



National Biodiesel Board 605 Clark Ave. PO Box 104898 Jefferson City, MO 65110-4898 (800) 841-5849 <i>phone</i> (573) 635-7913 <i>fax</i>	National Biodiesel Board 1331 Pennsylvania Ave., NW Washington, DC 20004 (202) 737-8801 <i>phone</i> www.biodiesel.org
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April 18, 2013

VIA ELECTRONIC FILING

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Ave. NW.
Washington, DC 20460
ATTN: Docket ID No. EPA-HQ-OAR-2012-0621

Re: RFS Renewable Identification Number (RIN) Quality Assurance Program;
Proposed Rule, 78 Fed. Reg. 12,158 (Feb. 21, 2013)

To Whom It May Concern:

The National Biodiesel Board (NBB) appreciates the opportunity to submit comments on the Proposed Rule for the RFS Renewable Identification Number (RIN) Quality Assurance Program, 78 Fed. Reg. 12,158 (Feb. 21, 2013) (referred to as "QAP Proposal"). The QAP Proposal includes a voluntary quality assurance program and an affirmative defense intended to address recent issues of "liquidity" in the Renewable Identification Number (RIN) market, as many obligated parties have declined to purchase RINs from smaller or lesser known producers based on the mere possibility that EPA may subsequently determine the RINs to be fraudulent. Because EPA has shown strong enforcement in cases of fraud, NBB believes the cases of fraudulent RINs of the type that came to light in 2011 and 2012 are a thing of the past.

Before we get too deep into our comments we complement each member of the OTAQ team, your Director Chris Grundler, and your team in both Washington, DC, and Ann Arbor, Michigan. There has been no shortage of regulatory issues during the ongoing implementation of the RFS and it clearly has not been an easy task. Your team, however, has done an admirable job in navigating these issues and last year, the RFS delivered more than 14 billion gallons of renewable fuels into the United States fuels market. Since 2010, under the RFS2, the program delivered more than 2 billion gallons of Advanced Biofuels -- by all accounts a remarkable success. We believe the RFS has been one of the most successful energy policies in recent history and it is accomplishing what Congress intended. It has significantly reduced our dependence on imported petroleum, improved our energy security, reduced carbon emissions and other pollution, and improved the economies of countless communities around the nation. In short, the program is working, and with every gallon produced, our industry and other Advanced Biofuel industries are developing better systems, technologies, feedstocks and economics that will continue this success.

The RFS is still a relatively new program and strong enforcement will create disincentives for criminals to try to manipulate the system. Looking back, 2011 was an important year for criminals and the RFS as the EPA issued "Notices of Violation" (NOV's) in three separate criminal cases. Today, two of those cases have yielded convictions, with the perpetrators facing lengthy prison sentences, and the third case is proceeding toward justice.

Perspective is important, and we must remember that the three cases are isolated and that the vast majority of biofuel producers are honest companies producing quality fuels for the U.S. marketplace. What we have seen is no different from fraud in other financial markets where criminals have come in and found a way to take advantage of the system. The only good news with these cases is that the scam has now come to light and will be very difficult to repeat going forward.

In fact, the RIN Fraud we're discussing today is from previous years, and the private sector has already done a good job to insure it won't happen again.

Current RIN Fraud issues took place in 2009, 2010 and 2011. Public EPA enforcement began in late 2011. Now In 2013, most obligated parties have taken steps to eliminate invalid RINs from their compliance reports. In 2012 and 2013, obligated parties have been doing what they should have been doing in 2009, 2010 and 2011. They have been inspecting and requiring audits of the biofuel producers from which they purchased biodiesel and RINs. The buyer beware program, therefore, works, and, as EPA found, ensures the mandated volumes are met while providing the market with flexibility as how best to insure against fraudulent activity.

Prior to 2012, however, obligated parties did not take their obligation under a buyer beware program seriously, and now the regulated entities have taken numerous steps to oversee RIN generation, including real time monitoring and compliance audits. Nonetheless, NBB agreed to work with obligated parties and EPA to develop an affirmative defense for obligated parties to avoid civil penalties in the unlikely event that RINs they purchased in good faith are fraudulent. *NBB did so because of the importance of small producers to the biodiesel industry and to the Renewable Fuel Standard (RFS2) program.* NBB appreciates EPA's efforts in this regard, and the willingness to meet with industry throughout this process.

To begin, we highlight the work NBB has done to create NBB's RIN Integrity Task Force. When created it was comprised of biodiesel producers, petroleum companies and independent third party blenders and marketers. We also had the benefit and distinction of having participation from staff members from the EPA. At its core the task force assisted in moving all industry partners down the path of focusing on industry solutions to addressing RIN Fraud. The task force was the first to outline the steps of an industry audit where the task force agreed to the appropriate elements of a RIN audit. We are pleased the EPA largely included in its proposed rule similar elements of the Task Force's recommendations in what has become known as the "Quality Assurance Plan" or Q-A-P. Nonetheless, we believe EPA's proposal must be substantially simplified.

While NBB does not oppose the creation of an affirmative defense for civil penalties and generally supports providing guidance for a verification process, we have various concerns with EPA's proposal. These concerns largely stem from three key areas:

1. We are concerned that EPA's proposal will allow an overall reduction in mandated volumes, which will violate the statute;
2. We are concerned that EPA's proposal is too complicated and will be overly burdensome on producers, particularly small biodiesel producers, and we propose a simpler Q-A-P system (i.e., one verification process with RIN replacement remaining with the obligated party) that will streamline the regulatory program and provide both

biodiesel producers and obligated parties better options for both the affirmative defense and RIN verification; and

3. We are concerned that EPA's proposal could provide incentives for fraud, and the Q-A-P process must work to eliminate fraud, including ensuring the auditor is truly independent.

