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November 9, 2006

Mr. William Wehrum
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency (Mail Code: 6101A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Draft Renewable Fuel Standard Program
Docket ID No. EPA-HQ-OAR-2005-0161**

Dear Assistant Administrator Wehrum:

NPRA, the National Petrochemical & Refiners Association, appreciates the opportunity to submit the enclosed comments on the draft Renewable Fuel Standard program (71 FR 55552). NPRA is a national trade association with 450 members, including those who own or operate virtually all U.S. refining capacity, as well as most of the nation's petrochemical manufacturers with processes similar to those of refiners. Our members will be significantly affected by any changes in fuel specifications.

NPRA believes it is possible to enjoy reliable and affordable fuel supplies while maintaining and advancing the nation's environmental progress. However, this goal can only be achieved if the costs and benefits of new regulatory requirements are carefully weighed in the context of their impact on energy supplies. Continued failure to consider and balance supply implications with air quality impacts and fuel choices risks making the current transportation fuels market situation worse in the future.

NPRA supports EPA's proposed RFS program structure. The Agency understands the legislative provisions in section 1501 of the Energy Policy Act of 2005 and has proposed a reasonable framework for the RFS regulatory program.

NPRA appreciates the Agency's action in providing for "collective compliance" for RFS implementation in 2006. Given the circumstances surrounding the timing of EPACT's enactment, it was nearly impossible for EPA to promulgate fair, equitable, and easily enforceable RFS implementation rules. This fact, when compounded with the realization that substantially more volumes of renewables than required by the statute would be blended in 2006, fully justifies the collective compliance approach. NPRA, however, believes that this option is not justified under the current circumstances for 2007. It is our belief that EPA (and obligated

parties and other stakeholders) would be better served if the Agency devoted its efforts to finalizing the RFS implementation rules as soon as possible in early 2007. NPRA believes it is imperative that EPA issue these rules in a timely manner so that obligated parties: (1) fully understand their particular compliance responsibilities; (2) can make necessary adjustments to their production systems; and, (3) have the opportunity to participate as soon as possible in the important credit trading program. NPRA supports EPA's proposal that the new RFS program begin on the effective date for these new RFS rules, at least 60 days after the publication of the new rules in the Federal Register next year. NPRA believes that the 60-day period will afford obligated parties sufficient time to make their particular necessary adjustments for compliance. Further, it is our understanding that the new RFS rules not apply retroactively to gasoline produced in 2007 before the effective date of the new RFS rules. NPRA endorses this concept.

NPRA believes that the RFS credit trading program must be understandable, allow unambiguous enforcement, and promote adequate flexibility for refiners and gasoline importers. It is very important for RFS compliance for many obligated parties who seek an alternative to blending ethanol or biodiesel directly. NPRA supports EPA's proposed system of volume accounting, tracking and reporting of renewable fuels, beginning with the assignment of renewable identification numbers (RINs) at the point of production of renewable fuels when the batch of renewable fuel is moved out of the production or import facility.

NPRA supports the EPA preemption review process and expansion of the scope of this analysis in section 1541 of last year's energy bill. Clean Air Act section 211(c)(4)(C) was amended by the Energy Policy Act of 2005 to make it the joint responsibility of EPA and DOE to review motor fuel control choices by states and require that both agencies consider the regional supply implications of such requests. Before granting a waiver of federal preemption, the Administrator of EPA is required, after consultation with the Secretary of Energy and after notice and comment, to find that the fuel control choice will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. NPRA strongly supports this analysis of supply-side impacts.

New state biofuel mandates are not currently subject to the requirement that they be examined by EPA for their impact on fuel production and the fuel distribution system. NPRA believes that they should be. If there is no mechanism to assess the impact of these state mandates on fuel supply and distribution, NPRA believes that the Clean Air Act should be amended by Congress explicitly to preempt these programs.

EPA explains the merits of federal preemption in the preamble for the federal RFG and anti-dumping final rules, which includes the following statements:

The regulations proposed here will affect virtually all of the gasoline in the United States. As opposed to commodities that are produced and sold in the same area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution suggests that federal rules should preempt State action to avoid an inefficient patchwork of potentially conflicting regulations. 59 FR 7809.

To summarize NPRA's position on this matter, the federal preemption provisions in the Clean Air Act act to preserve a rational motor fuel supply by precluding states from unilateral adoption of unique specifications absent an EPA waiver. The Agency should also be required to grant a waiver for any new state biofuel regulation following consultation with the Secretary of Energy, with notice and comment requirements, and after making a finding that the fuel control choice will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. Otherwise, such programs should be preempted.

Sincerely,

A handwritten signature in black ink that reads "Bob Slaughter". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Attachment

c: Margo Oge (EPA, OTAQ)
Chet France (EPA, OTAQ)
Paul Machiele (EPA, OTAQ)
David Kortum (EPA, OTAQ)
David Korotney (EPA, OTAQ)
Docket ID No. EPA-HQ-OAR-2005-0161

**COMMENTS OF NPRA,
THE NATIONAL PETROCHEMICAL & REFINERS ASSOCIATION,
ON EPA'S PROPOSED
RENEWABLE FUEL STANDARD RULES (71 FR 55552)
Docket ID No. EPA-HQ-OAR-2005-0161**

BACKGROUND

We begin by summarizing some key elements of the RFS program as prescribed by the Energy Policy Act of 2005. Next, the comments will outline certain guiding principles – essential elements that would result in a fair, equitable, and easily enforceable regulatory program – that NPRA believes should be incorporated as the foundation for the final rulemaking. Finally, we conclude with detailed comments of a more technical nature that will highlight not only NPRA's concerns regarding specific components of EPA's proposal, but also offer specific recommendations that we believe will improve the final RFS rule.

1. The Energy Policy Act of 2005 (EPACT) has clearly defined many elements of the RFS program.

There are several key provisions in section 1501 of the Energy Policy Act of 2005 that EPA must incorporate as core elements of the RFS rule. They include the following:

1. RFS liability will include domestic refiners, gasoline importers, and gasoline blenders.
2. The RFS program will begin without seasonal restrictions. Seasonal restrictions can be added by EPA outside of California only after the first year of the RFS program if the Energy Information Administration (EIA) determines that there are excessive seasonal variations in the use of renewable fuels. If seasonal regulations are promulgated in the future, the two seasons will be as follows: 1) April through September, and 2) January through March and October through December.
3. The RFS regulations will not restrict geographic areas in which renewable fuels may be used and will not impose any per-gallon obligation for the use of renewable fuels.
4. A RFS credit deficit may be carried over to the following calendar year, but there cannot be a RFS deficit for two consecutive years; the liable party with a year-end deficit must be in full compliance at the end of the following year.

5. The applicable annual RFS percentage will be a single value for all refiners, gasoline importers, and gasoline blenders, and will be expressed as a percentage of gasoline sold or introduced into commerce in the United States.
6. Gasoline produced at U.S. refineries for export will not incur any RFS liability.
7. The RFS compliance period will be a calendar year.
8. Energy bill provision: “(C) DURATION OF CREDITS. – A credit generated under this paragraph shall be valid to show compliance for the 12 months as of the date of creation.” This clause stipulates that the RFS credit may be used for compliance in the year created or in the following year.
9. There will be a RFS credit trading program.
10. Small (<75,000 b/d capacity) refineries are exempt until 2011. They may opt-in early to the RFS program and can generate RFS credits beginning in the calendar year following the date of notification.
11. A renewable fuel does not have to be used in gasoline. For example, biodiesel is a renewable fuel.

