

April 18, 2013

VIA ELECTRONIC FILING

EPA Docket Center, EPA West Building (Air Docket)
Attention: **Docket ID No. EPA-HQ-OAR-2012-0621**
U.S. Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

VIA EMAIL

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manners.mary@epa.gov

Re: Comments of the Renewable Fuels Association; RFS Renewable Identification Number (RIN) Quality Assurance Program; Proposed Rule (78 Fed. Reg. 12,158; Docket No: EPA-HQ-OAR-2012-0621)

Dear Ms. Manners,

The Renewable Fuels Association (RFA) appreciates the opportunity to submit these comments in response to the proposed rule establishing a Quality Assurance Program (QAP) for Renewable Identification Numbers (RINs) generated under the Renewable Fuel Standard (78 Fed. Reg. 12,158).

RFA is the leading national trade association for America's ethanol industry. Founded in 1981, our mission is to drive expanded production and use of American-made ethanol and co-products by raising awareness about the benefits of renewable fuels.

Congress first established the Renewable Fuel Standard (RFS) in the Energy Policy Act of 2005 and later expanded the program in the Energy Independence and Security Act (EISA) of 2007. The multiple legislative intents of the RFS were to enhance energy security, decrease fuel prices by diversifying energy supplies, create jobs and stimulate the economy, and improve the environment. Without question, the RFS is achieving those goals today and providing tangible benefits to the American public.

However, we are concerned the addition of a QAP to the RFS program, as currently proposed, will add unnecessary cost and administrative burden to our members' operations, without necessarily providing additional regulatory or societal benefit. RFA continues to believe the Agency's QAP proposal paints with too broad a brush. It fails to account for important distinctions among various renewable fuels and their associated RIN types (i.e., D-codes), and it neglects to appropriately

characterize the relative risk (or lack thereof) of fraudulent activity posed by each. Indeed, the entire proposal fails to acknowledge that the confirmed instances of RIN fraud were related to just one renewable fuel type (biomass-based diesel) and D-code type representing a relatively small share of the overall RFS program. In fact, in the 32 months since the RFS2 regulations took effect, **35.3 billion** renewable fuel (D6) RINs have been generated. To our knowledge, not a single one of those D6 RINs has been alleged or found to be fraudulent by EPA.

Additionally, RFA is concerned that the intended “voluntary” nature of the proposed QAP options will effectively be nullified because obligated parties are likely to only purchase RINs for which an affirmative defense against civil penalties is obtainable. Accordingly, we are seeking solutions that offer the lowest possible cost to the supply chain but still achieve a level of rigor sufficient for an affirmative defense. We are strongly urging EPA to consider an additional QAP option (“QAP C”) that would be available to renewable fuel producers and importers who have a demonstrated history of compliance.

Further, we are greatly concerned EPA’s proposal to disclose certain Confidential Business Information (CBI) could harm the competitive position of individual ethanol producers, while failing to provide any additional regulatory benefit whatsoever. If EPA’s intent is to “improve the transparency” of the RIN program, it should focus on disclosure of information regarding RIN transactions by regulated parties that are neither renewable fuel producers nor obligated parties, as well as RIN separation and retirement activities by obligated parties.

The attached comments contain more detail on these issues and many other aspects of the QAP proposal. Again, RFA appreciates the opportunity to provide these comments. We remain steadfastly supportive of the RFS and look forward to continued interaction with EPA to ensure successful implementation of the program. Please contact Geoff Cooper at gcooper@ethanolrfa.org or 636.594.2284 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Dinneen", with a stylized flourish at the end.

Bob Dinneen
President & CEO

**COMMENTS OF THE RENEWABLE FUELS ASSOCIATION
RENEWABLE IDENTIFICATION NUMBER (RIN) QUALITY ASSURANCE PROGRAM; PROPOSED RULE
(78 FED. REG. 12,158; DOCKET NO: EPA-HQ-OAR-2012-0621)**

- I. RFA agrees with EPA that the “buyer beware” approach to RIN transactions has worked effectively and economically for ethanol producers and obligated parties since the inception of the RFS program. EPA should ensure that the “buyer beware” approach remains available as a viable option for regulated parties.**

In describing the existing “buyer beware” approach to RIN transactions, EPA states, “...we continue to believe that the buyer beware approach is both appropriate and effective in ensuring the validity of RINs and the use of valid RINs representing real renewable fuel to meet compliance obligations.”¹ RFA entirely concurs; the current buyer beware approach has functioned successfully for ethanol producers and their counterparties, upholding the fidelity and integrity of the conventional renewable fuel (D6) RIN market. In the 32 months since the RFS2 regulations took effect, **35.3 billion** D6 RINs have been generated.² To our knowledge, not a single one of those D6 RINs has been alleged or found to be fraudulent by EPA. This unblemished track record underscores the effectiveness and reliability of the current buyer beware approach for D6 RIN transactions.

