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Air and Radiation Docket and Information Center
Environmental Protection Agency
Mailcode 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Re: **Docket ID No. EPA-HQ-OAR-2012-0546**
The U.S. Environmental Protection Agency's Proposed Rule on Regulation of Fuel and Fuel Additives: 2013 Renewable Fuel Standards

API is a national trade association representing more than 500 member companies involved in all aspects of the oil and natural gas industry. API's members include the obligated parties under the Renewable Fuel Standard – refiners and importers of fuel – who will be adversely affected by EPA's proposed 2013 RFS. Our members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers. Since 2000, they have invested over \$2 trillion in capital projects in the U.S. to advance all forms of energy, including alternatives. API appreciates the opportunity to comment on the proposed rulemaking for the 2013 Renewable Fuels Standard (RFS). The RFS mandate is unworkable, and API has joined a chorus of diverse interests calling on Congress to repeal it.

Economic Impacts of the Ethanol Blendwall

Our member companies' primary concern with the RFS is the E10 blendwall. Exceeding the 10% blendwall is problematic, could result in significant fuel supply disruptions in the United States, and could severely impact the U.S. economy if the RFS requirements remain in place.

There is insignificant cellulosic biofuel production to-date and serious issues with vehicle and fuel retail infrastructure compatibility/manufacture warranties with gasoline blends above 10% ethanol (E10 blendwall.) Each year, however, EPA has elected not to fully explore the tools and flexibility provided by the Energy Independence and Security Act of 2007 (EISA07). Instead, the Agency continues to apply aspirational criteria in setting the annual volumetric targets, including the 2013 standards.

EPA focuses its attention in the proposal on the biofuel producers' ability to supply biofuels. But the RFS is not a mandate to produce biofuels; it is a mandate for producers and importers of gasoline and diesel to use biofuel credits (RINs) in proportion to the volumes of transportation fuels consumed in the U.S. Refiners and importers can only legally produce or

import as much gasoline and diesel fuel for U.S. consumption as they have RINs to satisfy the obligations that producing or importing such gasoline or diesel fuel incur. As the mandated biofuel volumes exceed the E10 vehicle and retail infrastructure compatibility limits, RINs will be in short supply and obligated parties will have limited options to comply with the RFS.

To comply with the ever increasing standard, supply of E0 has been minimized, and the supply of E10 maximized. To continue to remain in compliance means potentially maximizing the use of high renewable content fuels, such as E15 and E85. But there's a problem: consumers have rejected E85 in the marketplace, and our companies don't own the retail facilities that need to make the financial investments necessary to distribute the fuel. Gasoline blended with 15% ethanol (E15) exceeds the percentage(s) used in the design and certification of the overwhelming majority of the vehicles on the road and retail infrastructure today. E15 not only has infrastructure compatibility and long-term engine durability problems, but has more recently been shown to cause vehicle fuel system breakdowns. E85 and E15 are not viable solutions, as they are suitable only for flex-fuel vehicles and a small fraction of the newest vehicles that are designed and warranted to tolerate E15. EPA acted prematurely and improperly in approving E15, and the E15 partial waivers should be rescinded.

EPA continues to apply aspirational criteria to set the annual standards, and with this proposed rulemaking it effectively sets an ethanol standard over 10% of gasoline demand. API recently published a report prepared by NERA Economic Consulting titled "Economic Impacts Resulting from Implementation of RFS2 Program." The report, which API is entering into the administrative record as a supplement to these comments, examines the potential compliance options available to obligated parties. NERA concludes that implementation of the RFS program will soon force U.S. energy markets into a devastating "death spiral," in which obligated parties are compelled to reduce domestic supply of transportation fuels as a last resort in order to remain in compliance with ever-increasing RFS obligations. Ultimately, API believes that the RFS program is irretrievably broken and needs to be repealed by Congress. Unless and until Congress acts, EPA needs to use the "tools" available to prevent any negative impacts the ethanol blendwall will have on the domestic transportation market and the economy.

