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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 620 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 continues to call on Congress to repeal or significantly reform the program.

The burden of the Renewable Fuel Standard (RFS) program impacts the entire refining sector with costs that are ultimately borne by consumers. API recommends that EPA establish RFS standards that are consistent with consumption capabilities of the fuels marketplace. When the RFS volume standards exceed the limits of the fuel distribution system and the vehicle fleet, significant market disruptions could occur, and the overall cost of the program increases. The economic impact of high-volume standards is potentially felt across the marketplace.

API’s primary concern with the RFS is the ethanol blendwall. Nearly seventy percent of light-duty vehicles on the road today were not designed and warranted for ethanol blends above 10%, and there remain serious infrastructure compatibility issues with blends above 10%. The increases in gasoline demand that
gasoline and diesel fuel they supply to the market. EPA’s own analysis in denying petitions to change the RFS point of obligation comes to the same conclusion.\(^4\) We urge EPA to maintain a level playing field when considering small refinery exemption petitions. Our belief, which is consistent with EPA’s own analysis in point of obligation debate, is that it is not possible to demonstrate that the economic harms caused by the RFS are disproportionate to specific entities.

In summary, the EPA lacks justification to continue granting large numbers of SREs and should discontinue this practice.

**API opposes EPA’s proposal to reallocate SRE volumes in the 2020 RFS Program.**

The reallocation of exempted small refinery volumes to other refiners is an additional market distortion that exacerbates this unlevel playing field and punishes non-exempt refiners that are already facing challenging RFS requirements. In addition, reallocation puts unnecessary pressure on the blendwall and increases the overall societal cost of the program.

The Supplemental Proposal would radically change EPA’s approach to setting annual Renewable Volume Obligations (“RVOs”) by reallocating the obligations of exempt small refineries to other obligated parties. This drastic shift in course would be both contrary to the statute and arbitrary and capricious for several reasons, as summarized below and explained in the enclosed appendix.

**First,** the Clean Air Act does not permit reallocation. The Act contains several provisions regarding small refinery exemptions, and authorizes only a single pertinent adjustment to the annual RVO: a reduction “to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt.”\(^5\) These provisions demonstrate that Congress knew how to grant EPA authority to alter the RVOs, and how to allow for changes to the RFS program in light of small refinery exemptions. The absence of express authorization to reallocate volumes as a result of those exemptions thus indicates that EPA lacks such authority.

**Second,** the Supplemental Proposal arbitrarily departs from EPA’s longstanding position on this issue. EPA’s explanation for the proposed change is threadbare and factually inaccurate. For example, EPA argues that, for the first time, small refinery exempt volumes constitute a significant portion of the transportation fuel supply. But in 2011 and 2012, EPA extended small refinery exemptions to 24 small refineries, a number not exceeded until 2017, yet repeatedly confirmed that reallocation was not appropriate. EPA does not address that history in its proposal, nor does it provide any other adequate rationale for a change in course.

**Third,** reallocating waived volumes would be unlawful because the Supplemental Proposal’s approach is based on an unstable and unpredictable EPA policy regarding small refinery exemptions. EPA proposes to reallocate volumes in *future* years based on how it believes its *current* small refinery exemption policy would have applied in *past* years. Perhaps such an approach could be defensible if EPA’s small refinery exemption policy remained consistent, but EPA has repeatedly shifted course in recent years.

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\(^4\) Assessment and Standards Division Office of Transportation and Air Quality U.S. Environmental Protection Agency, Denial of Petitions for Rulemaking to Change the RFS Point of Obligation. EPA-420-R-17-008. November 2017.

appropriate fuel choices. It is critical that EPA at least maintain the stringency of the current minimal labeling requirements. It is also critical that EPA should enforce the requirements in both the Misfueling Mitigation Rule (MMR) and the rule extending the 1-psi vapor pressure waiver to E15. The labeling requirements provided in the MMR give the consumer important information about the ethanol content and appropriate use of the product. API supports more robust labeling to protect consumers, as we noted in our comments to that rulemaking proposal in 2011.15

The recommendation to maintain the current labeling requirements is emphasized by the potential growth in E15 to new retail markets enabled by the inappropriate extension of the 1 psi vapor pressure waiver beyond E10. The retail blending of E15 presents several compliance concerns, including: use of uncertified components; variable ethanol content contributing to an inconsistent product offering; and incorrect utilization of the deemed to comply provisions in 40 CFR 80.28(g), which should receive more scrutiny from the EPA.

Choosing to “streamline labeling and remove other barriers to the sale of E15” and failing to enforce current rules would have negative consequences for consumers. EPA should not conduct a separate rulemaking to revise E15 pump labels or make other changes that would result in providing less information to consumers about E15 or that would risk causing vehicle damage due to misfueling with E15.

Conclusion.

API opposes EPA policy that grants a large number of small refinery exemptions, and we strongly oppose the proposal to reallocate exempted volumes as described in the supplemental notice. EPA should not include the proposed changes from the supplemental notice when finalizing the 2020 RFS volume standards. Instead, EPA should finalize the 2020 RFS Rule based on their historical procedures and the July 29, 2019 NPRM.

The supplemental notice is a clear demonstration of a failed process and a broken program. EPA is following a flawed directive to “ensure that more than 15 billion gallons of conventional ethanol be blended into the nation’s fuel supply beginning in 2020.”16 The RFS program does not have a mechanism to accomplish this goal, and any additional pressure on the blendwall is more likely to result in additional biodiesel use or a drawdown of carryover RINs.

Regulatory certainty is important to our industry and to the effective governance of this program. The procedural failures that have plagued the RFS since its inception have only been made worse by the supplemental notice. Acknowledging that it is not possible for EPA to consider public comments received on November 29 and publish a Final Rule by November 30, 2019, we urge EPA to expeditiously finalize this rulemaking before the compliance period begins on January 1, 2020.

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. EPA should cease granting large numbers of SREs, and only

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15 EPA-HQ-OAR-2010-0448-0081