

API Concerns with a Final Rule for the 2012 RFS

Cellulosic Biofuel Standards

- EPA is not following congressional intent with respect to cellulosic biofuel volumes
 - The proposed cellulosic volume is an estimate of “what could be made available” in 2012
 - Congress charged EPA with setting the standard at “the projected volume available¹”
 - EPA also states: “the purpose of setting a mandate is to stimulate more rapid increases in the rate of production than the cellulosic biofuel industry would likely experience in the absence of the mandate²”
- A concrete standard, not a subjective projection is necessary to provide certainty to the regulated community, and address the unjustified cost borne by obligated parties
 - API urged the agency to use demonstrated rates (continuous operation for at least three months) of existing annual capacity as of the required November 30 notice
 - According to EMTS data, none of the facilities that EPA projected to be producing cellulosic biofuels in 2010 or 2011 have in fact produced any volume as of September 30, 2011
 - EPA has imposed a total cost of nearly \$17 million in waiver credit purchases over the two year period³
 - EPA needs to adopt an equitable regulatory mechanism to correct for cellulosic production shortfalls that continues to provide cellulosic producers assurance of a market, while eliminating the unjustified cost to obligated parties
- When a cellulosic waiver is granted, a commensurate reduction in advanced biofuel and total renewable fuel is needed
 - Increased potential for unintended consequences and the creation of market instability

Biomass Based Diesel

- EPA proposed 1.28 billion gallons of biodiesel for 2013
- The statutory minimum of 1.0 billion gallons should be maintained
 - Likely that even with a 1.0 billion gallon standard in 2012 and 2013, EPA may be called upon to consider its waiver authority of up to 30%
 - Statute does not require EPA to increase the biodiesel volume and EPA’s justification for an increase to 1.28 billion gallons is inadequate:
 - EPA’s own out-of-date analysis;
 - EIA’s 2011 AEO shows 19% less than EPA figures
 - Irrelevant incremental increase during the 2009-2012 period and;
 - A study produced by IHS Global Insight⁴ that contains questionable results
 - The study assumes a minimum 1.3 billion gallons of biodiesel will be produced in 2013 - It is misleading and questionable to rely upon a study’s key assumption as being a study result

¹ Clean Air Act Section 211(o)(7)(D)(I)

² Section II.B.4 of the Proposed Rule

³ Based on waiver credit values established by EPA of \$1.56 and \$1.13 per gallon for 2010 and 2011, respectively

⁴ IHS Global Insight, “Biodiesel Production Prospects for the Next Decade”, March, 11, 2011.

Petition for Reconsideration of the 2011 Cellulosic Biofuel Volume Requirement

- EPA's final rule establishing the RFS standards for 2011 is unrealistically high
 - EPA is required by statute to determine the volume of cellulosic biofuel "projected to be sold or introduced into commerce in the United States"
 - EPA concluded that it is authorized to project higher levels of cellulosic biofuel production in order to "provide[] an incentive for developing cellulosic biofuel facilities to come on line as expeditiously as possible" and "to provide reasonable assurance that there will be a market for their product if they do."
 - EPA is required by statute to project the amount of cellulosic biofuel that will *actually* be sold or introduced into commerce in a given year. The statutory language calls for realistic, not aspirational, projections.

- EPA lacked a reasonable basis for departing from the EIA's estimate of cellulosic production
 - DOE regards EIA as "the primary Federal Government authority on energy statistics and analysis."
 - EIA estimated 3.94 million gallons of cellulosic biofuel would be produced
 - EPA prediction of 6.6 million gallons
 - EPA is required to do more than simply "consider" EIA's estimate. Instead, EPA's volume requirement must be "based on" EIA's estimate.