NPRA believes that EPA has met both the intent and spirit of EPACT through inclusion of these legislative provisions in the Agency’s proposal for the RFS program.

2. Several principles provide guidance for the RFS regulations.

NPRA suggests incorporation of core principles designed to facilitate an unambiguous, equitable, and easily enforceable RFS program. These principles are:

1. The RFS credit generation and trading regulations must be simple in design and implementation in order to provide certainty for all stakeholders. The program must be understandable, allow unambiguous enforcement, and promote adequate flexibility for refiners and gasoline importers.
2. The regulations must be developed with full realization of their impact on energy supplies. EPA must carefully review the supply side of the energy equation and not take an adequate energy supply for granted. These rules should not impose requirements on the refining industry without adequate regard for their impact on gasoline (or diesel) supply and distribution.
3. RFS credit trading must be national without geographic restrictions.
4. RFS credit trading should always be voluntary without government interference.

5. Refineries, gasoline importers and gasoline blenders should be able to purchase RFS credits from one another regardless of facility size or ownership.
6. RFS credit generation and trading should not require any changes to downstream gasoline product transfer documents (PTDs).
7. As is the case with current RFG oxygen and benzene credit trading, Tier 2/gasoline sulfur credit trading and highway ULSD credit trading, the regulations should not require EPA notification in advance of an impending RFS credit trade and should not require EPA pre-approval of a RFS credit trade.
8. EPA should not operate a national RFS credit bank.
9. Consistent with current anti-dumping and MSAT regulations, the RFS credit generation and trading program should be a recordkeeping system with an annual confidential business information report to EPA.
10. The development of RFS regulations by EPA should take account of potential impacts of other regulatory programs, such as the State phase-out of MTBE, the upcoming MSAT Phase 2 regulation, and new local summer low RVP gasoline programs in response to the 8-hour ozone NAAQS.
11. Refiners, gasoline importers and gasoline blenders should have sufficient time after December 31 (at least until February 28), a grace period, for RFS credit trading. Annual RFS reports should not be due to EPA until 60 days after the end of this grace period.
12. RFS credits may be traded in the year they are created and before the end of that calendar year. RFS credit trading should not be restricted to only the grace period after the end of the calendar year.
13. If either Alaska or Hawaii decides to opt-in to the RFS program, gasoline used in that particular State should incur a RFS liability and only excess RFS credits should be allowed to be traded. In other words, these two States cannot opt-in solely for the purpose of generating RFS credits and selling all of their RFS credits to out-of-state liable parties.
14. RFS credits generated in a State with an ethanol or biodiesel mandate (i.e., Minnesota) should not be distinguished in any way from any other RFS credit.
15. RFS credits must be tracked and identified by the year created and this year must not be altered by any party.

3. NPRA supports EPA's proposed RFS program structure.

NPRA believes that EPA has appropriately identified RFS liable parties to include refiners, importers and blenders (other than oxygenate blenders) that supply gasoline for the 48

contiguous states. A party that only blends ethanol with RBOB, CBOB or finished gasoline would not be a RFS liable party. A party that only blends biodiesel or renewable diesel with petroleum diesel would not be a RFS liable party.

Under the Act, EPA is to establish a renewable fuel standard annually, expressed as a percentage of gasoline sold or introduced into commerce, that will ensure that overall a specified total national volume of renewable fuels will be used in gasoline in the U.S. The Act does not require each obligated party to necessarily do the blending themselves in order to comply with this obligation. The Act envisions a regulatory program that would ensure that someone used a certain volume of renewable fuel, whether it was themselves or another party. Under the credit trading program required by the Act, each obligated party is allowed to satisfy its obligations either through its own actions or through the transfer of credits from others who have more than satisfied their individual requirements. (71 FR 55576).

EPA understands the legislative provisions and has proposed a reasonable framework for the RFS regulatory program.

NPRA urges the Agency to finalize the rules as soon as possible. While this effort may represent somewhat of a challenge to the Agency, NPRA believes it is imperative that EPA issue these rules in a timely manner so that obligated parties: (1) fully understand their particular compliance responsibilities; (2) can make necessary adjustments to their production systems; and, (3) have the opportunity to participate as soon as possible in the vitally important credit trading program. NPRA likewise supports EPA's proposal that the new RFS program begin on the effective date for the new RFS rules, at least 60 days after the publication of the new rules in the Federal Register next year. It is our understanding that the new RFS rules would not apply retroactively to gasoline or renewable fuels produced in 2007 before the effective date of the new RFS rules. NPRA endorses this concept.

The central provision of the proposed RFS compliance for an individual obligated party is that the regulatory Renewable Volume Obligation (see formula below) be met with valid renewable identification numbers (RINs). Since the creation of RINs cannot be mandated retroactively (where the RIN follows the renewable fuel through the distribution system before it is separated from the renewable fuel by an obligated party or a blender), it logically follows that the Renewable Volume Obligation cannot be retroactive.

EPA should revise 80.1106(b)(1) and remove any ambiguity by clarifying that the RFS program will not be effective for the entire calendar year of 2007.

The RFS% must be converted into the volume of RINs that a liable party must have to demonstrate compliance. EPA proposes at 80.1107(a) and NPRA supports the following formula:¹

$$RVO_i = (RFS_{std_i} \times GV_i) + D_{i-1}$$

where

RVO_i = the Renewable Volume Obligation in year i , in gallons

RFS_{std_i} = the RFS program standard for year i , in percent

GV_i = the nonrenewable gasoline volume produced by an obligated party in year i , in gallons

D_{i-1} = the RFS deficit carried over from the previous year, in gallons.

GV_i would include finished gasoline, RBOB and CBOB. It would not include any other unfinished gasoline or blendstock unless they are directly added to finished gasoline.

RFS compliance would be achieved² when the number of valid RINs = RVO_i .

Consistent with the legislative provisions, EPA will promulgate a RFS% in November for the following year and it will apply uniformly to all RFS liable parties. NPRA understands that the RFS% for 2007 will not be promulgated in November 2006, but will be promulgated when the final rules are issued next year.

Consistent with the legislative provisions, EPA will use the most recent EIA projection for the next calendar year's gasoline demand in the 48 contiguous states. This would be expanded to include Alaska, Hawaii or a U.S. territory if they opt-in to the program. NPRA supports EPA's intent to use EIA's October 2006 Short-term Energy Outlook projection for gasoline demand in 2007 (71 FR 55563). Since Alaska, Hawaii and U.S. territories would not be able to participate in the RFS program until 2008 (at the earliest), the final RFS % for 2007 will be derived only for the 48 contiguous states. NPRA supports EPA's intent to consistently use the October issue of EIA's monthly Short-term Energy Outlook in order to project next calendar year's gasoline demand in the 48 contiguous states and any EPA-approved RFS opt-in areas. This is the source for the latest EIA projection before EPA (in November of year $i-1$) needs to promulgate RFS_{std_i} for the following year.

