



Karen Y. Knutson

Vice President & General Manager of Government Affairs

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Via online submission at www.regulations.gov

U.S. Environmental Protection Agency (EPA)
Office of Air and Radiation
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Docket ID No. EPA-HQ-OAR-2021-0324, Proposed Rule: “Renewable Fuel Standard (RFS) Program: RFS Annual Rules”

Chevron appreciates the opportunity to review and comment on the referenced proposed rule. Chevron is a major refiner and marketer of petroleum products in the U.S. As an obligated party, a renewable fuel producer, and a renewable fuel blender, this proposed rule directly affects Chevron's compliance requirements under the Renewable Fuel Standard (RFS), which in turn impacts our transportation fuel business and customers. Chevron is a member of the American Petroleum Institute (API). We support and incorporate by reference the separate comments submitted by API in response to this proposed rulemaking.

Reset Authority and Proposed Volume Standards

Chevron agrees with EPA's proposal to use the statutory “Reset Authority”, as outlined in Clean Air Act 211(o)(7)(F). The original finalized renewable fuel volumes in 2020 satisfy the requirements to trigger use of the Reset Authority.

We also agree with EPA's decision to reduce the volume standards in 2020 and 2021 to match the actual volumes of renewable fuel in the market. The year 2020 was very unique due to the significant decline in transportation fuel demand due to the pandemic. Accordingly, the unusual circumstances in 2020 necessitate this retroactive change to preserve an adequate balance of carryover RINs.

Due to the delay in proposing and finalizing RFS volume standards for the 2021 compliance year, the only feasible option is to set the 2021 standard to match the actual volumes of renewable fuel used in the market. EPA's proposal for 2021 is appropriate and necessary to preserve an adequate balance of carryover RINs.

Chevron does not agree with the proposed volumes for 2022. The 2022 volumes represent a significant step change over the proposed volumes for 2020 and 2021 and exceed the pre-pandemic standards from 2019. We are concerned because the pandemic impact on

Chevron Corporation

600 13th Street NW, Suite 600, Washington, DC 20005
Tel 202 408 5800

transportation fuel demand and renewable fuel production in 2022 is highly uncertain. Even with optimistic projections for increased renewable fuel production, EPA's proposal shows that the available volume of renewable fuels will fall short of the combined volume standard and supplemental standard. Therefore, compliance with the proposed 2022 standards will likely require a significant draw on the bank of carryover RINs. As EPA has explained in the current and several previous rulemakings, maintaining an adequate RIN bank is important to a well-functioning RIN market and provides compliance flexibility for obligated parties.

EPA should use their Reset Authority and apply the same analytical approach in establishing the 2022 volume standards as was done to establish the proposed volumes for 2020 and 2021. Using a similar methodology, we would expect that EPA would arrive at much lower volume standards for 2022 than are currently proposed.

2016 Remand and Supplemental Volume

Chevron opposes EPA's proposal to implement a supplemental standard of 250 million gallons for the 2022 total renewable fuel standard. We also oppose the indication that EPA will implement a similar 250 million gallon supplemental standard in 2023. There is no practical basis for imposing these supplemental standards, and they will likely be unachievable based on actual renewable fuel blending volumes. The supplemental standard in 2022 is especially problematic because it represents an additional compliance obligation in addition to the base level standard. As we explained in the previous section, the 2022 proposed standards are likely to be unachievable and the supplemental standard will only exacerbate this problem.

EPA proposal to implement a supplemental standard is a reversal of the position they proposed for the 2020 RFS. In our comments on the 2020 RFS Proposed Rule, Chevron agreed with EPA's proposal to retain the 2016 total renewable fuel standard in response to the D.C. Circuit Court of Appeals remand of the 2016 final rule. As EPA explained in the 2020 proposed rule, there is no practical way to reopen the 2016 compliance period for obligated parties to resubmit additional 2015 and 2016 RINs to comply with an increased total renewable fuel volume standard.

EPA should not impose a supplemental standard in 2022 or 2023 to adjust for any volumes of renewable fuel which were not blended in 2016. An incremental standard would put significant pressure on the RIN and fuel markets because the proposed 2022 volume standards already exceed the projected available volume of renewable fuels. The use of carryover RINs would likely result as the only option to satisfy the incremental volume standard. Since there is no practical remedy for adjusting the 2016 total renewable fuel volume standard, EPA is justified in retaining the original standard.

