Message

From: Reynolds, Thomas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F954F9FA337C41D99DB5B9A340F766EA-REYNOLDS, THOMAS]
Sent: 8/14/2013 12:48:56 PM
To: Adm13McCarthy, Gina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fac40cddd879450daec9b6bb85c68b58-Adm13McCart]
Subject: Re: WSJ again on RFS

Deliberative Process / Ex. 5

From: Adm13McCarthy, Gina
Sent: Wednesday, August 14, 2013 8:38:14 AM
To: Reynolds, Thomas
Subject: Re: WSJ again on RFS

Deliberative Process / Ex. 5

Gina McCarthy
Administrator

From: Reynolds, Thomas
Sent: Wednesday, August 14, 2013 6:20 AM
To: Adm13McCarthy, Gina; Deputy Administrator; Vaught, Laura; Ganesan, Arvin; Rupp, Mark; Garbow, Avi; Feldt, Lisa; Bond, Brian
Subject: WSJ again on RFS

Behind an Ethanol Special Favor

By
- KIMBERLEY A. STRASSEL
- WSJ
- 8.14.2013

Why does the public demand transparency in government? Read on.

Last week, the Environmental Protection Agency issued its annual renewable-fuels mandate, telling refineries how much ethanol they must blend into the nation's gas supply. This quota, which grows each year, is becoming a horrific financial burden on the industry, forcing many refineries to buy federal ethanol "credits" to satisfy the rules. The skyrocketing price of those credits is adding hundreds of millions of dollars to refineries' annual costs.

So it was more than a little curious that the EPA, as part of its rule, announced it was exempting just one mystery refinery (out of 143) from this year's mandate. The dispensation amounts to a significant financial favor to one lucky player, as I wrote in the Journal on Friday. Further reporting has revealed that the refinery is Alon USA Energy's ALJ -2.36% Krotz Springs facility in Louisiana. There's reason to wonder why Krotz Springs alone got a deal.

The EPA maintains a program that allows "small refineries"—those with an average capacity of less than 155,000 barrels of crude daily—to apply for a hardship exemption from the mandate. Krotz Springs was one of four refineries that applied for 2013. The other three—Hunt Refining in Alabama, Kern Oil & Refining in California and Placid Refining in Louisiana—are small, privately held concerns. The biggest, Placid, has a capacity of about 57,000 barrels a day, according to January statistics from the federal Energy Information Administration.

Krotz Springs has a capacity of 80,000 barrels, so it meets the definition. Then again, Krotz Springs is just one of Alon's five refineries, which are located in Louisiana, Texas and California, and have a combined capacity of about 215,000 barrels. A New York Stock Exchange-listed company, Alon isn't exactly a mom-and-pop outfit.

Krotz Springs is a merchant refinery, and the ethanol mandate takes a particularly hard toll on such outfits. Alon earlier this month reported a big hit to its second-quarter earnings, partly due to what it estimates this year will be $20 million in ethanol-credit expenses. So yes, Krotz Springs is hurt by the rule.

Then again, so are other refineries. What particularly burned the industry about this exemption is that the EPA is requiring the rest of the industry (including other small, struggling refineries) to pay to cover the Krotz Springs pass.

So what's so special about Alon? If nothing else, it appears to understand how Washington works. Lobbying disclosure records show Alon paid $60,000 in the second quarter of 2013 to the Manatt, Phelps & Phillips firm. This was the same quarter when Alon filed for its exemption. The records show that Manatt lobbied in the House and in the Senate for Alon on the sole issue of "renewable fuel standards." Alon didn't report any appreciable lobbying expenses for the year preceding the quarter. The records also did not turn up similar lobbying efforts by other refineries applying for an exemption.

Republican Sen. David Vitter's office acknowledged on Tuesday that he had joined other Louisiana politicians in sending a letter to President Obama supporting the Krotz Springs exemption. Sen. Vitter's co-signers were Democratic Sen. Mary Landrieu, and Republican Reps. Charles Boustany and Rodney Alexander. Mr. Vitter's spokesman said the office had not been approached by other refineries for support, and noted that the senator has been pushing to waive the 2014 ethanol mandate for every refinery.

Ms. Landrieu's office would not answer inquiries about whether the senator had further involvement in the exemption. This is worth knowing, given that Ms. Landrieu's tough re-election next year will help determine whether Democrats hold the Senate. The Obama administration has an interest in helping her out.

Industry analysts meanwhile note that Alon has a financial tie up with J. Aron, the commodities-trading arm of Goldman Sachs. That bank has more than a few of its ex-executives in key Obama administration positions, and it has retained ex-Obama officials like former White House counsel Gregory Craig to do work for it.

"There's no question [Krotz Springs] is a disadvantaged refinery," Tom Kloza, chief oil analyst at Gasbuddy.com, tells me. "But there are other merchant refineries that are disadvantaged. And within the industry there is a healthy sense of cynicism about this [exemption], given the Goldman Sachs-J.Aron relationship."

In response to queries, an Alon spokesman said the company did not think it "appropriate to respond to any questions on the status of the application or the exemption process." The EPA did not respond to inquiries about why Alon received the exemption. The EPA had previously told me that its "case by case" decisions on exemptions are based on "metrics" and Energy Department "recommendations."

Maybe so. Perhaps Krotz Springs is facing a financial challenge that dwarfs that of other small refineries. Perhaps the EPA conducted a careful analysis, devoid of political pressure

The problem is we don't know. The EPA, citing confidentiality restrictions, won't explain the process. We are to trust that it did the right thing. Yet this is the same Obama administration that has spent years doling out billions in grants and loans to politically connected energy companies and junking federal rules to help favored players. Why trust the EPA now?

With federal mandates growing to crushing sizes, agencies like the EPA increasingly hold discretionary powers that can mean life or death for companies. The public deserves to know how and why that power is being exercised.

Ms. Strassel writes the Journal's Potomac Watch column.

A version of this article appeared August 14, 2013, on page A11 in the U.S. edition of The Wall Street Journal, with the headline: Behind an Ethanol Special Favor.

(via Instapaper)

Message

From: Shimmin, Kaitlyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BECB3F33F9A14ACD8112D898CC7853C6-SHIMMIN, KA]
Sent: 4/20/2018 7:11:34 PM
To: Ford, Hayley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4748a9029cf74453a20ee8ac9527830c-Ford, Hayle]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Bolen, Derrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ffc58b0468c4deca51a8bad735b7d95-Bolen, Derr]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Burke, Marcella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5066626ec70846439b8d3f6c35d92be8-Burke, Marc]; Chancellor, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ae6aeabeca754643bdb01c9f5b653ca6-Chancellor,]; Cook, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=394f5dede6184bc083cf9390e49a192c-Cook, Steve]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Darwin, Henry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ae8e9d24eeb4132b25982e358efbd9d-Darwin, Hen]; Darwin, Veronica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc98aaf2f15a466baede3dab0e27a35e-Darwin, Ver]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Falvo, Nicholas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=424ac90ea7d8494a93209d14d37f2946-Falvo, Nich]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Forsgren, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a055d7329d5b470fbaa9920ce1b68a7d-Forsgren, D]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group

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Subject: OCIR Weekly Report 4/20/18

Office of Congressional & Intergovernmental Relations

WEEKLY RECAP

Farm Bill — The House Agriculture Committee held a markup on the 2018 Farm Bill. The Committee approved the language by a 26-20 vote.
<!--[if !supportLineBreakNewLine]-->
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Hearings — On April 18th, the Senate Committee on Environment and Public Works held a hearing on "Appropriate Role of States and the Federal Government in Protecting Groundwater." EPA did not have a witness attend.
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Meetings — Administrator Pruitt met with Mayor Maxwell of Pascagoula and signed an "Early Action" memorandum for Mississippi Phosphates.
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Administrator Pruitt and RA Cathy Stepp met with Governor Holcomb and Mayors to sign a memo to accelerate lead removal at Federated Metals site, and announce a WIFIA grant.
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LOOK-A-HEAD

April 23 — The House and Senate are in session.
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April 23- 27 — EPA Nominees Peter Wright (OLEM) & Chad McIntosh (OITA) will be in town to meet with EPW members and prepare for their confirmation hearings.
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April 26 — Administrator Pruitt will testify before the House Energy and Commerce and House Appropriations Committees on EPA's FY19 Budget.
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April 26 — EPA officials will meet with Congresswoman Cathy McMorris Rogers and Mayor Condon of Spokane to discuss Washington Water issues.
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April 26 — EPA officials will meet with Congressman Buddy Carter to discuss Georgia coastal issues.
<!--[if !supportLineBreakNewLine]-->
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STORIES OF INTEREST

CONGRESS:

- <!--[if !supportLists]--><!--[endif]-->Andrew Wheeler, former coal lobbyist, confirmed as No. 2 official at EPA Link
- <!--[if !supportLists]--><!--[endif]-->Sen. Barrasso releases statement on hardship relief for small refineries Link
- <!--[if !supportLists]--><!--[endif]-->NGA Heartened by House Ag Comm's Farm Bill Markup Link
- <!--[if !supportLists]--><!--[endif]-->Farm state senators demand EPA name recipients of biofuel waivers Link

STATE/ LOCAL

- <!--[if !supportLists]--><!--[endif]-->EPA administrator Scott Pruitt, Region 5 leader, governor quietly visit Federated Metals site Link
- <!--[if !supportLists]--><!--[endif]-->W.Va. AG demands EPA help for steel, coal Link
- <!--[if !supportLists]--><!--[endif]-->EPA readies $107.6M cleanup plan for Mississippi Phosphates site Link

Kaitlyn Shimmin
Special Assistant Congressional and Intergovernmental Affairs
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1200 Pennsylvania Ave., N.W.
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Shimmin.Kaitlyn@epa.gov

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/5/2018 4:43:56 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Energy and Commerce QFR's from 12/7/17 Hrg for Review
Attachments: 12.7.17 hearing QFRs_Pruitt - for OP-OGC Review.docx

Samantha/Matt,

Attached are the QFR responses from the Administrators 12/7/17 hearing with the Energy and Commerce Committee for review by your teams. These were drafted by the relevant program offices and vetted/edited by their political leadership.

E&C had originally wanted them back by last Friday but I have gotten a week extension so we can run them by both of you first. If your staff could review and send back with any comments by Tuesday COB so we can submit OMB for approval it would be much appreciated. Please let me know if you have any questions!

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Message

From: Quinn, Jill [Jill.Quinn@delta.com]
Sent: 6/20/2013 6:10:39 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Cathey, Tawanna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be1ec938575d4fb1adcb5f4b04571ab7-Cathey, Tawanna]
Subject: RE: Delta/Monroe 2012-13 Renewable Fuel Standards obligations

Thank you very much. Jill

From: Brooks, Phillip [mailto:Brooks.Phillip@epa.gov]
Sent: Thursday, June 20, 2013 1:57 PM
To: Quinn, Jill; Cathey, Tawanna
Subject: Re: Delta/Monroe 2012-13 Renewable Fuel Standards obligations

Tawanna Cathey, copied on this email, can work with you to schedule a meeting or phone call. My suggestion is a phone call.

From: Quinn, Jill
Sent: Thursday, June 20, 2013 1:27:17 PM
To: Brooks, Phillip
Subject: FW: Delta/Monroe 2012-13 Renewable Fuel Standards obligations

Mr. Brooks – when you have a minute, please let me know your assistant's contact information and I will be happy to reach out and set something up hopefully for the week of July 1.

Thanks and best regards,
Jill Quinn
202-216-0705

From: Quinn, Jill
Sent: Monday, June 17, 2013 11:16 AM
To: 'Brooks.Phillip@epa.gov'
Subject: FW: Delta/Monroe 2012-13 Renewable Fuel Standards obligations

Hello Mr. Brooks – please feel free to give your assistant my direct dial 202-216-0705 if that's convenient. Thank you. –Jill Quinn

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From: Rivkin, Bob S
Sent: Friday, June 14, 2013 12:52 PM
To: 'Brooks, Phillip'
Cc: Quinn, Jill
Subject: RE: Delta/Monroe 2012-13 Renewable Fuel Standards obligations

Mr. Brooks - Thank you. Jill Quinn (copied here) can work to find a time. Best – Bob Rivkin

Robert S. Rivkin | [redacted] | SVP & Deputy General Counsel – Regulatory & International Affairs
P: 202.216.0700 | F: 202.289.6834 | 1212 New York Ave NW Ste 200 Washington, DC 20005

From: Brooks, Phillip [mailto:Brooks.Phillip@epa.gov]
Sent: Friday, June 14, 2013 12:49 PM
To: Rivkin, Bob S
Subject: Re: Delta/Monroe 2012-13 Renewable Fuel Standards obligations

Mr. Rivkin

I am out of the office today. I will ask my assistant to find a time for a meeting. Whith whom should she work to set a time? I am not available June 20 through June 30.

From: Rivkin, Bob S
Sent: Friday, June 14, 2013 11:41:44 AM
To: Brooks, Phillip
Subject: Delta/Monroe 2012-13 Renewable Fuel Standards obligations

Dear Mr. Brooks -

Delta Air Lines would appreciate the opportunity to meet with you to present our concerns regarding compliance with Renewable Fuel Standards obligations for 2012-13. We have had the opportunity to meet with Chris Grundler and Ben Hengst (who subsequently had to recuse himself) on May 21, as well as with Karl Simon and Byron Bunker on June 12, regarding this issue.

As we explained to your colleagues, in June 2012 Delta purchased Monroe Energy, a refinery in Trainer, PA with a capacity of 185,000 barrels per day. Monroe saved the refinery from closure by purchasing it from Phillips 66 for $150 million and investing another $150 million on major repairs and improvements. Monroe re-started operations in September 2012 and plans to substantially increase its supply of crude oil from domestic sources, including Bakken shale oil from North Dakota and Eagle Ford shale oil from Texas. Delta purchased Monroe in order to have a reliable source of supply for the jet fuel Delta needs to operate its fleet of airplanes.

Monroe is a refiner obligated under EPA's Renewable Fuels Standards (RFS) program either to blend renewable fuels into certain categories of its refined products, or to purchase renewable fuel credits (RINs). While the jet fuel supplied to Delta is not subject to the RFS blending requirements, Monroe's other products require either the purchase of ethanol for blending or the purchase of RINS on the market. Because Monroe has virtually no capacity to blend renewable fuels and therefore sells all its on-the-road fuel products to distributors prior to their being blended, Monroe has no choice but to purchase ethanol RINs on the market. In this way, Monroe is similar to a small refinery, although it does not qualify as a small refiner.

Monroe intended to purchase RINs before February 28, 2013 to satisfy its 2012 RVO and not carry forward a deficit. However, the price of ethanol RINS exploded in early 2013, from about five cents per gallon in late December, to over $1.00 per gallon in early March, and it was not clear even at that price how many RINs were available for purchase. The price increase coincided with the release of EPA's proposed volumetric mandate for 2013. Even today, the applicable RIN price hovers around 90 cents per gallon. At these prices, even assuming sufficient availability, it would cost Monroe Energy well over $150 million in 2013 to comply with the RFS program. This magnitude of economic burden created by the RIN price increase in simply unsustainable.

Because of the functional unavailability of RINs in early 2013, Monroe carried over its 2012 RVO and is now obligated to meet its 2012 and 2013 compliance obligations by February 28, 2014. It appears that only a timely and carefully crafted 2014 proposal could induce the market to return to functionality, but even that prospect is uncertain. Consequently, we

would like to pursue other possible avenues of relief, including a compliance agreement that would allow Monroe more time to comply with its 2012 RVO while EPA attempts to restore a functioning market.

We would appreciate the opportunity to discuss this with you at your convenience late next week or the following week if possible.

Yours sincerely - Bob Rivkin

Robert S. Rivkin | [redacted] | SVP & Deputy General Counsel – Regulatory & International Affairs
P: 202.216.0700 | F: 202.289.6834 | 1212 New York Ave NW Ste 200 Washington, DC 20005

********** ATTACHMENT NOT DELIVERED **********

This Email message contained an attachment named
image001.jpg
which may be a computer program. This attached computer program could contain a computer virus which could cause harm to EPA's computers, network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced into the EPA network. EPA is deleting all computer program attachments sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

********** ATTACHMENT NOT DELIVERED **********

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For further information, please contact the EPA Call Center at

(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

********** ATTACHMENT NOT DELIVERED **********

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/16/2018 6:10:44 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: FW: Small Refinery Exemptions

https://insideepa.com/daily-news/biofuels-sector-hopes-wheelers-political-savvy-will-ease-rfs-tensions

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Gunasekara, Mandy
Sent: Friday, March 23, 2018 3:24 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Re: Small Refinery Exemptions

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 23, 2018, at 3:01 PM, Traylor, Patrick <traylor.patrick@epa.gov> wrote:

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Gunasekara, Mandy
Sent: Friday, March 23, 2018 2:41 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Clint Woods <cwoods@csg.org>; Baptist, Erik <Baptist.Erik@epa.gov>
Subject: Re: Small Refinery Exemptions

Deliberative Process / Ex. 5

Who in OECA is involved in this?

Sent from my iPhone

On Mar 23, 2018, at 2:18 PM, Traylor, Patrick <traylor.patrick@epa.gov> wrote:

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Message

From: Miller, Anthony [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22A9C0F41174B28BB0DBF0C5A21A8EF-MILLER, ANTHONY]
Sent: 5/1/2018 4:09:04 AM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
CC: Kodish, Jeff [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c291cb168784a25b4e3575df4b94915-Kodish, Jeff]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]
Subject: Re: RIN question

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 30, 2018, at 7:45 PM, Brooks, Phillip <Brooks.Phillip@epa.gov> wrote:

Deliberative Process / Ex. 5

>
>> April 26 (Reuters) - CVR Energy Inc
>> refining unit's income more than doubled in the first quarter,
>> versus the prior-year period, the company said on Thursday,
>> citing stronger crack spreads and lower biofuels compliance
>> costs.
>>
>> *CVR Refining reported net income of $147 million for the
>> first quarter, up from $67 million in the same period of 2017.
>> * "The quarter's fiscal performance was driven by stronger
>> crack spreads, hedging gains, a reduction to our estimated
>> Renewable Volume Obligation and lower" prices of biofuels
>> credits," said Dave Lamp, CVR's chief executive officer.
>> * When asked on an investor call if the company received a
>> small refinery hardship exemption for its Wynnewood, Oklahoma,
>> refinery, Lamp said: "(T)he request for or granting of a waiver,
>> something we consider very confidential and we will not discuss
>> that."
>> * Oil refiners and other fuel companies are required to
>> blend biofuels such as ethanol with their petroleum-based
>> products each year, though refiners with capacity below 75,000
>> barrels per day can apply for a waiver of those obligations.
>> * The Environmental Protection Agency has said it has given
>> 25 such exemptions for 2017.
>> * CVR Refining said on Thursday that it turned a $23 million
>> profit on Renewable Identification Number (RIN) credits in the
>> first quarter, nearly quadrupling the $6 million it earned in
>> the market for biofuels credits in the same period of 2017.
>> * The company said it now expects its cost of complying with
>> the Renewable Fuel Standard will fall to $80 million this year
>> from roughly $249 million in 2017. The $80 million projection is
>> also markedly below the $200 million in 2018 RIN costs that CVR
>> estimated for this year when it released its fourth-quarter 2017
>> earnings in February.

Message

From: Phillip Brooks Personal Email / Ex. 6
Sent: 5/1/2018 1:25:37 AM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]

April 26 (Reuters) - CVR Energy Inc
refining unit's income more than doubled in the first quarter, versus the prior-year period, the company said on Thursday, citing stronger crack spreads and lower biofuels compliance costs.

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* The company said it now expects its cost of complying with the Renewable Fuel Standard will fall to $80 million this year from roughly $249 million in 2017. The $80 million projection is also markedly below the $200 million in 2018 RIN costs that CVR estimated for this year when it released its fourth-quarter 2017 earnings in February.

Message

From: Kodish, Jeff [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C291CB168784A25B4E3575DF4B94915-KODISH, JEFF]
Sent: 5/3/2018 6:27:34 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
CC: Miller, Anthony [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22a9c0f41174b28bb0dbf0c5a21a8ef-Miller, Anthony]
Subject: FW: ABFA sues EPA over waivers

FYI

From: Kryman, Matthew
Sent: Thursday, May 3, 2018 12:21 PM
To: Kodish, Jeff <Kodish.Jeff@epa.gov>; Miller, Anthony <Miller.Anthony@epa.gov>; Rivers, Tahani <Rivers.Tahani@epa.gov>; Schefski, Melissa <Schefski.Melissa@epa.gov>
Subject: ABFA sues EPA over waivers

Note ABFA's president, also a senior policy advisor at Holland & Knight: https://www.hklaw.com/michael-mcadams/

Also, he was the attorney for Scott Johnson (Gen-X Energy, Southern Resources and Commodities).

A biofuels advocacy group is challenging EPA's decision to exempt refiners from annual renewable fuel requirements.

The Advanced Biofuels Association yesterday filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit seeking review of the agency's waivers for more than two dozen small refineries.

"We have seen reports that the number of small refinery exemptions recently granted for compliance years 2016 and 2017 have doubled compared to previous years," Michael McAdams, president of ABFA, said in a statement. "ABFA members are concerned that Administrator [Scott] Pruitt is granting these exemptions in an arbitrary and capricious manner to undisclosed parties behind closed doors with no accountability for its decision-making process."

Under the renewable fuel standard and in coordination with the Energy Department, EPA can grant waivers exempting small refiners that demonstrate economic hardship from meeting biofuel-blending targets. Refiners can also meet the yearly biofuel mandates by buying renewable fuel credits.

EPA has said it has granted exemptions for around 25 refineries. The agency, though, hasn't disclosed which refineries receive waivers because it says doing so would reveal private business information (*Greenwire*, April 5).

Reuters, however, has reported that EPA granted waivers to three small refineries owned by Andeavor, which is among the nation's biggest refiners.

Earlier this week, the news agency reported that EPA also exempted an oil refinery owned by billionaire Carl Icahn, a former adviser to President Trump. The Justice Department is investigating whether Icahn improperly influenced ethanol policy while he served as an adviser.

In its suit, ABFA argues that an arbitrary change in EPA's criteria for determining economic hardship accounts for the large number of exemptions last year.

EPA's decision to grant "a historically unparalleled number of exemptions has destabilized the national renewable fuels market," as well as hurt the organization's members, the petition says. The group's membership includes BP PLC, Cargill Inc. and advanced biofuel companies.

Scott Segal, an attorney at Bracewell LLP representing refiners, said that the small refinery exemption is "well established" and that the suit is based on a "fundamental misunderstanding."

"EPA's current actions are fully consistent with the Clean Air Act," he said.

The new lawsuit comes as the D.C. Circuit is hearing litigation over EPA's 2017 renewable fuel targets. Several refining companies, as well as the American Fuel & Petrochemical Manufacturers trade association, have challenged EPA's methodologies and the agency's decision to not reconsider changing which parties must comply with the renewable fuel standard. The National Biodiesel Board, on the other hand, is challenging EPA's target for biodiesel, an advanced biofuel made from soybean oil, animal fats and used cooking grease. Final briefs are due in June.

Outside of the courtroom, corn-state senators have urged EPA to stop granting the refinery waivers, warning that they would cause corn prices to drop and hurt farmers (*Greenwire*, April 17).

Matthew Kryman
Attorney-Advisor
U.S. Environmental Protection Agency
OECA/AED/Western Field Office (8MSU)
1595 Wynkoop Street
Denver, CO 80202

Ph: 303.312.6272
Fax: 303.312.6003

Confidential: This transmission may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this message has been received by you in error, you are instructed to delete this message from your machine and all storage media whether electronic or hard copy. Thank you.

Message

From: Schefski, Melissa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C5B5D99A44CD491D99FCCA65BE54E601-KATZ, MELISSA]
Sent: 4/17/2018 8:19:03 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]
CC: Miller, Anthony [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22a9c0f41174b28bb0dbf0c5a21a8ef-Miller, Anthony]; Rivers, Tahani [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b83cb290f8b47e79093f897562b2658-Rivers, Tahani]
Subject: PES Language for 2019 RFS Standards Proposed Rule

Phill/Apple – Here are the steps we took to get the carry-over RIN estimate.

Attorney Client - Deliberative Process / Ex. 5

Attorney Client - Deliberative Process / Ex. 5

Attorney-Advisor
Fuels Enforcement Branch
Air Enforcement Division
Mail Code: 8MSU
1595 Wynkoop Street
Denver, Colorado 80202
303-312-6842

Attorney Client - Deliberative Process / Ex. 5

Message

From: Miller, Anthony [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22A9C0F41174B28BB0DBF0C5A21A8EF-MILLER, ANTHONY]
Sent: 3/13/2018 9:26:08 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: RE: What kind of price movement was there in the D6 market over the last 24 hours?

According to the following article - negative 3.5 cent drop. 40% down in last two weeks.

Biofuel credits drop in wake of refiner settlement: traders https://www.reuters.com/article/us-usa-biofuels-rins/biofuel-credits-drop-in-wake-of-refiner-settlement-traders-idUSKCN1GP1RC

NEW YORK (Reuters) - Renewable fuel credits for 2018 slipped on Tuesday after the U.S. Environmental Protection Agency granted a bankrupt Philadelphia refiner significant relief from its biofuel obligations.
Prices for renewable fuel (D6) credits for 2018 traded at 35 cents on Tuesday morning, traders said, down from 38.5 cents on Monday and roughly 40 percent lower than just two weeks ago.

The EPA and the Carlyle Group-backed Philadelphia Energy Solutions refinery agreed on Monday that the refiner would have to satisfy only roughly half of its $350 million worth of outstanding compliance obligations under the U.S. Renewable Fuel Standard. The RFS requires refiners to blend biofuels like ethanol into their fuel or buy credits from those that do.

The settlement, which must be approved by a federal judge and faces a public comment period, says PES does not have to go into market and buy some 250 million compliance credits covering 2016, 2017 and portions of 2018. That has raised concerns among biofuels producers that other independent refiners may also seek relief.

The EPA has also signaled that it is willing to exempt a larger number of small refineries from the program, limiting the number of potential buyers and putting even more credits into the market.

-----Original Message-----
From: Brooks, Phillip
Sent: Tuesday, March 13, 2018 3:24 PM
To: Miller, Anthony <Miller.Anthony@epa.gov>
Subject: What kind of price movement was there in the D6 market over the last 24 hours?

Sent from my iPhone

Message

From: Kodish, Jeff [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C291CB168784A25B4E3575DF4B94915-KODISH, JEFF]
Sent: 4/13/2018 6:41:55 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
CC: Miller, Anthony [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22a9c0f41174b28bb0dbf0c5a21a8ef-Miller, Anthony]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]
Subject: Re: Chevron, Exxon seek 'small refinery' waivers from US biofuels law

Deliberative Process / Ex. 5

Sent from my iPhone

> On Apr 13, 2018, at 12:28 PM, Brooks, Phillip <Brooks.Phillip@epa.gov> wrote:
>

Deliberative Process / Ex. 5

>
> Sent from my iPhone
>
>> On Apr 13, 2018, at 11:28 AM, Miller, Anthony <Miller.Anthony@epa.gov> wrote:
>>
>>
>> http://www.hydrocarbonprocessing.com/news/2018/04/chevron-exxon-seek-small-refinery-waivers-from-us-biofuels-law
>>
>>
>> Sent from my iPhone

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/31/2018 4:42:57 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
CC: Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]
Subject: Re: Interesting article

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Mar 31, 2018, at 12:32 PM, Brooks, Phillip <Brooks.Phillip@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 31, 2018, at 12:19 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Brooks, Phillip
Sent: Saturday, March 31, 2018 12:15 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Subject: Interesting article

https://www.bloomberg.com/news/articles/2018-03-29/washington-leak-culture-meets-wall-street-s-insider-trading-cops

Sent from my iPhone

Message

From: Kodish, Jeff [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1C291CB168784A25B4E3575DF4B94915-KODISH, JEFF]
Sent: 3/25/2018 8:05:29 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: RE: Small Refinery Exemptions

Deliberative Process / Ex. 5

Thanks for raising the issue.

Jeffrey A. Kodish
Fuels Team Leader
Attorney-Adviser
OECA/AED/Western Field Office (8MSU)
1595 Wynkoop Street
Denver, Colorado 80202

Tel: 303-312-7153
Fax: 303-312-6003

Enforcement Confidential: Attorney Work Product and / or Attorney Client Communications

From: Brooks, Phillip
Sent: Friday, March 23, 2018 1:32 PM
To: Kodish, Jeff <Kodish.Jeff@epa.gov>
Subject: Fwd: Small Refinery Exemptions

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

> **From:** "Traylor, Patrick" <traylor.patrick@epa.gov>
> **Date:** March 23, 2018 at 3:06:55 PM EDT
> **To:** "Brooks, Phillip" <Brooks.Phillip@epa.gov>
> **Subject: FW: Small Refinery Exemptions**

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency
(202) 564-5238 (office)
Personal Phone / Ex. 6

From: Gunasekara, Mandy
Sent: Friday, March 23, 2018 2:41 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Clint Woods <cwoods@csg.org>; Baptist, Erik <Baptist.Erik@epa.gov>
Subject: Re: Small Refinery Exemptions

Deliberative Process / Ex. 5

Who in OECA is involved in this?