This record of excellence is *not* simply due to the fact that D6 RINs have historically held very little value in the secondary market. Certainly, the low value of D6 RINs has been a factor, but the total lack of fraud in the trade of D6 RINs can also be explained by the fact that, in nearly all circumstance, these RINs are separated from physical gallons of renewable fuel by the obligated party at the point of blending—they are generally not separated by the ethanol producer upstream.

Further, ethanol producers and their counterparties have invested substantial resources since the inception of the RFS to develop in-house controls intended to ensure that RINs are validly generated. The majority of the companies and ethanol facilities represented by RFA have been in operation at least four or five years and have a well-established history of compliance with RFS registration, reporting, and recordkeeping requirements. These facilities have submitted multiple attest engagements and third-party engineering reviews, and they have robust controls in place to ensure high quality fuel production and valid generation of RINs. Thus, moving forward, we believe the buyer beware approach would continue to serve as the most economical and efficient means of ensuring valid RIN generation. However, for reasons discussed in the next section of these comments, we are greatly concerned that the intended “voluntary” aspect of the proposed QAP will

¹ 78 Fed. Reg. 12,164

² EPA. “RFS2 EMTS Informational Data.” <http://www.epa.gov/otag/fuels/rfsdata/index.htm>

be effectively negated and ethanol producers may be unwillingly compelled to participate in a QAP program.

A properly constructed and implemented quality assurance process eliminates the necessity of duplicate or triplicate verification points that are redundant, costly and add no real value in ensuring against RIN fraud. The existing verification points for ensuring RINs generated represent physical gallons of renewable fuel, such as the annual attestation requirements and independent third-party engineering reviews, have proven to be effective monitoring tools. We find no incremental benefit or value in implementing additional invasive procedures, such as requiring quarterly onsite visits by QAP auditors, requiring auditors to contact all feedstock suppliers and fuel purchasers, and introducing batch-level monitoring.

Yet, it appears these onerous proposed QAP requirements may become de facto standard practices for all renewable fuel producers who wish to remain competitive in the marketplace. In this way, we are concerned that “one bad apple is spoiling the bunch.” That is, the overwhelming majority of ethanol market actors who have impeccable compliance records and are following the existing rules could be unnecessarily punished and burdened by the proposal, all because of the actions of two bad actors in the biodiesel space.

II. RFA is concerned that the intended “voluntary” nature of the proposed QAP options will be effectively nullified because obligated parties are likely to only purchase RINs for which they may obtain an affirmative defense against civil penalties.

EPA proposes to make the QAP program “voluntary” in nature, stating: “Whether or not to purchase and retire RINs verified by an EPA-approved QAP is a choice each obligated party would make on its own...”³ We are greatly concerned, however, that the intended voluntary aspect of the program will be effectively nullified as QAP becomes the norm. It seems inevitable that obligated parties will make it a matter of policy to transact only RINs for which an affirmative defense against civil liability is available; as the proposal is currently structured, the affirmative defense is only available to RINs that have been subjected to the Option A or Option B QAP programs. The implied incentive for obligated parties to obtain an affirmative defense is so significant that they are likely to make QAP a pre-condition for transacting RINs.

Because renewable fuel producers will incur most of the cost associated with a QAP program, and because it seems unlikely to us that QAP RINs will demand higher value in the market on an ongoing basis, we believe there is strong incentive for obligated parties to require all RINs, regardless of D code type, to go through a QAP. In short, we believe QAP will become the de facto standard.

EPA itself acknowledges this in the proposal, stating, “...we expect that most RINs purchased and used for compliance purposes will be QAP-verified even though the program is voluntary because

³ 78 Fed. Reg. 12,167

most obligated parties...will prefer not to take on the risk of using an unverified RIN.”⁴ Indeed, several RFA member companies have indicated some obligated parties are already signaling that they may only purchase D6 RINs that have been subjected to an EPA-approved QAP. In this way, a program that was intended to improve liquidity in the relatively smaller biomass-based diesel RIN (D4) pool may actually reduce liquidity in the D6 RIN pool for renewable fuel producers who may initially choose not to participate in a QAP.

