

August 19, 2010

VIA ELECTRONIC FILING

EPA Docket Center, EPA West (Air Docket)
Attention: Docket ID No. EPA-HQ-OAR-2010-0133
U.S. Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments of the Renewable Fuels Association;
2011 Renewable Fuel Standards; Proposed Rule
75 Fed. Reg. 42238
Docket No: EPA-HQ-OAR-2010-0133

The Renewable Fuels Association (“RFA”) is the leading trade association for America’s ethanol industry. Its mission is to advance the development, production, and use of ethanol fuel by strengthening America’s ethanol industry and raising awareness about the benefits of renewable fuels. Founded in 1981, RFA represents the majority of the U.S. ethanol industry and serves as the premier meeting ground for industry leaders and supporters. RFA’s 300-plus members are working to help America become cleaner, safer, energy independent and economically secure.

The RFA is pleased to submit the following comments to the U.S. Environmental Protection Agency’s (EPA) notice of proposed rulemaking announcing the setting of its proposed 2011 percentage standards for volumes of renewable fuels and its projected volume of cellulosic biofuel for compliance year 2011. 75 Fed. Reg. 42238.

1. EPA should maintain the overall Renewable Fuels Standard (RFS) at 13.95 billion gallons, but should lower the advanced biofuels standard commensurate with the proposed reduction in the cellulosic biofuels standard.

We agree with EPA’s proposal to maintain the overall RFS at 13.95 billion gallons for 2011. However, based on the likelihood that volumes of advanced biofuels will be insufficient to meet the 1.35 billion gallon advanced biofuels standard, we believe EPA should reduce the advanced biofuels standard commensurate with the proposed reduction in the cellulosic biofuels standard.

Under CAA 211 (o)(7)(D)(i), EPA has the flexibility to reduce the advanced biofuel standard in the event that the projected volume of cellulosic biofuel is determined to be below the

volume specified in the statute. However, EPA is proposing to maintain the advanced biofuels standard at 1.35 billion gallons in 2011. EPA's proposed approach is based on the assumption that "...there are likely to be sufficient volumes of other advanced biofuels such that the advanced biofuels standard need not be lowered below 1.35 billion gallons."¹ EPA relies on Energy Information Administration projections to suggest that there will be adequate supplies of imported sugarcane ethanol and biodiesel (in excess of the 800 million gallon biomass-based diesel standard) in 2011 to satisfy the 125-144 million ethanol-equivalent gallon shortfall created by lowering the cellulosic biofuel standard.

We disagree with EPA's assessment and believe it is highly unlikely that there will be sufficient volumes of imported sugarcane ethanol, excess biodiesel, or other advanced biofuels to meet the shortfall resulting from lowering the cellulosic biofuel standard. An examination of current sugarcane ethanol import trends and biodiesel production levels casts significant doubt on whether volumes of these fuels will be adequate in meeting the advanced biofuels standard.

Due to rapidly increasing ethanol demand in Brazil, volatile world sugar markets, and lower-than-expected sugarcane production, it is highly improbable that Brazil can or will export 125-144 million gallons of sugarcane ethanol to the United States in 2011. Total ethanol imports from *all* countries have totaled just 14.96 million gallons in the first six months of 2010, and less than 60,000 gallons have been imported from Brazil.² Assuming this trend continues through the remainder of 2010, imports from Brazil would be equivalent to just 0.08-0.1% of the 125-144 million gallons of biofuel needed to satisfy the proposed advanced biofuel standard. While imports from Brazil may increase in 2011, it is doubtful that they will approach the levels necessary to offset the shortfall created by lowering the cellulosic biofuel standard.

Similarly, it is highly unlikely that biodiesel production in 2011 will exceed the 800 million gallon biomass-based diesel standard. In its August 2010 World Agriculture Supply & Demand Estimates report, the U.S. Department of Agriculture estimated 1.8 billion pounds of soy oil would be processed into biodiesel in the 2009-2010 marketing season (Oct. 1, 2009-Sept. 30, 2010), implying 240 million gallons of soy biodiesel production during that period.³ For the 2010-2011 marketing season (Oct. 1, 2010-Sept. 30, 2011), USDA projects 2.9 billion pounds of soy oil will be processed into biodiesel, implying 387 million gallons of biodiesel production. Of course, feedstocks other than soy oil are used for biodiesel, but these feedstocks (e.g., canola oil, corn oil, palm oil, and animal fats) have accounted for the minority of biodiesel production in recent years. Thus, it seems unlikely that enough biodiesel will be produced to meet the 800 million gallon biomass-based diesel standard, let

¹ 75 Fed. Reg. 42,247 (July 20, 2010)

² USDA Foreign Agricultural Service. Global Agricultural Trade System. Standard Query. Accessed Aug. 12, 2010.