If EPA proceeds to implement a supplemental standard, Chevron believes the appropriate supplemental volume should be 120 million gallons total, rather than the proposed 500 million gallon total. The 120 million gallon total reflects the fact that EPA could have reduced the 2016 total renewable volume standard by an additional 380 million gallons by fully applying the available cellulosic waiver volume. In reevaluating the 2016 standard, EPA should

acknowledge that full use of the cellulosic waiver would have reduced the total renewable volume standard by an additional 380 gallons. The use of the cellulosic waiver has been well established and was not in question in the DC Circuit Court decision to remand the 2016 volume to EPA.

Biointermediates

General Comments

Chevron supports EPA's advancement of the proposed biointermediate provisions and believes the provision represents a potential avenue to utilize existing facilities and infrastructure within the context of the RFS program. The biointermediate structure allows for more feedstock and product flexibility which may allow additional compliance pathways to emerge. We provide recommendations below to ensure the biointermediates provision will be flexible enough to enable commercially viable solutions.

EPA's use of the existing RFS framework where the renewable fuel producer generates the RIN, not the biointermediate producer, is important to minimize potential double counting of RINS while increasing the integrity of those RINs in the process. Chevron agrees with the EPA that RIN integrity is of the utmost importance and supports EPA's proposed requirements on attest engagements for biointermediate producers, the requirement for both the biointermediate producers and the renewable fuel producer to have a Quality Assurance Plan (QAP) in place to generate a Q-RIN, and the QAP requirements during the interim implementation period.

Biointermediate Facilities

The proposed two-facility (biointermediate producer and renewable fuel producer) limitation unnecessarily constrains the viability of the process. Potential future pathways, in particular those that involve renewable natural gas or involve intermediate processing steps at more than one pretreatment/stabilization/upgrading/aggregation facility, may not qualify under the two-facility restriction. EPA could achieve the same level of rigor in tracking biointermediates while removing the proposed restriction on the number of parties allowed to make a biointermediate.

Similarly, we do not agree with the proposed limitation that a biointermediate producer can only send their product to one renewable fuel producing facility. We encourage EPA to allow for a single biointermediate producer to be able to send their product to multiple facilities. Again, the same level of RIN validation and quality assurance could be imposed on this "one to many" structure to ensure RIN integrity.

Chevron agrees that intracompany transfers should not be excluded from the proposed requirements for validation and quality assurance. These steps should be required regardless of company ownership of facilities involved in the biointermediate chain.

Biointermediate Tracking

We do not support establishing additional controls specific to biointermediates including unique biointermediate RIN tracking (PTD, EMTS code etc), limited transfers to biofuel producers, and requirements to keep different batches of biointermediate segregated even if they are the same

biointermediate. In particular, RINs generated from biointermediate pathways should be traded without the requirement to carry a separate identifier.

Biointermediate Definition

Chevron recommends a modification to the definition proposed for biointermediate in 40 CFR 80.1401, to clarify what constitutes a biointermediate and what is not considered a biointermediate. Clause (4) under the Biointermediate definition should be modified to clarify the requirement for the renewable fuel feedstock to be identified in the fuel pathway:

(4) It is made from the feedstock identified in an approved pathway (as described in table 1 to § 80.1426 or a pathway approval pursuant to § 80.1416) and will be used to produce the renewable fuel in accordance with the process(es) listed in that the approved pathway. ~~(as described in table 1 to § 80.1426 or a pathway approval pursuant to § 80.1416) that the biointermediate producer and renewable fuel producer are using to convert renewable biomass to renewable fuel.~~

Clause (5) in the biointermediate definition should be expanded to include additional categories. EPA has proposed to specify three general categories of intermediate products which will be considered as biointermediates: biocrude, free fatty acid (FFA) feedstock, and undenatured ethanol. We recommend the addition of two new biointermediate categories.

A new category of alcohols, including methanol, n-butanol, and isobutanol should be added. While these compounds can be utilized directly for transportation fuels, they are also intermediate compounds in several pathways that utilize alcohols for conversion to hydrocarbons. Allowing these alcohols to be transferred as biointermediates will provide flexibility and allow new pathways for production of cellulosic fuels.

In addition, we recommend that byproducts from renewable fuel production be included as a new category of biointermediates. These byproducts are currently being produced at commercial scale and cannot currently be utilized for blending simply because they are transferred to a different facility. These byproducts include gasoline blendstocks produced at one refinery, either through coprocessing or standalone processing units, that could be transferred to another facility for blending. Because these volumes are available today and blending would not impact the D-class of the RIN, this category of biointermediate could be utilized immediately to generate RINS and would be easily monitored with the limitations associated with biointermediates.