Sent from my iPhone

On Mar 23, 2018, at 2:18 PM, Traylor, Patrick <traylor.patrick@epa.gov> wrote:

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Personal Phone / Ex. 6

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 3/23/2018 6:43:48 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: FW: Small Refinery Exemptions

FYSA; close hold, please.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Personal Phone / Ex. 6

From: Traylor, Patrick
Sent: Friday, March 23, 2018 2:18 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Clint Woods (cwoods@csg.org) <cwoods@csg.org>
Cc: Baptist, Erik <baptist.erik@epa.gov>
Subject: Small Refinery Exemptions

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Personal Phone / Ex. 6

Message

From: Phillip Brooks [pabmah1@gmail.com]
Sent: 3/21/2018 1:53:38 AM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Attachments: rfs-small-refinery-2016-12-06.pdf

https://www.epa.gov/sites/production/files/2016-12/documents/rfs-small-refinery-2016-12-06.pdf

Sent from my iPad

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

OFFICE OF
AIR AND RADIATION

December 6, 2016

SUBJECT: Financial and Other Information to Be Submitted with 2016 RFS Small Refinery Hardship Exemption Requests

The Clean Air Act ("CAA" or "the Act") includes a provision that allows small refineries to petition the EPA for an exemption from their federal Renewable Fuels Standard ("RFS") requirements. The EPA may only grant such petitions if it finds that the small refinery will experience a "disproportionate economic hardship" from compliance with its RFS obligations. The purpose of this correspondence is to provide information about the petition submission process for small refineries seeking exemptions from their 2016 RFS obligations. The correspondence also includes information regarding the kinds of financial and other information the EPA will need to evaluate a petitioning small refinery's request. We also provide a summary of how the EPA has conducted, and will continue to conduct, its evaluation.

Background

The CAA exempted all small refineries from the RFS program until calendar year 2011, and permits the EPA to extend the exemption for a small refinery that would experience a "disproportionate economic hardship" if required to comply with its RFS requirements.[1] A small refinery is one with an average crude oil input no greater than 75,000 barrels per day (bpd) crude in 2006.[2] Subsequent revisions to the RFS program regulations further limit small refineries' eligibility to petition to those having an average aggregate daily crude oil throughput no greater than 75,000 bpd in the most recent full calendar year prior to submitting a petition. In addition, the petitioner cannot be projected to exceed the 75,000 bpd threshold in the year or years for which it is seeking an exemption.[3]

The EPA regulations require that a small refinery petition specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the small refinery would face in meeting its RFS obligations, and identify the date by which the small refinery anticipates that compliance with its RFS obligations can reasonably be achieved.[4]

Petition Evaluation and Content

In reviewing small refinery petitions, the EPA will continue to assess whether a small refinery would face a "disproportionate economic hardship" if required to comply with its RFS obligations. A small refinery is most likely to experience a "disproportionate economic hardship" from its RFS requirements when it faces "a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the

[1] CAA § 211(o)(9)(A)(i); CAA § 211(o)(9)(B)(i).
[2] CAA § 211(o)(1)(K).
[3] 40 CFR 80.1441(e)(2)(iii).
[4] 40 CFR 80.1441(e)(2)(i).

refinery operations."[5] Specifically, "disproportionate economic hardship" encompasses an impact on "the ability of the [refinery] to remain competitive and profitable."[6] The EPA therefore considers whether the petitioning small refinery will remain competitive and profitable while satisfying its RFS obligations.

The EPA, in consultation with the Department of Energy (DOE), considers the findings of the DOE Small Refinery Study and a variety of economic factors in evaluating petitions. For example, in assessing whether or not a small refinery faces a "disproportionate economic hardship" from compliance with its RFS obligations, the EPA independently reviews the information a small refinery submits. The EPA also analyzes other economic factors including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. To enable this analysis, petitioning small refineries should submit detailed financial and operational information to support a claim of "disproportionate economic hardship" from compliance with their RFS obligations. Typical documentation would include accurate and up-to-date financial statements that are prepared according to generally accepted accounting principles. Documentation may also include loan covenants and restrictions affecting the purchase of RINs, a discussion of local impediments to blending, a discussion of local market conditions negatively impacting a refinery's ability to comply with its RFS obligations, a discussion of the extent of RFS compliance costs relative to refinery operating margins and capital expenditures, and any documentation of the effect of 2016 RFS compliance costs on the ability of the refinery to remain financially viable and profitable. Financial statements should include RFS compliance costs for the year of the petition. Petitions should also describe the small refinery's plan for achieving compliance in the future.

Timing of small refinery petition evaluations for 2016 necessitates a slightly different evaluation process compared to the petition evaluation process for 2014 and 2015. In particular, financial data may not be available in time for petitioners to provide full-year financial information for 2016 and still enable the EPA to issue decisions before the 2016 compliance deadline of March 31, 2017. Petitions should include the following financial data:

- Full calendar-year financial data for 2013, 2014, and 2015;
- Full calendar year gross and net refining margins for 2013, 2014, and 2015;
- Aggregate financial data for the first three quarters (Q1, Q2, and Q3) of calendar-year 2016; and
- Aggregate calculated gross and net refining margins for the first three quarters (Q1, Q2, and Q3) of calendar-year 2016.

EPA also welcomes any relevant 2016 fourth quarter (Q4) information that petitioners can provide with confidence. All information submitted needs to be accurate and true to the best of the petitioner's knowledge.

Additionally, a complete petition will also include the narratives, analyses, and other information the EPA needs for evaluating whether RFS compliance would cause the small refinery "disproportionate economic hardship." The EPA recommends complete petitions be submitted as soon as possible to enable the EPA to conduct its evaluation and issue a decision prior to the 2016 compliance deadline of March 31, 2017. The EPA will acknowledge receipt of petitions and will communicate with petitioners as to whether their submission includes the necessary materials, and will also communicate with petitioners when the EPA considers a petition to be complete. The EPA generally will not act on incomplete petitions. The EPA will consult with DOE during its

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[5] "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study), pg. 3; *Hermes Consol., LLC. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 984 (8th Cir. 2015). Since 2011, when the EPA began evaluating small refinery petitions, the EPA has adopted the interpretation of "disproportionate economic hardship" set forth in the DOE Small Refinery Study.

[6] DOE Small Refinery Study, at pg. 27; *Hermes Consol.* at 575; *Lion Oil* at 984.

evaluation of each petition, and all petition documentation will be shared with DOE. The EPA intends to act on completed petitions within 90 days of the submission of a complete petition.

We suggest that petitioners, including small refineries that have already submitted a 2016 petition, review the information in this correspondence and update the submissions accordingly, especially with the financial information described above and with updated RFS compliance cost estimates that include the most recent cost data available.

Petitioning small refineries should always presume that they are subject to the requirements of the RFS program and include RFS compliance in their overall planning.

Petition Submission

A small refinery may submit an electronic copy of its petition and all supporting materials to Brent Williams at williams.brent@epa.gov. A hard copy of the petition and all supporting materials may be submitted to:

Attn: RFS Program
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 6405A
Washington, DC 20460

We believe that the information provided here will enhance the small refinery petition process. If you have any questions, please send an email to complianceinfo@epa.gov.

Sincerely,

Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality

Message

From: Bunker, Byron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DDF7BCF023D241A9A477A2DC75D5901C-BUNKER, BYRON]
Sent: 7/12/2016 10:59:17 AM
To: Thompson, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f96bb89976344a60bfe4f8ea5dc4664b-Thompson, Christopher]; Kodish, Jeff [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c291cb168784a25b4e3575df4b94915-Kodish, Jeff]
CC: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Small Refiner Coalition request for stay of 2014/15 ompliance demonstration deadlines
Attachments: Perkins Coie request for stay of deadlines.pdf; ATT00001.htm

Deliberative Process / Ex. 5

Thanks,

Byron

Sent from my iPhone

Begin forwarded message:

From: "Dubois, Roland" <Dubois.Roland@epa.gov>
Date: July 11, 2016 at 11:23:32 PM EDT
To: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Argyropoulos, Paul" <Argyropoulos.Paul@epa.gov>, "Simon, Karl" <Simon.Karl@epa.gov>, "Charmley, William" <charmley.william@epa.gov>, "Korotney, David" <korotney.david@epa.gov>, "Burkholder, Dallas" <burkholder.dallas@epa.gov>, "Reid, Lauren" <Reid.Lauren@epa.gov>, "Weihrauch, John" <Weihrauch.John@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Cohen, Janet" <cohen.janet@epa.gov>
Cc: "Orlin, David" <Orlin.David@epa.gov>, "Stahle, Susan" <Stahle.Susan@epa.gov>
Subject: Small Refiner Coalition request for stay of 2014/15 ompliance demonstration deadlines

ATTORNEY WORK PRODUCT

Attorney Work Product / ACP / Deliberative Process / Ex. 5

Attorney Work Product - Deliberative Process / Ex. 5

Attorney Work Product - Deliberative Process / Ex. 5

Given how tight everyones' schedules are this week, and the need to discuss this quickly, I am going to try to set up a call for 8 a.m. on Wednesday. We can perhaps discuss in the fuels call tomorrow whether that is likely to work, or folks could respond to this message.

From: Machiele, Paul
Sent: Monday, July 11, 2016 12:10 PM
To: Dubois, Roland
Cc: Argyropoulos, Paul; Orlin, David; Simon, Karl; Burkholder, Dallas; Charmley, William; Bunker, Byron; Korotney, David; Hengst, Benjamin; Weihrauch, John; Sutton, Tia; Reid, Lauren; Cohen, Janet
Subject: Re: Cal for Agenda Items for Tomorrows 11 am Weekly Fuels Team Meeting

Roland, I'm on the road today, at a conf tomorrow am and then back on the road. Sounds like we should discuss, but if it has to be soon it will likely be without me. See if you can organize a mtg to discuss it. Otherwise put it on the agenda for the 11:00 tomorrow

Sent from my iPhone

On Jul 11, 2016, at 12:04 PM, Dubois, Roland <Dubois.Roland@epa.gov> wrote:

Deliberative Process / ACP / Ex. 5

From: Machiele, Paul
Sent: Monday, July 11, 2016 11:58 AM
To: Dubois, Roland
Cc: Argyropoulos, Paul; Orlin, David; Simon, Karl; Burkholder, Dallas; Charmley, William; Bunker, Byron; Korotney, David; Hengst, Benjamin; Weihrauch, John; Sutton, Tia; Reid, Lauren; Cohen, Janet
Subject: Re: Cal for Agenda Items for Tomorrows 11 am Weekly Fuels Team Meeting

Deliberative Process / ACP / Ex. 5

Sent from my iPhone

On Jul 11, 2016, at 10:37 AM, Dubois, Roland <Dubois.Roland@epa.gov> wrote:

Deliberative Process / ACP / Ex. 5

From: Argyropoulos, Paul
Sent: Monday, July 11, 2016 9:53 AM
To: Burch, Julia; Orlin, David; Weihrauch, John; Dubois, Roland; Machiele, Paul; Le, Madison; Simon, Karl; Lie, Sharyn; Burkholder, Dallas; Camobreco, Vincent; Audette, Lucie; Charmley, William; Larson, Robert; Manners, Mary; Bunker, Byron; Korotney, David; Hengst, Benjamin
Cc: Sopata, Joe; Dupree, Sheena; Sutton, Tia; Parsons, Nick; Reid, Lauren; Sargeant, Kathryn; Anderson, Robert; Monger, Jon
Subject: Cal for Agenda Items for Tomorrows 11 am Weekly Fuels Team Meeting

Please forward any agenda item by COB today to add to our list for tomorrow's 11 am call.

Thanks, Paul

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/15/2017 2:06:42 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Re: Small Refineries (re: RFS hardship exemption)

Heading down now

Sent from my iPhone

On Aug 15, 2017, at 9:59 AM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

> Group is in 1332. Mandy is heading down in 2 min
>
> **Small Refineries (re: RFS hardship exemption)**
> Scheduled: Tuesday, Aug 15, 2017 from 10:00 AM to 11:00 AM
> Location: 1200 Pennsylvania Avenue, NW (North) - Room 1332 WJCN
> Invitees: Hengst, Benjamin, Johnson Koch, LeAnn M. (Perkins Coie), Mandy Gunasekara (Gunasekara.Mandy@epa.gov), Dravis, Samantha, Kime, Robin (Kime.Robin@epa.gov), Susan Butler, Brittany Bolen (bolen.brittany@epa.gov), Hughes, Krista (Perkins Coie)
>
> Sent from my iPhone

Message

From: Bowman, Liz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C3D4D94D3E4B4B1F80904056703EBC80-BOWMAN, ELI]
Sent: 7/31/2017 1:56:58 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: RE: Schnare again

Deliberative Process / Ex. 5

From: Dravis, Samantha
Sent: Monday, July 31, 2017 9:37 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Schnare again

Deliberative Process / Ex. 5

From: Jackson, Ryan
Sent: Monday, July 31, 2017 9:36 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Schnare again

Deliberative Process / Ex. 5

From: Dravis, Samantha
Sent: Monday, July 31, 2017 9:29 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Schnare again

Deliberative Process / Ex. 5

From: Bowman, Liz
Sent: Monday, July 31, 2017 9:25 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Schnare again

I really don't want to litigate this back-and-forth with this guy...but just so you have it, this is his full response:

Dr. Schnare responds:

I stand by earlier statement and expand on it upon request to respond to EPA. Neither EPA nor Mr. Pruitt denied that a Red Team – Blue Team on climate science is silly; nor that under the Global Change Research Act of 1990, OSTP, not EPA, has the responsibility and authority to conduct a fresh analysis of climate science.

Neither EPA nor Mr. Pruitt denied that "a delegated EPA authority was going to be used by a career manager on a sensitive issue, an action required by law. I advised him on the Agency's options and he rejected them all. Mr. Pruitt then ordered a different course of action, one I firmly believe is not permitted under law." The Agency's response was tantamount to demanding specifics before admitting (or failing to deny) this statement. Because EPA demands the specifics, here they are.

On March 8th, on the daily morning senior staff meeting with Mr. Pruitt, I brought forward four issues requiring decisions: the Chorpyrifos petition, the TSCA §21 petition on TBBPA, the RFS Small Refineries Exemption Denials, and the Pebble Mine premature veto matter. These were identified in the March 8, 2017 "Daily Hot Topics" briefing paper used at these kinds of meetings. The Small Refiner Renewable Fuels Exemptions were a "sensitive issue," in part because of Mr. Pruitt's long-standing campaign support from the refinery industry; and, because the requests for exemption from the standard for four of the 11 small refineries were clearly without merit, granting those exemptions would have two adverse effects. First, the Agency has no discretion in the event a small refiner does not meet the statutory and regulatory criteria for an exemption. To grant the exemptions would be a clear violation of Mr. Pruitt's oath of office. Second, granting improper exemptions would look like a quid pro quo to the refinery industry – something that could only harm the reputation of both the Agency and Mr. Pruitt.

When I raised the RFS issue during the March 8 meeting, Mr. Pruitt instantly rejected the staff's intent to deny the exemptions. I suggested he would benefit from a briefing on the issue. He said, "Well then, brief me." I handed him a five page brief that I had distributed to senior staff the previous day. He read the top page and then indicated he was not going to deny the exemptions. I then suggested that we could change the exemption criteria in order to carry out his intent. Mr. Pruitt instantly rejected that idea stating "We aren't going to do that. It would take 18 months." I then asked on what basis he would like to grant the exemptions. He stated: "Chevron deference." I then explained that it is black letter administrative law that we would still have to use a notice and comment regulatory process to employ that deference, again requiring about 18 months to accomplish.

At that point Mr. Pruitt turned to face me and stated, "Dave, who is going to sue me?" It was instantly obvious that Mr. Pruitt believed he need not "faithfully discharge the duties of [his] office" unless it was likely he would be caught. This is a violation of his oath of office under 5 U.S. Code §3331, subject to enforcement under 18 U.S.C. § 1918 and constitutes a criminal act – a felony. After I resigned, I check in with a senior career official in the Air Office and that person confirmed that Mr. Pruitt, through a third party, directed granting the exemptions, in direct violation of the Agency's rules.

Regarding my position while at EPA and as intended by the White House, apparently, whomever responded on behalf of EPA is ignorant of the White House's plans for my appointment as Assistant Deputy Administrator. The Transition Team managers, who were in charge of the entire transition, created the position of EPA Assistant Deputy Administrator specifically for me. It was a condition I requested in order to agree to serve on the EPA Beachhead Team. OPM approved the position description and EPA's White House Liaison, Charles Munoz, coordinated with the Presidential Personal Office process to complete the appointment process. The day before I resigned, he informed me that all the paperwork on my appointment was completed and was due at EPA any day. EPA had no involvement in this other than to process the appointment, once made, require a new oath of office and institute some additional ethics reporting. The appointment decisions were all at the White House. The Senior White House Liaison, Don Benton, was fully aware of and supportive of this appointment and as my acting in that capacity during the transition period before the final appointment.

As for meetings with senior officials, the story is more nuanced that EPA indicates. Immediately upon Mr. Pruitt coming aboard, we had a welcoming session with all the acting assistant administrators. He also participated in the monthly teleconference with acting regional administrators and acting assistant administrators. Further, we proposed he have a one-hour meet and greet with each of the major offices. He rejected that but eventually agreed to a half-hour with each. In none of these cases were issues brought forward for his decision-making. Rather, we calendared decision meetings to address those issues. While I was there, we scheduled at least five decision meetings between Mr. Pruitt and acting assistant administrators or the acting deputy administrator, each of which were taken off his calendar and subsequently handled through the daily senior staff "Hot Topics" process.

From: Jackson, Ryan
Sent: Monday, July 31, 2017 9:13 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: Schnare again

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
Ex. 6

On Jul 31, 2017, at 8:11 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 31, 2017, at 7:50 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 31, 2017, at 7:47 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 30, 2017, at 9:22 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

RJ's is the best answer. A few points are below if you need any additional information on the subject matter at hand:

- The Administrator has significant discretion under Section 211(o)(9)(B) of the Clean Air Act to grant a waiver for small refineries that experience a "disproportionate economic hardship." I pasted the pertinent statutory language below.
- Determining whether a small refinery qualifies for such an exemption is the result of an extensive analysis by both the Department of Energy and the EPA that weigh confidential business information provided by the petitioning company.
- This analysis and the subsequent decision comport with not only the Administrative Procedure Act (APA), but also the CAA.

PERTINENT STATUTORY LANGUAGE:

(B) PETITIONS BASED ON DISPROPORTIONATE ECONOMIC HARDSHIP

(i) Extension of exemption

A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

(ii) Evaluation of petitions

In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

(iii) Deadline for action on petitions

The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

From: Bowman, Liz
Sent: Sunday, July 30, 2017 7:19 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: Schnare again

Do you all have anything we can use to respond to this? Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

> **From:** "Abboud, Michael" <abboud.michael@epa.gov>
> **Date:** July 30, 2017 at 7:05:47 PM EDT
> **To:** "Graham, Amy" <graham.amy@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>
> **Subject: Fwd: Schnare again**
>
> I emailed Dawn and asked for the full response that Schnare provided. But wanted to give you guys the explanation she provided.
>
> Sent from my iPhone
>
> Begin forwarded message:
>
>> **From:** dawn reeves <dawn.reeves@iwpnews.com>
>> **Date:** July 30, 2017 at 3:16:00 PM EDT
>> **To:** "Abboud, Michael" <abboud.michael@epa.gov>
>> **Subject: Schnare again**
>>
>> Hi Michael,
>> We now have a detailed response from David Schnare explaining his allegation that the administrator was not following administrative law in wanting to grant RFS small refiner waivers to companies that did not meet the exemption criteria.

Schnare says the
administrator
ordered him to direct
staff to grant the
waivers anyway and
that prompted his
resignation.
We plan to run this on
Monday and want to
give you the
opportunity to
respond as well.
Deadline is 11 a.m.
tomorrow.
Please let me know if
you want me ro
include anything
Thanks!
Dawn

Message

From: Bowman, Liz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C3D4D94D3E4B4B1F80904056703EBC80-BOWMAN, ELI]
Sent: 7/31/2017 1:41:19 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Schnare again

Deliberative Process / Ex. 5

From: Dravis, Samantha
Sent: Monday, July 31, 2017 9:29 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Schnare again

Deliberative Process / Ex. 5

From: Bowman, Liz
Sent: Monday, July 31, 2017 9:25 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
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When I raised the RFS issue during the March 8 meeting, Mr. Pruitt instantly rejected the staff's intent to deny the exemptions. I suggested he would benefit from a briefing on the issue. He said, "Well then, brief me." I handed him a five page brief that I had distributed to senior staff the previous day. He read the top page and then indicated he was not going to deny the exemptions. I then suggested that we could change the exemption criteria in order to carry out his intent. Mr. Pruitt instantly rejected that idea stating "We aren't going to do that. It would take 18 months." I then asked on what basis he would like to grant the exemptions. He stated: "Chevron deference." I then explained that it is black letter administrative law that we would still have to use a notice and comment regulatory process to employ that deference, again requiring about 18 months to accomplish.

At that point Mr. Pruitt turned to face me and stated, "Dave, who is going to sue me?" It was instantly obvious that Mr. Pruitt believed he need not "faithfully discharge the duties of [his] office" unless it was likely he would be caught. This is a violation of his oath of office under 5 U.S. Code §3331, subject to enforcement under 18 U.S.C. § 1918 and constitutes a criminal act – a felony. After I resigned, I check in with a senior career official in the Air Office and that person confirmed that Mr. Pruitt, through a third party, directed granting the exemptions, in direct violation of the Agency's rules.

Regarding my position while at EPA and as intended by the White House, apparently, whomever responded on behalf of EPA is ignorant of the White House's plans for my appointment as Assistant Deputy Administrator. The Transition Team managers, who were in charge of the entire transition, created the position of EPA Assistant Deputy Administrator specifically for me. It was a condition I requested in order to agree to serve on the EPA Beachhead Team. OPM approved the position description and EPA's White House Liaison, Charles Munoz, coordinated with the Presidential Personal Office process to complete the appointment process. The day before I resigned, he informed me that all the paperwork on my appointment was completed and was due at EPA any day. EPA had no involvement in this other than to process the appointment, once made, require a new oath of office and institute some additional ethics reporting. The appointment decisions were all at the White House. The Senior White House Liaison, Don Benton, was fully aware of and supportive of this appointment and as my acting in that capacity during the transition period before the final appointment.

As for meetings with senior officials, the story is more nuanced that EPA indicates. Immediately upon Mr. Pruitt coming aboard, we had a welcoming session with all the acting assistant administrators. He also participated in the monthly teleconference with acting regional administrators and acting assistant administrators. Further, we proposed he have a one-hour meet and greet with each of the major offices. He rejected that but eventually agreed to a half-hour with each. In none of these cases were issues brought forward for his decision-making. Rather, we calendared decision meetings to address those issues. While I was there, we scheduled at least five decision meetings between Mr. Pruitt and acting assistant administrators or the acting deputy administrator, each of which were taken off his calendar and subsequently handled through the daily senior staff "Hot Topics" process.

From: Jackson, Ryan
Sent: Monday, July 31, 2017 9:13 AM

To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: Schnare again

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

On Jul 31, 2017, at 8:11 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 31, 2017, at 7:50 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 31, 2017, at 7:47 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 30, 2017, at 9:22 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

RJ's is the best answer. A few points are below if you need any additional information on the subject matter at hand:

- The Administrator has significant discretion under Section 211(o)(9)(B) of the Clean Air Act to grant a waiver for small refineries that experience a "disproportionate economic hardship." I pasted the pertinent statutory language below.
- Determining whether a small refinery qualifies for such an exemption is the result of an extensive analysis by both the Department of Energy and the EPA that weigh confidential business information provided by the petitioning company.

- This analysis and the subsequent decision comport with not only the Administrative Procedure Act (APA), but also the CAA.

PERTINENT STATUTORY LANGUAGE:

(B) PETITIONS BASED ON DISPROPORTIONATE ECONOMIC HARDSHIP

(i) Extension of exemption

A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

(ii) Evaluation of petitions

In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

(iii) Deadline for action on petitions

The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

From: Bowman, Liz
Sent: Sunday, July 30, 2017 7:19 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: Schnare again

Do you all have anything we can use to respond to this? Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Abboud, Michael" <abboud.michael@epa.gov>
Date: July 30, 2017 at 7:05:47 PM EDT
To: "Graham, Amy" <graham.amy@epa.gov>, "Bowman,

Liz" <Bowman.Liz@epa.gov>
Subject: Fwd: Schnare again

I emailed Dawn and asked for the full response that Schnare provided. But wanted to give you guys the explanation she provided.

Sent from my iPhone

Begin forwarded message:

> **From:** dawn reeves <dawn.reeves@iwpnews.com>
> **Date:** July 30, 2017 at 3:16:00 PM EDT
> **To:** "Abboud, Michael" <abboud.michael@epa.gov>
> **Subject: Schnare again**
>
> Hi Michael,
> We now have a detailed response from David Schnare explaining his allegation that the administrator was not following administrative law in wanting to grant RFS small refiner waivers to companies that did not meet the exemption criteria. Schnare says the administrator ordered him to direct staff to grant the waivers anyway and that prompted his resignation.
> We plan to run this on Monday and want to give you the opportunity to respond as well. Deadline is 11 a.m. tomorrow.

Please let me know if
you want me ro
include anything
Thanks!
Dawn

Message

From: Bowman, Liz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C3D4D94D3E4B4B1F80904056703EBC80-BOWMAN, ELI]
Sent: 7/31/2017 1:33:57 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Re: Schnare again

Thanks; this is helpful. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 30, 2017, at 9:22 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

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- <!--[if !supportLists]--><!--[endif]-->The Administrator has significant discretion under Section 211(o)(9)(B) of the Clean Air Act to grant a waiver for small refineries that experience a "disproportionate economic hardship." I pasted the pertinent statutory language below.
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Sent: Sunday, July 30, 2017 7:19 PM
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Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
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Deliberative Process / Ex. 5

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> **To:** "Graham, Amy" <graham.amy@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>
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> > Dawn

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From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 7/31/2017 1:07:48 AM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
CC: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: Schnare again

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
Ex. 6

On Jul 30, 2017, at 7:18 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Do you all have anything we can use to respond to this? **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

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Please let me know if you want me ro include anything
Thanks!
Dawn

Message

From: Brian Jennings [bjennings@ethanol.org]
Sent: 4/3/2018 5:10:27 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: recent correpondence with Pruitt and Wehrum
Attachments: ACE Pruitt follow up letter 3.29.18.pdf; Policy Options for EPA Regarding RVP and RIN Discussion.pdf; ACE Wehrum follow up letter 3.28.18.pdf; RELEASE -ACE-EPA's course change on GHG standards an opportunity for high-octane fuel.pdf

Samantha,

Hope this finds you well. I wanted to keep you in the loop regarding a couple letters I sent to Administrator Pruitt and Assistant Administrator for Air and Radiation Wehrum following meetings I recently had with them. Also attached is ACE's press release on the GHG announcement. Please let me know if you have any questions. I hope to get some follow up meetings with staff to discuss some of the issues in the letters.

Thanks.

Brian

Brian Jennings
CEO
AMERICAN COALITION for ETHANOL
605-334-3381 ext. 12
ethanol.org

american coalition for
ethanol.

March 29, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

Thank you for meeting with Bill Couser, Lucy Norton, Nick Bowdish and myself on March 22nd as part of the American Coalition for Ethanol (ACE) 10th anniversary Washington, D.C. fly-in. I appreciate your candid approach and willingness to engage us on timely and important issues facing ACE members. Beyond expressing my sincere gratitude for meeting with us, I want to follow up on key topics we discussed during the meeting.

While I understand your desire to find a "win-win" solution for merchant refiners and biofuel producers regarding the Renewable Fuel Standard (RFS), I reiterate EPA is poised to take actions which already constitute wins for refiners. The proposed settlement to forgive Philadelphia Energy Solutions for approximately half of its RIN obligation, if approved by a bankruptcy court, could place a significant volume of RINs on the market and deflate prices. RIN prices will decline even more if EPA approves the 27 pending requests for Small Refiner Exemptions from the RFS. Biofuel producers would win nothing from these actions.

Further, despite what Green Plains or Poet may have said in your meeting with them, a "win-win" involving a mechanism to cap, waive, or multiply RINs will not lessen the potential for lawsuits. As the U.S. Court of Appeals for the D.C. Circuit ruled in *Americans for Clean Energy et al. v. EPA*, the "intent of the RFS's increasing requirements are designed to force the market to create ways to produce and use greater and greater volumes of renewable fuel each year." Waiving or capping RINs generally or based on ethanol use thresholds would violate the intent of the RFS and invite litigation, even if linked to Reid vapor pressure (RVP) relief.

We support RVP relief for E15 and higher blends to ensure a true "win-win" for refiners and ethanol producers (and consumers). Thank you for instructing EPA to find a legally defensible interpretation of the statute. I appreciate your comment about getting a proposed rule out within six months if the legal analysis is affirmative. As you may know, ACE and others in the biofuels industry met with Assistant Administrator Wehrum on January 3, 2018 to provide multiple legal interpretations to justify RVP relief. Given this, I would like to meet with your staff to clarify the timeline for completing the legal analysis and proposed rulemaking. Additionally, with the summer ozone season fast-approaching, I encourage EPA to consider issuing an interim-final rule before June 1st so retailers could continue to offer E15 to their customers this summer. The advantages of this approach include increased ethanol blending and reduced RIN prices in the near-term.

As I indicated during our meeting, ACE supports proposals to improve the function and transparency of the RIN market. I have also attached for your consideration policies we believe will reduce RIN prices by increasing the availability and use of renewable fuels.

5000 S. Broadband Lane, Suite 224 Sioux Falls, SD 57108 605-334-3381 ethanol.org

Finally, I was very encouraged by your commitment to include high-octane fuel in future GHG standards. ACE has long believed high-octane fuel is a low-cost tool for automakers to reduce GHG emissions and comply with fuel economy requirements. What's more, comparative research by the Department of Energy to find the most promising fuel to help automakers comply with future GHG standards shows ethanol ranks the highest.[1] This is timely given the April 1st deadline by which EPA must determine the appropriateness of the 2022-2025 model year GHG standards for automobiles.

I would appreciate the opportunity to meet with your staff to follow up on the concept and implementation of 95 octane (presumably Research Octane Number) fuel as discussed during our meeting. For example, would 95 RON be a floor or minimum octane rating that future fuel could exceed? We believe fuels in the range of 98-100 RON would deliver more benefits at a lower cost than 95 RON. How would the Agency go about phasing in a minimum octane fuel given today's 87 AKI? What process would EPA use to move forward with a minimum octane fuel, as part of resetting the GHG standards for 2022-2025 model year vehicles or separate and parallel to that rulemaking?

