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Administrator Lisa Jackson
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Subject: Comments on EPA's proposed changes to the Renewable Fuel Standards rules for
2011 Docket EPA-HQ-OAR-2010-0133

Dear Administrator Jackson:

NPRA, the National Petrochemical and Refiners Association, is pleased to provide comments on the Agency's proposed changes to the Renewable Fuel Standards (RFS2) rules for 2011 (75 FR 42238; 7/20/10). NPRA's members comprise more than 450 companies, including virtually all U.S. refiners and petrochemical manufacturers. Our members supply consumers with a wide variety of products and services that are used daily in homes and businesses. These products include gasoline, diesel fuel, home heating oil, jet fuel, asphalt products, and the chemicals that serve as "building blocks" in making plastics, clothing, medicine and computers. Our members have spent the last three years implementing the RFS rules.

NPRA opposes the Agency's "Delayed RIN" generation proposal. EPA has no authority for retroactive rules. EPA should exercise its waiver authority under EISA section 203(e)(3)(E)(2) to reduce the biomass-based diesel volume standard in 2011 below 800 million gallons.

Additional discussion of the issues is in the attachment.

Sincerely,

A handwritten signature in black ink, appearing to read "G. M. Scott", is written over a light blue horizontal line.

Gregory M. Scott

Attachment

cc: Paul Machiele
Docket EPA-HQ-OAR-2010-0133

**COMMENTS OF
THE NATIONAL PETROCHEMICAL
& REFINERS ASSOCIATION
ON EPA’S PROPOSED CHANGES TO THE
RENEWABLE FUEL STANDARDS RULE FOR 2011**

(75 FR 42238; 7/20/10)

Docket ID No. EPA-HQ-OAR-2010-0133

A. “DELAYED RINS”

EPA proposes the generation of “Delayed RINs” for eligible fuels produced between July 1, 2010 and the date that the RFS2 rule is amended to include the eligible fuel. The Agency proposes that this would apply only to grain sorghum ethanol, pulpwood biodiesel, palm oil biodiesel, and canola oil biodiesel (75 FR 42262) provided EPA's lifecycle GHG analysis determines that these fuels meet the eligibility thresholds.

NPRA opposes this “Delayed RIN” generation proposal. This is clearly inappropriate. The Agency has no authority for retroactive rules. EPA cannot amend the RFS2 rules in the future to affect RINs generated on and after July 1, 2010 and before the effective date of the revised RFS2 rule. EPA’s rules must be effective in the future. For example, if the RFS2 rule is amended to permit canola oil biodiesel to generate biomass-based diesel RFS2 RINs, then that amendment would be effective in the future (e.g., 30 days after promulgation of the amended rule) and should have no impact on RFS2 RINs already generated and accepted in EMTS.

B. CELLULOSIC BIOFUEL

EIA will provide EPA with a projection for 2011 of cellulosic biofuel consumption by October 31, 2010. NPRA supports the use of this information for the Agency’s determination of the regulatory level in 2011.

EPA may also consider Production Outlook Reports that will be due on September 1, 2010. These may be informative, but may be difficult to evaluate by the end of November 2010.

However, the revised standard should be based primarily on a proven record of production rather than projections of production in 2011. This would argue for a volume standard at the lower end of their proposed range.

C. BIOMASS-BASED DIESEL

EPA proposes that the regulatory volume of biomass-based diesel in 2011 will be 0.8 billion gallons, EISA's level. The Agency believes that this can be supplied by the current 2.2 billion gallon U.S. biodiesel production capacity.

The question is projected consumption, given that the tax credit is not yet available for 2010 or any year after 2010. For example, on May 28, 2010, the U.S. House of Representatives passed a revised HR 4213, the "American Jobs and Closing Tax Loopholes Act of 2010." It is a large bill that, among many provisions, would amend the Internal Revenue Code to extend tax incentives for biodiesel and renewable diesel for one year (through the end of 2010); this includes the \$1.00 per gallon production tax credit for biodiesel, the small agri-biodiesel producer credit of 10 cents per gallon and the \$1.00 per gallon production tax credit for diesel fuel created from biomass (see sections 202 and 207). However, this version did not pass the Senate. The Senate approved HR 4213 on July 21, 2010, but it was a substitute (Senate Amendment 4425) that covered unemployment insurance and compensation. On July 22, the House approved this new version of HR 4213 and the President signed it (became Public Law No. 111-205). Therefore, the biodiesel and renewable diesel tax credits have not yet been extended. Even if a bill passes Congress, it may only extend tax benefits for biodiesel through the end of 2010 and leave the issue unresolved for 2011. Therefore, it is difficult to project biodiesel production and consumption for 2011 with this uncertainty over tax credits.