We suggest that “other alcohols” and “byproducts of biofuel production” be added to clause (5) of the 80.1401 biointermediate definition:

- (5) Is one of the following:
- (i) Biocrude.
 - (ii) Free fatty acid (FFA) feedstock.
 - (iii) Undenatured ethanol

- (iv) other alcohols (including methanol, n-butanol, and isobutanol)
- (v) Byproducts of biofuel production that are transferred to another facility for blending into a finished fuel.

Clause (6) in the Biointermediate definition should be modified by adding two sub-clauses. The first sub-clause would clearly identify the processing steps that do not trigger the biointermediate designation. These permitted processing steps were discussed in the preamble of this proposed rule and appear in the proposed regulatory text in 80.1460 (k)(2). We also propose adding “removing trace impurities” to the list of permitted processing steps. The addition of “removing trace impurities” is required to allow removal of trace metals. Also, processing that does not alter the chemical composition of the bulk feedstock, such as mild hydrotreating for trace metals removal, should be permitted without triggering the biointermediate designation.

The second sub-clause is needed to clarify that the portion of the feedstock that is not substantially altered is not considered as biointermediate. This is consistent with the example of how free fatty acids would be classified as a biointermediate, but the remainder of the feedstock would not be classified as a biointermediate.

Here is an excerpt showing the addition of two new sub-clauses to (6):

(6) A feedstock listed in a pathway in Table 1 to § 80.1426, or in an approved pathway petition under § 80.1416, and used to produce the renewable fuel specified in that pathway or approved petition using the specified process requirements, as applicable, is not a biointermediate.

- (i). Feedstocks that are not substantially altered are not biointermediates. Form changes of renewable biomass such as chopping, crushing, grinding, pelletizing, filtering, compacting/compression, centrifuging, degumming, dewatering/drying, melting, removing trace impurities, or the addition of water to produce a slurry do not constitute substantial alteration.
- (ii) If a biointermediate is derived from a portion of a feedstock, only the portion that was substantially altered is a biointermediate.

Definition of Biocrude

The definition of biocrude should be modified to include other processes that are approved by the pathway but may be conducted at the biointermediate production facility. For example, hydrotreating of a feedstock may occur at a separate location from renewable fuel production and should be included in the definition of biocrude. Modifying the definition of biocrude would allow this hydrotreating process to occur:

“Biocrude means a liquid biointermediate produced from renewable biomass through gasification or pyrolysis or process identified in a approved pathway (as described in § 80.1426 Table 1 or a pathway approval pursuant to § 80.1416) to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.”

¹⁴C Testing and Mass Balance

In order to determine the renewable content of co-processed fuels, the 2010 RFS2 final rule provided two methods, mass balance and ¹⁴C testing. The proposed rule would limit the allowable testing to only ASTM D6866 radiocarbon dating (¹⁴C) testing. Chevron believes that the mass-balance methodology is an equally, if not more appropriate, quantification approach, particularly at lower biogenic concentrations.

Both options have their advantage based on processing regime and biomass concentration that should be considered within each pathway and facility. Evaluations of these benefits would be eliminated if there was selection of a singular test method; ASTM method D6866 procedure B. There should also be no differentiation between coprocessing of feedstocks or biointermediates when considering mass balance and ¹⁴C radiocarbon dating.

EPA should not deviate from the 2010 rule and further limit the methodologies available to determine the renewable content of co-processed fuels. Eliminating the mass balance option may prove to have the unintended consequence of inhibiting investment and production of low-carbon fuels. In order to avoid this consequence, EPA should include the mass balance approach as an acceptable methodology to determine renewable fuel yields. To address potential concerns regarding data quality, EPA could evaluate additional requirements such as additional QAP validation or provisional periods where increased analysis is required. At a minimum, EPA should provide an option to petition for use of a mass-balanced yield approach where ¹⁴C is not appropriate.

In addition, the EPA should not limit ¹⁴C radiocarbon dating testing to a single method. In addition to identifying D6866 procedure B as a primary method, D6866 procedure C and other ¹⁴C radiocarbon dating methodologies also should be permitted. Chevron supports the establishment of a minimum concentration that could utilize D6866 procedure C.

