

RIN QUALITY ASSURANCE PROGRAM (QAP) AFPM/API MEETING WITH OMB 3/24/14

We support the efforts of the Administration to improve the integrity of the Renewable Fuel Standard (RFS) program. We are encouraged that EPA understands the need to develop an alternative to the “buyer beware” system of RIN liability. We support a rule that establishes an EPA-approved, voluntary, 3rd party RIN verification program (QAP) that establishes affirmative defense to liability stemming from invalid RINs. The affirmative defense would provide legal certainty for obligated parties who purchase verified RINs, provided that the obligated parties did not have actual knowledge of the RINs’ invalidity at the time of purchase and did not otherwise cause the invalidity. Obligated parties using “verified” RINs for compliance would be eligible to assert an affirmative defense to EPA enforcement actions.

Treatment of 2013/2014 RINs Prior to Effective Date of Final Rule: EPA proposed a retroactive process by which RINs generated after January 1, 2013, and before the effective date of the RFS RIN QAP rule, can be verified “through an informal ‘pre-registration’ process.” It is unclear how the proposed approach will work. We are already well into 2014, the elements of the QAP(s) have not been finalized and it is our understanding that, as a result a very small fraction of producers (less than 5%) have registered with QAP providers.

EPA needs to fulfill its commitment and finalize a rule that provides an affirmative defense and no penalties on **all** 2013/2014 RINs generated prior to the effective date of the final rule and until the EMTS modifications have been completed.

We support a voluntary program. As a consequence, there will be both “verified” and “unverified” RINs in the marketplace. Obligated parties should not be required to purchase verified RINs in any volume or proportion of their Renewable Volume Obligation. For RINs that do not go through the QAP process, obligated parties should be able to assert an affirmative defense if their due diligence process meets or exceeds the Agency’s prescribed due diligence. This option has existed for years in other fuels programs and should be permitted to continue to ensure that the QAP program remains voluntary.

Elements of a QAP: The use of EPA-approved, 3rd party auditing performance standards will create competition in the RIN verification market and will ensure that the appropriate amount of due diligence needed to reduce the risk of invalid RIN generation is conducted in a cost effective manner by independent, EPA-approved auditors.

The scope of EPA’s QAP program must focus on minimizing the risk for invalid RIN generation. It should not be viewed as a substitute for EPA’s own enforcement efforts to ensure that biofuel producers comply with the RFS. The temptation to create a third-party audit of the entire biofuel supply chain for full compliance with the RFS regulations will result in an overly expensive, complex, and burdensome due diligence program that fails to restore RIN liquidity.

The QAP program must balance the minimization of the risk for invalid RIN generation with a cost-effective solution that promotes confidence and participation. We believe that the EPA

proposal contained several auditing elements that add complexity and cost without providing additional assurance against invalid RINs. Examples:

- A quarterly requirement to review an annual report
- Count number of employees
- Incorporating product quality in a voluntary RIN verification program

Obligation to replace RINs: Obligated parties should not be required to replace verified RINs if EPA subsequently determines that they are invalid. It is not possible to go back in time and induce additional biofuel production for a prior year. We believe that the proposed RIN verification process will reduce the risk of invalid RINs significantly. By ensuring that a generated RIN is an appropriate representation of renewable fuel, an effective and efficient verification program supports the goals of the RFS program and minimizes the potential for a significant number of invalid RINs. The liability stemming from RIN invalidity should be limited to the party or parties that caused the invalidity to occur. Requiring RIN replacement or civil penalties for a verified RIN should be limited to RIN generators, auditors, and parties that otherwise caused RINs to become invalid. Requiring obligated parties to replace verified RINs undermines the value of the affirmative defense and may not solve the RIN liquidity problem. Obligated parties who have purchased verified RINs without actual knowledge of invalidity should not be required to re-purchase RINs to replace any verified RINs that EPA subsequently has determined to be invalid.

Limited Threshold: We support the concept of a limited threshold exemption as a means to ameliorate the due process and equity problems associated with having an innocent purchaser replace invalid RINs. We support a permanent (no phase out) 2-3% threshold as consistent with the inherent variability in forecasting fuel demand, such as the variability in EIA's October Short Term Outlook (STEO) projection vs. actual demand, which is implicit in the RFS annual percentage standards.

Biodiesel RIN separation by producers: EPA must close the loophole for RIN separation, which has been the source of over 170 million fraudulent RINs. The volume of biodiesel used as neat transportation fuel is miniscule compared with the risk for RIN invalidity. The Agency should prohibit biodiesel producers from separating RINs. This is not currently available for ethanol. All biodiesel that leaves the production facility not owned by an obligated party should have the RINs attached.

Exports/RIN Retirement: Exported biofuels are ineligible for RFS compliance. Companies with an RVO obligation based solely on biofuel exports should be required to retire RINs upon export, or 30 days later if the biofuel was obtained without attached RINs. The deficit carryover compliance flexibility should not apply to these parties. Tracking biofuel exports is outside the scope of QAP verification, and EPA's obligation to ensure compliance with export regulations should not be foisted onto QAP verifiers.

We are disappointed that the rulemaking process has taken so long. We hoped to have a final rule before the end of 2012.