EPA has the authority (in consultation with the Department of Agriculture and the Department of Energy) to waive the RFS in whole or in part, based on a petition from a state, an obligated party, or EPA's own initiative. EPA can also waive requirements when domestic biofuel supplies are inadequate. The preamble to this rulemaking argues that the shortfall in advanced can be mitigated through the import of sugarcane ethanol from Brazil. This assertion is an admission that domestic supply is inadequate, and it also fails to recognize the E10 blend wall. In fact, EPA suggests that imports of at least 666 million gallons of sugarcane ethanol from Brazil would be required to satisfy the statutory volumes. This is an admission that there is insufficient domestic supply of advanced biofuels.

API recommends that EPA reduces the 2013 standards so that the total ethanol volume does not exceed 10% of EIA's estimate for 2013 U.S. gasoline demand.

Advanced Biofuel and Total Renewable Fuel

Separate from EPA's authority to waive the RFS standards where there is inadequate domestic supply or to avoid severe economic harm, Congress granted EPA the authority to reduce a corresponding amount from the advanced biofuel and total renewable fuel requirements when EPA reduces the cellulosic standard. Yet, EPA proposes not to reduce the advanced biofuel and total renewable fuel requirements in 2013. API has in the past expressed concerns and supported a reduction in advanced biofuel and total renewable fuel when the cellulosic waiver is exercised. We again advocate that EPA make a commensurate reduction in the total and advanced categories for the same reasons, but stress that this reduction is urgently needed in 2013 because of the blendwall.

EPA already established an ambitious biomass based diesel standard of 1.28 billion gallons in 2013, which API is litigating in court, and the Agency recognizes in the proposal that the requirement of 816 million gallons of advanced ethanol (at least 666 million gallons imported from Brazil) may not be available. If EPA does not reduce the advanced and total biofuel obligations, the effective ethanol blend rate required for ethanol would be approximately 10.94%.¹ The effective blend rate could be reduced to approximately 10.19% by exercising this authority.² It is imperative that EPA, at a minimum, use this "tool" to prevent disruptions to the domestic fuel supply and economy, as discussed below.

Moreover, increased imports of sugarcane ethanol from Brazil will likely have to be offset with exports of non-advanced biofuels or petroleum products from the U.S. to Brazil. As EPA recognizes, even in 2011 and 2010, with far lower advanced biofuel requirements, there was a significant two-way trade in ethanol between the U.S. and Brazil. A standard that results in transshipment of large quantities of biofuel between the United States and Brazil solely for the purpose of satisfying a discretionary regulatory requirement would result in significant GHG impacts, and so would undermine a basic purpose of the RFS program.

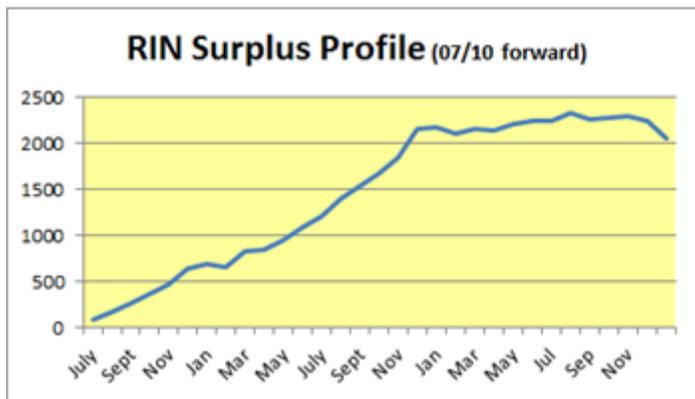
RIN Carryover

EPA estimates that 2.6 billion RINs were generated in 2012 that can be carried over for 2013 compliance. Based on some published estimates, and the chart below which uses EMTS data to January 2013, the EPA estimate appears inflated.³

¹ $16.55 - (1.5 \times 1.28) / 133.70 = 10.94\%$

² $15.55 - (1.5 \times 1.28) / 133.70 = 10.19\%$

³ NERA Economic Consulting, "Economic Impacts Resulting from Implementation of RFS2 Program", October, 2012.