Accordingly, we think EPA’s assumption that the program would have “no required costs” associated greatly minimizes the likely economic impact to renewable fuel producers. Estimates from industry sources and potential QAP providers suggest it will cost \$50,000-\$125,000 per ethanol facility to participate in a QAP program, but could be substantially more depending on the QAP approach chosen, size of facility, and other factors. Accordingly, the total cost on an annual basis to the ethanol industry could be on the order of \$11-26 million *or more* if QAP becomes the norm as expected.

III. Because QAP is likely to become the de facto standard for all RIN transactions, the ethanol industry urges EPA to consider adding an additional QAP option (“QAP C”) that would substantially lower the cost for producers, while still providing the additional assurance desired by obligated parties.

For the reasons described in the previous section, participation in a QAP program ultimately seems inevitable for D6 RIN generators, despite an unblemished compliance record and the extremely low risk of fraudulent activity in the generation of D6 RINs. Therefore, we are urging additional consideration of cost-conscious solutions that still achieve a level of stringency sufficient for an affirmative defense.

EPA’s current proposal includes only two QAP options, both of which require the ongoing use of third-party auditors to provide oversight. We are strongly urging EPA to consider an additional QAP option (“QAP C”) that would be available to renewable fuel producers and importers who meet certain criteria with respect to compliance history. The ethanol industry’s proposed QAP C scheme would contain elements that are virtually identical to those found in EPA’s proposal for QAP A and QAP B options. The key distinction for QAP C would be who can qualify as an auditor. Specific elements of the ethanol industry’s proposed QAP C option are detailed below:

- QAP C would have feedstock, production, RIN generation, and RIN separation monitoring requirements identical to Option A, as described in Tables IV.A.1.a-1 through IV.A.1.d-1 of the proposal.
- QAP C plans would be subject to the same requirements as QAP A for approval and frequency of updates or revisions, as described in section IV.A.2.a and b of the proposal,

⁴ *Id.*

with the only exception being that the “producer” or “importer” would be referenced in place of, or in addition to, the references to “third-party auditor.” Approval of a QAP C plan would also require the submitter to demonstrate that the producer or importer has a history of compliance, including submittal of at least one successful attest engagement and third-party engineering review.

- Treatment and resolution of invalid RINs under QAP C would be identical to invalid RIN treatment and resolution under QAP B. Under QAP C, the producer or importer would be responsible for replacing RINs they generated that were determined to be invalid. Further, the same 2% limited exemption proposed under QAP B would apply for the RIN owner or obligated party under QAP C. We believe a level playing field with regard to a limit on liability exposure for RIN owners and generators should apply to all QAP options.
- RIN replacement requirements for QAP C would be the same as those associated with QAP B in the proposal. However, we would suggest modifying V.D.3 of the proposal to allow RINs verified via QAP C to be used interchangeably with RINs verified via QAP B. As a second-best alternative, the section could be modified to allow RINs validated via QAP C to be segregated into their own category in the same way currently proposed for RINs validated via QAP A and QAP B.
- Under QAP C, we suggest that any regulated party designated by a Producer or Importer, including the individual Producer or Importer themselves, that submits an EPA-approved QAP plan, that has submitted successful attest engagements and has a history of compliance can administer their own QAP (i.e., serve as the auditor). Importantly, aside from “independence,” the same requirements outlined in sections VI.A through VI.C of the proposal for professional auditor standards, errors and omissions insurance, registration, notification, identification, record-keeping, and prohibited acts would still apply to the additional QAP C option we are suggesting.

We strongly believe that RINs verified via the QAP C option proposed above should qualify for the same affirmative defense afforded to RINs verified QAP A and QAP B. Because the majority of an ethanol producer’s cost associated with QAP A or QAP B would be tied to paying for third-party audit expenses, we believe the additional QAP C option proposed here would substantially lower the cost burden for ethanol producers and their counterparties, while delivering the same level of benefit to the RFS program as other QAP options.