We also recommend acceptance of ¹⁴C radiocarbon dating methodologies that are adopted through test standardization bodies such as ASTM, or methods that can show comparable performance through the Performance Based Measurement Standards that EPA applies in other fuel programs from 40 CFR Part 1090. We are actively seeking approval of “Standard Test Method for Determining the Biobased Content of Liquid Fuels Using Liquid Scintillation Counting” through ASTM WK73882 which is expected to be approved later this year. This method has improved reproducibility and comparable detection limits compared to D6866 procedure B and has the added benefit of being able to be operated onsite which permits increased testing frequency at a lower cost. EPA should provide a mechanism by which this test method and others may be utilized as an alternative to D6866 procedure B when ¹⁴C radiocarbon dating is utilized to support RIN generation.

Definition of “Produced by Renewable Biomass”

The definition should be revised to add the word “primarily”:

“Produced from renewable biomass means that the energy in the finished fuel or biointermediate comes primarily from renewable biomass.”

Without this revision, it would imply that any reprocessing using non-biomass constituents would render a fuel no longer produced from renewable biomass. Hydrotreating would be a prime example of this where hydrogen introduced in the finished fuel may be derived from petroleum feedstocks.

Biomass Based Diesel Conversion Factor

Chevron agrees with the proposal to change the biomass based diesel conversion factor from 1.5 to 1.55 when calculating the annual percentage standards. This change is appropriate and acceptable based on the increased volume of renewable diesel blending in the market.

Public Access to Information

EPA proposes to clarify the information it may disclose under two different scenarios: 1) Treatment of Information Contained in Enforcement Actions and Invalid RIN Determinations; and 2) Treatment of Information Contained in Requests Submitted Under the RFS Program.

Treatment of Information Contained in Enforcement Actions and Invalid RIN Determinations

Chevron does not oppose the proposal to continue releasing basic information relating to fuel quality and RFS regulation violations. This has been EPA's practice since 2013, and it is appropriate to codify this process in the regulations.

Treatment of Information Contained in Requests Submitted Under the RFS Program

Chevron does not oppose EPA's proposal that certain information (submitter name, facility location, facility EPA I.D. number, etc.) is not entitled to confidential treatment, when that information is drawn from final EPA determinations or other administrative actions. However, for pending submissions, Chevron recommends that EPA retain the duty to conduct a confidentiality analysis before releasing any information, as the nature, timing, and identify of particular facility making a submission may reveal investment and market strategies to competitors. Chevron does not oppose treating aggregated information (e.g., the number of submissions pending) as non-confidential where submitter identifying information remains confidential.

E15 1 psi RVP Waiver Regulation

Pursuant to the D.C. Circuit Court's 2021 reversal of the E15 1 psi RVP rule, EPA should revise the language at 1090.215(b)(2) to state:

“...must contain ethanol at a concentration of at least 9 volume percent and no more than 45 10 volume percent.”

The RFS Set Rule for 2023 and Future Years

The year 2022 is the final year for which Congress specified renewable fuel volumes when it passed the Energy Independence and Security Act (EISA) in 2007. Beginning in 2023 and for

future years, EPA is required to establish new volume standards for the RFS, under a new rulemaking commonly referred to as the RFS Set Rule. Therefore, 2022 is a foundational year in establishing a firm basis upon which EPA will develop the Set Rule.

We believe it is important for EPA to set reasonable, achievable volume standards for 2022 and to preserve an adequate bank of carryover RINs to allow the market to function in the 2023+ time period. We are optimistic that the RFS Set Rule will address some of the key challenges that have existed with the RFS. While well-intentioned, the design of the RFS from EISA 2007 did not foresee several of these challenges. The RFS Set Rule provides an opportunity to adjust the mechanics of the program to match the original program objectives more closely. Chevron also believes the future changes to the RFS should be designed to facilitate the transition to lower carbon fuels.

Conclusion

The RFS is in transition, moving from the statutorily defined period through 2022 into the future phase where EPA will establish new standards in the upcoming RFS Set Rule. The current proposed rule is important to establish a foundation for these future changes. Thank you for providing this opportunity to comment on the proposed rule. If you have any questions regarding our comments, please contact Bob Anderson (bob.anderson@chevron.com; 925-842-5317) or Jason Larrabee (jasonlarrabee@chevron.com; 202-408-5853).

Sincerely,

A handwritten signature in black ink, appearing to read "Kaim Knutson". The signature is fluid and cursive, with the first name "Kaim" and last name "Knutson" clearly distinguishable.