³ USDA. World Agricultural Supply & Demand Estimates. August 12, 2010.

alone to meet the need for additional advanced biofuels resulting from lowering the cellulosic biofuels standard.

Because it is unlikely that sufficient supplies of advanced biofuels will be available to offset the reduction in the cellulosic biofuels standard in 2011, we believe EPA should exercise its authority to reduce the advanced biofuel standard while keeping the overall RFS intact at 13.95 billion gallons. As EPA acknowledges, doing so would increase the use of “conventional” renewable fuel such as ethanol from corn and grain sorghum. There is sufficient capacity to accommodate an increase in the “conventional” renewable fuel standard from 12.6 billion gallons to an amount that would offset the reduction in the cellulosic biofuels standard (i.e., the “conventional” renewable fuels standard would be adjusted upward to 12.725-12.744 billion gallons and the advanced biofuel standard would be adjusted downward to 1.206-1.225 billion ethanol-equivalent gallons, based on EPA’s proposal).

Projected Impact of Cellulosic Volume Adjustment on Use of Other Biofuels in 2011
 [Mill Gallons, ethanol equivalent]

	EPA Proposed Rule (Table II.C—1)	Adjusted Standards Based on Likely Available Volumes in 2011
Total renewable fuel.....	13,950	13,950
Conventional renewable fuel.....	12,600	12,725—12,744
Total advanced biofuel.....	1,350	1,206—1,225
Cellulosic biofuel.....	6.5—25.5	6.5—25.5
Biomass-based diesel.....	1,200	1,200
Other advanced biofuel.....	125—144	0

As of Aug. 16, 2010, there were 201 installed ethanol facilities with the capacity to produce 13.56 billion gallons.⁴ Further, current year-to-date production levels (January-May) suggest ethanol production in 2010 will be 12.81 billion gallons, slightly above the level of “conventional” renewable fuels required if EPA opts to reduce the advanced biofuels standard but leave the overall RFS intact at 13.95 billion gallons.⁵

We agree with EPA that one of Congress’ goals with the Energy Independence and Security Act of 2007 was to encourage the development of cellulosic and other advanced biofuels. However, we also believe Congress intended to maximize the use of all available renewable fuels, in accordance with the overall renewable fuels standard, regardless of feedstock. Thus, we believe the most practical option for meeting the 2011 renewable fuels

⁴ Renewable Fuels Association. Biorefinery Locations. <http://www.ethanolrfa.org/bio-refinery-locations/> Accessed Aug. 16, 2010.

⁵ Energy Information Administration. U.S. Renewable Fuels Plant and Oxygenate Plant Net Production of Fuel Ethanol. Petroleum Navigator. http://www.eia.doe.gov/dnav/pet/pet_sum_top.asp. Accessed Aug. 13, 2010.

requirements established by the statute is to lower the advanced biofuel standard but maintain the total renewable fuels standard.

Further, based on some of the language in the proposed rulemaking, we feel compelled to remind EPA that it is limited in its authority to waive the overall RFS and that the process for waiving the overall RFS is clearly outlined in CAA 211(o)(7). This rulemaking process cannot be used in lieu of the process outlined in CAA 211(o)(7) for considering waivers. EPA's proposed rule states that, "If [the volumetric ethanol excise tax credit] is not renewed, the excess ethanol volume shown in Table II.C-4 may be smaller. Thus, while we are proposing that the required volume of total renewable fuel for 2011 be set at the statutory level of 13.95 billion gallons, we request comment on whether the total renewable fuel standard should be lowered." While this statement is generally within the context of EPA's proposal to lower the cellulosic biofuel standard, we are concerned by the tenor of the statement and believe that the discussion deviates from the established statutory process that requires adequate notice and comment should EPA consider waiving the overall RFS requirements. The criteria for considering a waiver of overall RFS requirements is clearly outlined in CAA 211(o)(7) and issues such as speculation on the impacts of failing to extend the volumetric ethanol excise tax credit cannot be used to support efforts to consider a waiver of the overall RFS.

