

April 2, 2012

John Duff
Energy Information Administration
EI-25
Forrestal Building
U.S. Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

RE: Comments of the Renewable Fuels Association (RFA) in response to “Notice of Solicitation of Comments on a Proposed Change to the Disclosure Limitation Policy for Information Reported on Form EIA-819 ‘Monthly Oxygenate Report.’” (77 Fed. Reg. 12,823; March 2, 2012)

Mr. Duff:

The Renewable Fuels Association (RFA) appreciates the opportunity to offer comment in response to the Energy Information Administration’s (EIA) “Notice of Solicitation of Comments on a Proposed Change to the Disclosure Limitation Policy for Information Reported on Form EIA-819 ‘Monthly Oxygenate Report.’”

The RFA is the leading trade association for America’s ethanol industry. Its mission is to advance the development, production, and use of ethanol fuel by strengthening America’s ethanol industry and raising awareness about the benefits of renewable fuels. Founded in 1981, RFA’s 300-plus producer and associate members are working to help America become cleaner, safer, energy independent and economically secure.

The RFA values its relationship with EIA and believes the data and analysis provided by the Administration is critically important to our industry for daily decision-making and business planning. However, we believe the proposed policy change regarding public disclosure of information reported on Form EIA-819 goes too far by proposing to disclose information that is extraneous to the achievement EIA’s stated goals. The proposed change would unnecessarily make known some information that our members consider confidential in nature.

- 1. EIA’s goals of enhancing the public’s understanding of ethanol production capacity can be accomplished by disclosing only *company-level nameplate capacity*, aggregated at the state or, more preferably, regional (i.e., PADD) level.**

Public disclosure of “maximum sustainable capacity” is unnecessary for achievement of EIA’s stated goals.

EIA suggests it is planning to publicly disclose nameplate and “maximum sustainable capacity” identifiable by company and facility primarily for the following reasons:

- To satisfy “EIA’s mandate for carrying out a central, comprehensive, and unified energy data and information program responsive to users’ needs for credible, reliable, and timely energy information that will improve and broaden understanding of energy in the United States.”
- To “provide comparable upstream information similar to refineries [that] will be useful to assess upstream gasoline market supply conditions.”
- To better assess “supply conditions within a region or state...in the event of a supply disruption.”
- To permit “comparisons on the growth in capacity at the state level over the past twenty years.”

Each of these goals can be readily accomplished simply by disclosing only *nameplate capacity by company* for each state and/or region. This is the only information that is necessary for public disclosure to achieve the primary goals of the proposed policy change, which are to assess the impacts of ethanol production capacity on state and/or regional supply conditions and to compare growth in capacity at the state level.

To the extent that a company operates multiple facilities in one state or region, its total nameplate capacity for those facilities should be aggregated at the state or regional level before public disclosure. For example, if XYZ Ethanol Company operates two facilities in a single state—one with 110 MGY nameplate capacity and one with 50 MGY nameplate capacity—the information disclosed to the public should indicate that the company’s nameplate capacity for that state is 160 MGY. While we would prefer nameplate capacity by company be aggregated at the regional (i.e. PADD) level, we understand the additional benefit of offering state-level data.

- 2. RFA is strongly opposed to EIA’s recommendation to publicly disclose information on “highest production” and “maximum sustainable capacity,” as some ethanol producers may consider this data as confidential business information. Additionally, “maximum sustainable capacity” may confuse and/or mislead the public regarding the ethanol industry’s actual production capabilities under normal operating conditions. EIA should continue to treat “maximum sustainable capacity” as protected information.**

EIA defines “Maximum Sustainable Capacity” as “the annualized maximum denatured fuel ethanol production that can be achieved over a period of any 6 consecutive months.” EIA further clarifies that “Maximum Sustainable Capacity may be calculated as 2 times

the ***highest production*** of denatured fuel ethanol in any period of 6 consecutive months since the plant began operation (emphasis added).”

In essence, public disclosure of this information would be akin to disclosing *actual production volumes* from individual facilities for a 6-month period. Most ethanol producers regard actual production as confidential business information with implications for competitiveness in the marketplace. We believe EIA’s previous determination that “maximum sustainable capacity” satisfies the criteria for exemption under 5 U.S.C. § 552 was and is correct, and we see no justification for changing that determination at this time. Specifically, “Exemption 4” of 5 U.S.C. § 552(b)(4) protects from public disclosure “...commercial or financial information obtained from a person and privileged or confidential.”

In addition, publicly disclosing both “maximum sustainable capacity” and “nameplate capacity” may confuse and mislead the public in regard to a company’s actual production capacity under normal operating conditions. This is because there is likely to be a discrepancy, which may be large in some cases, between the “maximum sustainable capacity” and “nameplate capacity” for a company. Clearly, “nameplate capacity” is the most useful metric for EIA data users, as it is most indicative of a company’s production capability under normal operating conditions.

We further note that similar actual production-related information is not publicly disclosed for oil refineries in the “Refinery Capacity Report.” Only atmospheric crude oil distillation *capacity* and downstream charge *capacity* is publicly disclosed in the “Refinery Capacity Report” and no information regarding “highest production” levels over a specified time interval is published.

Therefore, to ensure fairness and consistency, EIA should continue to treat “maximum sustainable capacity” as protected information not for public disclosure.

3. Public disclosure of “nameplate capacity” for ethanol production facilities should occur only *once per year*, as is the case for oil refineries.

The intended frequency of public disclosure of capacity information is unclear from the notice of solicitation for comments. That is, EIA does not indicate whether it intends to publicly disclose this information monthly, annually, or on some other interval. EIA indicates only that public disclosure of this information will begin with collection of the July 2012 data.

We note that the “Refinery Capacity Report” is published once annually and that the release of the information occurs six months after the “as of” date for refinery capacity. That is, petroleum refinery capacity as of January 1 of a given year is not published until late June of that same year.

To ensure fairness and consistency with petroleum refinery capacity data, EIA should only publish ethanol “nameplate capacity” once per year and should allow for a similar

lag time between “as of” date and the public disclosure date. We propose that ethanol “nameplate capacity” as of January 1 should be published once annually at the same time as publication of the “Refinery Capacity Report” (i.e., late June). Doing so would ensure that data users are receiving information that is consistent in terms of timing and breadth.

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Thank you for considering our comments regarding EIA’s proposed policy change. Please do not hesitate to contact Geoff Cooper at 636.594.2284 or gcooper@ethanolrfa.org if you have questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Dinneen", with a long horizontal flourish extending to the right.

Bob Dinneen
President & CEO