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The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C.

RE: 2013 Renewable Fuel Standard for Cellulosic Biofuel
Docket No. EPA-HQ-OAR-2012-0546

Dear Administrator McCarthy:

The American Fuel & Petrochemical Manufacturers (“AFPM”)¹ is writing in support of the Environmental Protection Agency’s (“EPA” or the “Agency”) direct final rule entitled *Regulation of Fuels and Fuel Additives: 2013 Cellulosic Biofuel Standard* (“DFR”).² On October 10, 2013, AFPM filed a petition for reconsideration and a petition for partial waiver of the 2013 cellulosic standard. AFPM’s petition asked EPA to examine EMTS cellulosic biofuel production data and issue a waiver representing the difference between the promulgated 2013 cellulosic biofuel standard and the amount of cellulosic RINs available for compliance at the conclusion of the 2013.

The DFR amends the 2013 cellulosic standard to reflect actual production and avoids the problem caused by an inadequate domestic supply of cellulosic biofuel RINs. AFPM is pleased that the Agency granted its request to reduce the 2013 cellulosic volume to an amount equal to the cellulosic biofuel actually produced in 2013 (*i.e.*, 810,185 RINs). AFPM supports the revised cellulosic RFS for 2013 of 0.0005%. **This letter does not convey an adverse comment on the regulatory text adjusting the cellulosic biofuel standard.**

Although AFPM supports the adjusted cellulosic RFS, it respectfully disagrees with certain statements and methodologies used by the Agency in support of the revision. Specifically, it is inconsistent with the Clean Air Act and EPA guidance for the Agency to adjust RFS to account for small refinery exemptions granted *during* or *after* a compliance period. Nor is it appropriate for EPA to rely on EIA fuel consumption projections made after the start of a

¹ The American Fuel & Petrochemical Manufacturers is a national trade association representing virtually all U.S. refiners and petrochemical manufacturers. AFPM’s refinery members operate 122 U.S. refineries comprising approximately 98% of U.S. refining capacity. AFPM members are obligated parties under the RFS.

² EPA promulgated a revision of the 2013 Renewable Fuel Standards in a direct final rule at 79 *Federal Register* 25025 (May 2, 2014). The Agency also published a proposal at 79 *Federal Register* 25074 (May 2, 2014).



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compliance year. In this particular rule, the resulting cellulosic RFS did not materially differ due to these errors and therefore we are not submitting adverse comments. However, AFPM shares these concerns about EPA's statements and methodologies to allow the agency to give them due consideration going forward in the hope of avoiding disputes over the methodology and data in the future.

A. Consideration of Small Refiner Exemptions in Calculating the RFS

We are concerned that the Agency arrived at the correct cellulosic standard for 2013 (0.0005%) using an incorrect calculation. We explained the correct procedure in our petition for reconsideration.³ EPA should have used gasoline and diesel volumes in the denominator assuming no small refiner/refinery exemptions for 2013 because the exemptions were granted after the beginning of the compliance period (January 1, 2013). Instead, EPA removed 1.48 billion gallons in the denominator when calculating the new cellulosic standard for 2013, representing exemptions for three small refineries.⁴ Small refiner/refinery exemptions approved after the start of the compliance period must be excluded from the calculation of RFS percentages issued after the beginning of the compliance period.

In 2013, obligated parties had to estimate their RFS obligations because the final rule was issued after the start of the annual compliance period. The same is true for 2014.⁵ This regulatory uncertainty is exacerbated by a lack of information regarding how many small refiner/refinery exemptions EPA will grant and how the exemptions will affect the RFS percentages when issued. In this regard, the DFR announced for the first time on May 2, 2014, that EPA had granted three small refiner exemptions after the beginning of the 2013 compliance year and factored these into the 2013 cellulosic biofuel standard. The Agency acknowledges that this issue is the subject of pending litigation. Because EPA's revision to the 2013 cellulosic biofuel standard (*i.e.*, 0.0005%) is unaffected by these specific exemptions, AFPM is **not** submitting a negative comment on the DFR; however, AFPM continues to object to this methodology as contrary to the Agency's stated goal of ensuring regulatory certainty.⁶

³ EPA should have set GE_{2013} and DE_{2013} both equal to zero because there were no exemptions granted for 2013 as of January 1, 2013.

⁴ See Table IV.B.3-1, 79 *Federal Register* at 25029 (GE = 0.82 bg. DE = 0.66 bg.).

⁵ The 2014 RFS was proposed on November 29, 2013, and to date no final rule has been sent to the Office of Management and Budget for review under Executive Order 12866.

⁶ In the 2013 RFS final rule, EPA stated that "any requests for exemption that are approved after the release of today's final rulemaking will not affect the 2013 standards." 78 *Federal Register* at 49,825.



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B. Use of Revised EIA Data

The DFR uses revised EIA data from March 2014 to calculate the 2013 cellulosic biofuel standard. Given the small amount of cellulosic RINs, the use of the 2014 revised EIA data does not alter the calculation of the cellulosic RFS. For this reason, AFPM is **not** filing a negative comment on the DFR. EPA's use of revised EIA data provided after the start of a compliance year undermines regulatory certainty and injures obligated parties. EPA must implement a methodology that provides and maintains regulatory certainty prior to the beginning of the RFS compliance period. The best way to achieve this goal is for EPA to issue RFS rules in accordance with the prescribed statutory deadlines.

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We appreciate the agency's efforts and support the revised 2013 cellulosic RFS. Thank you for the opportunity to express our concerns about EPA's tardiness in promulgating RFS rules and its revision of data comprising the denominator of the RFS percentage calculations after the beginning of the compliance year. These issues undermine the regulatory certainty Congress intended under the Clean Air Act.

AFPM looks forward to working with the Agency to address these concerns.

Respectfully submitted,


Richard Moskowitz

c: Janet McCabe
Christopher Grundler