- IV. While we much prefer the existing attestation requirements and third-party engineering review over the proposed QAP options, participation in a QAP program should eliminate the annual requirement for an attest engagement and the triennial requirement for a third-party engineering review.**

As stated above, we firmly believe the existing annual attestation requirements and independent third-party engineering reviews have proven to be highly effective monitoring and verification tools for ethanol producers and their counterparties. When paired with the existing “buyer beware” approach, we believe the current attestation and third-party engineering requirements have provided adequate assurance regarding the validity of D6 RIN generation.

However, given our belief that ethanol producers may be unwillingly compelled to participate in QAP, we recommend that renewable fuel producers who are actively participating in an EPA-approved QAP program should not also be required to submit an annual attest engagement or triennial third-party engineering review. We make this recommendation because the information required for RIN verification via a QAP is the same, or in many cases more comprehensive, than the information submitted as part of the attest engagement and third-party engineering review. Requiring producers whose RINs have been verified through an EPA-approved QAP to continue submitting attest engagements and third-party engineering reviews would be unnecessarily duplicative and costly. In addition, EPA’s administrative burden would be reduced by eliminating the annual requirement for an attest engagement and the triennial requirement for a third-party engineering review for producers participating in a QAP program.

- V. In light of the administrative challenges that would be associated with retroactively applying a QAP to RINs generated previous to the promulgation of the final rule, QAP requirements should only be applicable to RINs generated after the release of EPA’s final rule.**

EPA proposes to allow the affirmative defense provisions to apply retroactively to RINs generated before promulgation of the final rule, provided certain conditions are met. We believe this proposal is untenable and recommend that QAP and affirmative defense provisions apply only to RINs generated *after the date of final rule promulgation* with no allowance for retroactivity. The rationale for our recommendation is that the required elements of the various QAP options in the final rule may differ somewhat from what appears in the proposed rule. Further, it may be difficult for auditors to verify certain required information for RINs generated and/or transacted before EPA’s rules are finalized if ongoing monitoring tools were not already in place. Additionally, auditors whose QAP programs have already been “pre-approved” by EPA may need to alter their QAP programs upon release of the final rule. Due to the uncertainty surrounding ultimate QAP/auditor approval status, final QAP required elements, and other indeterminate factors during the interim period between Jan. 1, 2013 and the date of the final rule, EPA should ensure QAP requirements and affirmative defense provisions are only applicable to RINs generated after the release of the final rule.

- VI. EPA should clarify that the proposed audit requirement in section 80.1472 for “direct contact with all feedstock suppliers to the facility” pertains only to feedstocks for which the “aggregate compliance” provision does not apply.**

In the proposal's discussion of QAP A and QAP B feedstock-related verification requirements (sections IV.A.1.a and V.A.1.a), EPA states, "If the renewable fuel producer claims that the feedstocks qualify under the aggregate compliance approach, the QAP would be required to verify that the feedstocks are planted crops or crop residue that meet the requirements of §80.1454(g)."⁵ Presumably, this means the auditor would be required to simply verify that the feedstock being used by the renewable fuel producer is a "planted crop or crop residue" that qualifies for the aggregate compliance approach, and therefore meets the "renewable biomass" definition. It appears EPA does not intend for the auditor in this case to make direct contact with all feedstock suppliers to the facility to individually verify that the feedstock is "renewable biomass."

However, a strict reading of 80.1472(a)(4), "Requirements for Quality Assurance Audits," could lead an auditor to believe that "direct contact with all feedstock suppliers to the facility" is a requirement for all feedstocks received at a renewable fuel facility, regardless of whether the aggregate compliance approach applies for that particular feedstock. As such, we request that EPA explicitly clarify that the "direct contact" provision applies only to feedstocks for which the aggregate compliance approach does not apply (and even in cases where aggregate compliance does not apply, we find this "direct contact" requirement to be impractical and unrealistic). As described in numerous comments submitted to EPA in response to the notice of proposed rulemaking for the RFS2 (74 Fed. Reg. 24,904), any provision requiring renewable fuel producers to track individual batches of commodity feedstock back to the farm level would be logistically unmanageable and economically infeasible (indeed, these challenges served, in part, as the basis for EPA's decision to finalize the aggregate compliance approach). In the same way, a requirement for an auditor to make direct contact with all feedstock suppliers to a facility would be impractical, unnecessary, and cost prohibitive.

VII. The proposed audit requirement for "direct contact with all purchasers of renewable fuel produced at the facility" is impractical, uneconomical, and provides no additional assurance that RINs were properly generated.