A more simplified program would substantially decrease the complexity of EPA's proposed program and move the focus to rooting out fraud and creating a consistent system. It would also decrease the cost of the Q-A-P by removing the cost of RIN replacement from the biofuel producer, which would essentially occur under EPA's proposed Q-A-P A. Neither the statute nor any concept of fairness supports imposing the RIN replacement obligation on innocent producers, as opposed to the actual RIN purchasers who conducted no oversight whatsoever.

We briefly outline our main points on the proposed rule, starting from the issues raised in the last few pages of the proposal. Those issues are as follows:

1. **Export and Exporter Provisions:** NBB generally supports revising the exporter RVO provisions to ensure proper retirement of RINs and more transparency in the export market. It also believes there should be more timely retirement of RINs for exported renewable fuel, rather than the annual compliance currently provided under the RFS2 rules.
2. **Downstream Invalidation Issues:** NBB agrees that improper separation of RINs and the use of renewable fuel downstream for non-qualified uses should not invalidate the RIN. Biodiesel producers should not be required to track their fuel that has been properly designated for use in or as transportation fuel, heating oil or jet fuel.
3. **Treatment of Confidential Business Information (Transparency):** NBB supports efforts to increase the transparency of the RFS program, but believes the biggest issue is EPA's failure to provide information on the demand side. In addition, NBB objects to the proposal to provide producer information on a facility-by-facility basis, as providing the information does reveal confidential business information. EPA should follow the lead of other federal agencies and report such information on an aggregate basis only, and should also report the information on a consistent basis, including at the same time each month.

NBB addresses these issues, and others on which EPA has sought comment on, in the attached comments. We applaud EPA for attempting to clarify the rule, particularly with respect to exports and downstream uses, and specifically defining a number of gray areas under the current rule.

With respect to EPA's QAP process, we comment on at length on each of the following general areas:

- A Simpler Q-A-P process
- General Discussion on the Affirmative Defense
- General RIN Replacement Discussion
- Auditor Requirements

There are three issues to highlight in this group. On the issue of providing an affirmative defense: we are not interested in seeing obligated parties being fined or penalized for unwittingly using RINs they thought were valid, and we have been supportive in creating an affirmative defense for obligated parties and others in the chain who handle or transfer RINs. However, by the same token, we believe obligated parties should be required to exercise an appropriate level of due diligence before they submit RINs for compliance, and we are committed to ensuring that the gallons required under the RFS, the real gallons, are produced and sold in the U.S. as envisioned by Congress. EPA's proposal lets obligated parties off the hook in direct contravention of the statute, and we do not believe the proposal will, in fact, create a level playing field for producers. In particular, EPA must reconsider the impacts of its proposal on small producers, rather than rely on unsupported statements by obligated parties.

The second issue is the one relating to the requirements on the auditor. The EPA has a difficult task in creating the appropriate balance within the proposed rule, relating to the role of the auditor, the entity that will stand in the place of EPA to determine whether RINs are valid, or more importantly, invalid. In order for them to do so in the purest way possible, the auditor must maintain a level of independence in the fuels marketplace. This is important. An auditor, the company that implements that Q-A-P, will be conflicted if the company also has a monetary gain from the RINs that the auditor deems valid. We highlight what we think are the appropriate rules for auditor independence. NBB is concerned about the independence of auditors. There are billions of dollars at stake annually in RIN transactions, if the program does not require independent auditors, then EPA may be expanding rather than curtailing the opportunity for fraud under the RFS program.

Third, in the proposal, EPA did not discuss at length how a Q-A-P should be applied to foreign biofuel producers. We are concerned about the jurisdiction of the EPA and the U.S. Department of Justice in reaching into other countries to enforce the RFS2 program. How does EPA best protect obligated parties and the RFS from fraud or invalid RINs that are illegally or invalidly generated from foreign producers? We think this is an important issue for the EPA to get right, as there are currently hundreds of millions and potentially billions of RINs that will likely be generated under the program and at today's RIN prices across the board, the incentive to commit fraud is greater than ever.

Finally, NBB would like to respond to EPA's request for comments on whether biofuel producers should be allowed to separate RINs. In a word, yes. The producer's ability to separate RINs is necessary to serve local and regional markets and is often a lifeline for smaller producers. Any calls to prohibit producers from separating RINs should be rejected.

To finalize, our industry has spent a great deal of time with the EPA discussing points of concern and communicating the ramifications related to this proposed rule. We respect the work product of the team at EPA and believe the agency has done an excellent job administering a policy that is incredibly complex but at the same time incredibly important to our national energy goals.

NBB is the national trade association representing the biodiesel industry as the coordinating body for research and development in the United States. Since 1992 when it was founded, NBB has developed into a comprehensive industry association that coordinates and interacts with a broad range of cooperators including industry, government and academia. NBB's membership is comprised of biodiesel producers; state, national and international feedstock and

feedstock processor organizations; fuel marketers and distributors; and technology providers. The biodiesel industry is the epitome of that the RFS2 program was intended to promote. Small producers helped build the biodiesel industry, and they continue to innovate and advance the industry particularly through diversification of feedstocks. Small producers also contribute especially to local and regional markets that form the backbone of the biodiesel industry. In finalizing the rule, EPA must keep in mind that the purpose of the QAP Proposal is to weed out bad actors and to ensure small producers can participate in the program on an even level playing field. EPA must also keep in mind its obligation to ensure that at least the mandated volumes are met.

The QAP Proposal includes numerous provisions and requests comment on a myriad of issues. We have endeavored to comment on each component that has an impact on biodiesel producers. We appreciate the opportunity to submit these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Anne Steckel". The signature is written in a cursive, flowing style.

Anne Steckel,
Vice President of Federal and Regulatory Affairs
National Biodiesel Board