EIA publishes monthly biodiesel data (production, imports, exports, stock change, and consumption) in its "Monthly Energy Report (DOE/EIA-0035(2010/07))."¹ The July 2010 issue shows U.S. biodiesel consumption for 2009 was 315 million gallons (the tax credits were applicable in 2009). However, the statutory level was 500 million gallons in 2009, so there was not an adequate supply.

The statutory level for 2010 is 650 million gallons. Given the absence of a federal biodiesel tax credit for 2010 that was available in 2009, the supply of biomass-based diesel RINs generated in 2010 may be inadequate. $650 \text{ million gallons} / 12 \text{ months} = 54.17 \text{ million gallons/month}$. Monthly consumption so far in 2010 has been much lower. The EIA report cited above shows consumption at 8 million gallons in January 2010, 29 million gallons in February 2010, 13 million gallons in March 2010, and 25 million gallons in April 2010. The 4-month consumption estimate is only 74 million gallons. Therefore, consumption will have to increase substantially to meet a target of 650 million gallons in 2010. This is not likely given the absence of the federal tax credit for biodiesel.

¹ Available at http://www.eia.doe.gov/emeu/mer/pdf/pages/sec10_8.pdf

It is hard to expect domestic consumption of biodiesel to increase substantially in 2010 and again in 2011 given the uncertainty of these tax benefits.

EPA should reduce the regulatory level for biomass-based diesel (BBD) in 2011 because of this uncertainty. We believe that the uncertainty around the extension of the tax credit is creating a challenge for existing producers; however, the reinstatement of the tax credit may not magically fix the problem with biodiesel. We are concerned that adequate production may not be available in 2011. Given current market conditions which are unlikely to improve and current prices for BBD RINs, EPA should exercise its waiver authority under EISA section 203(e)(3)(E)(2) to reduce the BBD volume standard in 2011.

D. OTHER ADVANCED BIOFUEL AND TOTAL RENEWABLE FUELS

EISA's level for Advanced Biofuels in 2011 is 1.35 billion gallons. This is comprised of three parts: cellulosic biofuel (0.25 billion gallons), biomass-based diesel (0.8 billion gallons), and other. EPA proposes to reduce cellulosic biofuel to 6.5 – 22.5 million gallons, a significantly lower value than EISA's 250 million gallons. However, the Agency proposes no change to the statutory requirement for Advanced Biofuel or Total Renewable Fuel in 2011 (75 FR 42247). By proposing no change, EPA is requiring additional biomass-based diesel and/or Brazilian sugarcane ethanol to meet the residual Advanced Biofuel requirement. The Agency projects that there will be 60 million gallons of excess biodiesel production and 220 million gallons of imported sugarcane ethanol (75 FR 42247, 42249), and this will be more than enough to meet its projection of 125-144 million gallons of "other" Advanced Biofuel.

EPA should reduce Advanced Biofuels in 2011 by the same amount as the reduction for cellulosic biofuel. For example, if the Agency selects 6.5 million gallons for cellulosic biofuel in 2011 (a reduction of 243.5 million gallons: $250.0 - 6.5$), then Advanced Biofuel for 2011 should be reduced by 243.5 million gallons. Otherwise, this will pressure additional biodiesel (and there may not be enough, per the discussion above in section C) and imported sugarcane ethanol (which is handicapped by the import tariff).

In addition, if the Agency reduces Advanced Biofuel in 2011, EPA should reduce the total renewable fuel standard in 2011 by the same amount as the reduction for cellulosic biofuel. For example, if the Agency selects 6.5 million gallons for cellulosic biofuel in 2011 (a reduction of 243.5 million gallons: $250 - 6.5$), then the total renewable fuel standard for 2011 should be reduced by 243.5 million gallons. The implicit corn ethanol mandate in 2011 ($13.95 - 1.35 = 12.6$ billion gallons) should be maintained and not increased if the level for Advanced Biofuel is decreased.

E. AGGREGATE APPROACH TO RENEWABLE BIOMASS FOR FOREIGN COUNTRIES

NPRA supports EPA's proposed petition process for the aggregate compliance approach for foreign renewable fuel feedstocks. This extends the aggregate compliance approach for domestically-grown crops to foreign feedstocks.