¹ There is a typographical error in the Preamble at 71 FR 55566 in the formula for RVO_i . The correct formula is $RVO_i = (RFS_{std_i} \times GV_i) + D_{i-1}$

² "Each year, the refiners, blenders and importers obligated to meet the renewable volume requirement (referred to as 'obligated parties') must acquire sufficient RINs to demonstrate compliance with their volume obligation." (71 FR 565560). "An obligated party would demonstrate compliance with the renewable fuel standard by accumulating sufficient RINs to cover their individual renewable fuel volume obligation." (71 FR 55562). "The accumulation of RINs would be the means through which each obligated party would show compliance with its RVO, and thus with the renewable fuel standard." (71 FR 55580). Also see 80.1127.

EPACT allows RFS deficit carryover to the following year, but there cannot be a RFS deficit for two consecutive years; the liable party with a year-end deficit must be in full compliance at the end of the following year. NPRA believes EPA's RFS proposal fulfills this statutory provision.

NPRA supports the proposed RFS opt-in procedures for Alaska, Hawaii and U.S. territories. Alaska, Hawaii and U.S. territories would not be able to opt-in to the RFS program until after the effective date of the new RFS rules and cannot participate in the RFS program until 2008 (if EPA receives the opt-in letter from the Governor on or prior to September 1, 2007) or later. Until the effective date of such an opt-in, gasoline produced and consumed in or imported into Alaska, Hawaii or a U.S. territory would not incur a RFS obligation.

In summary, NPRA believes that EPA has appropriately identified obligated parties. NPRA supports an effective date at least 60 days following publication of final rule in the Federal Register rather than full calendar year 2007. The Agency should edit 80.1106(b)(1) to accurately impart the requirements for part of 2007. NPRA supports EPA's plan to consistently use the October issue of EIA's monthly Short-term Energy Outlook to project next years gasoline demand. NPRA supports the proposed opt-in procedures for Alaska, Hawaii, and U.S. Territories.

4. The regulatory values for the RFS% will be different than the estimated values in EPA's proposal.

The Agency estimated RFS percentages for 2007 through 2012 using the proposed formula for RFS_{std_i} for regulatory purposes for 2007 and for illustrative purposes after 2007 (71 FR 55565):

**Projected Renewable
Fuel Standards**

2007	3.71%
2008	4.22%
2009	4.72%
2010	5.21%
2011	4.82%
2012	4.85%

The regulatory value for RFS_{std_i} will be calculated and promulgated in the November prior to the start of the calendar year. For RFS compliance in 2007, the regulatory value for $RFS_{std_{2007}}$ will be announced with the final rule next year and will be a little different than the proposed 3.71%. The Agency is not ready to promulgate the value for $RFS_{std_{2007}}$ now because the formula has not yet been promulgated and, at the time that this RFS proposal was signed on September 7, 2006, EIA had not yet released the October 2006 Short-term Energy Outlook.³ Similarly, the

³ "We intend to use the October 2006 Short-Term Energy Outlook for the final rule." (71 FR 55563).

regulatory values for RFStd_i after 2007 will be different than the estimates shown above because newer EIA projections will have different values for many of the terms in the formula.⁴

The regulatory value for RFStd₂₀₀₇ will be different than 3.71% because EPA will use new values for terms in the denominator of the formula. EPA proposes at 80.1105(d) that the applicable RFS percentage be calculated using the following formula:

$$\text{RFStd}_i = \frac{(\text{RFV}_i - \text{Cell}_i) \times 100}{(\text{G}_i - \text{R}_i) + (\text{GS}_i - \text{RS}_i) - \text{GE}_i}$$

where

RFStd_i = Renewable Fuel Standard in year i, in percent

RFV_i = nationwide annual volume of renewable fuels required for year i, in gallons

G_i = amount of gasoline projected to be used in the 48 contiguous states in year i, in gallons

R_i = amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states in year i, in gallons

GS_i = amount of gasoline projected to be used in Alaska, Hawaii or a U.S. territory in year i if it opts-in, in gallons

RS_i = amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska, Hawaii or a U.S. territory in year i if it opts-in, in gallons; RS₂₀₀₇ would be zero.

GE_i = amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons

Cell_i = beginning in 2013, the amount of renewable fuel that is required to come from cellulosic sources in year i, in gallons (250 million gallons minimum); zero prior to 2013.

Using the above equation, the Agency derived 3.71% as a preliminary estimate for RFStd₂₀₀₇ as follows:⁵

$$\text{RFStd}_{2007} = \frac{(4.7 - 0) \times 100}{126.81} = 3.71\%$$

where

RFV₂₀₀₇ = 4.7 billion gallons

Cell₂₀₀₇ = 0

⁴ “However, since this rulemaking will not be finalized prior to November, 2006, we are proposing in this notice that the standard for 2007 be 3.71 percent.” 71 FR 55561. “We are proposing the standard for 2007 and estimating the standard for later years based on current information using the formulas discussed above.” 71 FR 55565. Also see 80.1105(a).

⁵ Memorandum from Christine Brunner, dated September 7, 2006, “Calculation of the Renewable Fuel Standard,” Attachment 3, EPA-HQ-2005-0161-0145.

the denominator is 48 contiguous state nonrenewable gasoline demand calculated as
 $154.2 - 0.84 - 5.73 - 20.82 = 126.81$ billion gallons

$G_{2007} = 154.2 - 0.84$ billion gallons (or national minus exempt Alaska and Hawaii
 nonrenewable gasoline)

$GS_{2007} = 0^6$

$R_{2007} + RS_{2007} = 5.73$ billion gallons

$GE_{2007} = 20.82$ billion gallons = $154.2 * 0.135$

In deriving the preliminary value of 3.71% for 2007, the Agency used an EIA projection for U.S. gasoline demand in 2007 of 17.80 quadrillion Btu (or 154.2 billion gallons) from EIA's Annual Energy Outlook 2006 Reference Case. This was released by EIA in November 2005 and, as such, is not the latest forecast. In determining the promulgated regulatory value for 2007, EPA will use an EIA projection for 2007 in EIA's October 2006 Short-term Energy Outlook, released on October 10, 2006. EIA has been projecting lower values than 154.2 billion gallons for U.S. gasoline demand in 2007. EIA releases short-term projections every month. The EIA-projected values from the latest monthly issues of the Short-term Energy Outlook are:

U.S. Gasoline Demand in 2007

	<u>mmb/d</u>	<u>billion gallons</u>
Oct. 2006	9.3362	143.124
Sept. 2006	9.33	143.0
Aug. 2006	9.29	142.4
July 2006	9.28	142.3
June 2006	9.33	143.0

Therefore, using EIA's October 2006 Short-term Energy Outlook, G_{2007} plus GS_{2007} is projected to be 143.124 billion gallons.

In deriving the preliminary value of 3.71% for 2007, EPA estimated that the total ethanol blended into gasoline in 2007 would be 5.73 billion gallons (the sum of R_{2007} and RS_{2007}). EPA based this on EIA's projected value of 0.43 quadrillion Btu for 2007 in EIA's Annual Energy Outlook 2006 Reference Case. EPA converted this using 75,000 Btu/gallon, which is ethanol's lower heating value. In determining the promulgated regulatory value for 2007, EPA will use an EIA projection for 2007 in EIA's October 2006 Short-term Energy Outlook, released on October 10, 2006. Lately, EIA has been projecting higher values than 5.73 billion gallons for ethanol demand in 2007. EIA releases short-term projections every month. The EIA-projected values from the latest monthly issues of the Short-term Energy Outlook (and converted using ethanol's lower heating value and higher heating value) are:

⁶ Alaska, Hawaii and U.S. territories would not be in the RFS program in 2007. The earliest that they could participate in the RFS program would be 2008.