The issue of "octane" is of paramount importance to ACE members. We would like to continue to discuss steps we have been recommending EPA take to position high-octane fuel in helping automakers meet future GHG standards, including:

1. Approve an alternative certification fuel with 25-30 percent ethanol and a minimum octane of 98-100 RON so automakers can begin testing future engines on a high-octane blend.

2. Establish a minimum octane standard for fuel in the range of 98-100 RON. This will foster a marketplace which spurs competition and innovation to produce low-cost, high-octane fuels. We believe 98-100 RON could be more beneficial for all stakeholders than 95 RON.

3. Update modeling and calculations so ethanol is no longer penalized with respect to fuel economy or emissions. First, correct the fuel economy equation by fixing the R-factor and by crediting ethanol's displacement of petroleum as EISA of 2007 permits. Second, revise the greenhouse gas emissions formula to credit ethanol's upstream GHG reductions. Third, correct the outdated MOVES2014 model used in calculating the non-GHG tailpipe and evaporative emissions of ethanol.

4. Restore credits to automakers for the manufacture of flexible fuel vehicles and consider a new incentive for future engines designed to achieve optimal efficiency on high-octane fuels.

Thank you very much for the opportunity to meet with you. I would like to follow up with you and appropriate staff on these matters if possible. Please have your staff contact me at bjennings@ethanol.org to schedule a follow up meeting. Thank you for your time and attention.

Sincerely,

Brian Jennings, CEO
American Coalition for Ethanol

[1] https://transportationtodaynews.com/news/8229-ethanol-based-fuels-good-fuel-economy-environment/

5000 S. Broadband Lane, Suite 224 Sioux Falls, SD 57108 605-334-3381 ethanol.org

american coalition for
ethanol.

March 28, 2018

Mr. Bill Wehrum – Assistant Administrator, Air and Radiation
Environmental Protection Agency
Mail Code: 6101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Bill:

Thank you for braving the snowstorm on March 21st to meet with members of the American Coalition for Ethanol (ACE) during our 10th anniversary fly-in. Given the high-level discussions currently taking place regarding the Renewable Fuel Standard (RFS), this is a critical time for ACE members and we appreciated the time you spent with us. While we have concerns about some of the proposed changes EPA is considering to the RFS, we are also grateful for your candor and commitment to answering our questions.

We believe the RFS is working and encourage EPA to adhere to the letter and spirit of the law if it proposes changes to address issues raised by some merchant refiners about Renewable Identification Number (RIN) prices. As the D.C. Court of Appeals ruled in Americans for Clean Energy et al. v. EPA, the "intent of the RFS's increasing requirements are designed to force the market to create ways to produce and use greater and greater volumes of renewable fuel each year." Mechanisms to waive, cap, or multiply RINs are just another way to waive RFS volume obligations based on perceived infrastructure constraints that were ruled illegal by the D.C. Court of Appeals.

Moreover, EPA is taking action to address RIN prices which already constitute refiner "wins." The Agency has proposed to forgive Philadelphia Energy Solutions for approximately half of their RIN obligation through bankruptcy court. If a judge approves this settlement, it could place a significant volume of RINs back on the market and deflate prices. As you acknowledged in our meeting, EPA is also deciding whether to grant 27 requests for Small Refiner Exemptions from the RFS. Approval of these exemptions will further reduce RIN costs. We feel this is unfairly responding to refiner concerns without addressing issues important to the ethanol industry and rural America.

Rural America is in bad economic shape and waiving RFS requirements would make matters worse. Farmers are facing their fifth year of corn prices at or below the cost of production. USDA forecasts 2018 net farm income will sink to its lowest level in 12 years. According to the Federal Reserve, farm debt is approaching its highest level since the 1980s farm crisis. The best way to spur market-based demand for farmers and improve economic conditions in rural America is to increase the use of renewable fuels.

To that end, thank you for reiterating EPA is analyzing its authority to grant Reid vapor pressure (RVP) relief so E15 and higher blends of ethanol can be sold year-round. The summer ozone season is fast-approaching. We encourage you to complete this legal review and issue a RVP rulemaking soon. Allowing retailers to offer E15 to their customers year-round would be a "win-win" solution because increased ethanol blending would generate additional RINs and lower their price.

5000 S. Broadband Lane, Suite 224 Sioux Falls, SD 57108 605-334-3381 ethanol.org

We also appreciate the fact you voluntarily referred to "octane" twice with ACE members last week. This is timely given the April 1st deadline by which EPA must determine the appropriateness of the 2022-2025 model year GHG standards for automobiles. With a blending-octane rating of 113, American-made ethanol is the lowest-cost source of fuel octane on the planet. What's more, comparative research by the Department of Energy to find the most promising fuel to help automakers comply with future GHG standards shows ethanol ranks the highest.[1] We would like to meet with you to discuss steps EPA could take to enable high-octane fuel to play a role in helping automakers meet future GHG standards, including:

1. Approve an alternative certification fuel with 25-30 percent ethanol and a minimum octane of 98-100 RON so automakers can begin testing future engines on a high-octane blend.

2. Establish a minimum octane performance standard for fuel in the range of 98-100 RON. This will foster a marketplace which spurs competition and innovation to produce low-cost, high-octane fuels.

3. Update modeling and calculations so ethanol is no longer penalized with respect to fuel economy or emissions. First, correct the fuel economy equation (R-factor) used to certify vehicles operating on high-ethanol blends to at least 1.0. Second, consider crediting ethanol's upstream GHG reductions or its displacement of petroleum as EISA 2007 permits. Third, correct the outdated MOVES2014 model used in calculating the GHG emissions of ethanol.

4. Restore credits to automakers for the manufacture of flexible fuel vehicles and consider a new incentive for future engines designed to achieve optimal efficiency on high-octane fuels.

Finally, we were very encouraged by your response to the suggestion an ACE member made about EPA adopting the Department of Energy "GREET" model to assess the lifecycle analysis of corn ethanol. State regulators and foreign countries developing low-carbon fuel programs rely upon EPA's outdated (2010) analysis which unfortunately limits the GHG reduction benefits of U.S. corn ethanol. This harms the competitiveness of U.S. ethanol in global trade. We urge EPA to adopt the latest GREET analysis to determine the GHG emissions of corn ethanol.

I would like an opportunity to meet with you and appropriate staff to follow up on these matters. Please have your staff contact me at bjennings@ethanol.org or 605-334-3381, extension 12 to schedule a follow up meeting. Thank you for your time and attention.

Sincerely,

Brian Jennings, CEO
American Coalition for Ethanol

[1] https://transportationtodaynews.com/news/8229-ethanol-based-fuels-good-fuel-economy-environment/

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american coalition for ethanol

Policy Options for EPA Regarding RVP and RIN Discussion

American Coalition for Ethanol

In an effort to address concerns of a small number of merchant refiners that have engaged the White House for relief on RIN prices, the American Coalition for Ethanol provides the following policy options we would support to blend more ethanol as a way to reduce RIN prices.

ACE *does not* support any form of a RIN price cap. To be clear, this includes: (1) a one or two year cap or (2) any cap that would be instituted if certain performance metrics are not met on a yearly basis. This would result in significant impact to the renewable fuels industry, create perverse incentives against expanding ethanol use, and would cost farmers billions of dollars annually.

Items ACE Supports to Reduce RIN Prices

- Permanent RVP relief for all ethanol blends greater than 10-percent (i.e. the fix to allow E15 and higher blends to be sold year-round).

- RIN transparency measures (i.e. quarterly reporting of RIN transactions, limit on length that RINs can be held). These items will improve the function of the RIN market.

Policies ACE Supports regarding High Octane Fuel

- Approve an alternative certification fuel with 25-30 percent ethanol and a minimum octane of 98-100 RON so automakers can begin testing future engines on a high-octane blend.

- Establish a minimum octane performance standard for fuel in the range of 98-100 RON. This will foster a marketplace which spurs competition and innovation to produce low-cost high-octane fuels.

- Update modeling and calculations so ethanol is no longer penalized with respect to fuel economy or emissions. First, correct the fuel economy equation by fixing the R-factor and by crediting ethanol's displacement of petroleum as EISA of 2007 permits. Second, revise the greenhouse gas emissions formula to credit ethanol's upstream GHG reductions. Third, correct the outdated MOVES2014 model used in calculating the non-GHG tailpipe and evaporative emissions of ethanol.

- Restore credits to automakers for the manufacture of flexible fuel vehicles and consider a new incentive for future engines designed to achieve optimal efficiency on high-octane fuels.

Policies we support regarding the RFS

- EPA should comply with the ruling in *Americans for Clean Energy et al vs. EPA* to require obligated parties to fulfill the 500 million gallon RIN obligation as a result of the court ruling on EPA's improper use of the RFS waiver authority.

- EPA should adopt the Argonne National Laboratory's GREET model for the lifecycle analysis of corn-based ethanol. EPA's analysis of the carbon footprint of corn ethanol is severely flawed and has not been updated since 2010. In large part, EPA penalized U.S. corn ethanol because of modeling – since refuted by Argonne National Laboratory– of potential land use change made freely by other countries.

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/5/2018 4:43:56 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Energy and Commerce QFR's from 12/7/17 Hrg for Review
Attachments: 12.7.17 hearing QFRs_Pruitt - for OP-OGC Review.docx

Samantha/Matt,

Attached are the QFR responses from the Administrators 12/7/17 hearing with the Energy and Commerce Committee for review by your teams. These were drafted by the relevant program offices and vetted/edited by their political leadership.

E&C had originally wanted them back by last Friday but I have gotten a week extension so we can run them by both of you first. If your staff could review and send back with any comments by Tuesday COB so we can submit OMB for approval it would be much appreciated. Please let me know if you have any questions!

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 1/26/2018 3:17:39 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Grogard, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a3367946384e42919bb367ac0e44eb54-Grogard, Megan]; Jones-Parra, Lisa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=363b050596844ddb875c18f18af15340-Jones-Parra, Lisa]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]
CC: Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]
Subject: FW: Questions for the Record: 12.7.17 Environment Subcmte Hearing - DUE TODAY COB (4PM)
Attachments: 12.7.17 QFRs_Pruitt.pdf; ATT00001.htm; 12.7.17 QFRs_Pruitt - PROGRAM OFFICES NOTEDcorrectedv1.docx; ATT00002.htm

Hello,

Earlier this week, you should have received the attached documents from Thea Williams requesting responses by COB today. She is out today, so I am following up to check on the status your back to OCIR for review.

Please provide an update as to when we can expect your drafts. Please note that today is a hard deadline.

Thanks in advance for your help!

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/15/2017 1:07:39 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: RE: tracker

RFS – Small refiner waivers – final letters sent 5/5
Proposed 2018 RVO – meeting with OMB 5/11; Draft to OMB
E15 Waiver analysis – options discussions with program – ongoing

---

From: Dravis, Samantha
Sent: Monday, May 15, 2017 8:29 AM
To: Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: FW: tracker

If you have updates to this spreadsheet, please send them to me via email in a bulleted list (not in the excel document) in the next 30 minutes. Thanks.

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 3/6/2017 4:21:16 PM
To: Schnare, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=96fc79d4007541a69e8b3cf57f6e13b0-Schnare, Da]
CC: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: Re: Elevation: AFPM request to delay the RFS 2016 compliance deadline

I'll also work with Chet.

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

On Mar 6, 2017, at 9:11 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

On Mar 6, 2017, at 8:53 AM, Schnare, David <schnare.david@epa.gov> wrote:

Deliberative Process / Ex. 5

Please let me know your views on this by COB.

David.

From: Dunham, Sarah
Sent: Monday, March 6, 2017 10:33 AM
To: Flynn, Mike <Flynn.Mike@epa.gov>; Schnare, David <schnare.david@epa.gov>
Cc: Connors, Sandra <Connors.Sandra@epa.gov>; Hull, George <Hull.George@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH

<Richardson.RobinH@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Elevation: AFPM request to delay the RFS 2016 compliance deadline

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 we have a separate request from the American Fuel and Petrochemical Manufacturers (AFPM) that EPA delay the compliance deadline for the 2016 annual RFS standards (incoming request is attached). The compliance deadline (by regulation) is March 31, 2017.

- The attached backgrounder presents the relevant facts in detail.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you!

<AFPM Compliance Delay Request briefing document 3.4.17.docx>
<AFPM incoming 2016 RFS request to delay compliance 022417 final.pdf>

Message

From: Brown, Byron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9242D85C7DF343D287659F840D730E65-BROWN, BYRO]
Sent: 5/5/2017 12:46:46 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: RE: Updates to Issues Tracker
Attachments: OP Issues Tracker-050517-Byron.docx

Here are some edits in the document.

Should also add a new line for Infrastructure EO:

Infrastructure EO	Updates to EPA NEPA guidance under development Developing policy proposals for infrastructure legislative package

From: Dravis, Samantha
Sent: Wednesday, May 3, 2017 11:31 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Updates to Issues Tracker

Hi everyone,

I am working to update the list of policy and other major items that each member of our political team is working on so that our list is up to date and accurate. Attached is the template I have been working from. It would be great if everyone here could respond to me via email on all of the issues, regs, or major cases you're working on and the status of them so that I can update the tracker with the latest info.

These are informative for the 8am meetings and just so we are all on the same page generally. Don't worry about making updates in the document yourself, just send an email in whatever format is best for you and I will update it and then re-distribute to the group.

Thank you!

Samantha

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/3/2017 11:33:53 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Air items

Deliberative Process / Ex. 5

Sent from my iPhone

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 5/1/2017 11:20:28 PM
To: Munoz, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ae303b61fc23433e89c844d7842c9626-Munoz, Char]
CC: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: updated tracker
Attachments: OP Issues Tracker.docx

Charles – attached is an updated version of the tracker that I just edited. We haven't had a chance to meet with folks to thoroughly update it. Hope this helps. Let me know if you have any questions.

Brittany

Brittany Bolen
Deputy Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
(202) 564-3291
Bolen.Brittany@epa.gov

Message

From: Torma, Tim [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9BA71394653C408CA8E45F71EA617843-TORMA, TIM]
Sent: 3/29/2017 8:48:48 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
CC: Kenny, Shannon [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57cd4660f9e342a99180ac2cbc3d264c-Kenny, Shannon]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Flynn, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=735bf2d12a064b0998510511c5b4644b-MFlynn]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Rees, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rees, Sarah]
Subject: Topics for the 03/30/2017 8AM with the Administrator
Attachments: Topics for 03-30-2017 Administrator meeting.docx

Brittany/Samantha,

Attached are topics to consider for the 8AM tomorrow. Hard copies will go to Brittany shortly.

TT

Tim Torma
Senior Advisor
U.S. EPA Office of Policy
202-566-2864

Message

From: Torma, Tim [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9BA71394653C408CA8E45F71EA617843-TORMA, TIM]
Sent: 3/27/2017 8:50:53 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
CC: Kenny, Shannon [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57cd4660f9e342a99180ac2cbc3d264c-Kenny, Shannon]; Rees, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rees, Sarah]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: Topics for 03/28 8AM with the Administrator
Attachments: Topics for 03-28-2017 Administrator meeting.docx

Samantha,

File attached and hard copies in your chair. Hope these are proving helpful.

Tim Torma
Senior Advisor
U.S. EPA Office of Policy
202-566-2864

Message

From: Dravis, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ECE53F0610054E669D9DFFE0B3A842DF-DRAVIS, SAM]
Sent: 8/15/2017 1:05:18 PM
To: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: Today

Thanks Robin. Can you amend the reservation at Hamilton to 4, if Brittany is attending?

From: Kime, Robin
Sent: Tuesday, August 15, 2017 8:00 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Today

Good morning,

I have reached out to Mario and will reschedule lunch/coffee for as soon as it fits your schedules. I am anticipating getting the Administrator's travel plans for next week today and will get that in motion. Have a good day.

Tue, Aug 15

Before 8:00 AM	**Free**
8:00 AM – 10:00 AM	**Free**
10:00 AM – 11:00 AM	Small Refineries (re: RFS hardship exemption) – meeting hosted by Mandy
11:00 AM – 11:30 AM	Weekly Reg Update – Nicole will run the brief discussion today
11:30 AM – 1:00 PM	Lunch with Steve M. (11:45 Reservations) – reservations for 3 under Samantha's name
1:00 PM – 1:45 PM	Earthjustice/EPA (re: TX Regional Haze) - meeting hosted by Mandy
1:45 PM – 2:30 PM	**Free**
2:30 PM – 3:00 PM	Update with Al
3:00 PM – 5:00 PM	Retirement Celebration for Wendy Cleland-Hamnett
3:30 PM – 4:30 PM	Meeting w/ Valero - meeting hosted by Mandy
5:00 PM – 6:00 PM	MANDATORY TRAINING
After 6:00 PM	**Free**

Appointment

From: Dravis, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ECE53F0610054E669D9DFFE0B3A842DF-DRAVIS, SAM]
Sent: 8/21/2017 1:27:33 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]

Subject: Accepted: Small Refineries (re: RFS hardship exemption)
Location: 1200 Pennsylvania Avenue, NW (North) - Room 1332 WJCN

Start: 8/15/2017 2:00:00 PM
End: 8/15/2017 3:00:00 PM
Show Time As: Busy

Message

From: Dravis, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ECE53F0610054E669D9DFFE0B3A842DF-DRAVIS, SAM]
Sent: 3/30/2017 2:40:46 PM
To: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: FW: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Print

From: McGartland, Al
Sent: Thursday, March 23, 2017 4:56 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Dravis, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ECE53F0610054E669D9DFFE0B3A842DF-DRAVIS, SAM]
Sent: 3/23/2017 6:35:25 PM
To: McGartland, Al [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5fe25fc1df634f9798675527e0070429-AMcGartl]
Subject: RE: RFS

An email to me, Byron and Ryan Jackson would be fantastic! Thank you.

Specific focus on whether the RIN obligations are factored into the calculation.

-----Original Message-----
From: McGartland, Al
Sent: Thursday, March 23, 2017 2:33 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RFS

Do you want me to write you an email or talk to you about the RFS small refineries exemption. I'm done with my review

Sent from my iPhone

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 5/30/2018 5:50:48 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]
CC: Bunker, Byron [bunker.byron@epa.gov]; Cohen, Janet [cohen.janet@epa.gov]; Stahle, Susan [Stahle.Susan@epa.gov]; Burkholder, Dallas [burkholder.dallas@epa.gov]; Michaels, Lauren [Michaels.Lauren@epa.gov]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]

Subject: Meet with Coalition of Small Refinery Owners (Confirmed)
Attachments: FW: Small Refinery Hardship -- Renewable Fuel Standard; Confirmed 6/8 at 4pm: Small Refinery Hardship -- Renewable Fuel Standard
Location: WJC-N 5400 + Video with AA + Personal Phone / Ex. 6

Start: 6/8/2018 8:00:00 PM
End: 6/8/2018 8:45:00 PM
Show Time As: Busy

Re: small refinery hardship relief under the Renewable Fuel Standard, specifically, (1) streamlining the petition process; (2) correct scoring of small refineries by DOE (or EPA rejecting incorrect scoring); (3) why granting relief does not cause "demand destruction"; and (4) impending octane cost implications for small refineries.
To: Bill Wehrum, Mandy Gunasekara, Chris Grundler, Ben Hengst
Outside Attendees (in person): TBD

FW: Small Refinery Hardshi...

Confirmed 6/8 at 4pm: Small Refin...

Appointment

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 11/13/2017 2:22:37 PM
To: Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]

Subject: Small Refinery Hardship
Location: RM. 6520 DC/RM. C-174 DOD AA

Start: 11/13/2017 4:00:00 PM
End: 11/13/2017 4:30:00 PM
Show Time As: Busy

MEETING REQUEST:

Hi Gwen—

Can you please put this on the calendar for this morning?

Subject: Small refinery hardship—quick check-in
When: Today, Monday November 13, 2017, from 11-11:30am
Who: Byron Bunker, Janet Cohen, Ben Hengst

Thanks,
Ben

Appointment

From: Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]
Sent: 8/23/2017 9:08:40 PM
To: Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Dubois, Roland [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=835458b87b574ccbb1704415df8413d1-RDUBOIS]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Li, Ryland (Shengzhi) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf0eac9d34b446f88e03f8ec48274f1-Li, Shengzh]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]
CC: Stewart, Gwen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3f8c5838943241caadb6005ffaddd7db-gstewart]

Subject: OTAQ Fuels/RFS Weekly Meeting
Attachments: Fuels weekly with Mandy 8.23.17.docx
Location: WJC-N 5400 + Video with AA + Personal Phone / Ex. 6

Start: 8/24/2017 2:00:00 PM
End: 8/24/2017 3:00:00 PM
Show Time As: Busy

To: Dunham, Sarah; Grundler, Christopher; Hengst, Benjamin; Argyropoulos, Paul; Bunker, Byron; Dubois, Roland; Orlin, David; Li, Ryland (Shengzhi); Lewis, Josh; Charmley, Bill; Machiele, Paul; Simon, Karl; Gunasekara, Mandy; Shaw, Betsy
Cc: Stewart, Gwen

Fuels weekly with Mandy 8.23.17.d...

Message

From: McMichael, Nate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=58FB85A6A601456D87C58F23C40015D0-NMCMICHA]
Sent: 8/15/2013 11:47:37 PM
To: Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Draft Letter to the Editor: WSJ RFS Small Refinery Waivers

Good suggestion. I am sure I'll get more comments. Will try to work this in tomorrow when I address them.

Thanks!

From: Stewart, Lori
Sent: Thursday, August 15, 2013 7:31:21 PM
To: McMichael, Nate
Cc: Grundler, Christopher
Subject: Re: Draft Letter to the Editor: WSJ RFS Small Refinery Waivers

Thanks for doing this Nate. Looks great. Only one additional suggestion - Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: McMichael, Nate
Sent: Thursday, August 15, 2013 10:37:37 PM
To: Grundler, Christopher; McCabe, Janet; Millett, John; Bloomgren, David
Cc: Mylan, Christopher; Stewart, Lori; Kika, Stacy; Valentine, Julia; Ketcham-Colwill, Nancy
Subject: Draft Letter to the Editor: WSJ RFS Small Refinery Waivers

Here is a first cut at the letter to the editor. Since we're on a time crunch, I am sending it to everyone at once. Please send your comments to John and me so we can reconcile them tomorrow morning.

Thank you,
-Nate

Nate McMichael
US EPA Office of Air and Radiation
202-564-0382 (Office)
202-236-4176 (Cell)

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 8/7/2013 4:58:00 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Ghanta, Venu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]
Subject: FW: draft RFS small refinery letter 7-26

This is the last we saw of the letter. Joel was going to share with Janet. I asked Nancy about it yesterday and she had not heard anything about it. Chris, you may want to flag it for her or I can ask Nancy to check with Janet. The letter is for your signature.

From: Beauvais, Joel
Sent: Friday, July 26, 2013 4:52 PM
To: Stewart, Lori; Ghanta, Venu
Cc: Argyropoulos, Paul; Hengst, Benjamin; Grundler, Christopher
Subject: RE: draft RFS small refinery letter 7-26

I can send

From: Stewart, Lori
Sent: Friday, July 26, 2013 4:51 PM
To: Beauvais, Joel; Ghanta, Venu
Cc: Argyropoulos, Paul; Hengst, Benjamin; Grundler, Christopher
Subject: RE: draft RFS small refinery letter 7-26

Thanks Joel. I am attaching a clean version. Chris asked that this go to Janet as well. Would you like to share this with Janet or should I send forward?

From: Beauvais, Joel
Sent: Friday, July 26, 2013 4:44 PM
To: Ghanta, Venu
Cc: Argyropoulos, Paul; Hengst, Benjamin; Stewart, Lori
Subject: draft RFS small refinery letter 7-26

Looks fine – a few nits attached

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 8/8/2013 7:25:51 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Le, Madison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9297d8b52bcb41319ba40d11142ab307-Le, Madison]
Subject: FW: Re: Revised RFS Statement

Chris, OPA received inquiries from the WSJ regarding the small refinery exemptions policy under RFS. Madison worked with John W. and provided him background info. (drawn from public docs) and he composed this summary. It looks pretty straight forward.

From: Le, Madison
Sent: Thursday, August 08, 2013 2:16 PM
To: Stewart, Lori
Subject: FW: Re: Revised RFS Statement

Below is the final statement drafted by Bo Delp (with inputs from John Weihrauch/Chris McKenna – who works on small refinery exemptions).

From: Delp, Robert
Sent: Thursday, August 08, 2013 12:26:52 PM
To: McMichael, Nate
Cc: Johnson, Alisha
Subject: RE: Re: Revised RFS Statement

The Department of Energy (DOE) developed metrics in a 2011 study for small refinery requests for exemption from RFS. These include, for example, access to capital, whether compliance costs could lead to a shutdown, or whether these small refiners are subject to exceptional state regulations. Based on these metrics, DOE evaluates small refinery applications for exemption and makes recommendations to EPA. Because encouraging small business growth is a priority for the EPA, the agency carefully considers these recommendations as well as any potential impacts its actions may have on small businesses.

In 2013, EPA received four requests from small refineries for RFS exemption. After taking into consideration DOE's metric-driven evaluation and other requirements in the RFS rule, EPA has granted one exemption, and no determination has yet been made with the other three exemption requests. Due to confidentiality restrictions, EPA cannot provide any specifics on the actions the agency has taken regarding these exemption requests.

You can find a list of hardship requests we received here: http://www.epa.gov/otaq/regs/hardship-exemptions/hardship.htm

You can find the criteria for hardship exemption outlined under 80.1442(e)(2) here: http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol17/pdf/CFR-2012-title40-vol17-sec80-1442.pdf

You can find additional information on the DOE 2011 study at this link: http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf

Message

From: Dunham, Sarah [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A9444681441E4521AD92AE7D42919223-SDUNHAM]
Sent: 2/22/2017 11:42:46 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Follow-ups to the Office of Air and Radiation briefing for Administrator Pruitt

Ok thanks. That's good to know.

Sent from my iPhone

On Feb 22, 2017, at 6:36 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> Thanks Sarah.
>
> I don't recall if we talked about this, but we do not do any public communications surrounding small Refinery decisions due to the claimed CBI nature of the request.
>
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202/564-1682 (Washington DC)
> 734/214-4207 (Ann Arbor MI)
>
> On Feb 22, 2017, at 6:02 PM, Dunham, Sarah <Dunham.Sarah@epa.gov> wrote:
>
>> Dear Ryan (and David, and George, and Mike)-
>> I hope the firehose you have been drinking from the past two days has not been too overwhelming. I wanted to follow-up on a couple of the more near-term items from this morning's briefing on the Office of Air and Radiation with you and Administrator Pruitt—we are trying to prioritize the follow-up items so as not to overwhelm you even more! We are keeping a list of the requests the Administrator made, and will make sure we don't forget about them. But there were three items that are most time sensitive.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks Ryan, and please let me know if you have any questions, reactions, or suggestions for how you'd like to proceed on any of these areas, and specifically ways we can make this flood of information easier for you and the Administrator.

Sarah

Sarah Dunham
Acting Assistant Administrator
EPA Office of Air and Radiation
202 343 9301
202 236 1721

<Small refinerybackgrounder for 2016.jl edits.docx>

<oil and gas ICR.clean.docx>

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 2/21/2017 8:17:17 PM
To: Page, Steve [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=269c9581404542e79501f2bf0379a2ad-SPAGE]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Harvey, Reid [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8ec31caad5048db83f210032847de32-RHARVE02]; Krieger, Jackie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9b5c0c79be3c4821baf10ab9cf823e82-JKrieger]; Edwards, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3715bc4dfc3e4d6caf3af1bf2fc5ca77-JEdwar02]; Gitlin, Bonnie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=081d666cc407440d9f50bdeec15dd7f8-Gitlin, Bonnie]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]
CC: Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: For review: slides for Administrator briefing tomorrow morning
Attachments: OAR 101 briefing.for Adminstrator.pptx

Slides 1-5 are identical to what was in the slide deck Sarah used for the transition team briefing a month or so ago

Slide 6 condenses the info that was in slides 6-10 of the old slide deck

Slide 7-8 are new slides that highlight a handful of key issues (if you think something major is missing, please call to discuss).

From: Lewis, Josh
Sent: Tuesday, February 21, 2017 2:02 PM
To: Page, Steve <Page.Steve@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Krieger, Jackie <Krieger.Jackie@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>; Gitlin, Bonnie <Gitlin.Bonnie@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: OAR briefing for the Administrator tomorrow morning
Importance: High

We just got word that the Administrator, plus David Schnare and Ryan Jackson, will be coming to the main OAR conf room tomorrow at 10:40 for an OAR overview briefing. An invite will be coming from the 3rd floor shortly. OAR attendees in the room will be Sarah, Betsy, Chris, Jon, Reid, and me; and we'll have Steve on video.

Guidance we've received is to use the briefing to provide an overview of OAR's structure, mission/function, and then flag high level issues. I'll send draft slides – using the attached as a starting point – in the next 30-45 minutes. Comments by COB would be appreciated.

