



Thursday, December 5, 2013

U.S. Environmental Protection Agency's Public Hearing for the 2014 Standards for the Renewable Fuel Standard Program, Docket Number: EPA-HQ-OAR-2013-0427

Hyatt Regency, Crystal City, 2799 Jefferson Davis Highway, Arlington, VA

The Biotechnology Industry Organization ("BIO") is pleased to have the opportunity today to comment on the U.S. Environmental Protection Agency's ("EPA") Proposed Rule on the 2014 Standards for the Renewable Fuel Standard (RFS) Program¹ ("the proposed rule") and the renewable volume obligations (RVO) for biofuels in 2014.

BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products.

BIO represents nearly 90 companies leading the development of new technologies for producing conventional and advanced biofuels. Through the application of industrial biotechnology BIO members are improving conventional ethanol processes, enabling advanced biofuel production technologies and speeding development of new dedicated energy crops. To date, these companies have invested more than \$5.7 billion in private capital here in the United States in building the advanced and cellulosic biofuels industry². Our membership includes four companies EPA cites in its proposed rule as producing commercial gallons of cellulosic biofuels in 2014³.

¹ 2014 Standards for the Renewable Fuel Standard Program, 78 Fed. Reg. 230, 71732 (proposed Nov. 29, 2013) (to be codified at 40 C.F.R. pt. 80) (available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-11-29/pdf/2013-28155.pdf>) [hereinafter *The Proposed Rule*].

² *The Renewable Fuel Standard, Timeline of a Successful Policy*, Biotechnology Industry Organization, Jun. 29, 2012, available at: <http://www.bio.org/articles/renewable-fuel-standard-timeline-successful-policy>

³ *Visible Progress in Biorefinery Commercialization, Industrial Biotech Companies Show Progress in Commercialization*, Biotechnology Industry Organization, Jun. 15, 2012, available at: <http://www.bio.org/articles/visible-progress-biorefinery-commercialization>



Our member companies are deeply concerned the proposed rule is a fundamental change in direction and it sets a troubling precedent for the RFS in 2014 and beyond. Creating an inconsistent regulatory climate will undercut investment and undermine the development of advanced and cellulosic biofuels, just as they are set to produce millions of commercial gallons and launch a rapid scale up.

EPA's proposal to waive volumes of the advanced and total renewable fuel RVOs for 2014 is inconsistent with past regulatory practice for previous rules. This regulatory inconsistency will undermine investors' confidence in the program, short-circuiting our companies' efforts to commercialize new technologies that are highly dependent on investment capital. For regulatory consistency and to ensure stable and sustained growth in the advanced and cellulosic biofuels industry, EPA should revise the proposed rule to be consistent with past practice in setting RVOs, EPA's previous interpretation of waiver requests, the plain language of the statute, and Congressional intent.

We believe EPA should revise the advanced and overall renewable fuel RVOs in the proposed rule to reflect the levels required by the statute for 2014⁴ and follow actual production and availability of the renewable fuels coming on the market rather than focus on distribution constraints.

BIO is concerned the proposed rule is designed to grant regulatory relief to obligated parties when it is misguided and not warranted. The rapid rise and fall in renewable identification number (RIN) prices that occurred throughout this year was caused by refiners who refused to comply with the spirit of the law and instead looked for escape clauses. EPA is wrong to interpret this summer's rise RIN prices as an indication that RVOs should be reduced. On the contrary, this short-term rise had precise effect intended by Congress in

⁴ Energy Independence and Security Act of 2007, Public Law 110-140, approved December 19, 2007, available at: <http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/html/PLAW-110publ140.htm>



establishing the RIN market: increased blending of biofuels – especially by previously recalcitrant parties.

