

**Testimony of Chet Thompson, President and CEO, American Fuel & Petrochemical
Manufacturers**

U.S. House Energy and Commerce Subcommittee on the Environment

“Discussion Draft: The 21st Century Transportation Fuels Act.”

December 5, 2018

The American Fuel & Petrochemical Manufacturers (“AFPM”) appreciates the opportunity to provide testimony on *The 21st Century Transportation Fuels Act*. AFPM’s members operate approximately 120 refineries, representing more than 95 percent of U.S. refining capacity, to produce the gasoline, diesel, jet fuel, and building blocks for the thousands of products that make innovation and progress possible.

Today’s discussion draft advances a dialogue about what the best transportation fuel policy is for the American people. We applaud Chairman Shimkus and Congressman Flores for their leadership and for continuing a robust discussion in an attempt to find the correct balance for the future of transportation fuel.

AFPM supports competitive markets for transportation fuels and policies that both protect consumers and reduce regulatory barriers to competition. As we testified in April, AFPM believes that if implemented correctly, a transition from the Renewable Fuel Standard (“RFS”) to a fuel-neutral, 95-RON performance standard has the potential to better address the needs of all stakeholders: the auto industry, marketers, biofuel producers, farmers, refiners, and most importantly consumers. While AFPM is unable to support the discussion draft in its current form, we do recognize that it gets some issues right, misses the mark on others, and includes areas we

are simply unable to support as they fail to promote free market competition for fuels. We look forward to engaging all stakeholders in further discussions on this policy.

I. PROPERLY STRUCTURED, A TRANSITION FROM THE RFS TO A FUEL-NEUTRAL 95-RON OCTANE STANDARD CAN BE A BETTER POLICY FOR ALL STAKEHOLDERS

If policymakers enact legislation to transition from the RFS into a fuel-neutral octane standard, AFPM agrees that 95 RON is the appropriate minimum octane level. A 95 RON octane fuel, when paired with automobiles optimized for such fuel, can deliver a 3-4 percent efficiency gain at a lower well-to-wheels cost than other technologies. A 3-4 percent efficiency gain is the carbon equivalent of more than 700,000 electric vehicles on the road each year. And at a time when policymakers and consumers are looking for increased fuel efficiency, a 95 RON standard would enable the refining industry to reduce emissions more cost-effectively for consumers than other options available to automakers.

As with any fuels policy, the feasibility of introducing a new fuel is a function of market and regulatory conditions. 95 RON has the benefit of being available on a nationwide basis on day one, minimizing disruptive infrastructure requirements and other market barriers associated with higher RON levels.

Moreover, a 95 RON can be produced within all of the most stringent air quality standards in place today—including in California. Recognizing California's restrictive predictive model on air quality and restrictions on the sale of ethanol blends exceeding 10 percent, 95 RON is the effective upward limit on a federal octane standard that can be achieved in all 50 states. Such a standard would also provide maximum flexibility for retailers and lower costs for consumers.

For a transition from the RFS to a 95 RON octane standard to work, legislation must include certain core elements.

- 1. Congress should refrain from establishing new product-specific mandates or subsidies that will distort the functioning of the fuels market.** A transition to a fuel-neutral 95 RON octane standard should be preferable fuel policy for all stakeholders, but markets must be permitted to function efficiently. New or additional requirements will add cost and uncertainty and undermine the intent of the policy proposal.
- 2. The standard must be limited to 95 RON.** For the reasons already articulated above and in our April testimony, mandatory RON specifications exceeding 95 RON are not feasible nationwide on a timeline enabling efficiency gains for fuel economy targets. Automakers can utilize existing regulatory pathways for additional certifications if they choose.
- 3. Congress should preempt state laws that conflict with a nationwide adoption of a fuel-neutral octane standard.** The benefit of 95 RON is that the fuel can be available to satisfy the demands of a nationwide auto fleet on a timeline to help meet the 2022-25 fuel economy standards. To minimize uncertainty and the costs of the transition, Congress should prevent states from interfering with misfuelling regulations or fuel composition.
- 4. To provide incentive for transitioning infrastructure, Congress should provide liability protection for retailers and refiners that comply with misfuelling regulations.** Potential liability for misfuelling is a barrier to entry for new fuels that Congress can address through legislation. AFPM suggests a limited scope of safe-harbor liability protection limited to damage caused by misfuelling with subgrade octane,

provided refiners, retailers, and automakers have complied with their responsibilities under the law and implementing regulations.