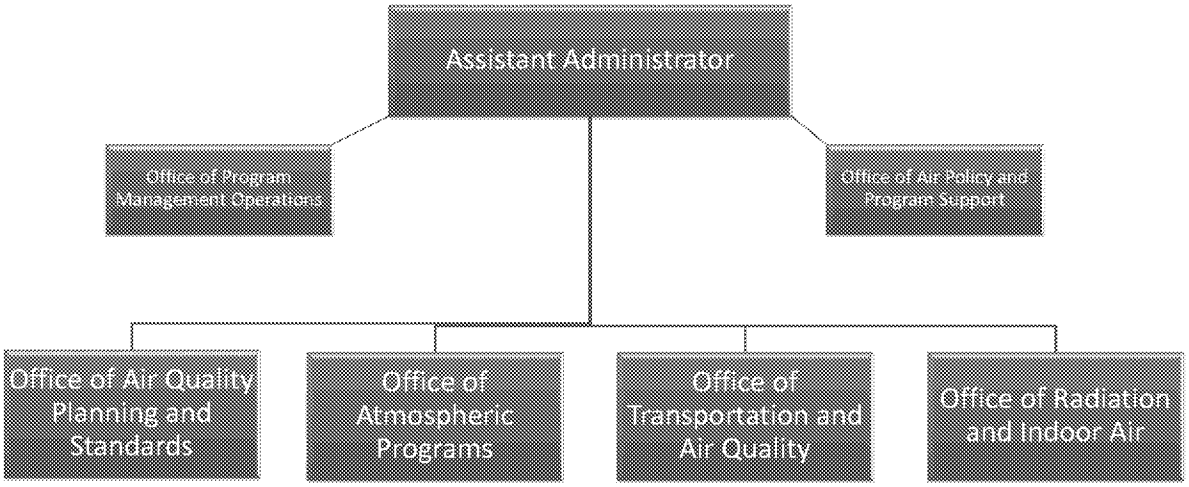
Josh Lewis
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 564 2095
Cell: 202 329 2291

EPA
United States
Environmental Protection
Agency

The Office of Air and Radiation

– An Overview –

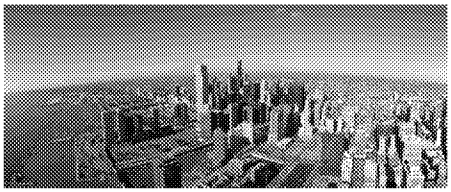
Office of Air and Radiation Organizational Chart



2

The Clean Air Act directs EPA to…

- Meet health-based air quality standards
- Control emissions from cars, trucks, ships, planes, trains
- Control emissions from stationary sources
- Reduce acid rain
- Reduce regional haze
- Protect the ozone layer



Additional Direction

- Besides the Clean Air Act, EPA is also responsible for administering provisions found in actions such as the:
  - Atomic Energy Act
  - Waste Isolation Pilot Plant Land Withdrawal Act
  - Energy Policy Act
  - Energy Independence and Security Act
  - Energy and Policy Conservation Act
  - United Nations Framework Convention on Climate Change
  - Superfund Amendments and Reauthorization Act
  - Toxic Substances Control Act

How the Office of Air and Radiation Does Its Work

- OAR develops and helps implement national programs, policies, and regulations for controlling air pollution and radiation exposure. We do this through:
  - Regulations
  - Public-Private Partnership efforts, for example:
    - ENERGY STAR
    - SmartWay
    - Indoor Air
    - Advance Program
  - Data and Analysis, for example:
    - National Emissions Inventory
    - U.S. Inventory of GHG Emissions and Sinks
    - National Air Toxics Assessment
    - Air Quality System (monitoring data)
    - AirNow
  - Supporting state efforts to reduce air pollution
  - Significant engagement with stakeholders

More Specifics on What OAR Does

- Review the National Ambient Air Quality Standards (NAAQS) for 6 Common Pollutants – particulate matter, ozone, sulfur dioxide, carbon monoxide, lead, and nitrogen dioxide – every five years and work with the States and Tribes to implement standards.
- Establish and implement national emissions standards for transportation fuels, vehicles, and a variety of off road equipment.
- Set emissions standards (NESHAPs) for existing and new industrial sources that emit toxic air pollutants and conduct Risk and Technology Reviews (RTRs) every eight years.
- Set technology-based emissions standards (NSPS) for new, modified, or reconstructed industrial sources.
- Implement regional and national market-based programs to improve air quality and protect the ozone layer.
- Set protective limits on radiation in the environment, and work with the Nuclear Regulatory Commission and the Department of Energy to implement the limits.

Key Upcoming Issues

- Renewable Fuels Standard
  - 2018 volume final rule: statutory deadline of November 30, 2017
  - Small Refinery Hardship Petitions for 2016: respond to 11 petitions received by the end of Feb (compliance deadline for 2016 is March 31, 2017).
- Air Toxics Risk and Technology Reviews
  - Deadlines for 5 sectors in the coming months
  - We have been sued over an additional 42 RTRs where we have missed deadlines
- Ongoing Support for NAAQS
  - Clean Air Act 126 petitions: Six pending petitions (four from DE; one from CT; one from MD) alleging air pollution from upwind power plants is significantly contributing to downwind state's air quality problems. The deadlines range from January 25, 2017-August 3, 2017.
  - 2015 Ozone Designations: Final designations due by October 1, 2017. To meet this deadline, the Administrator typically would issue "120 day" letters to states by June 2, 2017.

Key Upcoming Actions (continued)

- Regional Haze
  - Actions pending in TX, LA, MS, AL.
  - Follow up work (e.g., remands, litigation) in AZ, MT, ND, NE, PA, UT, WY.
  - EPA regional offices are the lead in the State specific actions, although the Administrator has to sign final disapprovals and FIPs.

- Oil and Gas Information Collection Request
  - Part 1: went out broadly asking for readily available info from existing operations. Responses were due back on a rolling basis through mid-Feb (we have been granting a lot of extensions).
  - Part 2: requests information on emissions sources and control devices/practices from a smaller number of sources. Responses due back in May/June.

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 2/21/2017 5:50:35 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Hot Issues Briefings

Got it

On Feb 21, 2017, at 12:33 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> Learned this morning that SP not interested in filling up his calendar with program overview briefings. DS prepared a 5-6 pager, presumably on hot issues. So I am anticipating that RFS and MTE are on the list, and we should expect briefing requests.
>
> Pls start outlining an approach to the following briefings. Attendance tbd, but it may just be Sarah and me
>
> --small refinery hardships (use this weekend's paper as discussion guide, or other?)
> --RFS 2018
> --MTE

Message

From: Dunham, Sarah [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A9444681441E4521AD92AE7D42919223-SDUNHAM]
Sent: 2/1/2017 9:35:52 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Small Refinery Hardship Decisions

Thank you Chris. This is helpful context for the briefing on Friday.

From: Grundler, Christopher
Sent: Wednesday, February 01, 2017 3:59 PM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: Small Refinery Hardship Decisions

Sarah,

Deliberative Process / Ex. 5

Thanks,

Chris

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 7/22/2016 12:55:45 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: For (quick) review -- RFS-related letter

Roger.

On Jul 21, 2016, at 7:47 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Oh, and thanks for taking care of this. Personal Matters / Ex. 6
Personal Matters / Ex. 6 Then teleworking

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

On Jul 21, 2016, at 6:31 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

You can tell I've been out, as I somehow forgot to include my boss on that last email....

Adding Chris.

Ben

From: Hengst, Benjamin
Sent: Thursday, July 21, 2016 6:28:44 PM
To: McCabe, Janet
Cc: Read, David; Bunker, Byron; Orlin, David; Dubois, Roland; Stewart, Lori
Subject: For (quick) review -- RFS-related letter

Janet,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks, Ben

<Response letter - refinery coalition - petition to stay RFS deadline (staff and OGC final 7-21-16).docx>

Message

From: Simon, Karl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4D781D1AD595415DB3A4E768C2D2B3FC-SIMON, KARL]
Sent: 1/14/2016 12:17:48 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Fwd: Final Agenda and Materials - Thursday Fuels Meeting

Won't make this morning's meeting. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Driving Innovation in Clean Transportation

Begin forwarded message:

From: "Argyropoulos, Paul" <Argyropoulos.Paul@epa.gov>
Date: January 14, 2016 at 7:08:25 AM EST
To: "Audette, Lucie" <audette.lucie@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Burkholder, Dallas" <burkholder.dallas@epa.gov>, "Korotney, David" <korotney.david@epa.gov>, "Iffland, JoNell" <Iffland.JoNell@epa.gov>, "Weihrauch, John" <Weihrauch.John@epa.gov>, "Simon, Karl" <Simon.Karl@epa.gov>, "Le, Madison" <Le.Madison@epa.gov>, "Manners, Mary" <manners.mary@epa.gov>, "Shelby, Michael" <Shelby.Michael@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Shaffer, Patricia" <Shaffer.Patricia@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>, "Larson, Robert" <larson.robert@epa.gov>, "Dubois, Roland" <Dubois.Roland@epa.gov>, "Lie, Sharyn" <Lie.Sharyn@epa.gov>, "Camobreco, Vincent" <Camobreco.Vincent@epa.gov>, "Charmley, William" <charmley.william@epa.gov>
Cc: OTAQ Materials <OTAQMaterials@epa.gov>
Subject: Final Agenda and Materials - Thursday Fuels Meeting

Agenda

Deliberative Process / Ex. 5

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

<Approach to the 2017 Standards NPRM ver 5.pptx>

Message

From: Governors' Biofuels Coalition [larry@governorscoalition.org]
Sent: 7/23/2018 12:00:19 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Today's Biofuels News

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View this email in a web browser.

GOVERNORS' BIOFUELS COALITION

NEWS UPDATE July 23, 2018

Top Stories

House hearing will scrutinize refiner fuel credits

Marc Heller, E&E News reporter • • Posted July 23, 2018

A House Energy and Commerce subcommittee this week will delve into one of the dicier aspects of biofuel mandates — the renewable fuel credits that are driving much of the debate over the policy's future. The Subcommittee on Environment, chaired by Rep. John Shimkus (R-Ill.), takes up renewable identification numbers, or RINs, at a hearing Wednesday. [read more ...]

EPA wrongly denied biofuel waiver for West Virginia refinery: court

By Jarrett Renshaw, Reuters • • Posted July 23, 2018

The U.S. Environmental Protection Agency must reconsider its denial of small West Virginia refinery Ergon's application for an exemption from U.S. biofuel laws after it relied on an "error-riddled" analysis, an appeals court ruled on Friday. The EPA relied on a recommendation from the Department of Energy that, among other things, failed to take into account that Ergon produced high levels of diesel that may not easily be blended and sold into the local market, according to the 4th U.S. Circuit Court of Appeals in Maryland. [read more ...]

Court faults EPA for rejecting refinery waiver

Amanda Reilly, E&E News reporter • • Posted July 23, 2018

A federal court today found EPA wrongly rejected a small West Virginia refinery's request for a reprieve from national biofuel requirements. EPA relied on an "error-riddled analysis" from the Energy Department and failed to adequately take into account rising renewable fuel credit prices, the 4th U.S. Circuit Court of Appeals ruled. [read more ...]

Policy & Politics

Rollback of auto rule seen as Wheeler's 'first big test'

Maxine Joselow, E&E News reporter • • Posted July 23, 2018

When acting EPA Administrator Andrew Wheeler announces a weakening of Obama-era clean car standards next week, it will be the first major rule rollback proposed on his watch. EPA and the National Highway Traffic Safety Administration plan to formally propose weakening the greenhouse gas and fuel economy standards next week, according to an EPA official. [read more …]

Trump is about to weaken car rules. 5 things to watch

Debra Kahn, E&E News reporter • • Posted July 23, 2018

With the Trump administration set to weaken Obama-era fuel economy standards for passenger cars and trucks, a chasm is opening between red and blue states. EPA is expected to propose a rule in the coming days to prevent the standards from rising past the 2020 levels established under former President Obama, who hailed those increases as a major step toward addressing rising temperatures. [read more …]

Did Trump's renewable fuels policy really cost corn growers $3.65 billion in 2017?

By Jim Lane, Biofuels Digest • • Posted July 23, 2018

In Washington, new evidence has appeared that a Trump Administration shift on US low carbon fuel policy may have cost US corn growers an estimated $3.65 billion. The mechanism? A secretive effort by Administration officials installed at the US Environmental Protection Agency that destroyed an estimated 1.37 billion gallons of annual demand for low-carbon renewable fuels, in favor of fossil fuels. [read more …]

Trying to catch Trump during his TV time

By Kelsey Tamborrino, Politico • • Posted July 23, 2018

Ethanol trade association Growth Energy is out with a new ad, slated to air on Fox News, that features Iowa farmers and calls for the year-round sale of E15 ethanol-gasoline blend. [read more …]

Massachusetts pushes toward setting carbon price on cars

Benjamin Storrow, E&E News reporter • • Posted July 23, 2018

Massachusetts climate advocates face a roadblock. Last month, the state Senate unanimously passed an energy bill that called for increasing the commonwealth's renewable portfolio standard, eliminating its net metering cap and imposing an economywide carbon price. But they now worry the Bay State could fall short of its climate goals after the state House of Representatives passed a series of limited energy measures last week. The House bills call for boosting energy storage and efficiency and envision a smaller increase in the renewable portfolio standard. [read more …]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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This message was sent to **grundler.christopher@epa.gov** from **larry@governorscoalition.org**

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

Message

From: Haley, Mike [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0B3D67842D0E435986ABAF1B0C25214E-MHALEY]
Sent: 6/22/2016 9:38:50 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Senate Appropriations Report Language - Small Refinery Relief (RFS) and possible ECA Exemptions

Will wait for Ed Walsh's perspective. My initial thought was it might have to do with vessels in Alaskan waters since Murkowski is the Committee chair. But the linkage with modal shifts sounds Great Lakish.

On Jun 22, 2016, at 5:23 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Any insight as to why senate committee staff don't reach out to us to get perspective? The ECA language is a gift to a Canadian company

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

Begin forwarded message:

From: "Haley, Mike" <Haley.Mike@epa.gov>
Date: June 22, 2016 at 4:46:53 PM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Cc: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Cook, Leila" <cook.leila@epa.gov>
Subject: Senate Appropriations Report Language - Small Refinery Relief (RFS) and possible ECA Exemptions

Chris –

The Senate Appropriations Committee has now also marked up the EPA appropriations bill. It also includes report language regarding hardship relief for small refineries under the RFS program. If you recall, the House earlier had include report language on this subject in its markup. In addition to the small refinery language, the Senate markup also includes new language related to ECAs and a directive for EPA to consider exempting vessels with engines that generate less than 32,000 horsepower operating within 50 miles of the U.S. coastline.

The House bill is now expected to go the House Floor the week of July 4. It is unclear if and when the Senate bill will make it to the Senate Floor.

Senate Appropriations Committee report language directed specifically at OTAQ programs:

Small Refinery Relief – Congress directed the Agency, in consultation with the Department of Energy [DOE], to grant hardship relief to small refineries if compliance with the Renewable Fuel Standard [RFS] would impose a disproportionate economic hardship. In response to several recent petitions, the Agency determined that compliance with the RFS would have a disproportionate economic impact on a small refinery, but denied hardship relief because the small refinery remained profitable notwithstanding the disproportionate economic impact. This is inconsistent with congressional intent because the statute does not contemplate that a small refinery would only be able to obtain an exemption by showing that the RFS

program threatens its viability. Congress explicitly authorized the Agency to grant small refinery hardship relief to ensure that small refineries remain both competitive and profitable. In the intensely competitive transportation fuels market, small entities cannot remain competitive and profitable if they face disproportionate structural or economic metrics such as limitations on access to capital, lack of other business lines, disproportionate production of diesel fuel, or other site specific factors identified in DOE's original 2011 Small Refinery Exemption Study prepared for Congress.

When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Fuel Standards - ECAs – The Committee supports efforts to reduce pollution from marine vessels that may be harmful to human health and coastal environments. While that is the case, the Committee is concerned the mandate for fuel with a sulfur content of 0.1% in the North American Emission Control Area is having a disproportionately negative impact on vessels which have engines that generate less than 32,000 horsepower. This impact may cause some shippers to shift from marine based transport to less efficient, higher emitting modes. In an effort to avoid negative environmental consequences and modal shifting, the Committee directs the Agency to consider exempting vessels with engines that generate less than 32,000 horsepower and operate more than 50 miles from the coastline. Within 180 days of enactment of this act, the Agency should provide the Committee with a report detailing their decision.

House Appropriations Committee report language directed specifically at OTAQ programs:

Disproportionate Impacts for Small Refineries – Division D of the Consolidated Appropriations Act, 2016 provided direction that the Department of Energy may recommend to the Administrator a 50 percent waiver under 211(o)(9)(B) of the Clean Air Act. Under regulations promulgated by EPA, a small refinery may petition the Administrator for an extension of its small refinery exemption, based on disproportionate economic hardship, at any time (40 CFR 80.1441(e)(2)). Under those regulations the Administrator shall act on small refinery petitions not later than 90 days after the date of receipt of the petition. The Administrator is reminded that disproportionate hardship does not require a finding that the refiner or refinery is no longer profitable. Small refinery profitability does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority, in consultation with the Secretary, to reduce or eliminate this burden. Disproportionate impact may occur from several site specific factors which make it more difficult or expensive to meet the required volumes, or from a lack of blending infrastructure available to the refinery. Where the refiner or refinery shows a disproportionate economic hardship based on site specific factors and where the Secretary of Energy recommends to EPA that a waiver, in partial or full, is warranted, the Committee finds the Administrator has the necessary authority to grant a partial waiver. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Message

From: Lie, Sharyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=02041179E5DD4B9E9C5EA63701032C04-SLIE]
Sent: 3/9/2014 5:10:27 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Monger, Jon [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=34a81578651b4f0fbba3afbb313baef7-Monger, Jon]
Subject: Updated Pathways 2 preamble
Attachments: Draft Pathways II Final Rule Preamble for Work Group 03.07.2014 v2.docx

Hi Chris,

As we discussed, attached please find an updated version of the Pathways 2 document. We sent a draft to the workgroup on Friday, and requested comments by March 28th. Please let us know if you have any questions or comments.

Thanks,
Sharyn

Message

From: Simon, Karl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4D781D1AD595415DB3A4E768C2D2B3FC-SIMON, KARL]
Sent: 6/20/2018 6:01:38 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: AEM speech follow up

Assoc of equipment manufacturers

Sent from my iPhone

> On Jun 20, 2018, at 1:56 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:
>
> Who/what is AEM?
>
> _____
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington, DC)
> 734.214.4207 (Ann Arbor, MI)
>
> -----Original Message-----
> From: Simon, Karl
> Sent: Wednesday, June 20, 2018 1:51 PM
> To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
> Cc: Grundler, Christopher <grundler.christopher@epa.gov>
> Subject: AEM speech follow up
>
> Ben,
>
> The good folks at AEM asked me to specifically pass on that they strongly support having the missing small volume refinery volumes put into the rfs standards. I think the quote went something like "this is not just important to the farmers but also to the workers in the factory floor in their companies".
>
> Karl
>
> Sent from my iPhone

Message

From: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Sent: 7/31/2013 8:11:07 PM
To: Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Krieger, Jackie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9b5c0c79be3c4821baf10ab9cf823e82-JKrieger]; Page, Steve [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=269c9581404542e79501f2bf0379a2ad-SPAGE]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; South, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ead249df78840c9928874ec2ec4f9a6-PSouth]; Flynn, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=735bf2d12a064b0998510511c5b4644b-MFlynn]; Duncan, Anna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c0ec2c8b802546afbc918f929883756e-Duncan, Anna]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; DeMocker, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d331cfe11ecc4729ae582d379c2ad18b-JDemocke]; Salgado, Omayra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f94fb52724a34511b3cc2f5dee21f331-OSalgado]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Mitchell, Ken [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e49335e2f5a64cbfa97c39cbf1faff2b-Mitchell, Kenneth]
CC: Geller, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a4cb1583a884038bdef193017d31e72-Geller, Michael]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Eagles, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6e3f422f9a2e4c8a94efdd5871f6cba8-TEagles]; Henigin, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cbe828e291f4facb492fc28261db45f-MHenigin]; Dougherty, Joseph-J [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110c9e8039bd4953859640278411e410-JDough03]; Rush, Alan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=87bd4df8264d4490afe9414cb28062b9-ARush]; Arling, Jeremy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d193cc651ac847e892f3414cf75e747c-jarling]; Ghanta, Venu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]; Lee, Raymond [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5b12c9bf19545eb99cb09184b4bdf3f-Lee, Raymond]; Drinkard, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=808a6b7b65bf447f93dad2f510feaf61-ADRINKAR]
Subject: RE: Mapping the next 6 months
Attachments: OAR activities thru September 2013 7-26-13.docx

Just a gentle reminder to please get us your entries for Janet's 6-month mapping request by COB tomorrow. Janet would very much like to have a compiled list/calendar to take home over the weekend (such fun). I feel sure this exercise will be updated on a periodic basis so if something doesn't make it into this first edition, it can catch up later. Please remember, though, that this exercise is just for higher profile/AO involvement items, so hopefully all the biggest ticket items will be on this first list.

I've attached the latest edition of the OAR Activities Tracker in case it has items in the "October and beyond" category that serve as helpful reminders. Kristien has been adding items to that category as she has time or as you have requested. We'll make it a more regular practice to get you the activities tracker as it's updated in the future.

Many thanks.

From: Ketcham-Colwill, Nancy
Sent: Thursday, July 25, 2013 4:41 PM
To: Dunham, Sarah; Krieger, Jackie; Page, Steve; Koerber, Mike; South, Peter; Flynn, Mike; Duncan, Anna; Grundler, Christopher; Stewart, Lori; DeMocker, Jim; Salgado, Omayra; Millett, John; Mitchell, Ken
Cc: Geller, Michael; Knapp, Kristien; Shaw, Betsy; Eagles, Tom; Henigin, Mary; Dougherty, Joseph-J; Rush, Alan; Arling, Jeremy; Ghanta, Venu; Lee, Raymond; Drinkard, Andrea
Subject: Mapping the next 6 months

As Janet mentioned at today's senior staff, she would like us to map out the significant OAR actions and activities that are planned for the next 6 months, or through December. As she also made clear, this is not an extension of the OAR Activities tracker, which is intended to compile in chronological order the OAR regulatory actions, the regional SIP actions, and significant events reports planned for the next 3 months. She would like us to maintain that tracker, but it is too comprehensive for this exercise. (Hopefully, providing the information needed for the activities tracker has become a pretty routine part of "feeding" the trackers that Tom maintains.) For this 6-month exercise, the task is to identify those actions each OAR office plans to take through this year that will likely involve the Administrator in formulation and/or roll-out/amplification/implementation. Could you please send Kristien and me your items for this exercise, including key dates (including projected date to OMB where applicable) and a short description of the sort you are already providing for the activities Tracker, **by COB next Thursday**? Many thanks for your continuing help in keeping the IO abreast of all the good work your offices are accomplishing and sending our way. It is awesome.

Message

From: Hannon, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25C873D522E94729B8D70106C88CBADF-JHANNON]
Sent: 7/29/2013 2:43:11 PM
To: Ghanta, Venu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: draft RFS small refinery letter 7-26
Attachments: draft RFS small refinery letter 7-26 v2 -jh729.docx

Deliberative Process; ACP; AWP / Ex. 5

John Hannon
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW (MC 2344A)
Washington, D.C. 20460
Phone (202) 564-5563
Fax (202) 564-5603

From: Ghanta, Venu
Sent: Monday, July 29, 2013 10:29 AM
To: Grundler, Christopher; Argyropoulos, Paul; Stewart, Lori; Hannon, John
Cc: Hengst, Benjamin
Subject: RE: draft RFS small refinery letter 7-26

Deliberative Process; ACP / Ex. 5

From: Grundler, Christopher
Sent: Monday, July 29, 2013 10:24 AM
To: Argyropoulos, Paul; Stewart, Lori; Ghanta, Venu
Cc: Hengst, Benjamin
Subject: RE: draft RFS small refinery letter 7-26

Deliberative Process / Ex. 5

From: Argyropoulos, Paul
Sent: Monday, July 29, 2013 7:10 AM
To: Stewart, Lori; Ghanta, Venu
Cc: Hengst, Benjamin; Grundler, Christopher
Subject: RE: draft RFS small refinery letter 7-26

Deliberative Process / Ex. 5

Thanks, Paul

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

From: Stewart, Lori
Sent: Friday, July 26, 2013 4:51 PM
To: Beauvais, Joel; Ghanta, Venu
Cc: Argyropoulos, Paul; Hengst, Benjamin; Grundler, Christopher
Subject: RE: draft RFS small refinery letter 7-26

Thanks Joel. I am attaching a clean version. Chris asked that this go to Janet as well. Would you like to share this with Janet or should I send forward?

From: Beauvais, Joel
Sent: Friday, July 26, 2013 4:44 PM
To: Ghanta, Venu
Cc: Argyropoulos, Paul; Hengst, Benjamin; Stewart, Lori
Subject: draft RFS small refinery letter 7-26

Looks fine – a few nits attached

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 4/16/2013 11:33:05 PM
To: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Fw: DOE refinery report

Fyi

From: Beauvais, Joel
Sent: Tuesday, April 16, 2013 11:31:59 PM
To: Stewart, Lori; Machiele, Paul; Argyropoulos, Paul
Cc: Lubetsky, Jonathan; King, Kirsten; Ghanta, Venu
Subject: RE: DOE refinery report

OK, thanks -- as early/soon as possible would be great

From: Stewart, Lori
Sent: Tuesday, April 16, 2013 7:31 PM
To: Beauvais, Joel; Machiele, Paul; Argyropoulos, Paul
Cc: Lubetsky, Jonathan; King, Kirsten; Ghanta, Venu
Subject: Re: DOE refinery report

I will need to check in further with Paul M and Paul A but believe this is the study that DOE did to support continued exemptions under RFS for small refiners. **Deliberative Process / Ex. 5** A background paper was done awhile back on this and we should be able to locate that in the morning.

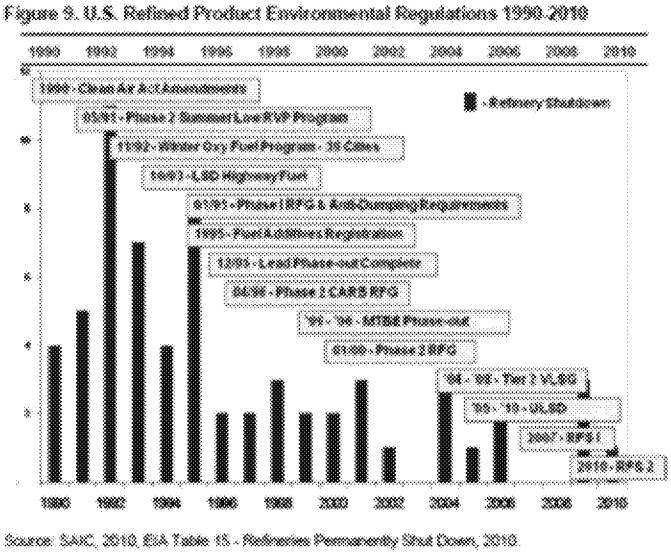
From: Beauvais, Joel
Sent: Tuesday, April 16, 2013 11:07:09 PM
To: Machiele, Paul; Argyropoulos, Paul; Stewart, Lori
Cc: Lubetsky, Jonathan; King, Kirsten
Subject: DOE refinery report

Paul, Paul, Lori – Are any of you aware of the DOE study that's referred to in this question?

QFR: The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. **However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures.** If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

(FYI I saw this exact same talking point on the Institute for Energy Research site, citing (seemingly incorrectly) a DOE 2011 small refinery hardship study, but not sure if that's what the QFR is referring to: http://www.instituteforenergyresearch.org/2012/05/03/over-regulation-of-the-nations-refineries/)

According to a March 2011 Department of Energy report, in the past 20 years, federal regulations were a significant factor in the closing of 66 U.S. refineries. (See chart below.) Refinery closures and the recession have led to a loss of over 3,000 direct jobs and 506,000 barrels per day decrease in capacity.



Source: U.S. Department of Energy, Office of Policy and International Affairs, *Small Refinery Exemption Study – An Investigation Into Disproportionate Economic Hardship*, p. 28-30, found at: http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/15/2018 3:58:33 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Where did you land on "announcement"
Attachments: EDIT Midwest Swing RFS Announcements_2018 06 15 v3.DOCX

Deliberative Process / Ex. 5

Attaching the current version, which should be pretty close to done

From: Grundler, Christopher
Sent: Friday, June 15, 2018 11:48 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Re: Where did you land on "announcement"

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jun 15, 2018, at 11:43 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Had a very long discussion on it. Working edits now. No major changes but good to clarify expectations.

Deliberative Process / Ex. 5

On Jun 15, 2018, at 11:37 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/18/2018 8:04:45 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: draft of small refinery FOIA briefing
Attachments: Small refinery FOIAs, CBI, etc.pptx

Chris—this is still under review, but this shouldn't change too dramatically based on that review. Please take a look when you get a chance. We'll have to send this down to OAR by 4pm on Monday. Thanks, Ben

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/26/2018 2:53:41 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Small Refinery Exemptions: Correcting the Record

There in two

On Apr 26, 2018, at 10:52 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> I am with Byron If you have more to share
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> Ex. 6 (mobile)
> www.epa.gov/otaq
>
> On Apr 26, 2018, at 10:18 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:
>
> Chris— Deliberative Process / Ex. 5
>
> **From:** Grundler, Christopher
> **Sent:** Thursday, April 26, 2018 9:41 AM
> **To:** Orlin, David <Orlin.David@epa.gov>
> **Cc:** Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Cook, Leila <cook.leila@epa.gov>
> **Subject:** RE: Small Refinery Exemptions: Correcting the Record
>
> -Harlow this time!
>
> Thanks for doing this David
>
> **From:** Orlin, David
> **Sent:** Thursday, April 26, 2018 9:19 AM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
> **Cc:** Harlow, David <harlow.david@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
> **Subject:** RE: Small Refinery Exemptions: Correcting the Record

Deliberative Process; ACP / Ex. 5

Deliberative Process; ACP / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Gunasekara, Mandy
Sent: Thursday, April 26, 2018 8:47 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: RE: Small Refinery Exemptions: Correcting the Record

+ Orlin and Bill.

I'm happy to engage on any of the substantive issues. That's why I'm working with Emily to set up a meeting for next week. Looking forward to the discussion.

Deliberative Process / Ex. 5 Ben has been very helpful and responsive.