U.S. Ethanol Demand in 2007

	<u>10¹⁵ Btu</u>	(LHV) billion <u>gallons</u>	(HHV) billion <u>gallons</u>
Oct. 2006	0.5155	6.873	6.118
Sept. 2006	0.533	7.11	6.33
Aug. 2006	0.534	7.12	6.34
July 2006	0.524	6.99	6.22
June 2006	0.524	6.99	6.22

Seven billion gallons of ethanol in 2007 may be a little high. Domestic ethanol production and imports in 2006 may be about 5.0-5.4 billion gallons.

EPA should use ethanol's higher heating value (84,262 Btu/gallon). EIA consistently uses higher heating values. EIA recommends 3.539 million Btu/bbl (84,262 Btu/gallon) as the thermal conversion factor for fuel ethanol (see EIA's Monthly Energy Review, Table A1, page 159, EPA-HQ-OAR-2005-0161-0095). Therefore, using ethanol's EIA-recommended HHV and EIA's October 2006 Short-term Energy Outlook, the projected value for ethanol fuel blended into gasoline in 2007 ($R_{2007} + RS_{2007}$) is 6.118 billion gallons.

If EPA makes no changes to the regulatory formula at 80.1105(d), replaces 154.2 billion gallons of U.S. gasoline demand with 143.124 billion gallons, replaces 5.73 billion gallons of ethanol with 6.118 billion gallons, the projection for nonrenewable gasoline demand in Alaska and Hawaii in 2007 is about 0.8 billion gallons (source: Federal Highway Administration statistics⁷), and gasoline production at exempt small refiners and small refineries is estimated by the Agency as 13.5% of total U.S. demand,⁸ then the promulgated regulatory value for $RFStd_{2007}$ will be about 4.02%. This calculation is shown below:

$$RFStd_{2007} = \frac{(4.7 - 0) \times 100}{116.88} = 4.02\%$$

where

$$RFV_{2007} = 4.7 \text{ billion gallons}$$

⁷ Motor Fuel Use – 2004, Table MF-21, available at <http://www.fhwa.dot.gov/policy/ohim/hs04/hm/mf21.htm> or <http://www.fhwa.dot.gov/policy/ohim/hs04/pdf/mf21.pdf>

⁸ It is not yet known how many small refiners and small refineries will waive the exemption and participate in the RFS program in 2007. For the purpose of deriving $RFStd_{2007}$, EPA assumes that all will be exempt in 2007. Beginning with the RFS program in 2008, EPA will know if any small refiners and small refineries waive the exemption and will participate. If any waive the exemption, then this will be reflected appropriately in the estimate for GE_{2008} when EPA promulgates $RFStd_{2008}$ in November 2007.

$$\text{Cell}_{2007} = 0$$

the denominator is 48 contiguous state nonrenewable gasoline demand calculated as
 $143.124 - 0.8 - 6.118 - (0.135 * 143.124) = 116.88$ billion gallons

$$\text{G}_{2007} = 143.124 - 0.8 \text{ billion gallons (calculated here as national minus Alaska and Hawaii nonrenewable gasoline)}$$

$$\text{GS}_{2007} = 0$$

$$\text{R}_{2007} + \text{RS}_{2007} = 6.118 \text{ billion gallons}$$

$$\text{GE}_{2007} = 19.322 \text{ billion gallons} = 143.124 * 0.135$$

Alternatively, if the Agency assumes that all small refiners and small refineries will decide to waive the exemption and will participate in the RFS program in 2007, then the denominator would be a little larger and RFStd_{2007} would be a little smaller. If EPA makes no changes to the regulatory formula at 80.1105(d), replaces 154.2 billion gallons of U.S. gasoline demand with 143.124 billion gallons, replaces 5.73 billion gallons of ethanol with 6.118 billion gallons, and the projection for nonrenewable gasoline demand in Alaska and Hawaii in 2007 is about 0.8 billion gallons (source: Federal Highway Administration statistics), then the promulgated regulatory value for RFStd_{2007} would be about 3.45%. This calculation is shown below:

$$\text{RFStd}_{2007} = \frac{(4.7 - 0) \times 100}{136.206} = 3.45\%$$

where

$$\text{RFV}_{2007} = 4.7 \text{ billion gallons}$$

$$\text{Cell}_{2007} = 0$$

the denominator is 48 contiguous state nonrenewable gasoline demand calculated as
 $143.124 - 0.8 - 6.118 - 0 = 136.206$ billion gallons

$$\text{G}_{2007} = 143.124 - 0.8 \text{ billion gallons (calculated here as national minus Alaska and Hawaii nonrenewable gasoline)}$$

$$\text{GS}_{2007} = 0$$

$$\text{R}_{2007} + \text{RS}_{2007} = 6.118 \text{ billion gallons}$$

$$\text{GE}_{2007} = 0$$

Therefore, assuming that small refiners and small refineries are all in or all out in 2007 makes a difference between estimating RFStd_{2007} as 3.45% or 4.02%.

5. Regulatory over-compliance in 2007 is possible. EPA should clarify that small refineries will not be in the RFS program in 2007.

If the Agency assumes that all small refiners and small refineries are not in the RFS program in 2007 and promulgates RFStd_{2007} at or near 4.02%, then regulatory over-compliance in 2007 is possible. Small refiners and small refineries in the 48 contiguous states could participate in the RFS program in 2007 by not submitting an exemption application by September 1, 2007 (per 80.1141(b)(2)). In this case, they would be obligated parties in 2007 and subject to the same

RFS% as all other obligated parties in 2007. Assuming that some small refiners and small refineries do not submit an exemption application by September 1, 2007 and nonrenewable gasoline production at these facilities adds up to 10 billion gallons in 2007,⁹ then $4.02\% \times (116.88 + 10) = 5.10$ billion gallons¹⁰ as the actual RVO_{2007} , much more than the statutory RVO_{2007} of 4.7 billion gallons. Therefore, ignoring for the moment that the RFS program may not be effective for the full year, regulatory over-compliance by about 10% (or more) in 2007 is possible because 4.02% was too high. Obviously, it would not be fair to promulgate a larger-than-necessary value for $RFStd_{2007}$ and provide no accommodation for this oversight.

EPA will know the status of potential regulatory over-compliance for 2007 if some small refiners and small refineries do not submit their exemption applications by September 1, 2007. If they all file exemption applications by September 1, 2007 and if the promulgated $RFStd_{2007}$ is about 4.02%, then there will not be any significant regulatory over-compliance in 2007. If some do not submit exemption applications by September 1, 2007 (and, therefore, participate fully in the RFS program in 2007) and the promulgated $RFStd_{2007}$ is about 4.02%, then there will be regulatory over-compliance because 4.02% is too high a value to ensure 4.7 billion gallons of renewable fuel. The Agency should consider a rebate or a refund if the promulgated RFS_{2007} is too high. For example, when the Agency announces $RFStd_{2008}$ in November 2007, EPA could make a regulatory adjustment, such as a slightly lower regulatory value for $RFStd_{2008}$ or a temporary increase in the rollover cap in 2009 on the use of RINs generated in 2008. It would be fair that if a regulatory national deficit could be carried over from 2006 to 2007 (per 80.1100(e)) then a regulatory national surplus should also be carried over from 2007 to 2008.