Section 80.1472(a)(6) states that auditors must make "direct contact with all purchasers of renewable fuel produced at the facility to obtain documents related to renewable fuel purchased from the facility."⁶ This provision is excessive and impractical, and it is unclear whether the term "all" is meant to apply to entities further downstream than the first purchaser. We do not understand the intent or purpose of this provision, especially in light of the fact that the information is already available via reviewable EMTS transactions and product transfer documents maintained by producers and buyers of fuel. In any event, a strict reading of the proposed provision could lead an auditor to believe that even end use customers buying fuel at retail gasoline stations,

⁵ 78 Fed. Reg. 12,170

⁶ 78 Fed. Reg. 12,215

as the ultimate “purchasers of the renewable fuel,” must be contacted directly. Additionally, some ethanol producers sell fuel directly to retailers, or they own E85 dispensers and/or blender pumps themselves. In these cases, it would not be feasible, practical, or beneficial to the QAP to contact every customer using these dispensers. We encourage EPA to remove this requirement altogether, or at the very least, revise this provision by striking the term “all” and clarifying which purchasers must be contacted. Further, we believe contacting a representative sample of first purchasers would be more efficient and practical.

VIII. EPA should reduce the proposed audit frequency for Options A and B to once per calendar year.

In section 80.1427(b), EPA is proposing to require auditors to perform at least four on-site visits to the renewable fuel production facility per calendar year for both QAP A and QAP B. We believe this is excessive and recommend reducing the number of on-site visits required to once per year for both QAP A and B. The QAP A option effectively requires real-time, ongoing monitoring by the auditor. Under QAP A, it is expected that the QAP provider/auditor will maintain extremely close contact with the renewable fuel producer and will have the ability to remotely monitor fuel production and RIN generation activities in real-time. The requirement for real-time monitoring obviates the need for more than one on-site visit per year. Likewise, we believe the requirements of Option B can be accomplished with one on-site visit per year, and regular communication between the auditor and producer.

IX. Auditors should be allowed more time to investigate potential problems before notifying EPA.

EPA proposes to require QAP auditors to notify the Agency and the renewable fuel producer of any potential RIN validity problems within 24 hours of identifying the potential problems. We are concerned that 24 hours is not enough time for auditors and renewable fuel producers to investigate potential problems. Most suspected problems can be explained or clarified with additional investigation and discussion with the renewable fuel producer, and very few of the potential problems initially flagged ultimately resulted in generation of an invalid RIN. If EPA finalizes the proposed 24-hour notification deadline, it seems likely that the Agency could receive a number of notifications of potential problems that otherwise could have been remedied or clarified by the auditor and renewable fuel producer if given more time (i.e., “false positives”). Thus, we are requesting that EPA either extend the time allowed for notification of potential problems from 24 hours to 96 hours, or require auditors to only report *substantiated* problems within 24 hours of confirming the problem. We view the latter option as most preferable.

X. EPA should continue to allow renewable fuel producers to separate RINs in certain circumstances, but with increased oversight.

In the proposal, EPA seeks comment on whether it should disallow separation of RINs by renewable fuel producers in all circumstances. While we agree that the instances of biodiesel RIN fraud were enabled by the RIN separation practices unique to the biodiesel market, we believe EPA should continue to allow renewable fuel producers to separate RINs in special circumstances. In general, ethanol producers do not separate RINs. However, there may be isolated cases where an ethanol producer is also a blender of record (e.g., in the case of direct-to-retail E85 sales) and therefore we recommend maintaining the option for RIN separation by producers.

However, we also recommend that EPA consider additional oversight for renewable fuel producers who are separating RINs, particularly in the biodiesel sector. Indeed, the proposed QAP program is itself a means of increasing oversight over renewable fuel producers who are separating RINs.

XI. Third-party auditors should be allowed to act as agents in the generation of RINs for renewable fuel producers.

EPA requests comment on whether third-party auditors should be allowed to act as agents in the generation of RINs for renewable fuel producers. RFA believes that allowing third-party auditors to act as agents maximizes efficiency and flexibility. Third-party auditors who also serve as agents are able to more quickly and efficiently compare RIN generation data from EMTS with data generated via QAP monitoring systems. Further, auditors who act as agents can also oversee other EMTS actions in real time (such as corrective actions), providing the renewable fuel producer with additional assurance that EMTS actions are being correctly executed.

XII. EPA should allow QAP A and QAP B auditors to be the same parties that conducted a renewable fuel facility's third-party engineering review and/or annual attestation engagement.