From: Grundler, Christopher
Sent: Wednesday, April 25, 2018 9:18 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Harlow, David <harlow.david@epa.gov>; Cook, Leila <cook.leila@epa.gov>
Subject: Fwd: Small Refinery Exemptions: Correcting the Record

Wow. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Ex. 6 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Date: April 25, 2018 at 6:29:53 PM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Cc: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Subject: Re: Small Refinery Exemptions: Correcting the Record

Hey Chris:

Thank you for the note. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Give me a call if you'd like to discuss anything before tomorrow's hearing. Thanks to Ben's help this afternoon, the Administrator has

been equipped with the facts on RFS and it is my belief he will represent us well.

Best,
Mandy

Sent from my iPhone

On Apr 25, 2018, at 5:01 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Bill,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Ex. 6 (mobile)
www.epa.gov/otaq

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/3/2018 9:20:59 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: A few items for tomorrow's RFS meeting

Deliberative Process / Ex. 5

I tried to call David but missed him. I will follow up.

On May 3, 2018, at 4:58 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Thursday, May 03, 2018 4:45 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: A few items for tomorrow's RFS meeting

Hi Bill, Mandy:

I've attached a document that summarizes our 'active items' concerning RFS small refinery exemptions. This document can serve as a checklist of potential items to highlight in your meeting with the Administrator.

I've also attached, just so it's all in one place, the 1-pager on the AFPM cellulosic waiver request.

The other two items where it would be helpful to have guidance, as discussed in our weekly meeting this morning, relate to the 2019 RVO proposal:

Deliberative Process / Ex. 5

Thanks
Ben

Message

From: Burkholder, Dallas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=667EF175292D4784997E454A9985B3B3-BURKHOLDER, DALLAS]
Sent: 4/25/2018 3:33:44 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RIN Transparency Text
Attachments: RIN Transparency Text.docx

Chris,
Attached is the text on **Deliberative Process / Ex. 5**. If you have any edits/comments please let me know.

Dallas Burkholder
Office of Transportation & Air Quality
US Environmental Protection Agency
(734)214-4766
Burkholder.Dallas@epa.gov

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/11/2018 11:38:57 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Documents on RVP, RIN Market Transparency

Deliberative Process / Ex. 5

A few other bits (I only stayed till noon in the meetings due to other conflicts, and the fire drill on Transparency issues):

Deliberative Process / Ex. 5

Harlow attended the fuels meetings. Not sure if he is officially getting involved or not.

Safe travels!

On Apr 11, 2018, at 7:24 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> **Deliberative Process / Ex. 5**
> I'm boarding at 9 am DC time. Pls shoot me an email from your metro ride tomorrow on how other topics went with Bill minus MTE. I spoke with Charmley this evening. Thx.
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> 734.645.5221 (mobile)
> www.epa.gov/otaq
>
> On Apr 12, 2018, at 1:19 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:
>
>> No. Sorry. Not being clear....it was a long day.
>
> **Deliberative Process / Ex. 5**

On Apr 11, 2018, at 6:41 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Apr 12, 2018, at 12:26 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

On Apr 11, 2018, at 6:13 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Apr 11, 2018, at 11:06 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Bill, Mandy:

Attached are the two documents the team developed following our 10 am meeting today. OGC has reviewed both.

We made only minor additions/edits to the

RVP piece that Mandy shared with us. It is brief, but we thought that's probably OK for this exercise.

Please let us know if you need more.

Thanks,
Ben

<Extending the E10 RVP waiver, 4.11.18 version.docx>

<RIN Transparency Ideas_v3.docx>

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/3/2018 1:51:45 AM
To: OTAQ Materials [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d024a3342082470eada2969a12393750-OTAQ Materi]
Subject: Materials for Thursday's fuels weekly with Bill Wehrum
Attachments: Volumes with Wehrum 5-3-18.pptx; Agenda for Fuels Weekly with Bill W 05-03-18.docx; 2017 AFPM Cellulosic Biofuel Waiver Options - May 2018.docx

Materials attached:

1. Agenda
2. One-pager on 2017 AFPM waiver options
3. Reset volume options

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/10/2018 2:01:41 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Agenda items for Tuesday's weekly fuels meeting
Attachments: 2017_Compliance_Year_Update_Preliminary.pdf

You should take a quick look and we will try to flag for Bill/Mandy

---

From: Weihrauch, John
Sent: Tuesday, April 10, 2018 9:37 AM
To: Sutton, Tia <sutton.tia@epa.gov>; Levy, Aaron <Levy.Aaron@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Dubois, Roland <Dubois.Roland@epa.gov>; Le, Madison <Le.Madison@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Manners, Mary <manners.mary@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Lie, Sharyn <Lie.Sharyn@epa.gov>; Borgert, Kyle <borgert.kyle@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Korotney, David <korotney.david@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Fujii, Kristen <Fujii.Kristen@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Patulski, Meg <patulski.meg@epa.gov>; Anderson, Robert <Anderson.Robert@epa.gov>; Michaels, Lauren <Michaels.Lauren@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Gustafson, Kurt <Gustafson.Kurt@epa.gov>; Sobel, Aaron <Sobel.Aaron@epa.gov>; Master, Barbora <Master.Barbora@epa.gov>; Maynard, Rachel <maynard.rachel@epa.gov>; Boylan, Thomas <boylan.thomas@epa.gov>; Nelson, Karen <nelson.karen@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Larson, Ben <Larson.Ben@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>
Cc: Larson, Ben <Larson.Ben@epa.gov>; Kim, Jung <Kim.Jung@epa.gov>
Subject: RE: Agenda items for Tuesday's weekly fuels meeting

Please find attached preliminary numbers for 2017 compliance.
The takeaway here being that the RFS values show the impacts of small refinery hardship relief granted.
This information will become public with our regular monthly posting on Thursday, 4/19.

John

From: Sutton, Tia
Sent: Monday, April 09, 2018 6:06 PM
To: Levy, Aaron <Levy.Aaron@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Dubois, Roland <Dubois.Roland@epa.gov>; Weihrauch, John <Weihrauch.John@epa.gov>; Le, Madison <Le.Madison@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Manners, Mary <manners.mary@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Lie, Sharyn <Lie.Sharyn@epa.gov>; Borgert, Kyle <borgert.kyle@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Korotney, David <korotney.david@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Fujii, Kristen <Fujii.Kristen@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Patulski, Meg <patulski.meg@epa.gov>; Anderson, Robert <Anderson.Robert@epa.gov>; Michaels, Lauren <Michaels.Lauren@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Gustafson, Kurt <Gustafson.Kurt@epa.gov>; Sobel, Aaron <Sobel.Aaron@epa.gov>; Master, Barbora <Master.Barbora@epa.gov>; Maynard, Rachel <maynard.rachel@epa.gov>; Boylan, Thomas <boylan.thomas@epa.gov>; Nelson, Karen <nelson.karen@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Larson,

Ben <Larson.Ben@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>
Subject: Agenda items for Tuesday's weekly fuels meeting

Sending out the agenda for Tuesday's Weekly Fuels meeting now, just in case. If anyone else has additional items, we can cover during the Division readouts.
Talk to/see you tomorrow!

Agenda for Tuesday 4/10 Weekly Fuels Meeting
Call-in: (202) 991-0477, code: 9257281

Deliberative Process / Ex. 5

Message

From: Birgfeld, Erin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3383BC15DD5542E5BFF5C3DE13BA9BF2-EBIRGFEL]
Sent: 4/20/2018 4:56:23 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Today's Biofuels News

Will do. I'll send the LA times story Monday.

From: Grundler, Christopher
Sent: Friday, April 20, 2018 9:43 AM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: FW: Today's Biofuels News

Erin:

1. You should get on this listserve
2. See LA Times story below and add to OTAQ Daily

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Governors' Biofuels Coalition [mailto:larry@governorscoalition.org]
Sent: Friday, April 20, 2018 8:00 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Today's Biofuels News

Please add the Governors' Biofuels Coalition to your address book for uninterrupted delivery
View this email in a web browser.

GOVERNORS' BIOFUELS COALITION

NEWS UPDATE April 20, 2018

Top Stories

More than 95% of world's population breathing unhealthy air

By James Masters, CNN • • Posted April 20, 2018

More than 95% of the world's population is breathing unhealthy air and the poorest nations are the hardest hit, a new report has found. According to the annual State of Global Air Report, published Tuesday by the Health Effects Institute (HEI), long-term exposure to air pollution contributed to an estimated 6.1 million deaths across the globe in 2016. [read more ...]

King Tells Iowa RFA: "I Want Ethanol Sold To, Through, and Beyond the E15 Blend."

By AJ Taylor, KIOW • • Posted April 20, 2018

Congressman Steve King, a member of the House Agriculture Committee, released the following statement after meeting today with members of the Iowa Renewable Fuels Association. During their meeting, Congressman King re-affirmed his strong support for biofuels, telling participants that he wants to see ethanol sold in blends that go "to, through, and beyond" the E15 mix. [read more ...]

Policy & Politics

Air pollution can be bad for the brain — these are the cleanest and the smoggiest places in America

By Sarah Berger, CNBC • • Posted April 20, 2018

Ozone pollution, or smog (created by emissions from industrial facilities and electric utilities, vehicle exhaust, gasoline vapors and chemical solvents, according to the Environmental Protection Agency) is worse than in 2017, according to the report, released Wednesday. It also found nearly 128.9 million people live in 185 counties that earned an "F" grade for ozone. [read more ...]

China cuts smog but health damage already done: study

By David Stanway, Reuters • • Posted April 20, 2018

While China has made progress cutting smog, the damage to the health of millions of people may already have been done, especially as the population ages, the head of a U.S.-based research agency said. China faces about 1.6 million premature deaths a year as a result of air pollution, the U.S.-based Health Effects Institute (HEI) said in a report, based on data going back to 1990, published on Tuesday [read more ...]

EPA regs spurred public health gains in Atlanta — study

Sean Reilly, E&E News reporter • • Posted April 20, 2018

For the sprawling Atlanta metro area, tighter regulations on power plants and vehicles yielded a long-term payoff in both dramatically improved air quality and fewer emergency room visits, according to a study released today by the Health Effects Institute. The study, carried out by researchers at the Georgia Institute of Technology and Emory University, examined the impact of a suite of EPA initiatives driven mainly by the 1990 Clean Air Act Amendments and primarily aimed at cutting emissions of sulfur dioxide and nitrogen oxides (NOx). [read more ...]

Pruitt on GHG drop: Trump's 'critics are wrong again'

Niina Heikkinen, E&E News reporter • • Posted April 20, 2018

while EPA touted the 11 percent decrease in carbon emissions between 2005 and 2016, the press release did not mention that carbon emissions actually increased by about 2.4 percent from baseline levels set during EPA's first inventory in 1990. The report shows that the transportation sector accounted for 28.7 percent of total greenhouse gas emissions in 2016, followed closely by the electric power sector at 28.6 percent and industry at 21.7 percent. Just as the power sector has reduced emissions, industry emissions have also declined at least in part due to a shift away from manufacturing to more service-oriented jobs, according to the inventory. [read more ...]

Perdue's Strong First Year at USDA May Be Clouded By Ethanol Doubts

By Chuck Abbott, Agriculture.com • • Posted April 20, 2018

Sonny Perdue was a stranger to the Farm Belt when President Trump selected him as agriculture secretary – a former two-term governor from Georgia and only the second Southerner to lead USDA, a post that often goes to someone from the Midwest. Perdue minted his reputation as agriculture's ambassador during his first week on the job by helping to persuade Trump to renegotiate NAFTA rather than abandon it. [read more ...]

Trump's EPA argues more people will die in car accidents unless California fuel rules are weakened

By Evan Halper, Los Angeles Times • • Posted April 20, 2018

The Trump administration is embracing a curious — and some would say dated — argument as it builds its case to weaken federal rules championed by California that require cars and SUVs to average 55 miles per gallon by 2025. It is warning that the fuel-efficiency targets, seen by most as key to meeting climate and air quality goals in California and nationwide, could actually end up killing people. Trump's Environmental Protection Agency chief Scott Pruitt is tossing aside reams of federal and California data showing the fuel economy standards are perfectly safe. Instead, Pruitt's directive this month to potentially scale back the fuel standard says "an important factor" is the need to reexamine safety issues. [read more ...]

China Loosens Foreign Auto Rules, in Potential Peace Offering to Trump

By KEITH BRADSHER, New York Times • • Posted April 20, 2018

Beijing and Washington have threatened each other with tariffs for weeks, raising the prospect of a trade war. But on Tuesday, China took a step to lower tensions, offering to make it easier for foreign automakers and aerospace manufacturers to own factories in the country. The Chinese authorities said that in the next five years they would ease rules that have long required carmakers like General Motors, Toyota and Volkswagen to link up with a local partner before building a factory in China. For manufacturers of electric cars, as well as for companies that make jetliners, helicopters and drones, Beijing plans to move even faster, eliminating foreign ownership limits this year. [read more ...]

Trump's new energy guy is a 28-year-old known as 'the kid'

Zack Colman and Hannah Northey, E&E News reporters • • Posted April 20, 2018

Francis Brooke frequently wears purple — the Northwestern University alumnus and former Wildcats baseball pitcher is known to sport the school's plum shade whenever possible. When his name

surfaced as President Trump's new energy aide, some people thought of a different color: green, as in inexperienced. That's the label 28-year-olds get when they step into a prominent White House role. [read more ...]

Anti-ethanol pundits show how Iowa uses less of its own product

By John Siciliano and Josh Siege, Washington Examiner • • Posted April 20, 2018

A study showing that U.S. ethanol leader Iowa doesn't use a lot of its own corn-based fuel is exciting some in the anti-ethanol crowd in Washington. "Iowa — the number one ethanol producer and corn grower in the United States — reaps arguably the greatest benefits from the Renewable Fuel Standard program, but on average, there is less ethanol in the motor fuels that Iowans buy [at their local retailers] than what consumers buy in the rest of the country as a whole," a summary of the new study reads. [read more ...]

Undermining Trump

By John Siciliano and Josh Siege, Washington Examiner • • Posted April 20, 2018

"Discontinuing the issuance of small refinery hardship waivers would be a violation of the Renewable Fuel Standard," EPA spokeswoman Liz Bowman said in a statement to John on Wednesday. "EPA doesn't have the authority to pick and choose which provisions of the RFS to follow," she said. [read more ...]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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This message was sent to grundler.christopher@epa.gov from larry@governorscoalition.org

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

iContact
TRY IT FOR FREE ›

Message

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 6/8/2018 11:47:52 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Draft calendar for approval
Attachments: Grundler Christopher Calendar.ics

CHRISTOPHER GRUNDLER
FRIDAY, JUNE 8, 2018
CALENDAR
AA OFFICE

11:15 AM - 12:00 PM	Meet with Growth Energy re: RFS (Confirmed) Location: RM. 5400 DC/RM. C-174 DOD AA
12:00 PM - 1:00 PM	MANAGEMENT TIME
2:00 PM - 2:45 PM	Meet with Volkswagen Group of America, Inc. (Confirmed) Location: RM. 5400 DC/RM. C-174 DOD AA
4:00 PM - 4:45 PM	Meet with Coalition of Small Refinery Owners (Confirmed) Location: RM. 5400 DC/RM. C-174 DOD AA

Gwen Stewart
Office of Transportation and Air Quality
RM. 6520N
202 564-1682 - Telephone
202 564-1686 - Fax Number

Stewart.gwen@epa.gov

Subject: C
Start Time: Fri 6/8/2018
End Time: Sat 6/9/2018

Subject: MANAGEMENT TIME
Start Time: Fri 6/8/2018 4:00:00 PM
End Time: Fri 6/8/2018 5:00:00 PM

Subject:	Meet with Coalition of Small Refinery Owners (Confirmed)
Start Time:	Fri 6/8/2018 8:00:00 PM
End Time:	Fri 6/8/2018 8:45:00 PM

Subject: Meet with Growth Energy re: RFS (Confirmed)
Start Time: Fri 6/8/2018 3:15:00 PM
End Time: Fri 6/8/2018 4:00:00 PM

Subject:	Meet with Volkswagen Group of America, Inc. (Confirmed)
Start Time:	Fri 6/8/2018 6:00:00 PM
End Time:	Fri 6/8/2018 6:45:00 PM

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 1/26/2018 12:44:01 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Press inquiries on small refinery hardship petitions

Will do

On Jan 25, 2018, at 9:22 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> Ben-
> When you are comfortable with this pls send directly to Bill and Mandy—I am at conference all morning.
> Thx
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> 734.645.5221 (mobile)
> www.epa.gov/otaq
>
> On Jan 25, 2018, at 4:22 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:
>
>> Chris: here's a draft to send Bill Wehrum.
>
> **Deliberative Process / Ex. 5**
>
> Deliberative Process / Ex. 5 – Ben
>
> ***
> Bill:
>
> Reuters ran a story today that provides an estimate of the number of RFS small refinery hardship petitions EPA is currently evaluating (link below).
>
> Multiple other press outlets subsequently contacted us asking us to confirm the Reuters number (Reuters reported 24 petitions currently pending).

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 but please let us know if you'd like to discuss this. – Chris

https://www.reuters.com/article/us-usa-epa-biofuels-exclusive/exclusive-small-refiners-hit-epa-with-surge-of-biofuel-waiver-requests-sources-idUSKBN1FE1KA

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/22/2018 1:44:54 PM
To: Birgfeld, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]
Subject: RE: UPDATE- OTAQ: SP Global Platts - RFS Waivers - ASAP

Well that certainly makes this afternoon's meeting timely

From: Birgfeld, Erin
Sent: Tuesday, May 22, 2018 9:43 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: UPDATE- OTAQ: SP Global Platts - RFS Waivers - ASAP

Update from Robert...The response that was sent yesterday was only the first sentence of our response which noted the total number of waivers received. They did not send the number of waivers granted to date.

All inquiries in this are now being handled by Jahan Wilcox.
Sent from my iPhone

On May 21, 2018, at 3:10 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> This will generate some news
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> Ex. 6 (mobile)
> www.epa.gov/otaq
>
> On May 21, 2018, at 2:51 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:
>
>> Yup. Just confirmed that Robert sent the response as written to the reporter about 20 minutes ago.
>>
>> Robert flagged the response for the politicals before he sent it and they approved the response. Robert also noted that any follow ups would be best answered by political staff.
>>
>> ---
>> **From:** Grundler, Christopher
>> **Sent:** Monday, May 21, 2018 2:46 PM

To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: Re: OTAQ: SP Global Platts - RFS Waivers - ASAP

Pls double check that OPA sent an updated response and let me know

---

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Ex. 6 (mobile)
www.epa.gov/otaq

On May 21, 2018, at 2:43 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

> Hi Chris,
>
> We sent out a press response re: RFS small refinery waivers Deliberative Process / Ex. 5
> Deliberative Process / Ex. 5
> Deliberative Process / Ex. 5 Just want you to be prepared if reporters ask tomorrow. Let us know if you need more info.
>
> Thanks,
> Erin
>
> **Incoming from Platts (from last week) :** Are there any updates to the small refinery waivers for 2017? Last I had was 25 approved out of 30 petitions received.
>
> **OTAQ Response (sent today):** EPA has received 33 requests for small refinery waivers for the year 2017. Deliberative Process / Ex. 5
> Deliberative Process / Ex. 5
>
> ---
>
> **From:** Birgfeld, Erin
> **Sent:** Monday, May 21, 2018 2:30 PM
> **To:** Hengst, Benjamin <Hengst.Benjamin@epa.gov>
> **Subject:** FW: OTAQ: SP Global Platts - RFS Waivers - ASAP
>
> FYI – this response went to the reporter already. Should I send a note to Chris G. so he is prepared for any questions he might get tomorrow?
>
> ---
>
> **From:** Birgfeld, Erin
> **Sent:** Monday, May 21, 2018 1:38 PM
> **To:** Daguillard, Robert <Daguillard.Robert@epa.gov>
> **Cc:** Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
> **Subject:** RE: OTAQ: SP Global Platts - RFS Waivers - ASAP

We are not developing a Q and A. The questions will be best answered by the politicals I think.

From: Daguillard, Robert
Sent: Monday, May 21, 2018 1:16 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: Re: OTAQ: SP Global Platts - RFS Waivers - ASAP

Thank you, Erin. Are you developing a Q&A? Not a suggestion, I'm just curious.

Robert Daguillard
U.S. EPA
Office of Media Relations
Washington D.C.
Ex. 6 M)
202-564-6618 (O)

On May 21, 2018, at 1:12 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

> Hi John and Robert,
>
> Below is our suggested response to the Platts request on RFS small refinery waivers from last week. Apologies for the delay. This response is likely to generate press interest. Ben has alerted Bill W.
>
> -Erin
>
> **Incoming:** Are there any updates to the small refinery waivers for 2017? Last I had was 25 approved out of 30 petitions received.
>
> **OTAQ Response:** EPA has received 33 requests for small refinery waivers for the year 2017. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Daguillard, Robert
Sent: Tuesday, May 15, 2018 11:19 AM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: OTAQ: SP Global Platts - RFS Waivers - ASAP

SP GLOBAL PLATTS
MEGHAN GORDON
ASAP

Hullo again team. Meghan's weekly inquiry:

Are there any updates to the small refinery waivers for 2017?

Last I had was 25 approved out of 30 petitions received.

Thanks in advance.

Cheers, R.

Robert Daguillard
Office of Media Relations
U.S. Environmental Protection Agency
Washington, DC
+1 (202) 564-6618 (O)
Ex. 6 (M)

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/4/2018 1:54:41 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Small refinery hardship numbers

Yeah. I have struggled between yesterday and today. You and I should talk a bit more about it (fiber) tomorrow.

On Apr 3, 2018, at 8:57 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Apr 3, 2018, at 8:02 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Date: April 3, 2018 at 7:46:20 PM EDT
To: "Cohen, Janet" <cohen.janet@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Stahle, Susan" <Stahle.Susan@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Michaels, Lauren" <Michaels.Lauren@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>, "Burkholder, Dallas" <burkholder.dallas@epa.gov>, "Parsons, Nick" <Parsons.Nick@epa.gov>, "Li, Ryland (Shengzhi)" <Li.Ryland@epa.gov>, "Nelson, Karen" <nelson.karen@epa.gov>, "McKenna, Chris" <McKenna.Chris@epa.gov>
Subject: Fwd: Small refinery hardship numbers

Not easy getting these things out the door.

Begin forwarded message:

From: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Date: April 3, 2018 at 6:27:33 PM EDT
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
Cc: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Subject: Re: Small refinery hardship numbers

Ben,

Deliberative Process / Ex. 5

Thanks,
Mandy

Sent from my iPhone

On Apr 3, 2018, at 6:09 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Thanks Ben.

From: Hengst, Benjamin
Sent: Tuesday, April 3, 2018 6:05 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Millett, John <Millett.John@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Small refinery hardship numbers

Bill:

This is a follow-up to your email regarding information we can share with press outlets on the small refinery decisions.

Deliberative Process / Ex. 5

Thanks,

Ben

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 3/1/2018 9:56:35 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Direction from the Administrator meeting today

I'll give you some color today or tomorrow.

From: Machiele, Paul
Sent: Thursday, March 01, 2018 12:43 PM

Subject: Direction from the Administrator meeting today

We'll have to let the dust settle following the meeting with the Administrator today. However, I thought I would pass along some of the key takeaways from today's meeting and we can follow up next week. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Topic 1: Small Refiner Hardship for new refiners/refineries

Deliberative Process / Ex. 5

Topic 2: RFS Volume Standards for 2019

Deliberative Process / Ex. 5

Topic 3: 2016 Remand

Deliberative Process / Ex. 5

Topic 4: Reset/Set

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/18/2018 12:48:16 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Today's Biofuels News

Deliberative Process / Ex. 5

From: Grundler, Christopher
Sent: Wednesday, April 18, 2018 8:48 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Re: Today's Biofuels News

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Personal Phone / Ex. 6
www.epa.gov/otaq

On Apr 18, 2018, at 8:46 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

> Yep. It's on the list for Friday's meeting. Quite a letter.
>
> **From:** Grundler, Christopher
> **Sent:** Wednesday, April 18, 2018 8:46 AM
> **To:** Hengst, Benjamin <Hengst.Benjamin@epa.gov>
> **Subject:** Fwd: Today's Biofuels News
>
> Note letter that was sent yesterday from bipartisan group of Senators demanding info on small refiners
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> **Personal Phone / Ex. 6**
> www.epa.gov/otaq
>
> Begin forwarded message:
>
> > **From:** "Governors' Biofuels Coalition" <larry@governorscoalition.org>
> > **Date:** April 18, 2018 at 7:59:58 AM EDT
> > **To:** <grundler.christopher@epa.gov>

Subject: Today's Biofuels News
Reply-To: larry@governorscoalition.org

Please add the Governors' Biofuels Coalition to your address book for uninterrupted delivery
View this email in a web browser.

GOVERNORS'BIOFUELSCOALITION

NEWS UPDATE April

Top Stories

Corn-state lawmakers urge halt to RFS hardship waivers

Marc Heller, E&E News reporter • • Posted April 18, 2018

Sen. Chuck Grassley (R-Iowa) and other corn-state senators yesterday urged EPA to stop granting waiver ethanol mandates to refiners that claim economic hardship. While the waivers are intended for small refir most affected by the renewable fuel standard, EPA has granted waivers to some of the nation's biggest petroleum companies, and in numbers far greater than a few years ago. [read more …]

Octane performance standard preferable to RFS, AFPM president sa

By Nick Snow, Oil & Gas Journal • • Posted April 18, 2018

The American Fuel & Petrochemical Manufacturers believes a transition from the federal Renewable Fue Standard to a fuel-neutral, 95-RON octane performance standard could better address the needs of consur and other stakeholders, AFPM Pres. Chet Thompson told a US House Energy and Commerce Committee subcommittee. [read more …]

Japan Opens Door to US Ethanol

By Todd Neeley, DTN/Progressive Farmer • • Posted April 18, 2018

United States corn ethanol producers will be allowed to export ethanol to Japan, after the nation's govern approved a new policy to allow 44% of its 217-million-gallon ethanol demand to produce ethyl tert-butyl or ETBE, which is commonly used as an oxygenate in gasoline, to come from corn-based ethanol. [read …]

Policy & Politics

In new sign of trade battle, China slaps U.S. sorghum producers with 179 percent deposit

By Emily Rauhala, Washington Post • • Posted April 18, 2018

China announced temporary anti-dumping measures on U.S. sorghum, potentially hitting U.S. growers ar exacerbating the brewing trade war between Beijing and Washington. China's Ministry of Commerce sai starting Wednesday, Chinese importers of U.S. sorghum, used by the Chinese for animal feed and brewir alcohol, will be required to put down a 178.6 percent deposit in anticipation of anti-dumping tariffs. The deposits could discourage imports of U.S. sorghum, hurting American producers. [read more …]

Grassley Points to Ethanol Conflict in Trump Administration

By Todd Neeley, DTN/Progressive Farmer • • Posted April 18, 2018

Sen. Charles Grassley, R-Iowa, didn't mince words on Tuesday when talking about EPA granting waiver Renewable Fuel Standard while at the same time apparently slow-walking the approval of year-round E1 He said he puts the blame squarely on EPA Administrator Scott Pruitt. Grassley told agriculture journalis believes President Donald Trump is firmly behind the RFS but has an EPA administrator acting to the co "I believe that Pruitt is a loose cannon who is not carrying out the president's wishes," Grassley said. [re more …]

Bipartisan senators' group demands EPA disclose small refinery hardship recipients

By Jarrett Renshaw, Reuters • • Posted April 18, 2018

A bipartisan group of 13 U.S. senators told the U.S. Environmental Protection Agency on Tuesday to dis the names of companies who received a hardship exemption from the nation's biofuel laws since 2016. T calls for more transparency come amid increasing scrutiny of the EPA's expansion of the small refinery hardship exemption in recent months, including granting and considering waivers from the world's large companies. [read more …]

Farm state senators tell EPA to stop giving big oil refiners a pass on biofuels rules

By Tom DiChristopher, CNBC • • Posted April 18, 2018

A group of bipartisan lawmakers on Tuesday asked the Environmental Protection Agency to stop issuing waivers that allow oil refiners to avoid obligations to blend biofuels into gasoline. The 13 senators, led by Republican Chuck Grassley and Minnesota Democrat Amy Klobuchar, also requested in a letter that EPA provide justification for why the agency has allowed an unusual number of large, profitable refiners to si the biofuels mandate. [read more …]

Climate change adversely affecting Virginians' health, study says

By Patricia Sullivan, Washington Post • • Posted April 18, 2018

The klaxon sound of a government alert went off on cellphones all over Northern Virginia at 3:35 a.m. M the National Weather Service had issued a flash-flood warning for the region. Hours later, the state climatologist fielded phone calls about tornado watches and warnings in the central part of the state. Such warnings may become more frequent in the future, and they may have major implications for human heal

according to a new study by the Natural Resources Defense Council, a 48-year-old environmental organi
[read more …]

Pence aide picked for energy post

Zack Colman, E&E News reporter • • Posted April 18, 2018

The White House has tapped an aide to Vice President Mike Pence to fill its newly vacated energy slot. F
Brooke will replace Mike Catanzaro, who stepped down from the National Economic Council today, a W
House official confirmed. Currently Pence's associate director of policy, Brooke will start in the energy p
April 30. [read more …]

Tesla to Halt Production of Model 3 Cars Temporarily

By NEAL E. BOUDETTE, New York Times • • Posted April 18, 2018

Tesla plans to halt production of its Model 3 compact car on Tuesday in a bid to work out kinks that have
slowed assembly of the car, a critical vehicle in the company's business plan. It expects to idle its Model
assembly line for several days to clear impediments that have held production well below the electric-car
company's targets. [read more …]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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This message was sent to grundler.christopher@epa.gov from
larry@governorscoalition.org

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

Message

From: Birgfeld, Erin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3383BC15DD5542E5BFF5C3DE13BA9BF2-EBIRGFEL]
Sent: 5/21/2018 7:13:21 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]
Subject: Re: OTAQ: SP Global Platts - RFS Waivers - ASAP

Yes.