EPA created this problem for 2007 by proposing that small refineries and small refiners should submit their exemption applications by September 1, 2007, long after the regulatory value for $RFStd_{2007}$ has been promulgated. This is inconsistent with the small refinery provisions in the Energy Policy Act of 2005. The legislative provisions (Clean Air Act amended section 211(o)(9)(C) and (D)) read as follows:

“(C) Credit program. - If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

(D) Opt-in for small refineries. - A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).”

This means that small refineries can not participate in the RFS credit program in 2007, small refineries can not be obligated parties in 2007 (since they cannot participate in the RFS credit

⁹ This assumption represents about half of estimated $GE_{2007} = 19.322$ billion gallons = $143.124 * 0.135$

¹⁰ Or $4.02\% * (143.124 - 0.8 - 6.118 - (0.135 * 143.124) + 10) = 5.10$ billion gallons.

program in 2007), and the earliest that they could participate is 2008 (if they notify the Agency by November 1, 2007 and waive the exemption). Small refineries should not be obligated parties in 2007 even if they do not submit an exemption application by September 1, 2007.

There will not be an opportunity for RFS regulatory over-compliance in 2007 if EPA clearly explains that small refineries will not be obligated parties in 2007. Therefore, there should not be any confusion about the status of small refineries in 2007 and the regulatory RFS₂₀₀₇ should be about 4.02% (using a calculation as in the example above that exempts all small refinery nonrenewable gasoline in 2007).

EPA proposed a November 1st due date for the submission of small refinery (80.1141(g)(1)) and small refiner (80.1142(g)(2)) waiver applications for the following calendar year in order that the promulgated RFS_i for the following calendar year is accurate. As shown in the examples above, small refinery and small refiner participation in the RFS program could affect the regulatory RFS_i after 2007 (depending on how many waive the exemption).

6. The statutory RFS for 2006, 2.78%, will be exceeded in 2006.

Section 1501 of the Energy Policy Act of 2005 requires that the RFS be set at 2.78% for 2006 if the Agency does not promulgate comprehensive RFS rules by August 2006. EPA proposes that there will not be a regulatory RFS deficit in 2006 that needs to be carried over into 2007 (71 FR 55556, 55564). NPRA agrees because 2.78% will likely be exceeded in 2006.

Domestic ethanol production in 2006 could be about 5 billion gallons. EIA reports (in the August 2006 Petroleum Supply Monthly, Appendix D) that national ethanol production between January 2006 and June 2006 was 54.103 million barrels. If the second half of 2006 equals the first half, then the year-end value for 2006 will be 108.206 million barrels, or 4.545 billion gallons. Allowing for some growth in the second half of 2006 (from an increase in the capacity utilization of some existing ethanol facilities, capacity expansions at existing ethanol plants, or the start-up of new ethanol production plants), the year-end projection for 2006 could be about 5 billion gallons.

EIA projects that national gasoline demand in 2006 will be 9.23 million b/d, or 141.5 billion gallons, and ethanol blended into gasoline (domestic production plus imports) will be 0.436 quadrillion Btu, or (using ethanol's EIA-recommended higher heating value) 5.2 billion gallons (see EIA's October 2006 Short-term Energy Outlook, Tables 5a and 11, released on October 10, 2006). The ratio of 5.2 billion gallons of ethanol/141.5 billion gallons of gasoline equals 3.67%, a figure much higher than the statutory 2.78% RFS for 2006. Biodiesel blended in 2006 would add about 130-150 million gallons to the ethanol estimate and another 0.1% to the RFS% estimate for 2006. If the denominator is decreased to subtract projected ethanol use in 2006 (in order to estimate nonrenewable gasoline demand) and/or to subtract nonrenewable gasoline demand in Alaska and Hawaii, then the RFS% estimate for 2006 would be a little larger because the denominator would be somewhat smaller.

7. EPA's proposed RFS credit trading program is reasonable.

NPRA believes that the RFS credit trading program must be understandable, allow unambiguous enforcement, and promote adequate flexibility for refiners and gasoline importers. These are very important concepts relating to RFS compliance for many obligated parties who may seek an alternative to blending ethanol or biodiesel directly. NPRA supports EPA's proposed system of volume accounting, tracking and reporting of renewable fuels, beginning with the assignment of renewable identification numbers (RINs) at the point of production of renewable fuels (when the batch of renewable fuel is moved out of the production or import facility). "Thus the RIN approach has the advantage of allowing real-time trading without having to wait until the end of the year to determine excess." (71 FR 55577). EPA's proposal meets the Congressional intent for a RFS credit trading program.

NPRA supports the proposed requirement for renewable fuel producers to use an independent auditor to conduct an annual attest engagement. This is consistent with other EPA motor fuels credit programs and will provide confidence that RINs are valid. EPA should edit 80.1164(b) to also include renewable fuel importers.

Section 1501 of EPCACT explicitly includes several other provisions that are appropriately incorporated in EPA's proposal, including:

- gasoline produced at U.S. refineries for export will not incur any RFS liability;
- a RFS credit deficit may be carried over to the following calendar year, but there cannot be a RFS deficit for two consecutive years; the liable party with a year-end deficit must be in full compliance at the end of the following year;
- the RFS regulations will not restrict geographic areas in which renewable fuels may be used and will not impose any per-gallon obligation for the use of renewable fuels;
- the applicable annual RFS percentage will be a single value for all refiners, gasoline importers, and gasoline blenders, and will be expressed as a percentage of gasoline sold or introduced into commerce in the United States; and
- the RFS compliance period will be a calendar year.¹¹

NPRA supports the Agency's proposal to utilize the same basic reporting forms for registration that were used for the RFG and anti-dumping programs. Parties already registered with EPA under an existing fuel program would not have to re-register because registrations do not expire. Currently registered refiners and importers would continue to use their EPA-issued 4-digit company and 5-digit facility identification numbers.

NPRA supports the proposed restrictions that RINs:

- must be transferred with ownership or custody of the batch;
- must be included on product transfer documents (PTDs); and
- cannot be separated from batches in the distribution system except by obligated parties or biodiesel or oxygensate blenders.

¹¹ EPA proposes (and NPRA supports) that the RFS program in 2007 would not be a full calendar year, but that the RFS compliance period would be a full calendar year after 2007. See 80.1107(e). This should be clarified in 80.1106(b)(1).

Once a RIN is separated from a batch of renewable fuel, then the PTD associated with that batch could not list the separated RIN. NPRA supports EPA's decision not to propose any geographical limitations on RIN transfers within the 48 contiguous states. NPRA agrees with EPA that the Agency should not be directly involved in RIN transfers (71 FR 55591).

8. NPRA supports the Agency's proposal that the primary verification of RFS compliance would be a comprehensive review of annual reports.