In regard to who may qualify as an auditor, EPA seeks comment on whether it should allow third parties who conduct engineering reviews and/or attestation engagements to also serve as auditors for QAP A or QAP B. RFA believes firms that conducted third-party engineering reviews or attest audits should not be precluded from also serving as the QAP A or QAP B auditor.

XIII. RFA disagrees with the proposed requirement that QAP A and QAP B auditors must be licensed professional engineers or work under the supervision of a licensed professional engineer.

As EPA acknowledges, many elements of the proposed QAP A and QAP B audits would not require the expertise of a licensed professional engineer. As EPA points out, some elements of the audit would be more appropriately conducted by a CPA or CIA. As such, we believe EPA should not arbitrarily require that auditors possess certain professional certifications; rather, EPA should judge the qualifications of potential QAP A and QAP B auditors on a case-by-case basis when they submit their QAP plans for approval.

XIV. EPA should withdraw its proposal to disclose certain Confidential Business Information (CBI) submitted by renewable fuel producers, as such disclosure provides no additional regulatory benefit and could harm a company's competitive position.

EPA is proposing to publicly disclose certain Confidential Business Information (CBI) provided by renewable fuel producers in an effort to “increase transparency” and “promote greater liquidity in the RIN market.”⁷ EPA apparently is proposing to publish two separate monthly reports—one containing individual facility RFS registration and QAP information, and the other containing individual facility RFS reporting information. RFA fails to see how the proposed disclosure would accomplish the stated objectives of improving transparency and liquidity, and we strongly object to the public release of CBI, as discussed below. Disclosure of particular CBI could indeed harm or disadvantage a company's competitive position in the marketplace. Further, public disclosure of some of this information may violate Federal laws regarding trade secrets and CBI. Moreover, some of the less sensitive information EPA is proposing to publish monthly is already available publicly, and thus there is no additional benefit in re-publishing this information.

We strongly disagree with EPA's statement that “...many producers currently post this type of information on their public websites and issue press releases broadcasting this information.”⁸ It may be true that *some* producers publicize *some* of the information that EPA is proposing to disclose. But it is not true that “many” or even “some” producers publicize their actual monthly production volumes, details of their process technology, denaturant use, quantity of feedstock use, or quantity of RINs generated. This information is generally regarded as confidential and it typically is not made publicly available in any form. Even if some producers did choose to “post this type of information on their public websites,” they would be doing so by choice for business reasons, whereas EPA's disclosure of this information would be involuntary. Further, EPA's statement that the information they are proposing to disclose is already reported to “the U.S Department of Energy's National Renewable Energy Laboratory, which publishes the information on their website...” is completely incorrect. Ethanol producers do not report actual monthly production, or other information, to NREL. EPA should clarify its understanding of the purported NREL monthly reporting requirements; we are unaware of any such reporting requirements and disagree that NREL posts any such information to its web site.

EPA incorrectly asserts that disclosure of actual renewable fuel production volume on a monthly basis “would not cause substantial harm” to the submitter's competitive position. On the contrary, such information could be used to reveal a competitor's production efficiencies, gauge the competitor's ability to serve certain markets or fulfill certain marketing agreements, and expose other competitive factors. This was recognized by the Energy Information Administration (EIA), which collects individual facility production data on a monthly basis, *but does not disclose it publicly.*

⁷ 78 Fed. Reg. 12,197

⁸ *Id.*

Obligated parties who seek access to the types of information proposed for disclosure by EPA can gain that access through a QAP program. Further, much of the non-CBI information proposed for disclosure is already available in the public domain.

Below, we address the specific information elements that EPA is proposing to disclose.

a. RFS Registration Information

- i. **Company name:** It should be noted this information is already available on EPA's "Fuels Reporting Registration" web site.⁹
- ii. **Facility name:** It should be noted this information is already available on EPA's "Fuels Reporting Registration" web site.¹⁰
- iii. **Facility type:** It should be noted this information is already available on EPA's "Fuels Reporting Registration" web site.¹¹
- iv. **Total permitted capacity:** We object to the disclosure of this information by EPA. In most cases, permits are a matter of public record and can be obtained by interested stakeholders by contacting relevant state permitting authorities. Further, nameplate capacity for ethanol facilities is already publically available on RFA's web site and various other public web sites.¹²
- v. **Production volume:** We strongly object to the disclosure of monthly production volumes. This data is generally regarded as confidential business information by ethanol producers and is not typically available in the public domain. Publicly reporting an individual facility's actual production volume could harm that facility's competitive position in the marketplace. This was recognized by the Energy Information Administration (EIA), which collects individual facility production data on a monthly basis, *but does not disclose it publicly*. In 2012, EIA proposed periodic public disclosure of nameplate capacity and maximum sustainable capacity, but recognized that actual production data "...qualifies as confidential commercial information under the criteria for exemption in the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Department of Energy (DOE) regulations, 10 CFR part 1004, which

