" EPA-HQ-OAR-2019-0136-0031

¹⁴ Draft Statutory Factors Assessment for the 2020 Biomass Based Diesel (BBD) Applicable Volume". U.S. EPA, Office of Transportation and Air Quality memorandum to EPA Air Docket EPA-HQ-OAR-2018-0167

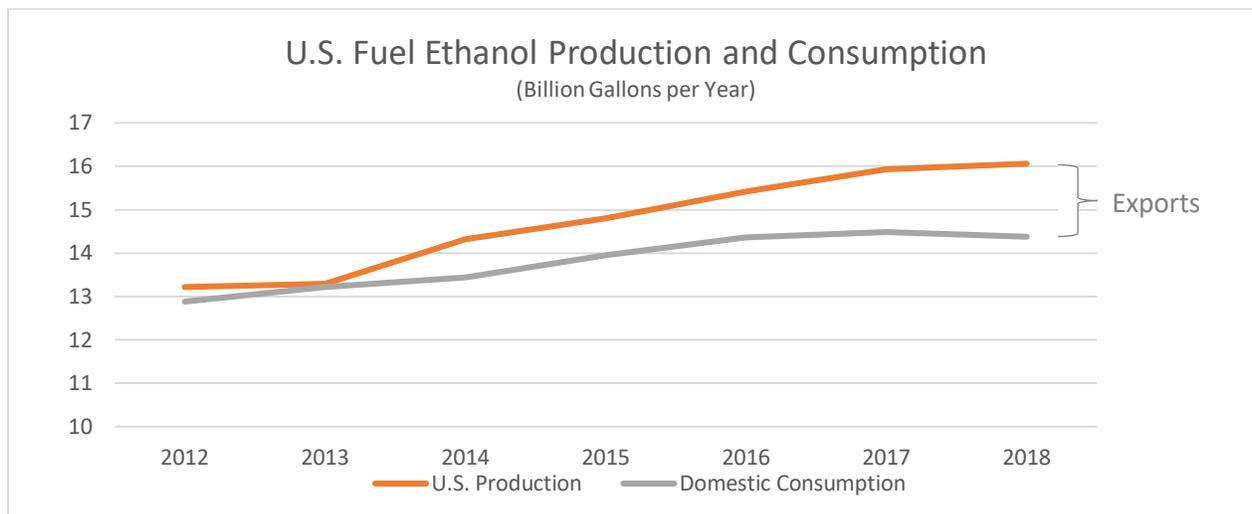
¹⁵ https://www.eia.gov/totalenergy/data/monthly/pdf/sec10_8.pdf

¹⁶ Federal Register /Vol. 84, No. 145 pg. 36765

Small Refinery Exemptions

The RFS is a burden on all refiners, regardless of size, with costs that ultimately impact consumers. EPA should reject calls to reallocate volumes from exempted small refineries onto other obligated parties. Reallocating small refinery obligations punishes complying parties and creates an unlevel playing field among competing refineries putting additional pressure on the blendwall and increasing the overall cost of the program. Several biofuel advocates asked EPA at the July 30 Public Hearing to increase the 2020 volume requirements as a way to reallocate biofuel volumes exempted for small refineries from prior years. Such requests are outside EPA's scope of authority and EPA should disregard them.

Biofuel advocates supporting the reallocation of small refinery exemptions have claimed that ethanol producers have been directly harmed by small refinery exemptions. EIA data show a different story, demonstrating that ethanol production continues to increase.¹⁷ Ethanol demand is limited by the ethanol blendwall and will be subject to market conditions that affect gasoline demand. U.S ethanol is competitive on the world market, and ethanol production growth opportunities remain as the export market continues to expand per figure below.



Amendments to the RFS Program Regulations

- Diesel RVO

EPA requests comments on potential regulatory changes to clarify situation(s) when an RFS obligation is incurred from non-transportation distillate fuels that are later re-designated for transportation use; EPA suggests three options. API supports the first option that enables downstream parties registered as refiners to re-designate Non-Transportation Distillate Fuel (NTDF) as transportation fuel and incur an RFS obligation. This option provides the flexibility to comingle similar products in the distribution system while maintaining a clear and accurate obligation under the RFS program.

¹⁷ Monthly Energy Review, EIA. July 29, 2019 Table 10.3

API requests that EPA clarify whether the running balances are to be completed at an entity level or facility level. Under some existing fuels programs EPA gives the regulated party the option of selecting an appropriate approach (i.e., entity or facility level), provided that the approach selected is consistent in future compliance years; API suggests a similar approach here. API requests that EPA clarify how inventory changes will be managed along with running balances; API suggests that inventory changes be determined at the beginning and end of a compliance period since compliance is managed on an annual basis.

API requests that EPA provide some guidance on completing the running balances and the type of documentation that will be necessary. For example, the documentation should show opening obligated fuel (e.g., diesel) inventory, obligated fuel (e.g., diesel) shipment volumes in and shipment volumes out, the ending obligated fuel (e.g., diesel) inventory, and calculations of RVOs if obligated fuel (e.g., ULSD) exceeds non-obligated fuel (e.g., heating oil, jet, ECA marine fuel). EPA should use the existing heating oil balance approach found in 40 CFR 80.599(c)(3) and (4) and rewrite the balances for obligated fuel (e.g. diesel).

API further requests clarification concerning the redesignation reporting requirements and refiner/importer reporting requirements. Given the difficulty that refiners would have tracking distillate fuel volumes downstream, it would add unneeded complexity and an administrative burden for refiners to report any diesel, distillate, and NTDf production/import volume and distillate redesignations made by downstream parties. API believes that downstream parties that redesignate distillate fuels should be registered as a refiner and report only when their obligated fuel balance for the compliance period is positive.

