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U.S. Environmental Protection Agency
Office of Air and Radiation
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted via: www.regulations.gov


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 Gorter\(^1\), 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 31\(^{st}\) inappropriately advocated for addressing the court decision by allocating a volume increase across advanced and cellulosic categories; EPA should dismiss those comments.

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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

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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).
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 analysis\(^7\) 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.

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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. 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.

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

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

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