⁹ See <http://www.epa.gov/otaq/fuels/reporting/programsregistration.htm>.

¹⁰ *Id.*

¹¹ *Id.*

¹² See, for example RFA. "Biorefinery Locations." <http://www.ethanolrfa.org/bio-refinery-locations/>

implement the FOIA; and the Trade Secrets Act, 18 U.S.C. 1905.”¹³ We agree with EIA that actual production volume should continue to be treated as CBI.

- vi. **Feedstock:** We do not necessarily object to the disclosure of feedstock type, provided that actual feedstock volumes are not reported.
- vii. **Process Type:** We object to the disclosure of process type, as information regarding process technology and process fuel type is generally regarded as CBI.
- viii. **D Code:** It should be noted this information is already available on EPA’s “Fuels Reporting Registration” web site.¹⁴
- ix. **Co-products:** We do not necessarily object to the disclosure of the type of co-products produced, provided that production volumes and product specifications are not included.

b. RFS Reporting Information

- i. **RIN Generating Company and Company Name:** It should be noted this information is already available on EPA’s “Fuels Reporting Registration” web site.¹⁵
- ii. **Renewable Fuel Original Producer:** It is unclear what is meant by these terms and we are unsure how this would differ from the Company or Facility.
- iii. **Facility Name and Address:** It should be noted this information is already available on EPA’s “Fuels Reporting Registration” web site.¹⁶
- iv. **Location in Latitude and Longitude; Renewable Fuel Production Year/Month; D Code/Fuel Type:** It should be noted that much of this information is already available on EPA’s “Fuels Reporting Registration” web site.¹⁷

¹³ 77 Fed. Reg. 12,823-12,824

¹⁴ See <http://www.epa.gov/otaq/fuels/reporting/programsregistration.htm>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

- v. **Feedstocks Used:** We are not necessarily opposed to disclosure of the feedstock type, but remain strongly opposed to any plans to disclose actual volume of feedstock use.
- vi. **Production Process:** We object to the disclosure of process type, as information regarding process technology and process fuel is generally regarded as CBI.
- vii. **Co-products:** We do not necessarily object to the disclosure of the type of co-products produced, provided that production volumes and product specifications are not included.
- viii. **Amount of Fuel Produced:** For reasons discussed above, we strongly object to the monthly disclosure of production volumes. This data is generally regarded as confidential business information by ethanol producers and is not typically available in the public domain. Publicly reporting an individual facility's actual production volume could harm that facility's competitive position in the marketplace. This was recognized by the Energy Information Administration (EIA), which collects individual facility production data on a monthly basis, but does not disclose it publicly. In 2012, EIA proposed periodic public disclosure of nameplate capacity and maximum sustainable capacity, but recognized that actual production data "...qualifies as confidential commercial information under the criteria for exemption in the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Department of Energy (DOE) regulations, 10 CFR part 1004, which implement the FOIA; and the Trade Secrets Act, 18 U.S.C. 1905." We agree with EIA that actual production volume should continue to be treated as CBI.
- ix. **RINs Generated:** We are opposed to disclosure of individual facility monthly RIN generation data, as this information can be used by competitors to determine actual production volumes.

XV. If EPA is truly interested in "increasing transparency" in the RIN market, it should consider disclosing company-level RVOs, information on RIN separations, the reason for separations, RIN retirements, the reason for retirements, and information on the volume of RIN transactions by non-obligated parties who are not renewable fuel producers.