5. **The RFS must sunset when the standard takes effect.** An octane standard has the potential to be the most cost efficient and consumer friendly way to meet emissions targets, but it also requires multiple billions of dollars in investment. The RFS is an incredibly expensive program, so to realize any type of cost benefit, an octane standard must be paired with an RFS sunset. Ethanol is a cost-competitive source of octane, and could reduce the investments needed in the refining system, but to drive down cost a 95 RON octane standard must enable competition instead of mandating specific fuels.

6. **Congress should provide for a robust and meaningful consumer education campaign.** The introduction of a new fuel has the potential to cause consumer confusion. Thus, Congress should build in authorization and funding for a significant consumer education effort as new vehicles enter the market.

7. **Congress should require EPA and FTC to evaluate and establish misfuelling and labeling regulations to prevent misfuelling of new vehicles with sub-octane fuel.** The misfuelling provisions should be cost-effective, account for legacy vehicles, and facilitate a smooth transition for retailers. Likewise, Congress should ensure that EPA and FTC update labeling, product transfer, and other regulations that need to be addressed for the new fuel to enter the market.

These suggestions should be core elements of any legislative package, but are not an exclusive list. In light of these guiding principles on the core elements, AFPM believes the discussion draft is moving in the right direction on many of these elements, but falls short on others. AFPM

could not support the legislation as drafted, but offers suggestions for improving the bill in the following section.

II. THE DISCUSSION DRAFT NEEDS MODIFICATION IN KEY AREAS

AFPM appreciates the leadership of the Committee to advance this important discussion. We offer the following suggestions to improve the draft:

Sunset the entire RFS in 2023. The core of any legislation should be to sunset the RFS before any new requirements take effect. The RFS is characterized by litigation, waivers, volatile RIN prices, phantom fuels, and fraud—issues that will only get worse and more uncertain as the mandates rise and as EPA considers both volume resets and a post-2022 regulatory environment where no stakeholder knows how the program will be administered. Bringing certainty to the market by sunsetting the RFS after the statutory tables expire is the right policy, and as a result, AFPM recommends that the legislation sunset the full RFS in 2023.

AFPM supports market competition for fuels, including a market-driven adoption of ethanol blends. AFPM projects that a 95 RON octane standard would provide a healthy market for ethanol, including significant potential for more market penetration than under the RFS. After 15 years of mandates and several decades of subsidies, further government support for ethanol is unnecessary.

Remove provisions establishing a conventional ethanol mandate pre-2022. AFPM is unable to support provisions establishing a 15 billion gallon corn ethanol mandate for 2020-2022.

According to the Energy Information Administration (“EIA”), the U.S. is on track to consume approximately 14.4 billion gallons of ethanol in 2018. To reach 15 billion gallons of ethanol consumption this year, the U.S. would have needed to sell an additional 12 billion gallons of

E15. According to analysis conducted with our members, this would require nearly 47,000 stations selling E15—30 times the number of stations selling E15 today, at a cost of more than \$3.5 billion—starting only 13 months from today. The math becomes even more challenging as projected gasoline demand continues to decline, placing even more pressure on the E15 market, and is further exacerbated by the fact that E15 is not legal in California and six other states (Arizona, Delaware, Montana, New York, Oregon, and Wisconsin). Without alternative compliance mechanisms, waivers, or other similar mechanisms, this is completely infeasible. To address the RFS before 2022, AFPM recommends reducing the total renewable volumes to better align with market realities. AFPM further recommends that Congress limit advanced biofuel mandates to demonstrated domestic production of advanced biofuel and ensure important cost-containment mechanisms are retained to protect consumers.