EPA has the data to provide a definitive number of carryover RINs, and should quantify this number, or at a minimum a range, broken down by RIN type and type of owner (obligated or non-obligated party owned). EPA should use data available in EMTS. If EPA believes that the EMTS database is insufficient, the agency should clarify the basis for its RIN carryover estimate.

EPA states in the proposal that all RINs carried-over can be used for compliance, and therefore the RFS demand for physical gallons will be below the E10 saturation point.⁴ Use of the RIN carryover, however, is not solution to the problem, as obligated parties will be faced with even higher biofuel mandates the following years. We are concerned that EPA continues to underestimate the seriousness of the blendwall problem. EPA should not develop RFS standards based on the assumption that the RIN carryover provision will be utilized by the industry as a whole. Despite EPA’s dismissal of this serious issue, some obligated parties may be dependent on the secondary market for RINs and may not carry-over RINs. It is false to apply any amount of RIN carryover to obligated parties as a group.

The RIN carryover provision was built into the RFS for compliance flexibility. EPA has recognized the intent of the carryover flexibility was to enable companies to remain in compliance in years when circumstances such as drought or other biofuel supply shortage limit the availability of RINs.⁴ By building this RFS flexibility into the baseline for 2013 compliance, the Agency has effectively taken away this provision to be used for its intended purpose of compliance flexibility. EPA needs to assess the blendwall based on the current year standards, and the ability to produce and use biofuels in the given year, independently of any RIN inventory some companies may have chosen to hold.

Timely Standards

EPA was late issuing the 2012 standards, and the final version of this 2013 rule will likely be released mid-year. EPA’s habitual delays in promulgating the annual RFS standards are unacceptable, fundamentally unfair, and inexcusably illegitimate. Obligated parties need this information ahead of the compliance year – as the Clean Air Act clearly requires EPA to do – in order to make operational, logistics, and investment decisions. If EPA’s intransigence continues, API may seek judicial assistance in enforcing the deadlines that EPA fails to take

⁴ <http://www.epa.gov/otaq/renewablefuels/420r10003.pdf> p. 5-22

seriously. Furthermore, the uncertainties created by the ethanol blendwall in 2013 are enormous, and EPA is only adding to the uncertainty with retroactive rules. EPA needs to move as quickly as possible to finalize this rulemaking, and to propose first and finalize second the 2014 standards. Timely issuance of the 2014 rule may provide some flexibility in 2013.

The biomass-based diesel standard for 2013 is now final, but was also issued late. We should already have a final biomass-based diesel standard for 2014, but EPA neglected to include a proposal to date. EPA has also not responded to API's Petition for Reconsideration of the 2013 biomass-based diesel standard. EPA needs to propose a biomass-based diesel standard for 2014 as soon as possible. We urge EPA to adhere to the statutory deadlines and issue timely rules.

Cellulosic Biofuel

API supports EPA's use of the waiver mechanism to reduce the cellulosic biofuel standard below the statutory requirements. However, EPA's proposed projected available volume of 14 million gallons of cellulosic biofuel is aspirational, arbitrary, and out of touch with reality. EPA's reasoning in the proposed rule repeats the errors that caused the D.C. Circuit to vacate the 2012 cellulosic biofuel standard. The court's decision should have caused EPA to change its "self-fulfilling prophesy" approach and adopt a neutral methodology when setting future cellulosic biofuel mandates. EPA has a statutory duty to make an accurate projection of cellulosic biofuel volume. In establishing the cellulosic waiver provision, Congress recognized the volumes set forth in section 211(o)(2)(B)(i)(III) were optimistic, and Clean Air Act section 211(o)(7)(D)(i) required EPA to reduce the cellulosic mandate to "the projected volume available." Instead, EPA is unrealistically increasing the mandate for the fuel in 2013. This stealth tax on our industry is a clear example of bad public policy that only adds a cost to providing transportation fuels, with no environmental or energy security benefit. Even EIA has recognized its original, optimistic projection for cellulosic biofuel was significantly off-base, when it revised its (still aspirational) 2013 projection to 5 million gallons.