While many refiners pursued successful strategies for meeting the RFS goals and began to increase their investments in renewable fuels and the infrastructure necessary to deploy these fuels to consumers, other obligated parties sought to avoid biofuels and instead solely purchase RINs from others. It should also be noted, since RINs are bought and sold among competing refiners, consumers are protected from the costs (Appendix I) – this is a fact verified by refiner quarterly statements to their investors⁵. The final rule should ensure the RIN market continues to work in incentivizing fuel market stakeholders to make the necessary investments in infrastructure for greater deployment of biofuels⁶; rather than give relief to the minority of refiners who have adopted defiant compliance strategies.

BIO recognizes the challenges associated with the RFS; however, codifying a 10-percent “blendwall” is inconsistent with the statute and original Congressional intent. The RFS is the *solution* to the oil-industry erected blend wall. RIN prices must be allowed to function as a market driver for investment in infrastructure and biofuel consumption if we are ever to arrive at a day when consumers have true choice at the pump.

Multiple compliance options are available for distribution of additional volumes of biofuel. Higher blends, such as E15 and E85 fuels are approved fuels⁷. Advanced biofuels that directly drop in to the gasoline supply are also making their way to the market, following years of research and development. Consistent growth in the RFS is essential to give companies the confidence to attract and deploy the capital necessary to bring this new

⁵ Geoff Cooper, Renewable Fuels Association, *What do Big Oil's Quarterly Earnings Say About the Real Impact of RINs on U.S. Gas Prices?*, Aug. 1, 2013, available at: <http://www.ethanolrfa.org/exchange/entry/what-do-big-oils-quarterly-earnings-say-about-the-real-impact-of-rins-on-u/>

⁶ Babcock, B.A., and S. Pouliot. 2013. “The Economic Role of RIN Prices” Policy Brief (13-PB-14), Center for Agriculture and Rural Development, Iowa State University.

⁷ Babcock, B.A., and S. Pouliot. 2013. “Price It and They Will Buy: How E85 Can Break the Blend Wall.” Policy Brief (13-PB-11), Center for Agriculture and Rural Development, Iowa State University.



technology to maturity. BIO would encourage EPA to use the regulatory flexibility inherent in the law to facilitate the transition over the “blendwall” without decreasing volume obligations.

The RFS was designed by Congress to provide a supportive environment for private companies to develop new technologies, new production infrastructure, and new energy crop supply chains. Our companies have acted on this, investing billions of dollars in private capital in conjunction with federal and state grants to launch this new industry. This proposed rule, signaling the market for biofuels will be frozen at a small percentage of transportation fuels, will strand existing investments in advanced biofuels, significantly curtails any further investment and development of future facilities, and put hundreds of thousands of existing and future jobs at risk. It will undercut the commercialization of other biotechnology research and development, such as the burgeoning renewable chemicals industry, that are following on to the growth of biorefinery platforms encouraged by the RFS.

In addition to the economic impact to the communities directly affected by the closure of a biorefining facility, this proposed rule would reverberate through the entire supply chain; from chemists and engineers developing the new chemicals and processes to make advanced biofuels, to the producers developing new energy crops. Because of the RFS, gas prices were reduced by \$1.09 per gallon in 2011, saving the average American household \$1,200 on their gas bill. Removing biofuels from the fuel supply will only cause prices to go up at the pump⁸.

This proposal could also derail our industry’s efforts to turn technological know-how into cleaner transportation fuels, leaving us increasingly dependent on oil, which

⁸ Hayes, D.J., and Du, X. 2012, “The Impact of Ethanol Production on U.S. and Regional Gasoline Markets: An Update to 2012.” Working Paper (12-WP 258), Center for Agriculture and Rural Development, Iowa State University.



increasingly comes from volatile regions of the world or is extracted in environmentally detrimental ways such as Canadian oil sands or deep water drilling. Today's oil emits 3 percent more greenhouse gas on average than oil used in 2005. Setting the 2014 RFS obligations lower than the 2013 levels – as the administration proposes -- would mean that America will use 100 million additional barrels of oil next year alone. This would result in more than 30 million added tons of greenhouse gases going into the atmosphere⁹.