Sent from my iPhone

On May 21, 2018, at 3:10 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> This will generate some news
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> 734.645.5221 (mobile)
> www.epa.gov/otaq
>
> On May 21, 2018, at 2:51 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:
>
>> Yup. Just confirmed that Robert sent the response as written to the reporter about 20 minutes ago.
>>
>> Robert flagged the response for the politicals before he sent it and they approved the response. Robert also noted that any follow ups would be best answered by political staff.
>>
>> ---
>> **From:** Grundler, Christopher
>> **Sent:** Monday, May 21, 2018 2:46 PM
>> **To:** Birgfeld, Erin <Birgfeld.Erin@epa.gov>
>> **Cc:** Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
>> **Subject:** Re: OTAQ: SP Global Platts - RFS Waivers - ASAP
>>
>> Pls double check that OPA sent an updated response and let me know
>>
>> ---
>> Christopher Grundler, Director
>> Office of Transportation and Air Quality
>> U.S. Environmental Protection Agency
>> 202.564.1682 (Washington DC)

734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On May 21, 2018, at 2:43 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

Hi Chris,

We sent out a press response re: RFS small refinery waivers that shows we have approved 3 more waivers since the last time we made a public statement. Just want you to be prepared if reporters ask tomorrow. Let us know if you need more info.

Thanks,
Erin

Incoming from Platts (from last week) : Are there any updates to the small refinery waivers for 2017? Last I had was 25 approved out of 30 petitions received.

OTAQ Response (sent today): EPA has received 33 requests for small refinery waivers for the year 2017. EPA has granted 28 and 5 are pending.

From: Birgfeld, Erin
Sent: Monday, May 21, 2018 2:30 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: FW: OTAQ: SP Global Platts - RFS Waivers - ASAP

FYI – this response went to the reporter already. Should I send a note to Chris G. so he is prepared for any questions he might get tomorrow?

From: Birgfeld, Erin
Sent: Monday, May 21, 2018 1:38 PM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: RE: OTAQ: SP Global Platts - RFS Waivers - ASAP

We are not developing a Q and A. The questions will be best answered by the politicals I think.

From: Daguillard, Robert
Sent: Monday, May 21, 2018 1:16 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: Re: OTAQ: SP Global Platts - RFS Waivers - ASAP

Thank you, Erin. Are you developing a Q&A? Not a suggestion, I'm just curious.

Robert Daguillard
U.S. EPA
Office of Media Relations
Washington D.C.
Ex. 6 (M)
202-564-6618 (O)

On May 21, 2018, at 1:12 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

> Hi John and Robert,
>
> Below is our suggested response to the Platts request on RFS small refinery waivers from last week. Apologies for the delay. This response is likely to generate press interest. Ben has alerted Bill W.
>
> -Erin
>
> **Incoming:** Are there any updates to the small refinery waivers for 2017? Last I had was 25 approved out of 30 petitions received.
>
> **OTAQ Response:** EPA has received 33 requests for small refinery waivers for the year 2017. EPA has granted 28 and 5 are pending.

From: Daguillard, Robert
Sent: Tuesday, May 15, 2018 11:19 AM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: OTAQ: SP Global Platts - RFS Waivers - ASAP

SP GLOBAL PLATTS
MEGHAN GORDON
ASAP

Hullo again team. Meghan's weekly inquiry:

Are there any updates to the small refinery waivers for 2017?

Last I had was 25 approved out of 30 petitions received.

Thanks in advance.

Cheers, R.

Robert Daguillard
Office of Media Relations
U.S. Environmental Protection Agency
Washington, DC
+1 (202) 564-6618 (O)
Ex. 6 (M)

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/18/2018 12:46:47 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Today's Biofuels News

Yep. It's on the list for Friday's meeting. Quite a letter.

From: Grundler, Christopher
Sent: Wednesday, April 18, 2018 8:46 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Fwd: Today's Biofuels News

Note letter that was sent yesterday from bipartisan group of Senators demanding info on small refiners

---

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Personal Phone / Ex. 6
www.epa.gov/otaq

Begin forwarded message:

From: "Governors' Biofuels Coalition" <larry@governorscoalition.org>
Date: April 18, 2018 at 7:59:58 AM EDT
To: <grundler.christopher@epa.gov>
Subject: Today's Biofuels News
Reply-To: larry@governorscoalition.org

Please add the Governors' Biofuels Coalition to your address book for uninterrupted delivery
View this email in a web browser.

GOVERNORS'BIOFUELSCOALITION

NEWS UPDATE April 18, 2018

Top Stories

Corn-state lawmakers urge halt to RFS hardship waivers

Marc Heller, E&E News reporter • • Posted April 18, 2018

Sen. Chuck Grassley (R-Iowa) and other corn-state senators yesterday urged EPA to stop granting waivers from ethanol mandates to refiners that claim economic hardship. While the waivers are intended for small refineries most affected by the renewable fuel standard, EPA has granted waivers to some of the nation's biggest petroleum companies, and in numbers far greater than a few years ago. [read more …]

Octane performance standard preferable to RFS, AFPM president says

By Nick Snow, Oil & Gas Journal • • Posted April 18, 2018

The American Fuel & Petrochemical Manufacturers believes a transition from the federal Renewable Fuel Standard to a fuel-neutral, 95-RON octane performance standard could better address the needs of consumers and other stakeholders, AFPM Pres. Chet Thompson told a US House Energy and Commerce Committee subcommittee. [read more …]

Japan Opens Door to US Ethanol

By Todd Neeley, DTN/Progressive Farmer • • Posted April 18, 2018

United States corn ethanol producers will be allowed to export ethanol to Japan, after the nation's government approved a new policy to allow 44% of its 217-million-gallon ethanol demand to produce ethyl tert-butyl ether, or ETBE, which is commonly used as an oxygenate in gasoline, to come from corn-based ethanol. [read more …]

Policy & Politics

In new sign of trade battle, China slaps U.S. sorghum producers with 179 percent deposit

By Emily Rauhala, Washington Post • • Posted April 18, 2018

China announced temporary anti-dumping measures on U.S. sorghum, potentially hitting U.S. growers and exacerbating the brewing trade war between Beijing and Washington. China's Ministry of Commerce said that starting Wednesday, Chinese importers of U.S. sorghum, used by the Chinese for animal feed and brewing alcohol, will be required to put down a 178.6 percent deposit in anticipation of anti-dumping tariffs. The deposits could discourage imports of U.S. sorghum, hurting American producers. [read more …]

Grassley Points to Ethanol Conflict in Trump Administration

By Todd Neeley, DTN/Progressive Farmer • • Posted April 18, 2018

Sen. Charles Grassley, R-Iowa, didn't mince words on Tuesday when talking about EPA granting waivers to the Renewable Fuel Standard while at the same time apparently slow-walking the approval of year-round E15 sales. He said he puts the blame squarely on EPA Administrator Scott Pruitt. Grassley told agriculture journalists he believes President Donald Trump is firmly behind the RFS but has an EPA administrator acting to the contrary. "I believe that Pruitt is a loose cannon who is not carrying out the president's wishes," Grassley said. [read more …]

Bipartisan senators' group demands EPA disclose small refinery hardship recipients

By Jarrett Renshaw, Reuters • • Posted April 18, 2018

A bipartisan group of 13 U.S. senators told the U.S. Environmental Protection Agency on Tuesday to disclose the names of companies who received a hardship exemption from the nation's biofuel laws since 2016. The calls for more transparency come amid increasing scrutiny of the EPA's expansion of the small refinery hardship exemption in recent months, including granting and considering waivers from the world's largest oil companies. [read more …]

Farm state senators tell EPA to stop giving big oil refiners a pass on biofuels rules

By Tom DiChristopher, CNBC • • Posted April 18, 2018

A group of bipartisan lawmakers on Tuesday asked the Environmental Protection Agency to stop issuing waivers that allow oil refiners to avoid obligations to blend biofuels into gasoline. The 13 senators, led by Iowa Republican Chuck Grassley and Minnesota Democrat Amy Klobuchar, also requested in a letter that EPA provide justification for why the agency has allowed an unusual number of large, profitable refiners to sidestep the biofuels mandate. [read more …]

Climate change adversely affecting Virginians' health, study says

By Patricia Sullivan, Washington Post • • Posted April 18, 2018

The klaxon sound of a government alert went off on cellphones all over Northern Virginia at 3:35 a.m. Monday; the National Weather Service had issued a flash-flood warning for the region. Hours later, the state climatologist fielded phone calls about tornado watches and warnings in the central part of the state. Such warnings may become more frequent in the future, and they may have major implications for human health, according to a new study by the Natural Resources Defense Council, a 48-year-old environmental organization. [read more …]

Pence aide picked for energy post

Zack Colman, E&E News reporter • • Posted April 18, 2018

The White House has tapped an aide to Vice President Mike Pence to fill its newly vacated energy slot. Francis Brooke will replace Mike Catanzaro, who stepped down from the National Economic Council today, a White House official confirmed. Currently Pence's associate director of policy, Brooke will start in the energy post April 30. [read more …]

Tesla to Halt Production of Model 3 Cars Temporarily

By NEAL E. BOUDETTE, New York Times • • Posted April 18, 2018

Tesla plans to halt production of its Model 3 compact car on Tuesday in a bid to work out kinks that have slowed assembly of the car, a critical vehicle in the company's business plan. It expects to idle its Model 3 assembly line for several days to clear impediments that have held production well below the electric-car company's targets. [read more …]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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This message was sent to **grundler.christopher@epa.gov** from **larry@governorscoalition.org**

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 3/1/2018 1:50:59 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: RFS Brief with Admin

-----Original Message-----
From: Gunasekara, Mandy
Sent: Wednesday, February 28, 2018 5:57 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RFS Brief with Admin

Hey Ben,

To relay my latest convo with Bill regarding tomorrow's briefing with the Administrator, he laid out the following order of discussion:

Deliberative Process / Ex. 5

We may not get to all but this is the goal. Let me know if you have any questions. Otherwise, see you tomorrow morning.

Sent from my iPhone

16011104T020000

PRODID
-//Microsoft Corporation//Outlook 16.0 MIMEDIR//EN

Version
2.0

METHOD
PUBLISH

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20171201T153000Z

X-CALEND
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20171201T050000Z

X-CLIPEND
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Grundler, Christopher

X-PRIMARY-CALENDAR
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X-OWNER (CN="Grundler, Christopher")
mailto:grundler.christopher@epa.gov

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080000

X-MS-OLK-WKHREND (TZID="Eastern Standard Time")
170000

X-MS-OLK-WKHRDAYS
MO,TU,WE,TH,FR

TZID
Eastern Standard Time

Start Date/Time
16011104T020000

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16010311T020000

Start Date/Time
16010311T020000

Recurrence Rule
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MANAGEMENT TIME
20171201T120000

Categories
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End Date/Time
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Start Date/Time
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Time Transparency
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OTAQ internal - OIG discussion draft report on LD em issions testing and compliance 20171201T150000

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End Date/Time
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DTSTAMP
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Start Date/Time
20171201T150000

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Summary
OTAQ internal - OIG discussion draft report on LD em issions testing and compliance

Time Transparency
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MTE Briefing Part III
20171201T160000

Categories
PUBLIC

End Date/Time
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DTSTAMP
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Start Date/Time
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Sequence Number
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Summary
MTE Briefing Part III

Time Transparency
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RFS Small Refinery Hardship Program 20171201T113000

Categories
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End Date/Time
20171201T121500

DTSTAMP
20171201T133345Z

Start Date/Time
20171201T113000

Sequence Number
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Summary
RFS Small Refinery Hardship Program

Time Transparency
OPAQUE

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CONFIRMED: Robert Wyman, Latham 20171201T140000

Categories
PUBLIC

End Date/Time
20171201T143000

DTSTAMP
20171201T133345Z

Start Date/Time
20171201T140000

Sequence Number
0

Summary
CONFIRMED: Robert Wyman, Latham

Time Transparency
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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

Prep for Auto Alliance Speech on 12/7 20171201T103000

Categories
PUBLIC

End Date/Time
20171201T111500

DTSTAMP
20171201T133345Z

Start Date/Time
20171201T103000

Sequence Number
0

Summary
Prep for Auto Alliance Speech on 12/7

Time Transparency
OPAQUE

UID
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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

Message

From: Parsons, Nick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7BA9A64331B0449A93CCC46F74D5D1F0-PARSONS, NICK]
Sent: 4/5/2018 3:33:55 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Remaining Small Refineries
Attachments: Remaining Small Refinery Petitions 040518.pptx

- Nick

From: Parsons, Nick
Sent: Thursday, April 05, 2018 10:11 AM
To: Byron Bunker <bunker.byron@epa.gov>; Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Paul Machiele <machiele.paul@epa.gov>; Janet Cohen <cohen.janet@epa.gov>; Piotrowski, Greg <piotrowski.greg@epa.gov>; McKenna, Chris <mckenna.chris@epa.gov>; Lauren Michaels <Michaels.Lauren@epa.gov>; Nelson, Karen <nelson.karen@epa.gov>; Dallas Burkholder <burkholder.dallas@epa.gov>; David Korotney <korotney.david@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Sue Stahle <Stahle.Susan@epa.gov>; Boylan, Thomas <Boylan.Thomas@epa.gov>; Manners, Mary <manners.mary@epa.gov>; Tia Sutton <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Remaining Small Refineries

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 This is more just an FYI rather than something we would use as an actual briefing, but I thought you might find it interesting nonetheless. Any additional thoughts from others welcome.

Nick Parsons • Chemical Engineer • Office of Air and Radiation • U.S. Environmental Protection Agency
734.214.4479 • parsons.nick@epa.gov • 2000 Traverwood Dr, Ann Arbor, MI 48103

"No man is more important than the team." -Bo Schembechler

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/5/2018 4:57:08 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Bill/Andy/Scott RFS meetings next week

Oh boy

On Jun 5, 2018, at 12:56 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

ICYMI:

Tuesday: USDA hosting Deputies meeting to discuss "true economic hardship relief for small refineries". Wheeler and Wehrum (note this conflicts with OAR Business Review)
Wednesday: Pruitt hosting Lemon family (mtg request below). Wehrum attending, with prebrief immediately prior. Mtg request below

Meeting Request Form for Administrator Scott Pruitt

Today's Date: May 21, 2018

Meeting Date: At the Administrator's convenience

Meeting Time: At the Administrator's convenience

Requested Location (if offsite, please list address, parking instructions, etc.): EPA offices in Washington, D.C., or wherever is convenient for the Administrator.

Requestor: John ("Jack") Barrow, co-founder of BTR Energy

Purpose of the Meeting: BTR Energy would like to discuss the status of the Renewable Fuel Standard ("RFS") electric pathway and its pending application to participate in the program.

Background on the Meeting: Electricity produced using biogas became an eligible renewable fuel under the RFS in 2014, when EPA promulgated a final rule and began accepting registration applications under the newly created "electric pathway." This provided a way for livestock farmers – often overlooked in the RFS -- to benefit directly from the program for the first time, and yet, no such applications have been approved in the ensuing four years.

Participation in the electric pathway would create a new revenue stream for livestock farms that operate anaerobic digesters, which produce electricity using animal and other organic wastes. This new revenue would be instrumental in supporting farms that have already invested in the technology and in encouraging more farms to do so.

In that way, the electric pathway would support rural economies – digesters create an average of two to four permanent jobs and generate new income for agricultural communities – and help our farmers continue to be stewards of the environment by reducing nutrient runoff and methane emissions, and eliminating odors.

BTR Energy submitted an application to participate in the pathway in early 2015 and has been engaged with EPA for the three years since. BTR currently partners with nearly 40 livestock farms and ten auto manufacturers, ranging from General Motors and BMW to Workhorse and Thor Trucks, all of which would benefit from activation of the electric

pathway and approval of BTR's application. Given this large and growing base of constituents, many members of Congress also support the activation of the pathway through approval of BTR's application, and have weighed in with EPA to express that support and explain the impact it could have in their home states.

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/8/2018 9:35:34 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Fwd: Deliberative Process / Ex. 5
Attachments: Deliberative Process / Ex. 5 docx; ATT00001.htm

I spoke to Machiele about this and can fill you in.

Begin forwarded message:

From: "Sutton, Tia" <sutton.tia@epa.gov>
Date: May 8, 2018 at 5:23:48 PM EDT
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>
Cc: OAR Briefings <OAR_Briefings@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Charmley, William" <charmley.william@epa.gov>, "Simon, Karl" <Simon.Karl@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Manners, Mary" <manners.mary@epa.gov>
Subject: Deliberative Process / Ex. 5

Hi Mandy,
Attached is a draft following this afternoon's discussion on the Deliberative Process / Ex. 5 Deliberative Process / Ex. 5. I am looping Chris and Ben here as well because they have not had a chance to review this just yet.

Thanks,
Tia

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 2/5/2018 5:41:30 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: CRS request: small refinery exemptions

Deliberative Process / Ex. 5

From: Grundler, Christopher
Sent: Monday, February 05, 2018 12:39 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: CRS request: small refinery exemptions

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Monday, February 05, 2018 12:34 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Cc: Cohen, Janet <cohen.janet@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: CRS request: small refinery exemptions

Chris, Byron:

Just an FYI that CRS is inquiring on this issue (how many petitions currently are before EPA). See note below.

Deliberative Process / Ex. 5

Please let us know if you have concerns. Ben

From: Haman, Patricia
Sent: Monday, February 05, 2018 11:09 AM
To: Sutton, Tia <sutton.tia@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>
Cc: Thundiyil, Karen <Thundiyil.Karen@epa.gov>
Subject: FW: CRS request: small refinery exemptions

Good Morning, Kelsi from CRS sent the note below a few minutes ago. Please let me know how you would like me to respond.

I know because of CBI concerns we do not talk about individual petitions but have we ever said anywhere we received x number of petitions in 2016, y number in 2017, etc. If we have, have we ever said we granted z/x number in 2016. I do not recall that we have but defer to the experts.

Karen is taking a compressed day today so I am pinch hitting.

Thank you. Pat

Patricia E. Haman
Office of Congressional Affairs
U.S. EPA
202-564-2806

Hi Pat,

I hope your 2018 is off to a great start.

I am working on a request for congressional staff and would appreciate a response to the three questions below by COB today.

- Does EPA disclose the number of RFS small refinery petitions under consideration to the general public?
- Has EPA disclosed this information in previous years to the general public?
- What is the EPA protocol for disclosing such information?

A Reuters article, *Exclusive: U.S. small refiners make surge of biofuel waiver requests – sources*, reports that "Sources familiar with the matter said the EPA was currently reviewing 27 waiver applications from small refineries, covering multiple years."

Please contact me if you have any questions about this request.

Thanks,
Kelsi

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 11/30/2017 12:52:18 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Tomorrow's Fuels Discussion

Deliberative Process / Ex. 5

On Nov 29, 2017, at 7:42 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Nov 29, 2017, at 7:32 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5 Mandy called and she and I agreed we could use the time tomorrow morning to talk generators. It is evidently holding up or at least affecting the EPW vote for Wheeler and Dourson.

So I think you could give him a short heads up.

On Nov 29, 2017, at 7:04 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Grundler, Christopher
Sent: Wednesday, November 29, 2017 7:03 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Tomorrow's Fuels Discussion

Bill—
Tomorrow at 9:30 we have our weekly fuels meeting. We plan to spend the first few minutes on RFS 2018 RVO rollout logistics, and the bulk of the time bringing you up to speed on RFS Small Refinery Hardship decisions, past and future. This is a time sensitive item as we have a few pending decisions, and we'd like to discuss options on how to proceed for the expected 2017 petitions. Spoiler alert, this is another

big refiner vs. not so big refiner issue. API spent part of their time at the 12866 meetings saying we should not be granting any of these petitions.

Thanks again for the time this evening

Chris

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/16/2018 9:09:11 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Fwd: Email address for Bill Wehrum

Janice told me they wanted to meet with Wehrum. Had no idea it was happening today.

Begin forwarded message:

From: "Raburn, Janice" <Janice.Raburn@bp.com>
Date: April 16, 2018 at 5:03:51 PM EDT
To: "Ben Hengst (Hengst.benjamin@Epa.gov)" <Hengst.benjamin@Epa.gov>
Subject: Email address for Bill Wehrum

Ben,

BP met this morning with Bill Wehrum, Mandy Gunasekara, Matt Leopold, and Erik Baptist on RFS issues. I told them that this afternoon I would email them a letter from BP to EPA regarding small refinery exemptions. I have everyone's email address except Bill Wehrum's.

Would you be able to provide Bill Wehrum's email address to me?

When I send the letter to the four folks above, I will then send it to you as well.

Thank you for your help.

Janice.

Janice K. Raburn
Manager, Fuels Regulatory Advocacy
BP Products North America Inc.
1101 New York Ave NW, Suite 700
Washington, DC 20005
Office 202-346-8516
Fax 202-457-6597
Mobile: 202-210-8540
janice.raburn@bp.com

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 1/9/2018 5:56:42 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Attachments: plan for 2018 briefings for Wehrum.docx

Message

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 10/2/2017 11:46:19 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Grundler, Christopher Calendar
Attachments: Grundler Christopher Calendar.ics

NOTE: I have added call-in numbers to your afternoon meetings, just in case.

CHRISTOPHER GRUNDLER
MODNAY, OCTOBER 2, 2017
CALENDAR
AA OFFICE

10:30 AM – 11:00 AM	General David Haugen Location: RM. C-174 DOD AA
11:00 AM – 12:00 PM	Revising the 2016 RFS standard for total renewable fuel Location: RM. 5400 DC/RM. C-174 DOD AA Ex. 6
12:00 PM – 1:00 PM	MANAGEMENT TIME
1:30 PM – 3:00 PM	Personal Matters / Ex. 6
3:00 PM – 4:00 PM	Small Refinery Hardship Topics Location: RM. 6520 DC/RM. C-174 DOD AA By Telephone: Access Code: Ex. 6
4:00 PM – 5:00 PM	MONTHLY MTE UPDATE Location: RM. 6520 DC/RM. C-174 DOD AA By Telephone: Access Code: Ex. 6

Gwen Stewart

Office of Transportation and Air Quality
RM. 6520N
202 564-1682 – Telephone
202 564-1686 – Fax Number
Stewart.gwen@epa.gov

16011104T020000

PRODID
-//Microsoft Corporation//Outlook 16.0 MIMEDIR//EN

Version
2.0

METHOD
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20171002T143000Z

X-CALSTART
20171002T000000

X-CALEND
20171002T210000Z

X-CALEND
20171003T000000

X-CLIPSTART
20171002T040000Z

X-CLIPEND
20171003T040000Z

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Grundler, Christopher

X-PRIMARY-CALENDAR
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X-OWNER (CN="Grundler, Christopher")
mailto:grundler.christopher@epa.gov

X-MS-OLK-WKHRSTART (TZID="Eastern Standard Time")
080000

X-MS-OLK-WKHREND (TZID="Eastern Standard Time")
180000

X-MS-OLK-WKHRDAYS
MO,TU,WE,TH,FR

TZID
Eastern Standard Time

Start Date/Time
16011104T020000

Recurrence Rule
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TZOFFSETTO
-0500

16010311T020000

Start Date/Time
16010311T020000

Recurrence Rule
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-0500

TZOFFSETTO
-0400

General David Haugen
20171002T103000

Categories
PUBLIC

End Date/Time
20171002T110000

DTSTAMP
20171002T114305Z

Start Date/Time
20171002T103000

Recurrence Rule
FREQ=WEEKLY;COUNT=1;BYDAY=MO

Sequence Number
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Summary
General David Haugen

Time Transparency
OPAQUE

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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

MANAGEMENT TIME
20171002T120000

Categories
PUBLIC

End Date/Time
20171002T130000

DTSTAMP
20171002T114307Z

Start Date/Time
20171002T120000

Recurrence Rule
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Sequence Number
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Summary
MANAGEMENT TIME

Time Transparency
OPAQUE

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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

MONTHLY MTE UPDATE 20171002T160000

Categories
PUBLIC

End Date/Time
20171002T170000

DTSTAMP
20171002T114310Z

Start Date/Time
20171002T160000

Recurrence Rule
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Sequence Number
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Summary
MONTHLY MTE UPDATE

Time Transparency
OPAQUE

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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

Dentist
20171002T133000

Categories
PUBLIC

End Date/Time
20171002T150000

DTSTAMP
20171002T114310Z

Start Date/Time
20171002T133000

Sequence Number
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Summary
Dentist

Time Transparency
OPAQUE

UID
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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

Revising the 2016 RFS standard for total renewable f uel 20171002T110000

Categories
PUBLIC

End Date/Time
20171002T120000

DTSTAMP
20171002T114310Z

Start Date/Time
20171002T110000

Sequence Number
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Summary
Revising the 2016 RFS standard for total renewable f uel

Time Transparency
OPAQUE

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BUSY

Small Refinery Hardship Topics
20171002T150000

Categories
PUBLIC

End Date/Time
20171002T160000

DTSTAMP
20171002T114310Z

Start Date/Time
20171002T150000

Sequence Number
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Summary
Small Refinery Hardship Topics

Time Transparency
OPAQUE

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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

Chris - AA
20171002

Categories
PUBLIC

End Date/Time
20171003

DTSTAMP
20171002T114310Z

Start Date/Time
20171002

Sequence Number
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Summary
Chris - AA

Time Transparency
TRANSPARENT

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X-MICROSOFT-CDO-BUSYSTATUS
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Message

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 12/11/2017 1:02:38 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Draft Calendar for Approval
Attachments: Grundler Christopher Calendar.ics

CHRISTOPHER GRUNDLER
MONDAY, DECEMBER 11, 2017
CALENDAR
AA OFFICE

10:15 AM – 3:30 PM	Mr. Wehrum Lab Visit
1:00 PM – 1:45 PM	RFS Small Refinery Hardship Program - Cont'd Location: RM. 5400 DC/RM. C-174 DOD AA
3:30 PM – 7:00 PM	TRAVEL TO DC OFFICE

Gwen Stewart
Office of Transportation and Air Quality
RM. 6520N
202 564-1682 – Telephone
202 564-1686 – Fax Number
Stewart.gwen@epa.gov

16011104T020000

PRODID
-//Microsoft Corporation//Outlook 16.0 MIMEDIR//EN

Version
2.0

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20171211T130000Z

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X-CALEND
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X-CALEND
20171212T000000

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20171211T050000Z

X-CLIPEND
20171212T050000Z

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X-WR-CALNAME
Grundler, Christopher

X-PRIMARY-CALENDAR
TRUE

X-OWNER (CN="Grundler, Christopher")
mailto:grundler.christopher@epa.gov

X-MS-OLK-WKHRSTART (TZID="Eastern Standard Time")
080000

X-MS-OLK-WKHREND (TZID="Eastern Standard Time")
180000

X-MS-OLK-WKHRDAYS
MO,TU,WE,TH,FR

TZID
Eastern Standard Time

Start Date/Time
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TZOFFSETTO
-0500

16010311T020000

Start Date/Time
16010311T020000

Recurrence Rule
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TZOFFSETFROM
-0500

TZOFFSETTO
-0400

MANAGEMENT TIME
20171211T120000

Categories
PUBLIC

End Date/Time
20171211T130000

DTSTAMP
20171211T130031Z

Start Date/Time
20171211T120000

Recurrence Rule
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Sequence Number
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Summary
MANAGEMENT TIME

Time Transparency
OPAQUE

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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

HOTEL: DC DIGS 20171211

Categories
PUBLIC

End Date/Time
20171212

DTSTAMP
20171211T130032Z

Start Date/Time
20171211

Sequence Number
0

Summary
HOTEL: DC DIGS

Time Transparency
TRANSPARENT

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X-MICROSOFT-CDO-BUSYSTATUS
FREE

DELTA - 664 - DEPT. DTW - 5:30 PM - ARR: DCA - 7:02 PM 20171211

Categories
PUBLIC

End Date/Time
20171212

DTSTAMP
20171211T130032Z

Start Date/Time
20171211

Sequence Number
0

Summary
DELTA - 664 - DEPT. DTW - 5:30 PM - ARR: DCA - 7:02 PM

Time Transparency
TRANSPARENT

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X-MICROSOFT-CDO-BUSYSTATUS
FREE

CHRIS - AA
20171211

Categories
PUBLIC

End Date/Time
20171212

DTSTAMP
20171211T130032Z

Start Date/Time
20171211

Sequence Number
0

Summary
CHRIS - AA

Time Transparency
TRANSPARENT

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X-MICROSOFT-CDO-BUSYSTATUS
FREE

TRAVEL TO DC
20171211T150000

Categories
PUBLIC

End Date/Time
20171211T190000

DTSTAMP
20171211T130032Z

Start Date/Time
20171211T150000

Sequence Number
0

Summary
TRAVEL TO DC

Time Transparency
OPAQUE

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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

HOLD: MR. WEHRUM 20171211T080000

Categories
PUBLIC

End Date/Time
20171211T180000

DTSTAMP
20171211T130032Z

Start Date/Time
20171211T080000

Sequence Number
0

Summary
HOLD: MR. WEHRUM

Time Transparency
OPAQUE

UID
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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

OTAQ All Hands Meeting with AA Bill Wehrum and guest s 20171211T143000

Categories
PUBLIC

End Date/Time
20171211T151500

DTSTAMP
20171211T130032Z

Start Date/Time
20171211T143000

Sequence Number
0

Summary
OTAQ All Hands Meeting with AA Bill Wehrum and guest s

Time Transparency
OPAQUE

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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

Wehrum Lab Visit
20171211T101500

Categories
PUBLIC

End Date/Time
20171211T153000

DTSTAMP
20171211T130032Z

Start Date/Time
20171211T101500

Sequence Number
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Summary
Wehrum Lab Visit

Time Transparency
OPAQUE

UID
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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

RFS Small Refinery Hardship Program - Cont'd 20171211T130000

Categories
PUBLIC

End Date/Time
20171211T134500

DTSTAMP
20171211T130032Z

Start Date/Time
20171211T130000

Sequence Number
0

Summary
RFS Small Refinery Hardship Program - Cont'd

Time Transparency
OPAQUE

UID
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X-MICROSOFT-CDO-BUSYSTATUS
BUSY

Message

From: Birgfeld, Erin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3383BC15DD5542E5BFF5C3DE13BA9BF2-EBIRGFEL]
Sent: 3/20/2018 8:28:08 PM
To: Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Backgrounder and Talkers for ACE Meeting
Attachments: PES - desk statement Qs As Anticipated Reaction to Settlement Clean- 3-12-18.docx; ACE March 2018.docx

Importance: High

Hi John,

Attached please find talkers and background info for Bill W.'s meeting tomorrow. Also attached is the desk statement on PES that was pulled together with by OECA. Ben thought it would be useful background for Bill to have.