EPA listed four basic elements for RIN validation (71 FR 55585):

- RINs would be checked to ensure that they were used only within their two-year valid life;
- all RINs owned by an obligated party would be cross-checked with the annual reports from renewable fuel producers to verify that they had in fact been generated;
- all RINs used by obligated parties for compliance purposes would be cross-checked with the annual reports from other obligated parties to ensure that no two parties used the same RINs; and
- previous-year RINs used for compliance purposes would be checked to ensure that they did not exceed the cap (proposed to be 20% of the current year's RFS obligation) for an individual obligated party.

This proposed enforcement framework ensures the integrity of the RIN system while, at the same time, providing RFS compliance flexibility for obligated parties. In addition, NPRA supports the Agency's proposal that all reports be annual reports.

NPRA does not support replacing the proposed annual reporting requirement with quarterly reporting. Since the RFS is an annual standard, it would not be meaningful or useful to require quarterly reporting.

An obligated party with invalid RINs should have the opportunity to fix the imbalance without penalty. Since a RIN deficit can be carried over by an obligated party, there would not be an immediate presumption of a violation by an obligated party. NPRA supports EPA's proposal that it "would normally look first to the generator/seller of the invalid RINs both for payment of penalty and to procure sufficient valid RINs to offset the invalid RINs." (71 FR 55580)

9. The proposed cap on the use of RINs generated in the previous year is unnecessary, potentially counter-productive and should be eliminated.

The Energy Policy Act of 2005 requires that RFS credits have a life of 12 months. EPA proposes to implement this restriction such that 1) RINs can be used for RFS compliance in the year that they are generated or in the following year, and 2) no more than 20% of the current year RFS obligation for an individual obligated party could be met with RINs generated in the previous year. NPRA supports the proposed provision that RINs can be used for RFS compliance in the year that they are generated or in the following year because this would

provide a viable and flexible banking and trading opportunity. RINs would expire if they were not used in the year created or in the following year.

A strict interpretation of a 12 month life for RFS credits is unworkable. If EPA were to attempt to take a 12 month life literally as some stakeholders have proposed, the first logical step would be monthly balances and reporting. But because some RINs might get a 13 month or a 12 month and 3 week life, we would have to go to daily balances and reporting, and so on. Therefore, annual reports and balances with RINs not used in the year they were created expiring in the following year is really the only practical interpretation.

NPRA believes that both the spirit and the intent of the RFS program will be realized without the artificial restriction of any rollover cap. The Agency simply cannot estimate or foresee events that could cause renewable fuel production to dip suddenly and dramatically.

If EPA believes that a rollover cap is justified and in order to facilitate compliance planning by obligated parties, NPRA recommends that the cap should be fixed for all years and not reset annually. NPRA further recommends that the proposed 20% cap should be raised to at least 30%. A cap of 30% would:

- ensure that RFS compliance is met primarily with current-year volumes of renewable fuels;
- provide more opportunity and flexibility to use banked credits and minimize deficits;
- place a higher value on purchasing renewable fuels and RINs at present because of the expanded option to bank and later use RINs dated last year or sell excess RINs dated in the previous year;
- minimize the need for EPA to respond to a drought or other episodic events that could require the issuance of waivers on all or parts of the RFS regulations; and
- facilitate over-compliance as an insurance policy against invalid RINs because of the expanded option to bank and later use RINs dated the previous year or trade excess RINs dated the previous year.

Further, if EPA believes that a rollover cap is justified, then it should not be effective before 2009. The Agency proposes that this rollover cap would be effective beginning in 2009 (see 80.1127(a)(2)). This rollover cap should not be effective in 2008 since the RFS program will not be in place for the entire 2007 calendar year.

NPRA does not support a “last-in, first-out” (LIFO) approach for addressing the RIN rollover issue (71 FR 55584). While the LIFO concept is a demonstrated, justified, and accepted procedure for product inventory accounting purposes, it is not applicable and would be confusing and complicated to implement as part of the RIN rollover model. A cap on the use of the last year’s RINs would maintain RFS credit simplicity with the flexibility to bank some RINs.

10. Given the regulatory significance of RINs, EPA should state precisely when the first RINs may be issued.

NPRA assumes that the first RINs would be generated with the first batch of renewable fuels released by the renewable fuel producer or importer on or after the effective date of the new regulations (60 days after the date of publication of the promulgated rules in the Federal Register¹²). EPA should clarify that the effective date of the RFS rule and the beginning of required RIN-generation be the same date.

If a renewable fuel producer or importer is ready to generate RINs earlier, is registered with the Agency, and the comprehensive RFS rule had been promulgated (but the 60 days had not yet elapsed), could that renewable fuel producer or importer begin to generate RINs or would that renewable fuel producer or importer be required to wait? Is there any circumstance where a RIN could be generated earlier than 60 days after the date of publication of the promulgated rules in the Federal Register?

11. The effective date for the registration requirement should be aligned with the effective date for other RFS regulations.

The Agency proposes that the effective date for the RFS standard and other requirements would be 60 days from the date of publication of the promulgated rules in the Federal Register (80.1104). This is consistent with the proposed effective date for recordkeeping (80.1151(a), (b) and (c)). However, EPA proposes that registrations by a renewable fuel producer should be submitted by no later than 90 days after the date of publication of the promulgated rules in the Federal Register (80.1150(b)(1)). In this case, a renewable fuel producer would be subject to RIN-generation regulations without necessarily having EPA-assigned company and facility registration numbers. EPA should revise 80.1150(b)(1) and replace the 90 day requirement with a 60 day limit.

If it is not feasible to require registrations until after the effective date of the promulgated RFS rules (and that may be why EPA proposed 90 days, which is 30 days after the effective date for the RFS rules), there remains the possibility that a renewable fuel producer or importer could ship a batch of renewable fuel without an accompanying RIN. This could occur because the renewable fuel producer or importer did not yet have EPA-assigned company and facility registration numbers. NPRA believes that it would be disruptive and confusing (and possibly illegal¹³) for some renewable fuel batches shipped after the RFS effective date to have RINs, while others lack corresponding RINs.

The proposed regulation at 80.1150(b)(1) would require a renewable fuel producer to register with EPA. This requirement should be revised to also include a renewable fuel importer.

¹² EPA proposes that the RFS standards and other requirements would be effective 60 days after publication of the promulgated rules in the Federal Register. See 80.1104, 80.1107(e)(1).

¹³ Because the proposed regulations for assigning RINs, 80.1126(a)(1), (c) and (d), and the applicable prohibition on assigning improper RINs (80.1160) do not have a later effective date.

12. EPA should strongly encourage ethanol and biodiesel producers and importers to register now.

EPA proposes that the renewable fuel producer's or importer's company and facility numbers, assigned by the Agency, be on each and every RIN. Therefore, all renewable fuel producers and importers must be registered with EPA prior to the effective date of the new RFS rules. NPRA is concerned that there may not be enough time for all renewable fuel producers and importers to register if they wait until after the RFS rules are promulgated. There is no reason that renewable fuel producers and importers cannot register with the Agency immediately. EPA should strongly urge early registration.

The Agency should publish a list of renewable fuel producer and importer company and facility registration numbers prior to the effective date of the RFS rules. EPA published a list of registration numbers prior to the June 2006 effective date for the highway ULSD rule and this action proved to be most beneficial for implementation purposes.