If EPA's goal is to "increase transparency" in the RIN market, the Agency should not be focused exclusively, or even primarily, on RIN generators/renewable fuel producers. Rather, EPA should be focused on improving transparency around the obligated parties' use of RINs and participation in

the RIN market by non-obligated third parties who are not renewable fuel producers. If EPA believes it is appropriate to disclose actual monthly production by individual renewable fuel facilities, then it would surely agree that similar information regarding obligated parties should also be disclosed. This would include annual company-level renewable volume obligations (RVOs), monthly data on company-level RIN separations and RIN retirements. Further, transparency and public understanding of the RIN market would be enhanced by monthly disclosure of RIN transactions by non-obligated third parties who are not renewable fuel producers.

XVI. RFA generally supports the proposed changes to 80.1430(a) governing establishment of renewable volume obligations (RVOs) for renewable fuel exporters. However, we are opposed to any modifications to the existing RIN retirement requirements or deficit carry-forward provisions for exporters.

RFA supports the proposed changes to 80.1430(a) regarding the requirement to establish an export RVO. Removing the terms “gasoline or diesel” should effectively clarify the intent of the provision and will ensure RVOs are properly generated for all exported renewable fuel.

In response to EPA’s discussion of potential changes to RIN retirement provisions and the deficit carry-over allowance for exporters, we do not believe it is prudent or equitable to eliminate the deficit carry-over provision only for exporters or to require immediate retirement of RINs for exported volumes. The existing provisions regarding deficit carry-over and RIN retirement provide important compliance flexibility for all obligated parties, including exporters.

Implementing new, more stringent RIN retirement requirements only for exporters and/or eliminating their ability to carry forward a deficit would competitively disadvantage these parties and unfairly benefit other obligated parties like refiners. RFA also opposes the potential modifications to exporter provisions discussed in the proposal because we believe they could discourage or limit U.S. ethanol exports. Moreover, we do not see how these potential regulatory changes for exporters would address in any way the purported underlying intent of this proposed rule, which is to ensure against RIN fraud and offer additional assurance regarding the validity of RINs.

Further, a requirement to immediately retire RINs on exported volumes could artificially shorten the intended two-year life of RINs and diminish the ability of obligated parties to use prior year RINs to meet up to 20% of their current year obligation. In this way, such a provision could negatively affect liquidity in the RIN markets and increase pressure on RIN prices.

One approach to increasing oversight over RINs related to exported volumes may be to require exporters to demonstrate quarterly or biennially that they have the ability to retire sufficient RINs to cover volumes exported (but not to require actual RIN retirement on a quarterly or biennial basis). In the event the exporter cannot demonstrate to EPA that it has the ability to retire the necessary volume of RINs, and if the exporter intends to utilize the deficit carry-over provision, EPA

could require that the exporter provide notice of this intent and the likely size of the deficit well in advance of the end of the compliance year (e.g., at least one quarter prior to the end of the year). This would allow EPA to communicate to other regulated parties and the public (via the EMTS reporting data web site or similar) the approximate aggregated amount of exporter RVOs that would be carried forward into the next compliance year. This would allow the regulated community to be aware of the impact of renewable fuel exports and exporter RIN retirements on overall program compliance.

XVII. RFA strongly supports the proposed changes to 80.1452 establishing an alternative reporting method for RIN buy and sell transactions, however we believe EPA should clarify certain aspects of the proposed regulatory language.

We strongly support the proposed addition of an alternative reporting method for RIN buy and sell transactions, as outlined in 80.1452. RFA believes many counterparties transacting RINs will utilize this alternative method, as it works most effectively with their existing formats for commercial documents and tracking systems. However, as currently written, it appears the alternative method would only be available for transfers of renewable fuel with assigned RINs. We believe the alternative reporting method should also be allowed in cases where renewable fuel is transferred with an appropriate number of separated RINs. We encourage EPA to revise the language in 80.1452 to include separated RINs that are transferring with a corresponding volume of renewable fuel.

Further, we believe EPA should clarify 80.1452(d)(2)(i) and (iv). We are concerned that the language, as currently constructed, could be interpreted as allowing the original “sell” transaction submitted into EMTS within five business days of shipping to expire before a corresponding “buy” transaction is entered into EMTS. We request that EPA clarify if it intends to allow transactions entered via the alternative reporting method to be available in EMTS beyond the current 10-day transaction window. We believe a 15- or 20-day window may be most appropriate for these transactions. Further, we request that EPA consider allowing the buyer to accept pending sales transactions in EMTS based on shipment date and post-enter the date of the receipt of the fuel after RINs have been accepted. The intent of these recommendations is to prevent the expiration of perfectly valid transactions due simply to a time delay in shipping and receipt-of-fuel events.

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