Thank you!

-Erin

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 12/19/2018 11:12:06 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]
Subject: RE: Updated connect the dots briefing
Attachments: Upcoming RFS Actions and Implications for Wheeler v3.pptx

I fixed a typo on slide 5

These look good (I didn't look at appendix)

One comment: **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Hengst, Benjamin
Sent: Wednesday, December 19, 2018 5:53 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Fwd: Updated connect the dots briefing

Begin forwarded message:

> **From:** "Burkholder, Dallas" <burkholder.dallas@epa.gov>
> **Date:** December 19, 2018 at 5:33:02 PM EST
> **To:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>
> **Subject: Updated connect the dots briefing**
>
> Have to run now, but here is what I was able to do. Ben, feel free to make edits as you see fit and send to Chris. I can make additional edits tomorrow morning if necessary.
>
> Dallas Burkholder
> Office of Transportation & Air Quality
> US Environmental Protection Agency
> (734)214-4766
> Burkholder.Dallas@epa.gov

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 11/28/2018 1:39:11 PM
To: Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Lie, Sharyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=02041179e5dd4b9e9c5ea63701032c04-slie]; Burch, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=27b0cd43b0404bab89aef0c8d08c165f-Burch, Julia]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Re: reset meeting

Thanks Ben. Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Nov 28, 2018, at 8:33 AM, Machiele, Paul <machiele.paul@epa.gov> wrote:

> Initial thought is - not to sit in the sinking chair this time...
>
> Paul
>
> ---
>
> **From:** Hengst, Benjamin
> **Sent:** Tuesday, November 27, 2018 11:07 PM
> **To:** Grundler, Christopher <grundler.christopher@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Lie, Sharyn <Lie.Sharyn@epa.gov>
> **Cc:** Burch, Julia <Burch.Julia@epa.gov>; Charmley, William <charmley.william@epa.gov>
> **Subject:** reset meeting
>
> Chris and others:

Deliberative Process / Ex. 5

I'm just flagging this for now so you can start thinking about it. We can discuss in coming days or at one of our standing fuels meetings. Thanks, Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/31/2018 12:44:55 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: Tomorrow's Hearing

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 31, 2018, at 8:20 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

On Jul 31, 2018, at 8:15 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 31, 2018, at 8:10 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

On Jul 31, 2018, at 8:05 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
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734.645.5221 (mobile)
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Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/31/2018 12:35:05 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: SRE slide deck

Ben—
This is really really good. Also, Deliberative Process / Ex. 5

Good luck

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On Jul 31, 2018, at 7:40 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Hey Chris—

Sorry we didn't get to chat yesterday. Personal Matters / Ex. 6

Personal Matters / Ex. 6

I meant to send this yesterday, but it has taken a lot of work to get this slide deck ready (and you'll see that there are still a few comments left to address).

Deliberative Process / Ex. 5

Personal Matters / Ex. 6

Ben

<SRE Options, July 2018.pptx>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/31/2018 11:57:47 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: SRE slide deck

Hey Ben. Personal Matters / Ex. 6

Personal Matters / Ex. 6

Personal Matters / Ex. 6 so I will take a look at the deck now.

Christopher Grundler, Director
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On Jul 31, 2018, at 7:40 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Hey Chris—

Sorry we didn't get to chat yesterday. Personal Matters / Ex. 6

Personal Matters / Ex. 6

I meant to send this yesterday, but it has taken a lot of work to get this slide deck ready (and you'll see that there are still a few comments left to address).

Deliberative Process / Ex. 5

Personal Matters / Ex. 6

Ben

<SRE Options, July 2018.pptx>

Message

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Sent: 7/24/2018 6:49:10 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re:

Don't wait on me

Christopher Grundler, Director
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On Jul 24, 2018, at 2:31 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

> Chris—I'll send this at about 4pm. Only changes are a few new slides in response to Mandy's request on small refinery exemptions, slides 20-22.
>
> I spoke with Mandy a bit further today to get some tips on what to emphasize, which I'll relay to you later.
>
> Thanks
> Ben
>
> <RFS for Acting Administrator Wheeler, July 2018, for Wehrum review.pptx>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/16/2018 1:14:41 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: Today's Biofuels News

Thanks.
Also, interesting to learn Kavanaugh authored the ACE decision on general waiver

---
Christopher Grundler, Director
Office of Transportation and Air Quality
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On Jul 16, 2018, at 9:13 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

> Yes, I saw that last week. As is usually the case, Irwin's analysis is solid. He's been tracking the SRE issue for some time now, and earlier posts have watched the 2019 NPRM from a "will they or won't they reallocate?" perspective. Now that the rule is out, he has his answer, and his conclusion that the exemptions effectively lower the standards is accurate.
>
> We expect to hear much of this at the public hearing on Wednesday.
>
> ---
>
> **From:** Grundler, Christopher
> **Sent:** Monday, July 16, 2018 8:23 AM
> **To:** Hengst, Benjamin <Hengst.Benjamin@epa.gov>
> **Subject:** Fwd: Today's Biofuels News
>
> Includes a piece by Scott Irwin on NPRM. Let me know what you think
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
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> 734.214.4207 (Ann Arbor MI)
> 734.645.5221 (mobile)
> www.epa.gov/otaq
>
> Begin forwarded message:
>
> > **From:** "Governors' Biofuels Coalition" <larry@governorscoalition.org>
> > **Date:** July 16, 2018 at 7:59:54 AM EDT
> > **To:** <grundler.christopher@epa.gov>

Subject: Today's Biofuels News
Reply-To: larry@governorscoalition.org

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NEWS UPDATE July

Top Stories

US Trade, Immigration and Biofuel Policies Hit Farmers Hard

By David, Pritt, Associated Press • • Posted July 16, 2018

Even before the specter of a trade war with China and other countries threatened to cost them billions of American farmers were feeling the squeeze from fluctuating crop prices and other factors that have halve overall income in recent years. The threat of counter-tariffs on U.S. farm goods and the impact of Preside Donald Trump's other policies on immigration and biofuels, though, have some farmers more worried th about their ability to continue eking out an existence in agriculture. [read more …]

Transcript of E&E News' interview with Andrew Wheeler

Robin Bravender and Kevin Bogardus, E&E News reporters • • Posted July 16, 2018

"Our responsibility is to follow the letter of the law. The balancing between the two is done in crafting th legislation and any changes to the program, fundamental changes have to be done legislatively. We're go follow both the letter and the spirit of the RFS program." [read more …]

Policy & Politics

Kavanaugh nomination revives RFS blending battle

Marc Heller, E&E News reporter • • Posted July 16, 2018

A fight over one word in the nation's biofuel blending law may be getting new life — and Supreme Cour nominee Brett Kavanaugh can take some of the credit. Kavanaugh, a judge on the U.S. Court of Appeals District of Columbia Circuit, wrote the opinion last year for a three-judge panel that found EPA misinterp the word "supply" in waiving certain biofuel volume requirements between 2014 and 2016. The biofuel a petroleum industries are still waiting for EPA to act on the ruling as Kavanaugh and the other judges dire read more …]

EPA 2019 RFS Proposed Rulemaking: What You See Is Not What You

By Jonathan Coppess and Scott Irwin, Department of Agricultural and Consumer Economics University of Illinois •
Posted July 14, 2018

If finalized, the proposed rule would set the requirements for obligated parties to comply with the RFS fo calendar year 2019, as well as the requirements for biomass-based diesel for calendar year 2020. On its fa proposed rule and its obligations appear to be non-controversial and straightforward. Buried within the proposed rule, however, is a mechanism for potentially reducing the mandate below the statutory requirer and EPA's stated obligations. [read more …]

RFS Volumes Hearing on Wednesday, July 18

By CINDY ZIMMERMAN, Agwired.com • • Posted July 16, 2018

The Environmental Protection Agency (EPA) will have a public hearing this week in Ypsilanti, MI on Ju to receive comments on the proposed rule "Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020." [read more …]

EPA under Wheeler fails to make good first impression with Senato Chuck Grassley

By John Siciliano and Josh Siegle, Washington Examiner • • Posted July 16, 2018

The nation's ethanol mandate continues to be a sticking point for the Environmental Protection Agency, with former agency head Scott Pruitt out of the picture. Sen. Chuck Grassley, R-Iowa, chairman of the Ju Committee, had a mixed review for the agency under Andrew Wheeler, Pruitt's replacement. [read more

Op-Ed: The real reason Scott Pruitt is gone: Putting a key voting blo risk

By Mike Carr, The Hill • • Posted July 16, 2018

In fact, Pruitt's downfall began when he broke the president's promise to heartland voters and infuriated GOP senators like Chuck Grassley of Iowa, John Thune of South Dakota, Deb Fischerof Nebraska, Roy of Missouri and Joni Ernst of Iowa. By doing favors for his friends in Oklahoma, Pruitt broke the preside promise, inflicted real economic harm to the midwest, and lied about it to some of the president's core supporters. As Bloomberg noted, "A deluge of political scandals hasn't sunk EPA Administrator Scott Pr But a wonky debate over the nation's biofuel policy just might." And it did. [read more …]

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Sent: 7/12/2018 12:16:42 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Today's Biofuels News

See Iowa Sen. comments on replacement

Christopher Grundler, Director
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GOVERNORS'BIOFUELS COALITION

NEWS UPDATE July 12, 2018

Top Story

EPA scraps detailed plan to force U.S. refiners to blend more biofuels

By Jarrett Renshaw, Reuters • • Posted July 12, 2018

The U.S. Environmental Protection Agency ditched a detailed plan that would have forced refiners to blend more biofuels into their gasoline and diesel in 2019 to compensate for volumes likely to be exempted under the agency's small refinery hardship waiver program, according to newly released EPA documents. [read more …]

Policy & Politics

Wheeler to staff: 'My instinct will be to defend your work'

Robin Bravender, E&E News reporter • • Posted July 12, 2018

EPA's new boss, Andrew Wheeler, isn't expected to veer much from ex-Administrator Scott Pruitt's agenda, but his tone is different. Wheeler, who took over Monday as acting administrator after Pruitt's resignation last week, spoke to staff and the press today in a standing-room-only speech in agency headquarters. [read more …]

GOP senators willing to wait for a permanent Pruitt replacement

By ANTHONY ADRAGNA, Politico • • Posted July 12, 2018

Senate Republicans are in no hurry to tackle a bruising confirmation fight to permanently replace Scott Pruitt as head of the Environmental Protection Agency. [read more …]

More Pruitt allies to exit

Kevin Bogardus, E&E News reporter • • Posted July 12, 2018

More top aides close to ex-EPA Administrator Scott Pruitt plan to leave the agency. Departing staffers include Lincoln Ferguson, whom Pruitt brought to EPA after they worked together in Oklahoma, and EPA's deputy White House liaison, Hayley Ford, an EPA official told E&E News. [read more …]

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Sent: 7/11/2018 8:53:03 PM
To: Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Korotney, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7b00e16e09654b94bc6146550ca87936-Korotney, David]
Subject: RE: Materials for OTAQ Fuels Weekly with Bill at 10am on Thursday

Thanks. Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Machiele, Paul
Sent: Wednesday, July 11, 2018 4:45 PM
To: Korotney, David <korotney.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: Materials for OTAQ Fuels Weekly with Bill at 10am on Thursday

Deliberative Process / Ex. 5

Paul

From: Korotney, David
Sent: Wednesday, July 11, 2018 4:32 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Machiele, Paul <machiele.paul@epa.gov>
Subject: RE: Materials for OTAQ Fuels Weekly with Bill at 10am on Thursday

Deliberative Process / Ex. 5

From: Grundler, Christopher
Sent: Wednesday, July 11, 2018 4:20 PM
To: Korotney, David <korotney.david@epa.gov>
Subject: RE: Materials for OTAQ Fuels Weekly with Bill at 10am on Thursday

Deliberative Process / Ex. 5

Christopher Grundler, Director
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U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Korotney, David
Sent: Wednesday, July 11, 2018 4:18 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: Materials for OTAQ Fuels Weekly with Bill at 10am on Thursday

Deliberative Process / Ex. 5

I will update the slide to this effect.

From: Grundler, Christopher
Sent: Wednesday, July 11, 2018 4:14 PM
To: Korotney, David <korotney.david@epa.gov>
Subject: RE: Materials for OTAQ Fuels Weekly with Bill at 10am on Thursday

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Korotney, David
Sent: Wednesday, July 11, 2018 4:09 PM

To: OTAQ Materials <OTAQMaterials@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>; Michaels, Lauren <Michaels.Lauren@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Dubois, Roland <Dubois.Roland@epa.gov>; Charmley, William <charmley.william@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Manners, Mary <manners.mary@epa.gov>; Weihrauch, John <Weihrauch.John@epa.gov>
Subject: Materials for OTAQ Fuels Weekly with Bill at 10am on Thursday

Attached are the materials for discussion of the 2016 remand.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/19/2018 12:14:09 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Dineen era comes to an end

Christopher Grundler, Director
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NEWS UPDATE July 19, 2018

Top Story

Farmers, Ethanol Interests Plead With EPA to Reallocate Lost Biofuel Gallons

By Todd Neeley, Progressive Farmer • • Posted July 19, 2018

EPA had not planned to address small-refinery waivers in a public hearing on Wednesday, but farmers and biofuels groups had other ideas as they unloaded on the agency. EPA is seeking comments on the latest proposed Renewable Fuel Standard volumes, which across the board show increases in nearly every biofuel

category. However, testifies at the hearing in Ypsilanti, Michigan, said the numbers are just window dressing. [read more …]

Biofuel groups ask U.S. government to slow small refinery waiver program

By Jarrett Renshaw, Reuters • • Posted July 19, 2018

Biofuel groups urged the U.S. Environmental Protection Agency on Wednesday to either stop granting exemptions from the nation's biofuel laws to smaller oil refineries or to force larger plants to make up the difference. The comments came during the first public hearing, held in Michigan, on the agency's proposed 2019 biofuel mandates under the U.S. Renewable Fuel Standard (RFS). [read more …]

Nebraska Governor, Ethanol Board Comment on EPA RFS Volumes Proposal

By Taylor Gage, Governor's Office • • Posted July 19, 2018

"Nebraska appreciates the EPA's continued commitment to the timely release of renewable volume obligations required by the RFS and maintaining conventional biofuel requirements at 15 billion gallons. We are also pleased to see that cellulosic and biodiesel are going up. While timely release helps create predictability for producers, the EPA's practice of granting small refinery waivers erodes producer confidence in the market." [read more …]

Gov. Reynolds testifies before EPA, opposes proposed Renewable Fuel Standard

By Ellyn Felton, KCRG-TV9 • • Posted July 19, 2018

"I'm here today asking the EPA to please embrace the law. Please carry out the vision of the president. And please, do your part in creating markets for farmers and renewable fuels producers. The impacts in Iowa are significant." [read more …]

Policy & Politics

'Night and day' as Wheeler opens doors to press

Robin Bravender and Kevin Bogardus, E&E News reporters • • Posted July 19, 2018

Scott Pruitt got a reputation for stonewalling the press, but his successor is taking a new approach. In his first two weeks on the job, acting EPA Administrator Andrew Wheeler has promised transparency to the press and to the public. He has published his daily calendars, has agreed to interviews with a range of news outlets and gave advance notice that his meeting Monday with business officials in Pennsylvania would be open press. [read more …]

Iowa lawmakers press Wheeler for visit

Marc Heller, E&E News reporter • • Posted July 19, 2018

Iowa's congressional delegation invited acting EPA Administrator Andrew Wheeler to the state, urging the agency to take a friendlier stance on ethanol mandates. "It is our expectation you will reinforce the Renewable Fuel Standard and bolster our nation's energy security," the six lawmakers told Wheeler in a letter Monday. [read more …]

Wheeler same as Pruitt on car rules — Calif. official

Benjamin Storrow, E&E News reporter • • Posted July 19, 2018

California's top air regulator doesn't see much of a difference between EPA's new boss and the old one on climate policy. Mary Nichols, chairwoman of the California Air Resources Board, described her meeting yesterday with EPA acting Administrator Andrew Wheeler as "pleasant" but said she fundamentally sees little difference between him and his predecessor, Scott Pruitt. [read more …]

Dinneen to Step Down as RFA CEO

By Daniel Enoch, Agri-Pulse • • Posted July 19, 2018

The Renewable Fuels Association (RFA) is marking the beginning of a new era. The Reverend of Renewables is climbing into the backseat of the ethanol organization and allowing Executive Vice President Geoff Cooper to drive. Cooper will assume the position of president and CEO in October 2018, while current President and CEO Bob Dinneen will transition into the role of RFA's Senior Strategic Advisor. [read more …]

As Cost of Trade War Grows, Farmers Stick With Trump—for Now

By Alan Bjerga, Bloomberg • • Posted July 19, 2018

President Donald Trump's trade disputes with China, Mexico and Canada are already eroding the value of American agricultural production, with soybean growers alone expected to lose at least $3.2 billion during the next crop season. But many farmers — including some whose incomes are plunging as exports stall — are sticking by the man they helped vote into office. They'd just like him to win the trade war quickly, before the fall harvest starts compounding the problem in a couple of months — when congressional midterm elections also will be heating up. [read more …]

Farm Bill Leaders Still Working on Starting Conference Talks

By Jerry Hagstrom, Progressive Farmer • • Posted July 19, 2018

House Agriculture Committee Chairman Michael Conaway, R-Texas, said at a forum Tuesday that the House vote on going to conference with the Senate on the farm bill will be held Wednesday or Monday. Conaway had earlier said he expected the vote would be Thursday, but at an event sponsored by Axios, he said the date has to be changed because House Agriculture ranking member Collin Peterson, D-Minn., cannot be present on Thursday. [read more …]

Gov. Ricketts to help open new gas station in Grant, featuring homegrown E15

By KWBE • • Posted July 19, 2018

Nebraska Gov. Pete Ricketts will be among the attendees at the grand opening of Aurora Cooperative's new A-Stop 24 pump site north of Grant on Friday. The new gas station will provide E10, E15, E30, E85 and diesel around the clock. The E15 blends and up all contain a higher-octane blend consisting of either 15%, 30% or 85% ethanol. [read more …]

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Sent: 7/18/2018 12:00:30 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Today's Biofuels News

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NEWS UPDATE July 18, 2018

Top Story

Iowa Congressional Delegation Asks New EPA Head to Reconsider Waivers Program

By Todd Neeley, Progressive Farmer • • Posted July 18, 2018

New EPA Acting Administrator Andrew Wheeler may be visiting Iowa after the state's congressional delegation outlined in a letter the challenges farmers and ethanol producers are facing with the way the agency has implemented the Renewable Fuel Standard. The agriculture and ethanol industries are trying to get a feel for how the EPA led by Wheeler will operate the RFS. In particular, the Iowa delegation said the industries have been harmed by EPA small-refinery waivers and a lack of movement in implementing year-round E15 sales. [read more …]

Iowa lawmakers press Wheeler for visit

Marc Heller, E&E News reporter • • Posted July 18, 2018

Iowa's congressional delegation invited acting EPA Administrator Andrew Wheeler to the state, urging the agency to take a friendlier stance on ethanol mandates. "It is our expectation you will reinforce the Renewable Fuel Standard and bolster our nation's energy security," the six lawmakers told Wheeler in a letter Monday. [read more …]

Policy & Politics

With Friends Like This…

By Doug Sombke, South Dakota Farmers Union • • Posted July 18, 2018

The news we get out of Washington these days lies somewhere between incredible and laughable, particularly with our Environmental Protection Agency. There is no precedent for the anti-ethanol, pro-oil actions of a federal agency like we are seeing from EPA. And this is from an administration and an agency that professes to be a friend to ethanol. It reminds us of the old saying: "With friends like these, who needs enemies?" But let's be clear: They are not friends to ethanol or, for that matter, agriculture. [read more …]

Scott Pruitt's Parting Shot At U.S. Ethanol Producers

By Tristan R. Brown, Seeking Alpha • • Posted July 18, 2018

EPA Administrator and refining industry ally Scott Pruitt resigned earlier this month after losing the support of the White House. Shortly before his departure, the EPA implemented substantial reductions to biofuel blending volumes under the national blending mandate. Recently-released EPA documents show that the reductions were implemented in a way that will keep ethanol blending at roughly 10 vol% of gasoline consumption. [read more …]

U.S. Poised To Ease Biofuel Quotas

By Haley Zaremba, OilPrice.Com • • Posted July 18, 2018

Just as scientists are making leaps and bounds in the technology behind biofuel production, opening the way for cheaper and more efficient clean fuel sources, the United States' Environmental Protection Agency (EPA) is backing further and further away from biofuel quotas. In the same month that scientists have announced a major breakthrough in biomass processing, the EPA has scrapped a plan to raise biofuel quotas in the coming year thanks to pressure from Big Oil. [read more …]

California is cutting greenhouse gases, but not from cars. Can that change?

By David R. Baker , San Francisco Chronicle • • Posted July 18, 2018

California's greenhouse gas emissions are falling faster than state leaders hoped when they launched their fight against climate change 12 years ago. But there's a glaring exception. [read more …]

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This message was sent to grundler.christopher@epa.gov from larry@governorscoalition.org

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

iContact
TRY IT FOR FREE ›

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/22/2018 1:09:08 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: RFS

Understood. Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jun 22, 2018, at 7:56 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

I'm working on this but will be off clock at noon. I will be in touch before then.

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
Date: June 22, 2018 at 7:18:27 AM EDT
To: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Cc: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: RFS

Ben - Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/21/2018 10:53:45 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: Not a good look

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jun 21, 2018, at 6:43 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

On Jun 21, 2018, at 6:20 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jun 21, 2018, at 6:19 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

No kidding

From: Grundler, Christopher
Sent: Thursday, June 21, 2018 6:16 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Not a good look

....when both oil and ag say you can't be trusted

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)

734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/21/2018 3:52:14 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: Doug Sparkman Request for phone call

pretty forward

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jun 21, 2018, at 11:09 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

From: Raburn, Janice [mailto:Janice.Raburn@bp.com]
Sent: Thursday, June 21, 2018 11:07 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Rakosnik, Delaney <rakosnik.delaney@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Doug Sparkman Request for phone call

Emily,

Another option - if it would be more convenient for Bill, he could call Doug on his cell at Personal Phone / Ex. 6 If possible, It would be great to alert Doug of the general timeframe that Bill might call.

Another request – I would like to arrange a call between Doug and Scott Pruitt as well. Would you have the contact in Administrator Pruitt's office that I should reach out to?

Thank you for your help.

Best,
Janice

From: Raburn, Janice
Sent: Thursday, June 21, 2018 10:57 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Delaney Rakosnik (rakosnik.delaney@epa.gov) <rakosnik.delaney@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Doug Sparkman Request for phone call

Emily,

I am writing to request a 10-15 minute phone call for Doug Sparkman with Bill Wehrum today or tomorrow. The only time that would *not* work is Friday 6/22 10-noon.

Doug Sparkman, is COO of BP Fuels North America and met with Bill Wehrum on May 17 regarding small refinery exemptions and other RFS issues. Doug would like the opportunity to chat briefly with Bill with BP's input on the possibility of EPA seeking to reallocate volumes of renewables that EPA has waived with small refinery exemptions.

Thank you for your consideration.

Best regards,
Janice

Senior Director, Fuels Regulatory Advocacy
BP America, Inc.
202-346-8516
Mobile 202-210-8540

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/19/2018 11:19:06 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Revised text on Small Refinery Exemptions

I gotta slow down

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

> **From:** "Grundler, Christopher" <grundler.christopher@epa.gov>
> **Date:** June 19, 2018 at 7:18:29 PM EDT
> **To:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>
> **Subject: Re: Revised text on Small Refinery Exemptions**
>
> Sorry to bother you Bill. That question was meant for Ben! Thanks for your prompt reply tho. :-)
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> 734.645.5221 (mobile)
> www.epa.gov/otaq
>
> On Jun 19, 2018, at 7:14 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Deliberative Process / Ex. 5

> _____
> Bill Wehrum
> Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency

(202) 564-7404

From: Grundler, Christopher
Sent: Tuesday, June 19, 2018 7:12 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Re: Revised text on Small Refinery Exemptions

Remind me—what other pieces?

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jun 19, 2018, at 6:06 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

> Ben – This looks fine. Please send this text, along with the other pieces we discussed with OIRA/USDA, to OIRA ASAP. Thanks.
>
> _____
> Bill Wehrum
> Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency
> (202) 564-7404
>
> ---
>
> **From:** Hengst, Benjamin
> **Sent:** Tuesday, June 19, 2018 9:19 AM
> **To:** Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Cc:** Grundler, Christopher <grundler.christopher@epa.gov>
> **Subject:** FW: Revised text on Small Refinery Exemptions
>
> Bill, Mandy:
>
> **Deliberative Process / Ex. 5**
>
> ***

Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/6/2017 12:56:15 PM
To: Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]
Subject: Re: small refinery hardship petition criteria (contains CBI)

Ok.

Ryan offered up a phone call ("let me know if you'd like to talk....for more info"). I think if you and he had a brief call while he's traveling to confirm what he needs would help

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

On Mar 6, 2017, at 7:44 AM, Dunham, Sarah <Dunham.Sarah@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 5, 2017, at 8:54 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Agree meeting would be best. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

On Mar 5, 2017, at 8:04 PM, Dunham, Sarah <Dunham.Sarah@epa.gov> wrote:

I'm not sure what the prospects of getting an actual briefing but I assume that would be best given we've already tried the approach

of just sending materials. Let me know how you'd like to proceed.

From: "Jackson, Ryan" <jackson.ryan@epa.gov>
Date: March 5, 2017 at 6:48:38 PM EST
To: "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Schnare, David" <schnare.david@epa.gov>, "Flynn, Mike" <Flynn.Mike@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>
Subject: RE: small refinery hardship petition criteria (contains CBI)

Thank you for this.

Deliberative Process / Ex. 5

We will be traveling all Monday and Tuesday. Let me know if you'd like to talk to get more information.

Thank you.

From: Dunham, Sarah
Sent: Friday, March 3, 2017 6:39 PM
To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>
Subject: small refinery hardship petition criteria (contains CBI)

Hi-
Sorry for the Friday evening email, but I wanted to follow-up on the RFS small refinery hardship petitions. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 2/27/2017 12:55:57 PM
To: Stewart, Gwen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3f8c5838943241caadb6005ffaddd7db-gstewart]
CC: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: Draft calendar for approval

Pls move David to the afternoon. Thx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

On Feb 27, 2017, at 7:53 AM, Stewart, Gwen <Stewart.Gwen@epa.gov> wrote:

<image001.gif>

CHRISTOPHER GRUNDLER
MONDAY, FEBRUARY 27, 2017
CALENDAR
AA OFFICE

<image002.gif>

9:30 AM – 10:00 AM	General David Haugen Location: Chris Office AA
10:00 AM – 11:00 AM	Small Refinery RFS Exemption Decision Location: RM. 5400 DC/RM. C-174 DOD AA By Telephone: Ex. 6 Access Code:
11:00 AM – 12:00 PM	Update on HEI Activities - Sponsors Meeting Location: RM. 6520 DC/RM. C-174 DOD AA
12:00 PM – 1:00 PM	MANAGEMENT TIME
3:00 PM – 8:00 PM	TRAVEL

<image002.gif>

Gwen Stewart
Office of Transportation and Air Quality
RM. 6520N
202 564-1682 – Telephone
202 564-1686 – Fax Number
Stewart.gwen@epa.gov

<Grundler Christopher Calendar.ics>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/19/2018 3:30:33 PM
To: Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Revised text on Small Refinery Exemptions

Got it

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Burkholder, Dallas
Sent: Tuesday, June 19, 2018 11:26 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Revised text on Small Refinery Exemptions

Deliberative Process / Ex. 5

From: Grundler, Christopher
Sent: Tuesday, June 19, 2018 11:23 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>
Subject: RE: Revised text on Small Refinery Exemptions

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Tuesday, June 19, 2018 11:13 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>
Subject: Re: Revised text on Small Refinery Exemptions

It gets a bit complicated but here is the answer. I'm looping in Dallas in case there are follow-up questions.

Deliberative Process / Ex. 5

On Jun 19, 2018, at 10:14 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 19, 2018, at 9:18 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Bill, Mandy:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/2/2017 2:55:49 PM
To: Hyde, Courtney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b9817dab77e44c898a7a7fb8b82ce353-CHYDE]
Subject: Re: FY 17 Approps Language

Thx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

On May 2, 2017, at 8:26 AM, Hyde, Courtney <Hyde.Courtney@epa.gov> wrote:

Chris,

Here is the only language that we saw that directly impacts OTAQ in the draft FY 17 Approps bill that was just introduced but we are still looking through it and let you know if we find anything else.

Thanks
Courtney

- <!--[if !supportLists]--><!--[endif]-->**Small Refinery Relief:** "....When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/2/2017 2:55:29 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Fwd: FY 17 Approps Language

So far no word on CSL language

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

Begin forwarded message:

From: "Hyde, Courtney" <Hyde.Courtney@epa.gov>
Date: May 2, 2017 at 8:26:06 AM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Cc: "Haley, Mike" <Haley.Mike@epa.gov>
Subject: FY 17 Approps Language

Chris,

Here is the only language that we saw that directly impacts OTAQ in the draft FY 17 Approps bill that was just introduced but we are still looking through it and let you know if we find anything else.