Remove provisions defining E20 as gasoline. AFPM recommends removing provisions that appear to forgo environmental reviews of E20 under the Clean Air Act §211(f)(4). The Clean Air Act provides a process by which fuel blends, including E20, are evaluated for suitable use as gasoline in the transportation fleet and are approved if they will not “cause or contribute to the failure of an emissions control device.” As drafted, §212 of the legislation appears to compel a waiver for E20 notwithstanding the results of any environmental review. The waiver would effectively permit the use of E20 in all on-road and off-road legacy vehicles and engines, regardless of compatibility with engines or impacts on durability and performance. AFPM recommends that the Committee refrain from automatic waivers, and actually strengthen the 211(f)(4) review process by including a review of the impact of new fuels on legacy engine durability and performance.

Remove provisions creating mandates for E20 warranties and infrastructure. The requirements for retailers to install E20 compatible infrastructure and for automakers to warranty their vehicles for E20 should be removed from the legislation. E20 is not a legal fuel for any vehicles other than flex-fuel vehicles, and therefore any such requirements are adding expense to the fuel system without a demonstrated need. This is particularly true in states like California and New York, which restrict the sale of ethanol blends exceeding 10 percent. Retailers and consumers in those states would be compelled to pay for hardened vehicles and infrastructure that no consumer will be able to use, even if EPA were to deem E20 a legal fuel in other states. As Congress asks retailers to invest in misfuelling equipment to protect against misfuelling for octane, it should not further increase costs for retailers by adding further requirements.

Remove the provision establishing a 98 RON certification fuel. The market should determine what additional certification fuels should be considered and as a result AFPM recommends removing requirements for EPA to establish a 98 RON certification fuel. There is an existing Clean Air Act process for automakers to seek certification on alternative certification fuels. AFPM recommends that Congress refrain from predicting how the market for higher octane fuels may develop. If there are concerns about the efficacy of the process for seeking new certification fuels, AFPM is willing to engage on improving the process without prescribing the certification fuel octane level for future high-performance vehicles. In combination, the provisions necessitating the 98 RON certification fuel and the requirements regarding E20 result in an implied federal mandate for E20 unsubstantiated by scientific research. This is something AFPM would adamantly oppose.

Strengthen liability protection and preemption provisions. A core aspect of a successful transition to a new octane standard is to promote both ease and certainty in the introduction of

the new fuels and vehicles. To that end, AFPM recommends strengthening the preemption provisions to prevent states from interfering with the introduction of a new fuel by establishing additional protections for the composition or marketing of the fuel. Similarly, the liability protection provision should be expanded to include refiners.

Remove the NAS sensitivity study. AFPM recommends removing the sensitivity study requirement. This study would create uncertainty while the new 95 RON policy is being implemented. For current and near-term vehicle technology, RON is the best measure to use for improving fuel economy, and adding a MON or sensitivity specification at a later date will complicate implementation and potentially increase the cost to produce gasoline. Importantly, future vehicle technologies may have different octane requirements for RON, MON, and sensitivity. It is unknown if and when these technologies will be implemented and what the specific octane requirements will be. An NAS study is likely to be inconclusive, and would need to be reevaluated when future technology requirements become clear.

Remove provisions governing advertising. AFPM places a high value on transparency and consumer education, but advertising at retail stations is heavily influenced by state and local law governing the size and location of signs. The advertising requirements, as drafted, would likely cause jurisdictional conflicts in many instances, and cause retailers to incur additional costs.

Finally, the draft identifies some important issues that need to be more fully considered and developed. AFPM is also compiling detailed comments on the misfuelling and labeling provisions that need to be calibrated to ensure the fuel is widely available when the new cars are in the market. Our initial recommendations are to strengthen the rulemaking requirements for the Federal Trade Commission to update labeling, for EPA to update its regulations on Product

Transfer Documents, and for the default misfuelling provisions to allow for other prevention measures.

These are critical details and AFPM looks forward to working with the Committee, our retailer partners, and others to further explore and develop a policy structure to enable an orderly transition.

III. CONCLUSION

AFPM appreciates the leadership of Chairman Shimkus and Congressman Flores and their efforts to find a path forward. AFPM believes a transition from the RFS to a 95 RON octane standard has the potential to be a better path forward for all stakeholders and consumers, and appreciates the opportunity to provide our views on policies that work and those that do not. We offer the suggestions in this testimony in the spirit of trying to find the best policy to promote competition and protect consumers, and stand ready to work with Committee to get the policy right.

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