As the D.C. Circuit explained in invalidating the 2012 cellulosic biofuel standard, EPA must aim at accuracy and not tilt its cellulosic biofuel projection in favor of unrealistic expectations. The proposed 2013 standard continues EPA's practice of incorporating upside potential into its projected volume and discounting downside risk, which leaves obligated parties burdened by the failure of cellulosic biofuel producers to achieve their production goals.

As API has suggested in past rulemakings, EPA would fulfill its duty to issue an accurate projection by using demonstrated rates (continuous operation for at least three months) of existing annual capacity as of the required November 30 notice. This approach would provide a more realistic estimate than relying on the assertions of companies whose self-interest is to advertise lofty projections of their ability to produce cellulosic biofuel. History has shown that biofuel producer's projections for 2010, 2011, and 2012 have been drastically and consistently

overly optimistic. It is unreasonable to expect that the producers' projections will be more accurate in 2013.

The producers' projections and EPA's proposed cellulosic biofuel volume are especially dubious in light of the fact that no cellulosic biofuel commercially is available for the 2013 compliance year so far.⁵ Without any commercial cellulosic biofuel and a mandate based on reality, obligated parties are forced to purchase credits from EPA – through no fault of their own. The D.C. Circuit pointed out this mismatch of incentives and obligations in noting that EPA's approach boils down to saying: "Do a good job, cellulosic fuel producers. If you fail, we'll fine your customers."

In addition, EPA's tentative determination that the cellulosic biofuel industry has made significant advances is based on inadequate facts. EPA cites, for example, lower enzyme and catalyst costs, signed contracts to obtain feedstocks, and increased availability of project financing, but these facts, by themselves, do not demonstrate that substantial amounts of cellulosic biofuel will be produced in 2013. EPA's reasoning is analogous to arguing that construction companies have made progress in constructing the approaches and on-ramps to a bridge across a wide chasm, and therefore it is reasonable to expect that a significant amount of traffic will flow across the bridge this year. Indeed, many of the trends that EPA identifies pre-date 2013, yet cellulosic biofuel still has not been produced in substantial quantities.

EPA's projections as to specific facilities are also unsupported and overly optimistic. For example, EPA notes that INEOS Bio and KiOR facilities are structurally complete and expected to begin producing fuel in the first quarter of 2013. The first quarter has concluded, but EPA's EMTS data do not show any production from these or other facilities. EPA must reconsider its assumption of a straight-line ramp up period beginning in January 2013 for INEOS Bio if updated information reveals that EPA's assumption has not been borne out by events. Furthermore, EPA has erred in its predictions about INEOS Bio and KiOR facilities (and others) in the past. In the 2012 final rule, EPA projected that INEOS Bio and KiOR would both begin producing cellulosic biofuel in mid-2012. In light of past missed projections, EPA should take a more realistic view of the likely commencement of production and total 2013 production from these facilities and reduce its projections for the final rule.

In summary, API recommends that EPA exercise its authority and implement the following for the 2013 RFS standards:

- Reduce the Advanced and Total renewable fuel requirements so that the total ethanol volume does not exceed 10% of EIA's estimate for 2013 U.S. gasoline demand.
- At a minimum, exercise existing discretion to reduce the advanced biofuel and total renewable fuel requirements by the corresponding amount that the cellulosic mandate is reduced.

⁵ Per EMTS data accessed April 5, 2013 at <http://www.epa.gov/otaq/fuels/rfsdata/2013emts.htm>

- Reduce the cellulosic volume to a reasonable estimate based on three months of actual production. Based on practically zero production in 2012, the 2013 cellulosic RVO should be set at zero.
- Expeditiously issue the 2013 RVOs
- Expeditiously issue the proposal for the 2014 RFS standards.

API and our member companies appreciate the opportunity to comment on this proposed rule. If you have any questions or concerns, please contact me or Patrick Kelly at (202) 682-8192.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Greco" followed by a stylized monogram "RB".

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