In conclusion, this proposed rule, if finalized and carried into the future will stymie the growth of advanced and cellulosic production, discourage additional innovation in the biotechnology industry, harm economic growth, undermine U.S. energy security, and enable significant backsliding on the nation's environmental goals.

The proposed approach is misguided and misinformed, and must be revised.

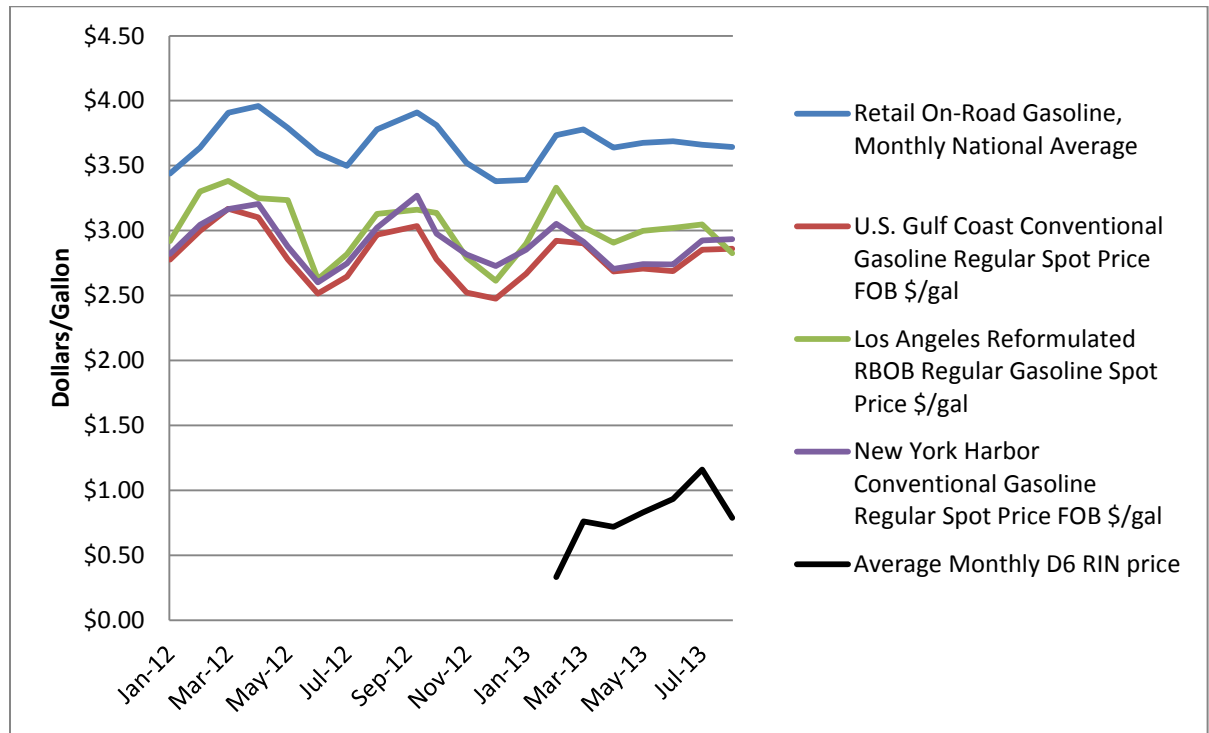
⁹ Wang, M. et al. "Well-to-wheels energy use and greenhouse gas emissions of ethanol from corn, sugarcane and cellulosic biomass for US Use." Environ. Res. Lett. 7 (2012) 045905 (13pp) doi:10.1088/1748-9326/7/4/045905, available at: <http://iopscience.iop.org/1748-9326/7/4/045905/>



Appendix

Appendix I:

2013 RIN price rises were never reflected in prices at the rack or the pump.



* Source Energy Information Administration and OPIS