13. EPA should strongly encourage other parties who will own RINs to register now.

EPA proposes that other parties (not obligated parties or renewable fuels producers or importers), including exporters of renewable fuels, must register with the Agency before acquiring ownership of RINs. 71 FR 55596. The Agency also proposes that the renewable fuel PTD include both the transferor's and the transferee's EPA-assigned company and facility numbers (see 80.1153(a)). NPRA is concerned that there may not be enough time for all to register if they wait until after the RFS rules are promulgated. There is no reason that they cannot register with the Agency immediately. EPA should strongly urge early registration.

14. Small volume domestic producers or importers of renewable fuels should not always be exempt from the registration requirement.

The Agency proposes that small volume (<10,000 gallons/year) domestic producers or importers of renewable fuels would be allowed to remain unregistered, would be exempt from reporting and recordkeeping requirements, and could not generate a RIN unless they registered and complied with reporting and recordkeeping requirements (71 FR 55596 and 80.1154). This could cause enforcement problems when a batch of exempt renewable fuel without RINs is mixed with a batch of nonexempt renewable fuel with RINs. In this case, how can a responsible party assign appropriate RINs to the combined batch? The Agency should not exempt all small renewable fuel producers or importers from the registration, reporting, recordkeeping, attest engagement and RIN-generation standards. Unless the exempt renewable fuel without RINs is distributed in a segregated manner that would avoid all opportunities for commingling with nonexempt renewable fuel with assigned RINs, unnecessary confusion, complexity, and enforcement problems will undoubtedly surface. In addition, EPA should revise 80.1154 to require that these facilities notify the Agency of their identity, specific location of operations,

and their intent to distribute renewable fuels without RINs. This information should be publicly released by EPA to inform blenders and obligated parties.

15. RINs separated from the renewable fuel should be restricted such that they can only be sold to obligated parties.

EPA proposes that RINs must accompany the renewable fuel and may only be separated from the renewable fuel by a biodiesel or oxygenate blender or an obligated party (71 FR 55589, 55590). This proposed system requires that RINs be included on renewable fuel producer product transfer documents (PTDs). NPRA supports this vitally important component of the RFS program.

Once a RIN is separated from the renewable fuel, EPA proposes that it could be freely traded (71 FR 55590). NPRA agrees that there should not be a limit on the number of times that a RIN could be traded. However, NPRA believes that there should be a restriction on the parties that could transfer RINs that have been separated from the renewable fuel. The Agency should revise 80.1128(b) to restrict the buyer of an unassigned RIN (a RIN has been separated from the renewable fuel) to be only an obligated party. With this added restriction, a broker could still facilitate a RIN transfer, but could not purchase the unassigned RIN. This additional restriction would prohibit “RIN speculators.” Any party could participate in the RFS program (as long as it was registered with EPA and complied with recordkeeping, reporting and attest engagement requirements), but it would have to buy the renewable fuel with the RINs included on the PTD and then sell the renewable fuel with the RINs included on the PTD.

EPA and NPRA agree that the RFS program should not create cottage industries. Free trading of unassigned RINs could create a cottage industry of RIN speculators.

NPRA is not suggesting interference with the distribution of batches of renewable fuels. NPRA does believe that all buyers of unassigned RINs should be obligated parties. If there is any doubt about whether or not a potential buyer of RINs is an obligated party, the RIN seller could check first with EPA. The Agency could verify that the potential RIN buyer was registered and had submitted gasoline batch reports to EPA in the past. If the potential RIN buyer was a new refiner or gasoline importer or gasoline blender, EPA would be able to confirm using the registration information.

16. Extra-value RINs should remain with the renewable fuel until all RINs are separated by a blender or an obligated party.

EPA proposes that denatured ethanol have an Equivalence Value of 1.0 and that one gallon of denatured ethanol would be assigned one gallon-RIN by the ethanol producer. In addition, if a renewable fuel would have an Equivalence Value greater than 1.0 (i.e., cellulosic ethanol with an Equivalence Value of 2.5), then one gallon of this renewable fuel would be assigned one standard-value gallon-RIN by the renewable fuel producer and also generate extra-value gallon-RINs. For example, one gallon of cellulosic ethanol would be assigned one standard-value

gallon-RIN and also generate 1.5 extra-value gallon-RINs. The standard-value RIN would remain with the renewable fuel when shipped by the renewable fuel producer, but the extra-value RIN could be separated from the renewable fuel immediately by the renewable fuel producer and sold by the producer.

NPRA believes that the final programmatic rules should reflect that extra-value RINs must remain tied to the renewable fuel gallon as is the case with the standard-value RINs. Likewise, these extra-value RINs could only be separated from the renewable fuel by a blender or an obligated party. It is not necessary to require a one-to-one correspondence with the number of gallon-RINs and the volume of the renewable fuel batch as it moves through the distribution system. What is important is that, at the end of the year, each and every RIN claimed by every obligated party for RFS compliance is valid.

A corollary advantage to NPRA's recommendation is that the RIN could be reduced by one digit. There would be no need for "K" in the RIN (see 80.1125(g)) to distinguish a standard-value RIN from an extra-value RIN. The identification of the Equivalence Value, RR (see 80.1125(e)), would provide sufficient explanation that this particular batch of renewable fuel has a volume that is the same as the volume indicated on the RIN (when the Equivalence Value is 1.0) or is not the same (when the Equivalence Value is not 1.0).

17. NPRA supports the concept of Equivalence Values as the basis for determining the number of gallon-RINs associated with a batch of renewable fuel.

The Agency proposes at 80.1115(b) that producers of renewable fuels must prepare a technical justification of the calculation of the Equivalence Value for EPA approval. NPRA supports the Agency's proposal that the Equivalence Value will always be 1.0 for ethanol produced from corn, starches, or sugar. This proposed technical justification requirement should be necessary for a domestic producer of cellulosic ethanol because its proposed Equivalence Value is relatively high and non-ester renewable diesel because its proposed Equivalence Value would be higher than biodiesel (mono-alkyl ester). This proposed technical justification requirement should also be necessary if a renewable fuel producer wanted to qualify a different fuel.

EPA proposes Equivalence Values for biodiesel (mono-alkyl ester), non-ester renewable diesel, butanol, and ETBE from corn ethanol at 80.1115(d). The Agency should consider increasing the proposed Equivalence Value for ETBE from corn ethanol from 0.4 to 0.5. This would be consistent with the European Union's biofuel volume equivalents for bio-ethers in their Biofuel Directive program. The EU assigned 47% as the percentage by volume of ETBE that is calculated as biofuel.¹⁴ This increase would also reflect the fact that commercial ETBE can include a small amount of unreacted ethanol.

¹⁴ See page 11 at <http://ec.europa.eu/research/energy/pdf/renews3.pdf>

18. EPA should require recordkeeping on the amount and type of fossil fuel used at plants producing cellulosic ethanol for renewable fuel producers, not obligated parties and renewable fuel exporters.

EPA proposes recordkeeping requirements for obligated parties and renewable fuel exporters on the amount and type of fossil fuel used at plants producing cellulosic ethanol at 80.1151(a)(5). This should not be a requirement placed on obligated parties, but rather it is rightly applicable to renewable fuel producers at 80.1151(b).

