



June 17, 2021

Mr. Joseph Goffman
Acting Assistant Administrator, Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Goffman:

We are writing to provide additional comments regarding the RFS Volume Standards for 2021 and 2022. We briefly discussed these topics during a conference call with you and your staff on May 10, 2021. We understand that EPA is working on a Notice of Proposed Rulemaking (NPRM) for the RFS which may be released in the near future. We are highlighting several of the key issues that are of concern regarding this NPRM.

The statutory volumes for 2021 and 2022 are unachievable, and EPA must reduce the RFS volumes in 2021 and 2022 to feasible levels. We hope EPA will utilize the cellulosic biofuel waiver authority under 211(o)(7)(D) as a first step to reduce statutory volumes. However, the cellulosic waiver authority by itself is insufficient to reach a feasible set of volume standards in 2021. In 2022, the problem is compounded because the statutory volume of advanced biofuel increases by an additional 500 million gallons, further reducing the effectiveness of the cellulosic biofuel waiver.

In addition to using the cellulosic biofuel waiver, EPA needs to use its general waiver authority under 211(o)(7)(A), or its RFS reset authority under 211(o)(7)(F). We believe that a combination of these waiver provisions will be necessary in both 2021 and 2022 to keep compliance volumes feasible, avoid potential increased costs to the consumer, and maintain program stability by not exceeding the ethanol blendwall.

There have been recent press articles stating that EPA may keep the renewable fuel volumes for 2021 roughly constant with the volume standards that were finalized for 2020. However, keeping the volumes at the 2020 level would result in an infeasible set of standards in 2021. The 2020 volumes included a volume increase, known as "reallocation", to compensate for future small refinery exemptions that were expected to return a significant quantity of RINs to the market. Instead, the small refinery exemptions have not been and appear unlikely to be granted. The reallocation of RINs in 2020 has exacerbated the problem of infeasible volume standards. Therefore, the 2020 volumes should not be considered as a viable scenario for the 2021 RFS. Further reductions are necessary.

If the 2021 volume standards are not reduced to a feasible level, there is a significant risk that the carryover RIN balance will be depleted. Our modeling shows that the carryover RIN balance is declining and will be exhausted by the end of 2021. EPA has consistently recognized in previous rulemakings that a sufficient balance of carryover RINs is necessary to ensure a properly functioning RIN market. In the RFS Final Rule for 2019, dated December 18, 2018, EPA stated:

"An adequate RIN bank serves to make the RIN market liquid" and "drawdown of the carryover RIN bank leading to a scarcity of RINs may stop the market from functioning in an efficient manner."



American
Petroleum
Institute

Ron Chittim
Vice President
API Downstream Policy
202-682-8167
chittim@api.org

The drawdown of carryover RINs should not be considered as a viable mechanism to justify infeasible volume standards. Once the carryover RIN balance is fully liquidated, it cannot be easily restored. Depleting the RIN bank should be avoided as it will increase RIN market volatility, potentially increase consumer costs, and jeopardize the ability for obligated parties to comply with the RFS.

The objectives of setting feasible RFS volume standards and maintaining a workable carryover RIN balance are significant challenges for EPA in 2021 and 2022. Against this backdrop, there are additional policy issues that EPA should not include in the 2021 and 2022 program.

Specifically, EPA should not consider increasing the volume standards in response to the 2016 RFS court remand decision. Also, EPA should not include a “reallocation” increase for small refinery exemptions as it did in 2020. Finally, EPA should not consider increasing volume standards to recover any RINs from previous small refinery exemptions that may be invalidated based on pending court decisions. Any of these individual actions would place additional pressure on the overburdened RFS.

In conclusion, EPA should take prudent action to ensure the RFS remains viable. A stable, functioning RFS is critical to meet the current objectives of the program in 2021 and 2022. Maintaining program stability is also important as EPA prepares to define future RFS standards starting in 2023, which could significantly increase the program’s effectiveness on reducing GHG emissions from transportation.

Thank you for your consideration of the issues we have raised in this letter. API is committed to working with EPA to chart a feasible course for the RFS, both in the current years and in the future. Please contact me with any questions.

Respectfully,

A handwritten signature in black ink that reads 'R Chittim'.

cc: Sarah Dunham, Director, Office of Transportation and Air Quality