The other two options suggested by EPA would be unworkable. They would impose a requirement for parties in the distribution system to not only keep track of fuels they sell, but also to collect information and keep records of the ultimate use of distillate fuels. There may be several parties taking title to a product before it is ultimately delivered for consumption. And when fuels are moved through common carrier pipelines, and through terminal hubs, large batches of fuel may be divided into smaller batches, and later comingled with similar fuel from other refiners with no means of tracking each specific gallon. Requiring a reversal of the current information flow along the supply chain would not be possible. For these reasons, the second and third approaches suggested by EPA are infeasible and should not be considered.

EPA should provide an appropriate amount of time to implement any regulatory changes. Refiners, pipelines, and terminals will need to update product codes and the software systems companies use to track products and compliance obligations. We recommend EPA implement any changes in this section on January 1, 2021.

EPA requests comment on whether similar changes should be considered for gasoline. API supports regulatory flexibility that would enable the comingling of domestic and export gasolines and we encourage EPA to consider similar changes for the gasoline market, but not as part of this rulemaking. There are additional issues for EPA to consider and we recommend re-proposing after EPA has had the opportunity to work with industry stakeholders to ensure a revised regulation is workable. One challenge to consider is the sulfur and benzene credits with gasoline.

Pathway Petition Conditions

API supports EPA's proposal to clarify its authority to enforce conditions included in the pathway petitions which the Agency has approved. EPA approval of pathway petitions submitted by biofuel producers enable these entities to generate valid RINs. Producers commit to meeting the conditions of the pathway petition and a failure to fulfill those obligations should disqualify that producer from generating valid RINs.

Esterification Pathway

API supports the valid RIN generation from biofuels providing GHG benefits that correspond to the type of RIN generated.

While we support the proposed qualification of the esterification pathways for D4 and D5 RIN generation, we recommend the use of more representative data for these pathways. A 2018 paper by Chen et al.¹⁸ cited an NBB 2016 survey to illustrate the inventory for biodiesel production (for both low and high FFA cases). Without knowing EPA's rationale of using the 2008 data, we recommend using the 2016 NBB survey, which has a higher response rate (44% vs 37%) compared with the 2008 NBB survey. Thus, the GHG emissions and the qualification for D4 and D5 RIN generation of these esterification pathways may need to be tested with the 2016 NBB survey. We also noted that the maximum values observed in the NBB survey were used instead of the average values of electricity and natural gas inputs. It is typical to use industry average representative values in lifecycle analysis (LCA). Again, EPA's rationale of using the maximum values is not clear. Similarly, the approach to aggregate all acid inputs is not appropriate. EPA can apply a cut-off criterion to exclude certain acid inputs. It is not indicated that aggregated acid input is represented by which single acid in the LCA model, as upstream production GHG burden will be different. And the proxy of soy oil extraction energy consumption for rendering needs to be tested, as recent research suggested that rendering requires higher energy consumption than oil extraction.¹⁸ Regarding Table 1 in 80.1426, further clarity of the feedstock column may be required, e.g., addition of "FFA produced from the listed feedstocks."

Clarification of Renewable Fuel Exporter

API supports permitting parties involved in a transaction that results in the export of renewable fuels the flexibility to contractually assign the associated RIN obligation. However, EPA's proposed definition potentially makes sellers liable for RIN obligations assigned to buyers that ultimately fail to meet their obligations. EPA should clearly identify that the exporter of record is the default obligated party – unless otherwise agreed to by contract. When the RIN obligation for an exported biofuel is contractually assigned to a party, and that party fails to retire RINs as appropriate, the counterparty should not be held liable for of the RIN obligation. In transactions involving blended renewable fuels, a notification by the seller that the fuel may contain biofuels (via the PTD, invoice, or other communication) should be sufficient in demonstrating an affirmative defense against enforcement actions relating to unretired RIN obligations for exported renewable fuels.

¹⁸ Chen et al., (2018) <https://www.sciencedirect.com/science/article/pii/S0960852417321648>

API recommends the definition of renewable fuel exporter read as follows:

Exporter of renewable fuel means the exporter of record, unless contractually assigned to another party in a transaction, of renewable fuel being transferred from a covered location to a destination outside of the covered locations.

Renewables Enhancement and Growth Support (REGS) Rule

API supports our 2017 comments to the REGS Rule that were submitted jointly with the American Fuel & Petrochemical Manufacturers Association in 2017 that can be found in the Docket at EPA-HQ-OAR-2016-0041-0244.

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. Three key assumptions made in 2007 when the Energy Independence and Security Act (EISA) was enacted have since proven to be inaccurate. 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, because 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 the Department of Energy's Energy Information Administration (EIA), the RFS "played only a small part in reducing projected net import dependence."¹⁹

It is ultimately up to Congress to repeal or reform the RFS. Meanwhile, API seeks regulatory solutions that: are based on sound science; are achievable for regulated parties; are cost effective for the consumer; and, maintain a level playing field in the market. We urge EPA to use its waiver authority to establish annual volumes consistent with the blendwall, recognizing consumer demand for E0 and the vehicle and infrastructure constraints that limit the sale of E15 and E85.

API and our member companies appreciate your attention to these issues. If you have any questions or concerns, please contact me at (202) 682-8167.

Sincerely,



Frank J. Macchiarola
Vice President
Downstream & Industry Operations

¹⁹ Howard Gruenspecht, Deputy Administrator, Energy Information Administration Before the Committee on Environment and Public Works. February 24, 2016