In addition to the recordkeeping requirement for verification of any claim for "displacement of 90% of fossil fuel use" to qualify for the cellulosic ethanol Equivalence Value, we suggest that such calculations necessarily include electricity. This will promote cogeneration and siting of plants where efficient electricity is available.

19. The proposed attest engagement requirements for obligated parties should be revised.

EPA proposes at 80.1164(a)(2)(ii) that the contracts or other documents for all RIN transactions be reviewed and at 80.1164(a)(3)(ii) that documentation of all RINs agree with the report to EPA. This is overly burdensome. The purpose of an attest engagement is a spot check of a subset of records, not a comprehensive review of every record. These proposed regulations should be revised to require that a representative sample of records be reviewed.

20. NPRA agrees with the Agency that a presumptive liability scheme would not be applicable under the RFS program.

EPA believes that a presumptive liability scheme would not be applicable under the RFS program because there are no proposed downstream RFS regulations in which an upstream party would be liable because it caused the violation (71 FR 55598). NPRA agrees.

21. Annual reports submitted by obligated parties should not be due until April 30.

EPA proposes February 28 as the due date for annual reports submitted by obligated parties (80.1152(a)(5)), producers and importers of renewable fuels (80.1152(b)(5)), and any other party that owns a RIN (80.1152(c)(5)). Given that there may be RIN trading in January and February for compliance in the previous year, it could be difficult to meet a February 28 due date. In order to permit RIN trading in January and February for compliance in the previous year, annual reports submitted by obligated parties should be due by April 30. This additional time may also be warranted because the RFS program requires the coordination and cooperation of a large number of parties (i.e., renewable fuel producers and importers, terminals, refiners) that is not typical of other EPA regulatory programs. This additional time would also serve to minimize RFS deficits carried over to the following year because there would be more time for RFS credit transfers.

If the Agency decides to promulgate April 30 as the due date for annual reports submitted by obligated parties, then the proposed due date of May 31 for attest engagements (80.1164(c)) should be changed to June 30.

22. EPA should not require obligated parties to comply with a non-cellulosic standard and a cellulosic standard after 2012.

The Energy Policy Act of 2005 requires an annual minimum of 250 million gallons of cellulosic ethanol beginning in 2013. EPA proposes that “an obligated party would be subject to two standards in 2013 and beyond, a non-cellulosic standard and a cellulosic standard.” (71 FR 55565). Complying with a separate cellulosic standard could be a substantial burden for obligated parties and could be very disruptive to the RFS system.

The legislative provision reads as follows (amended Clean Air Act section 211(o)(2)(B)(iii)):

“(iii) Minimum quantity derived from cellulosic biomass. - For calendar year 2013 and each calendar year thereafter -
(I) the applicable volume referred to in clause (ii) shall contain a minimum of 250,000,000 gallons that are derived from cellulosic biomass; and
(II) the 2.5-to-1 ratio referred to paragraph (4) shall not apply.”

However, the legislation does not require each and every obligated party to demonstrate separate and proportional compliance with a non-cellulosic standard and a cellulosic standard beginning in 2013.

The Agency should consider regulatory alternatives other than two renewable fuel standards beginning in 2013. Rather than over 100 obligated parties chasing cellulosic RINs after 2012, EPA could assume collective compliance with the statutory annual minimum of 250 million gallons of cellulosic ethanol after 2012. Obligated parties should not be liable or penalized if the annual target of a minimum of 250 million gallons of cellulosic ethanol is not met in 2013 or any later year. Since EPA does not expect and will not require obligated parties to produce or to import cellulosic ethanol, obligated parties should not have to worry whether or not an annual minimum of 250 million gallons of cellulosic ethanol is introduced in commerce beginning in 2013.

23. Before 2013, imported cellulosic or waste-derived ethanol should not have an Equivalence Value of 2.5.

The Agency proposes that one gallon of cellulosic or waste-derived ethanol would be assigned one standard-value gallon-RIN and also generate 1.5 extra-value gallon-RINs. Furthermore, a domestic producer of cellulosic or waste-derived ethanol would have to submit a technical justification to EPA (80.1115(b)). However, there is no proposed or feasible mechanism for EPA to require such a technical justification from an importer of cellulosic or waste-derived ethanol. Since the Agency has no assurance that a batch of imported ethanol meets the requirements as cellulosic or waste-derived ethanol, all imported ethanol should have an

Equivalence Value of 1.0. Obligated parties should have no concerns that EPA will declare some RINs invalid because the Agency doubts that a batch of imported ethanol was really cellulosic or waste-derived ethanol.

24. A typographical error in the regulatory provisions should be corrected.

There is a typographical error in 80.1141(g)(3): “in paragraph (m) of this section” should be replaced by “in paragraph (i) of this section.” Alternatively, 80.1141(g)(3) could be deleted because it is redundant with 80.1141(i).

25. New state ethanol and biodiesel mandates should be expressly preempted.

NPRA supports the EPA preemption review process and the expansion of the scope of this analysis in section 1541 of last year’s energy bill. Clean Air Act section 211(c)(4)(C) was amended by the Energy Policy Act of 2005 to make it the joint responsibility of EPA and DOE to review motor fuel control choices by states and require that both agencies consider the regional supply implications of such requests. Before granting a waiver of federal preemption, the Administrator of EPA should, after consultation with the Secretary of Energy and after notice and comment, find that the fuel control choice will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. NPRA strongly supports this analysis of supply-side impacts.

New state biofuel mandates are not currently subject to the requirement that they be examined by EPA for their impact on fuel production and the fuel distribution system. NPRA believes that they should be. The Agency should be required to grant a waiver for any new state biofuel regulation after consultation with the Secretary of Energy, with notice and comment requirements, and after making a finding that the fuel control choice will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. If there is no mechanism to assess the impact of these state mandates on fuel supply and distribution, NPRA believes that the Clean Air Act should be amended by Congress explicitly to preempt these programs.

The federal preemption provisions in the Clean Air Act preserve a rational motor fuel supply by precluding states from unilateral adoption of unique specifications unless EPA grants a waiver. EPA explains the merits of federal preemption in the preamble for the federal RFG and anti-dumping final rules, which includes the following statements:

The regulations proposed here will affect virtually all of the gasoline in the United States. As opposed to commodities that are produced and sold in the same area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution suggests that federal rules should preempt State action to avoid an inefficient patchwork of potentially conflicting regulations. 59 FR 7809.

NPRA further believes it necessary to avoid an inefficient patchwork of potentially conflicting regulations on biofuels. Congress did not anticipate the proliferation of new state ethanol and biodiesel mandates when it passed the Energy Policy Act of 2005. EPA and the Administration should support Clean Air Act amendments that expressly state that new state ethanol and biodiesel mandates are preempted. At the very least, new state ethanol and biodiesel mandates should be subject to the same fuel supply, distribution and producibility review which is required for changes in local gasoline and diesel standards. Congress and the Administration should not take a pass on considering the potentially serious impacts of politically popular but otherwise economically and environmentally detrimental additional new ethanol and biodiesel mandates. Without such a requirement, the result will undoubtedly be a proliferation of fuel requirements with negative impact on supply and considerable interference with implementation of the federal Renewable Fuel Standard (e.g., credit trading, averaging, banking credits, identifying liable or obligated parties).