2. We support EPA's proposal for "delayed" RIN generation for sorghum ethanol and woody pulp ethanol, but believe the deadline for generation of delayed RINs should be extended from the proposed 30 days to 60 days after the pathway is added to Table 1 of §80.1426

At least 128 million bushels of grain sorghum were used to produce fuel ethanol in the 2009-2010 marketing year, implying production of at least 340 million gallons of grain sorghum-based ethanol.⁶ Because grain sorghum is commonly used as an ethanol feedstock, particularly in the southern High Plains and southwest Corn Belt region, we support EPA's proposed mechanism allowing ethanol producers to generate RINs for the ethanol they produce from grain sorghum during the period before a specific pathway for grain sorghum is added to Table 1 of §80.1426.

However, we believe the deadline for generating delayed RINs should be extended from EPA's proposed 30 days after the pathway is added to Table 1 of §80.1426 to 60 days. This extension would provide more flexibility for grandfathered producers who would be required to acquire and retire RINs from the open market, as well as non-grandfathered producers who would generate delayed RINs based on the volume of renewable fuel they produced and sold between July 1, 2010 and the effective date of the new pathway.

⁶ Agri-Energy Solutions. Grain Sorghum in Ethanol. Report prepared for National Sorghum Checkoff. October 2009. http://www.sorghumcheckoff.com/userfiles/USCP%20Study%20_2_.pdf

- 3. EPA should only finalize its proposal regarding the adoption of the aggregate compliance approach to renewable biomass for foreign producers *IF* the agency is assured that the data and information submitted by foreign producers meets the same standard of availability, quality and credibility that was required of the aggregate compliance determination for U.S. crops and crop residues. Failing such assurance, EPA should require foreign producers to comply with the individual renewable biomass reporting and recordkeeping requirements as finalized in the RFS2 final regulation.**

We generally support the petition process as outlined by EPA in the proposed rule. However, we are concerned that there is a high likelihood that data and information submitted by foreign producers via petition may not rise to the standard of quality, robustness, and credibility established by the aggregate compliance determination for U.S. crops and crop residues. If EPA determines that the data and information that would be required for petitions from foreign producers is unlikely to be available or rise to the standard established by the aggregate compliance determination for U.S. crops and crop residues, the agency should require foreign producers to comply with the individual renewable biomass reporting and recordkeeping requirements.

In determining whether the aggregate compliance approach is appropriate for foreign producers, EPA should consider, at a minimum, the proposed criterion outlined in the proposed amendments to §80.1457 of the RFS2 regulation. In addition, the definitions of terms such as “cropland,” “pastureland,” “planted crop,” and “crop residue” included in the final RFS2 regulations must be applied consistently to all regions and countries as EPA makes this determination.

EPA’s proposal is not clear on the geographical boundary upon which the aggregate compliance decision would be based for foreign producers. EPA suggests aggregate compliance petitions from foreign producers may apply to feedstocks “...either in a foreign country as a whole or in a specified geographical area within a country.” The aggregate compliance determination for U.S. crops and crop residues was based on the national level of agricultural land existing in the United States in 2007. We see no reason why the national boundary should not be used in every case for determining aggregate compliance of crops and crop residues for all countries who submit petitions. Thus, we are recommending that EPA remove the allowance for petitions to pertain only to specified geographical areas within a particular country and instead require that petitions pertain to the entire nation in question.

Information and data submitted by petition must be generated and/or approved by the national government of the country in question. Further, the data and information submitted must be publicly accessible and available on an ongoing annual basis. In addition, the statistical methods underlying the submitted must be transparent. We also support

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EPA's recommendation that the petitioner must identify a specific entity that will provide necessary data to EPA on an ongoing annual basis. We support EPA's proposal to subject petitions from foreign producers to public notice and comment and believe public participation is a warranted and necessary component of EPA's proposed process to consider aggregate compliance petitions.

4. We support the inclusion of small refiners in the RFS2 program beginning in 2011.

We agree with the Department of Energy's conclusions from the "EPACT 2005 Section 1501 Small Refineries Exemption Study," which found there is no reason to believe that any small refinery would face disproportional harm from inclusion in the RFS2 program for 2011 and beyond. Including small refineries in the program for 2011 and beyond will aid in maximizing the goals and benefits of the RFS.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Dinneen", with a stylized flourish at the end.

Bob Dinneen
President