Thanks
Courtney

- <!--[if !supportLists]--><!--[endif]-->**Small Refinery Relief:** "....When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/21/2017 12:27:04 PM
To: White, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=793788a2a8e24b67a9e621a97836ea86-White, Susa]
CC: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]
Subject: Not feeling well

Personal Matters / Ex. 6

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

On Apr 21, 2017, at 8:19 AM, White, Susan <white.susan@epa.gov> wrote:

For your review/approval.

<image001.gif>

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Susan Y. White
Administrative/Technical Support Specialist
Senior Service America, Inc.
Supporting the Office of Transportation and Air Quality
U.S. Environmental Protection Agency
(202) 564-1682

<Grundler Christopher Calendar.ics>

Message

From: Grundler, Christopher [grundler.christopher@epa.gov]
Sent: 2/17/2017 5:42:42 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Revised small refinery 1-pager for 2016 NLP
Attachments: Revised small refinery 1-pager for 2016 NLP.docx; ATT00001.txt

I made one small edit on top of Nick's RLSO attached. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 Default is to drop the sub bullits

Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/10/2017 9:03:04 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: 10:30 fuels weekly with Sarah Dunham on 4/11/17

k

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Monday, April 10, 2017 3:38 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: FW: 10:30 fuels weekly with Sarah Dunham on 4/11/17

Chris—here's what I sent to the team.

The only folks that will be joining are Byron and Paul M (though Bill may join as well). No need to open a phone line or dial in for video.

Ben

From: Hengst, Benjamin
Sent: Monday, April 10, 2017 3:36 PM
To: Machiele, Paul <machiele.paul@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Dallas Burkholder (burkholder.dallas@epa.gov) <burkholder.dallas@epa.gov>; Michaels, Lauren <Michaels.Lauren@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Dubois, Roland <Dubois.Roland@epa.gov>; Master, Barbora <Master.Barbora@epa.gov>; Le, Madison <Le.Madison@epa.gov>; Weihrauch, John <Weihrauch.John@epa.gov>; Sharyn Lie (Lie.Sharyn@epa.gov) <Lie.Sharyn@epa.gov>
Cc: Bunker, Byron <bunker.byron@epa.gov>; William Charmley (charmley.william@epa.gov) <charmley.william@epa.gov>; Karl Simon <Simon.Karl@epa.gov>; Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Subject: 10:30 fuels weekly with Sarah Dunham on 4/11/17

Hi folks—

This week's fuels weekly with Sarah was moved from Thursday to tomorrow (Tuesday) from 10:30-11. Sarah Dunham will be in the Ann Arbor office. Folks can skip this, with the exception of Byron Bunker and Paul M. OGC can take a pass, too. Topics will be quick updates on small refinery hardship petitions and RVO rule.

Thanks,
Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/30/2017 2:35:39 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]
Subject: Re: Small refinery hardship petitions

Thx Ben

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

> On Mar 29, 2017, at 10:13 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:
>
> Just got off phone with Mandy. She had a few questions on our methodology on the small refinery methodology. All fairly straightforward.
>
> She hopes to have a discussion again with Pruitt tomorrow. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

>
> She hopes to tell us more tomorrow.
>
> I'll provide a bit more detail tomorrow at our ten am. Signing off for the night now.
>
> Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/22/2016 9:21:38 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Fwd: Senate Appropriations Report Language - Small Refinery Relief (RFS) and possible ECA Exemptions

Bill--pls call me about the ECA language

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Date: June 22, 2016 at 4:58:55 PM EDT
To: "Haley, Mike" <Haley.Mike@epa.gov>
Cc: "Grundler, Christopher" <grundler.christopher@epa.gov>, "Cook, Leila" <cook.leila@epa.gov>, "Charmley, William" <charmley.william@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>
Subject: Re: Senate Appropriations Report Language - Small Refinery Relief (RFS) and possible ECA Exemptions

Plus Byron Bill and Tia.

On Jun 22, 2016, at 4:46 PM, Haley, Mike <Haley.Mike@epa.gov> wrote:

Chris –

The Senate Appropriations Committee has now also marked up the EPA appropriations bill. It also includes report language regarding hardship relief for small refineries under the RFS program. If you recall, the House earlier had include report language on this subject in its markup. In addition to the small refinery language, the Senate markup also includes new language related to ECAs and a directive for EPA to consider exempting vessels with engines that generate less than 32,000 horsepower operating within 50 miles of the U.S. coastline.

The House bill is now expected to go the House Floor the week of July 4. It is unclear if and when the Senate bill will make it to the Senate Floor.

Senate Appropriations Committee report language directed specifically at OTAQ programs:

Small Refinery Relief – Congress directed the Agency, in consultation with the Department of Energy [DOE], to grant hardship relief to small refineries if compliance with the Renewable Fuel Standard [RFS] would impose a disproportionate economic hardship. In response to several recent petitions, the Agency determined that compliance with the RFS would have a disproportionate economic impact on a small refinery, but

denied hardship relief because the small refinery remained profitable notwithstanding the disproportionate economic impact. This is inconsistent with congressional intent because the statute does not contemplate that a small refinery would only be able to obtain an exemption by showing that the RFS program threatens its viability. Congress explicitly authorized the Agency to grant small refinery hardship relief to ensure that small refineries remain both competitive and profitable. In the intensely competitive transportation fuels market, small entities cannot remain competitive and profitable if they face disproportionate structural or economic metrics such as limitations on access to capital, lack of other business lines, disproportionate production of diesel fuel, or other site specific factors identified in DOE's original 2011 Small Refinery Exemption Study prepared for Congress.

When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Fuel Standards - ECAs – The Committee supports efforts to reduce pollution from marine vessels that may be harmful to human health and coastal environments. While that is the case, the Committee is concerned the mandate for fuel with a sulfur content of 0.1% in the North American Emission Control Area is having a disproportionately negative impact on vessels which have engines that generate less than 32,000 horsepower. This impact may cause some shippers to shift from marine based transport to less efficient, higher emitting modes. In an effort to avoid negative environmental consequences and modal shifting, the Committee directs the Agency to consider exempting vessels with engines that generate less than 32,000 horsepower and operate more than 50 miles from the coastline. Within 180 days of enactment of this act, the Agency should provide the Committee with a report detailing their decision.

House Appropriations Committee report language directed specifically at OTAQ programs:

Disproportionate Impacts for Small Refineries – Division D of the Consolidated Appropriations Act, 2016 provided direction that the Department of Energy may recommend to the Administrator a 50 percent waiver under 211(o)(9)(B) of the Clean Air Act. Under regulations promulgated by EPA, a small refinery may petition the Administrator for an extension of its small refinery exemption, based on disproportionate economic hardship, at any time (40 CFR 80.1441(e)(2)). Under those regulations the Administrator shall act on small refinery petitions not later than 90 days after the date of receipt of the petition. The Administrator is reminded that disproportionate hardship does not require a finding that the refiner or refinery is no longer profitable. Small refinery profitability does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority, in consultation with the Secretary, to reduce or eliminate this burden. Disproportionate impact may occur from several site specific factors which make it more difficult or expensive to meet the required volumes, or from a lack of blending infrastructure available to the refinery. Where the refiner or refinery shows a disproportionate economic hardship based on site specific factors and where the Secretary of Energy recommends to EPA that a waiver, in partial or full, is warranted, the Committee finds the Administrator has the necessary authority to grant a partial waiver. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on

Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/15/2016 9:47:52 PM
To: Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]
Subject: Re: small refinery language in house report

Full Approps committee approved today

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

On Jun 15, 2016, at 5:45 PM, Machiele, Paul <machiele.paul@epa.gov> wrote:

> I caught wind that this was coming yesterday. Its part of a Bill that isn't expected to move until perhaps 4th Q and its not clear what will survive then. I'm told there are also some countering legislative attempts, but its not clear what might happen when.
>
> Paul
>
> **From:** Grundler, Christopher
> **Sent:** Wednesday, June 15, 2016 12:56 PM
> **To:** Machiele, Paul <machiele.paul@epa.gov>
> **Subject:** Fwd: small refinery language in house report
>
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202/564-1682 (Washington DC)
> 734/214-4207 (Ann Arbor MI)
>
> Begin forwarded message:
>
> > **From:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
> > **Date:** June 15, 2016 at 12:50:41 PM EDT
> > **To:** "Grundler, Christopher" <grundler.christopher@epa.gov>
> > **Subject: FW: small refinery language in house report**
> >
> > Take a look at chain below
> >
> > **From:** Bunker, Byron
> > **Sent:** Wednesday, June 15, 2016 12:27 PM
> > **To:** Sutton, Tia <sutton.tia@epa.gov>

Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Haley, Mike <Haley.Mike@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Read, David <read.david@epa.gov>
Subject: RE: small refinery language in house report

Hi Tia,

Is this draft language in a House Report on some future budget bill, or is this actually report language for a passed bill? Asked another way, does this Report Language have whatever standing it is going to have now?, Or is there a process by which it will either be rejected or given the authority of a House Report?

Thanks,

Byron

****
Byron Bunker
Director Compliance Division
Office of Transportation and Air Quality
Environmental Protection Agency
2000 Traverwood Drive
Ann Arbor, MI 48105
Bunker.Byron@epa.gov
Phone: (734) 214-4155
Mobile: (734) 353-9623
****

From: Sutton, Tia
Sent: Wednesday, June 15, 2016 12:19 PM
To: Bunker, Byron <bunker.byron@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Weihrauch, John <Weihrauch.John@epa.gov>; McKenna, Chris <McKenna.Chris@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Reid, Lauren <Reid.Lauren@epa.gov>; Read, David <read.david@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Piotrowski, Greg <piotrowski.greg@epa.gov>
Subject: FW: small refinery language in house report

This just in—

From: LaRue, Steven
Sent: Wednesday, June 15, 2016 12:11 PM
To: Sutton, Tia <sutton.tia@epa.gov>
Subject: small refinery language in house report

Disproportionate Impacts for Small Refineries.—Division D of the Consolidated Appropriations Act, 2016 provided direction that the Department of Energy may recommend to the Administrator a 50 percent waiver under 211(o)(9)(B) of the Clean Air Act. Under regulations promulgated by EPA, a small refinery may petition the Administrator for an extension of its small refinery exemption, based on disproportionate economic hardship, at any time (40 CFR

80.1441(e)(2)). Under those regulations the Administrator shall act on small refinery petitions not later than 90 days after the date of receipt of the petition. The Administrator is reminded that disproportionate hardship does not require a finding that the refiner or refinery is no longer profitable. Small refinery profitability does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority, in consultation with the Secretary, to reduce or eliminate this burden. Disproportionate impact may occur from several site specific factors which make it more difficult or expensive to meet the required volumes, or from a lack of blending infrastructure available to the refinery.
Where the refiner or refinery shows a disproportionate economic hardship based on site specific factors and where the Secretary of Energy recommends to EPA that a waiver, in partial or full, is warranted, the Committee finds the Administrator has the necessary authority to grant a partial waiver. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 11/8/2016 9:52:11 PM
To: Corey, Richard@ARB [richard.corey@arb.ca.gov]
Subject: Legislative Riders on EPA Budget Bill
Attachments: Effects Statement- senate ECA FY17 11 8 16.docx; Capability Statements- RFS hardship FY17 House + Senate.docx; FY17 House Approps Statement on Trailers (Loudermilk).docx; FY17 Glider Kit - Capability Statement.docx

Richard—
There are a number of legislative riders in play at the moment that would impact California if enacted. As a co-regulator in these areas, I thought you would have an interest in them. The riders impact HD GHG phase 2 implementation, ships off the coast of California, and renewable fuels. My staff have drafted the attached summaries of the draft legislative language, the impacts, and the reason we are opposing them

Let me know if you have any questions

Chris

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Tuesday, November 08, 2016 4:03 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>
Subject: Effects/capability statements currently in play

Chris—here's what is in play on spending riders/report text.

Approps riders/amendments:

- Trailers (House bill)
- Gliders (House bill)

(*NOTE- a Hunter ECA amendment, which we also saw last year, was in play on the House approps bill in the spring but the amendment failed*)

Report language:

- ECA (Senate Report)
- Small refinery (both House & Senate Reports)

I've attached the current statements. The ECA one is updated – Jean-Marie, Mike, Bill, and I worked on this today.

Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/29/2015 7:51:13 PM
To: Personal Email / Ex. 6
Subject: Fwd: RFS reg amendment package
Attachments: RFS Rule Changes Briefing for Chris 3.25.15.pptx; ATT00001.htm

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. EPA
202-564-1682 (DC)
734-214-4207 (Ann Arbor)

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Date: March 27, 2015 at 10:47:29 AM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: RFS reg amendment package

From: Hengst, Benjamin
Sent: Tuesday, March 24, 2015 9:00 PM
To: OTAQ Materials
Subject: Slides for 3pm with Chris tomorrow

Please see attached. Thanks, Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/15/2018 12:23:14 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Today's Biofuels News

See first story for interesting reading

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Governors' Biofuels Coalition" <larry@governorscoalition.org>
Date: June 15, 2018 at 8:00:01 AM EDT
To: <grundler.christopher@epa.gov>
Subject: Today's Biofuels News
Reply-To: larry@governorscoalition.org

Please add the Governors' Biofuels Coalition to your address book for uninterrupted delivery
View this email in a web browser.

GOVERNORS' BIOFUELS COALITION

NEWS UPDATE June 15, 2018

Top Story

With Ethanol Issues at Forefront of Farm Concerns, Administrator Touts WOTUS

By Todd Neeley, Progressive Farmer • • Posted June 15, 2018

"About the small refinery waivers, there is a lot of misinformation in the marketplace," Pruitt said. "No. 1, it is statutory. Only certain companies can apply for that." The RFS statute allows for waivers to refiners who produce 75,000 barrels of oil or less per day. Ethanol interests have suggested the agency has pushed the envelope on the statute. Recent media reports suggest the EPA has been granting waivers to some of the largest oil refining companies in the country. "That is simply not the case," Pruitt said. He said waivers are determined

facility by facility and analyzed jointly with the Department of Energy. It is not being done to affect the renewable volume obligations. [read more …]

EPA chief Scott Pruitt hears ethanol concerns, but visit stays mostly Nebraska Nice

By Roseann Moring, Omaha World-Herald • • Posted June 15, 2018

The Nebraska Farm Bureau and others want to see Pruitt issue a waiver that allows E15 fuel to be sold year-round. President Donald Trump has voiced support for doing so. And they want him to issue fewer waivers allowing refineries to sidestep biofuel blending requirements. Pruitt said that he supports the E15 requirement and wants to bring stakeholders together to find a solution to the refinery issue. But he said he could not move the ethanol issues forward any faster. [read more …]

Policy & Politics

Simmons tapped for renewables office; White House aide jumps

Hannah Northey, E&E News reporter • • Posted June 15, 2018

President Trump yesterday nominated Dan Simmons, a former Capitol Hill staffer and free market evangelist, to serve as assistant secretary for the Energy Department's renewables and efficiency office. If confirmed, Simmons would lead DOE's Office of Energy Efficiency and Renewable Energy, where he is currently serving as principal deputy assistant secretary. Simmons first began leading the office almost a year ago during the transition effort, raising eyebrows among D.C. energy circles in light of his past criticism of wind and federal climate rules as director of state affairs at the Institute for Energy Research under CEO Tom Pyle [read more …]

Exclusive: Global warming set to exceed 1.5°C, slow growth – U.N. draft

By Alister Doyle Environment Correspondent, Reuters • • Posted June 15, 2018

Global warming is on course to exceed the most stringent goal set in the Paris agreement by around 2040, threatening economic growth, according to a draft report that is the U.N.'s starkest warning yet of the risks of climate change. Governments can still cap temperatures below the strict 1.5 degrees Celsius (2.7° Fahrenheit) ceiling agreed in 2015 only with "rapid and far-reaching" transitions in the world economy, according to the U.N.'s Intergovernmental Panel on Climate Change (IPCC). [read more …]

Will ethanol tip the balance?

By Kelsey Tamborrino, Politico • • Posted June 15, 2018

EPA Administrator Scott Pruitt's conservative support is wavering, but it could be his handling of biofuels policy that ends up being his downfall. The scandal-plagued administrator — who most recently came under fire for having one of his aides help his wife in her job search — will continue his trek across red, Trump-

backed states today, with a stop in Nebraska. The administrator's tour this week seems to signal his recognition that he needs to improve his standing with farmers. [read more …]

EPA's Scott Pruitt is making a 'liar' out of Trump, ethanol advocate says

By Steve Jordan, Omaha World-Herald • • Posted June 15, 2018

EPA administrator Scott Pruitt is risking "making a liar out of the president," the head of an ethanol industry group said this week. "It's just chipping away at biofuel demand," said Emily Skor, chief executive of Energy Growth, an ethanol advocacy group based in Washington, D.C. She was in Omaha for the International Fuel Ethanol Workshop & Expo, held at the CenturyLink Center. [read more …]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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Manage Your Subscription

This message was sent to grundler.christopher@epa.gov from larry@governorscoalition.org

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

iContact
TRY IT FOR FREE ›

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/29/2014 12:30:04 PM
To: Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]
Subject: Re: Definition

Thx for clarification

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Bunker, Byron
Sent: Thursday, May 29, 2014 7:50 AM
To: Grundler, Christopher
Subject: RE: Definition

I found it. Like you said, it was in the links that I sent to Ed and Mike.

A small refiner (corporate grouping of refineries) is 155,000 under RFS. Small refiners were exempted from RFS 2 for calendar year 2010. The reg provisions say that they can request an extension, but I don't know if anyone did request one for 2011. I will check.

The small refinery (single refinery that could be held by larger corporation) exemption is limited to refineries that meet 80.1401's definition of a small refinery which is a refinery whose production for calendar year 2006 was less than or equal to 75,000 bpd. These are the entities we are dealing with now and the subject of the DOE study.
.

****
Byron Bunker
Director Compliance Division
Office of Transportation and Air Quality
Environmental Protection Agency
2000 Traverwood Drive
Ann Arbor, MI 48105
Bunker.Byron@epa.gov
Phone: (734) 214-4155
Mobile: (734) 353-9623
****

From: Grundler, Christopher
Sent: Thursday, May 29, 2014 7:36 AM
To: Bunker, Byron
Subject: Re: Definition

I asked home to print it out from links in your email. I'm sure your right

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Bunker, Byron
Sent: Thursday, May 29, 2014 7:31 AM
To: Grundler, Christopher
Subject: RE: Definition

Thanks. Can you forward me the note from Mike? I am guessing the reg language is Tier 3 related and not RFS, but I need to check.

****
Byron Bunker
Director Compliance Division
Office of Transportation and Air Quality
Environmental Protection Agency
2000 Traverwood Drive
Ann Arbor, MI 48105
Bunker.Byron@epa.gov
Phone: (734) 214-4155
Mobile: (734) 353-9623
****

From: Grundler, Christopher
Sent: Thursday, May 29, 2014 7:29 AM
To: Bunker, Byron
Subject: Re: Definition

From reg language that Haley gave me that he said came from you that was sent to Hil

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Bunker, Byron
Sent: Thursday, May 29, 2014 6:18 AM
To: Grundler, Christopher
Subject: Re: Definition

75000 is the RFS small refinery hardship threshold. Where did you see 155000? That may be a Tier 2/ULSD threshold for refiners (a corporate collection of refineries) but it isn't the RFS small refinery level.

Sent from my BlackBerry 10 smartphone.

From: Grundler, Christopher
Sent: Wednesday, May 28, 2014 11:30 PM
To: Bunker, Byron
Subject: Definition

Small =155, 000bbd?

Why did I think it's 75,000?

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/29/2014 3:37:20 AM
To: Haley, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b3d67842d0e435986abaf1b0c25214e-Mhaley]
Subject: Fw: small refinery exemption summary
Attachments: Small Refineries Edits_Clean.docx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Bunker, Byron <bunker.byron@epa.gov>
Sent: Wednesday, May 28, 2014 10:33 PM
To: Grundler, Christopher
Subject: Fw: small refinery exemption summary

Sent from my BlackBerry 10 smartphone.

From: Manners, Mary
Sent: Wednesday, May 28, 2014 9:20 PM
To: Bunker, Byron
Cc: Weihrauch, John
Subject: Fw: small refinery exemption summary

I got this from Venu and am forwarding to you FYI. I'll try to turn this into something useful for Chris. Do you know what time the Simpson brief is?

From: Ghanta, Venu
Sent: Wednesday, May 28, 2014 8:28:03 PM
To: Manners, Mary
Subject: FW: small refinery exemption summary

Please see attached **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/10/2014 1:04:17 AM
To: Curtis, Rhonda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ade7345cde54db08c3f4ed749d506d9-Curtis, Rho]
Subject: Fw: Updated Pathways 2 preamble
Attachments: Draft Pathways II Final Rule Preamble for Work Group 03.07.2014 v2.docx

Pls print and bind in spiral binder

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202-564-1682 (Washington,DC)
734-214-4207 (Ann Arbor, MI)
www.epa.gov/otaq

Original Message
From: Lie, Sharyn <Lie.Sharyn@epa.gov>
Sent: Sunday, March 9, 2014 1:10 PM
To: Grundler, Christopher; Simon, Karl; Monger, Jon
Subject: Updated Pathways 2 preamble

Hi Chris,

As we discussed, attached please find an updated version of the Pathways 2 document. We sent a draft to the workgroup on Friday, and requested comments by March 28th. Please let us know if you have any questions or comments.

Thanks,
Sharyn

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/20/2014 6:09:49 PM
To: Chris Grundler **Personal Email / Ex. 6**
Subject: Fw: Pathways II Package
Attachments: Pathways II Final Rule Fact Sheet SL.docx; Internal Pathways II Desk Statement SL.docx; Pathways II Action Memo Chris to Janet SL.docx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Sent: Sunday, April 20, 2014 1:25 PM
To: Grundler, Christopher
Cc: Lie, Sharyn; Simon, Karl; Ghanta, Venu
Subject: Fw: Pathways II Package

Hi Chris. I have not seen the redline. This is the most recent version though, which should reflect comments made to respond to Janet.

From: Ghanta, Venu <Ghanta.Venu@epa.gov>
Sent: Sunday, April 20, 2014 12:24 PM
To: Hengst, Benjamin
Subject: FW: Pathways II Package

From: Monger, Jon
Sent: Friday, April 18, 2014 6:20 PM
To: Scoville, Pat
Cc: Lie, Sharyn; Ghanta, Venu
Subject: Pathways II Package

Hi Pat:

Attached please find Pathways II materials. We provided an advanced hard copy to Janet on Friday so that she could read it over the weekend, so please hold off on printing until we have heard back from Janet.

Please let me know if you have any questions.

Thanks, Jon

Jon Monger

Transportation and Climate Division

Office of Transportation and Air Quality

U.S. Environmental Protection Agency

monger.jon@epa.gov

(202) 564-0628 office

Driving Innovation in Clean Transportation

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/2/2014 1:34:46 PM
To: Curtis, Rhonda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ade7345cde54db08c3f4ed749d506d9-Curtis, Rho]
Subject: Fw: Questions for the Record (QFRs) from your December 2013 SEPW hearing
Attachments: SEPWHearingQfRsGrundler 3-28-14 BH.docx

Pls print

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq
Original Message
From: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Sent: Sunday, March 30, 2014 8:35 PM
To: Grundler, Christopher
Subject: Questions for the Record (QFRs) from your December 2013 SEPW hearing

Chris -- I've attached QFRs from your December hearing (these typically arrive at EPA weeks, if not months, after the hearing).

Deliberative Process / Ex. 5

Thanks,
Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/31/2014 2:06:11 AM
To: Chris Grundler [kerchris@comcast.net]
Subject: Fw: Questions for the Record (QFRs) from your December 2013 SEPW hearing
Attachments: SEPWHearingQfRsGrundler 3-28-14 BH.docx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

Original Message
From: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Sent: Sunday, March 30, 2014 8:35 PM
To: Grundler, Christopher
Subject: Questions for the Record (QFRs) from your December 2013 SEPW hearing

Chris -- I've attached QFRs from your December hearing (these typically arrive at EPA weeks, if not months, after the hearing).

Deliberative Process / Ex. 5

Thanks,
Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/25/2018 9:03:12 PM
To: Birgfeld, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]
Subject: Fwd: Small Refinery Exemptions: Correcting the Record

FYI

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: grundler.christopher@epa.gov
Date: April 25, 2018 at 5:01:56 PM EDT
To: Wehrum.Bill@epa.gov
Cc: Mandy Gunasekara <Gunasekara.Mandy@epa.gov>, harlow.david@epa.gov, Benjamin Hengst <Hengst.Benjamin@epa.gov>, Byron Bunker <Bunker.Byron@epa.gov>, Orlin.David@epa.gov
Subject: Small Refinery Exemptions: Correcting the Record

Bill,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Christopher Grundler, Director

Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/24/2018 5:54:01 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: RE: RE:

Checked. It's 40

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Apr 24, 2018, at 1:43 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

> I think it's 39 or 40
>
> ---
>
> **From:** Grundler, Christopher
> **Sent:** Tuesday, April 24, 2018 1:43 PM
> **To:** Hengst, Benjamin <Hengst.Benjamin@epa.gov>
> **Subject:** Re: RE:
>
> How many smalls these days? It used to be 59
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> 734.645.5221 (mobile)
> www.epa.gov/otaq
>
> On Apr 24, 2018, at 1:41 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:
>
>> Hey Mandy:
>>
>> Small refineries represent ~10% of total US gasoline and diesel production. Thus far for 2017 (25 exemptions), we've exempted ~6% of total US gasoline and diesel production.
>>
>> Ben
>>
>> -----Original Message-----
>> From: Gunasekara, Mandy
>> Sent: Tuesday, April 24, 2018 12:12 PM
>> To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>

Subject:

What percent of total US refining capacity do small refineries represent? Of that, how much have we granted small refinery hardship exemptions (in terms of total refining capacity)?

Sent from my iPhone

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/14/2013 6:38:54 PM
To: Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: FW: More on CBI claim as to 2013 RFS small refinery relief

---

From: Grundler, Christopher
Sent: Monday, August 12, 2013 6:40 PM
To: McCabe, Janet
Subject: Re: More on CBI claim as to 2013 RFS small refinery relief

Deliberative Process / Ex. 5

From: McCabe, Janet
Sent: Monday, August 12, 2013 6:27:34 PM
To: Grundler, Christopher
Subject: RE: More on CBI claim as to 2013 RFS small refinery relief

Deliberative Process / Ex. 5

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

From: Grundler, Christopher
Sent: Monday, August 12, 2013 3:07 PM
To: McCabe, Janet
Subject: More on CBI claim as to 2013 RFS small refinery relief

Fyi

From: Hannon, John
Sent: Monday, August 12, 2013 2:33:44 PM
To: Dubois, Roland
Cc: Grundler, Christopher; Bunker, Byron; Simon, Karl; Argyropoulos, Paul; Schmidt, Lorie; McKenna, Chris; Korotney, David; Nguyen, Quoc; Margolis, Alan; Miller, Kevin
Subject: RE: CBI claim as to 2013 RFS small refinery relief

Attorney Client - Deliberative Process / Ex. 5

Attorney Client - Deliberative Process / Ex. 5

John Hannon
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW (MC 2344A)
Washington, D.C. 20460
Phone (202) 564-5563
Fax (202) 564-5603

From: Dubois, Roland
Sent: Monday, August 12, 2013 1:34 PM
To: Garbow, Avi; McCabe, Janet
Cc: Grundler, Christopher; Bunker, Byron; Simon, Karl; Argyropoulos, Paul; Mallory, Brenda; Schmidt, Lorie; Hannon, John; McKenna, Chris; Korotney, David; Nguyen, Quoc; Margolis, Alan; Miller, Kevin
Subject: CBI claim as to 2013 RFS small refinery relief

Attorney Client - Deliberative Process / Ex. 5

Roland Dubois

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/13/2013 9:18:08 PM
To: Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]
CC: Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: FW: API/AFPM Petition to Waive 2014 RFS Mandates
Attachments: RFS Waiver Petition.pdf

Importance: High

From: Robert Greco [mailto:Greco@api.org]
Sent: Tuesday, August 13, 2013 4:51 PM
To: Mccarthy, Gina
Cc: Group A-AND-R-DOCKET; Garbow, Avi; Grundler, Christopher; PAUL ARGYROPOULOS (pkargyropoulos@verizon.net); Erik Baptist; (rmoskowitz@afpm.org)
Subject: API/AFPM Petition to Waive 2014 RFS Mandates
Importance: High

Dear Administrator McCarthy,

Attached please find a petition submitted by API and AFPM to waive in part the 2014 RFS mandates. We appreciate your prompt attention to this important matter.

Best regards,

Bob Greco
Group Director
API Downstream & Industry Operations
(202) 682-8167
greco@api.org

www.api.org

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/20/2018 1:42:56 PM
To: Birgfeld, Erin (Birgfeld.Erin@epa.gov) (Birgfeld.Erin@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: FW: Today's Biofuels News

Erin:

1. You should get on this listserve
2. See LA Times story below and add to OTAQ Daily

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Governors' Biofuels Coalition [mailto:larry@governorscoalition.org]
Sent: Friday, April 20, 2018 8:00 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Today's Biofuels News

Please add the Governors' Biofuels Coalition to your address book for uninterrupted delivery
View this email in a web browser.

GOVERNORS' BIOFUELS COALITION

NEWS UPDATE April 20, 2018

Top Stories

More than 95% of world's population breathing unhealthy air

By James Masters, CNN • • Posted April 20, 2018

More than 95% of the world's population is breathing unhealthy air and the poorest nations are the hardest hit, a new report has found. According to the annual State of Global Air Report, published Tuesday by the Health Effects Institute (HEI), long-term exposure to air pollution contributed to an estimated 6.1 million deaths across the globe in 2016. [read more ...]

King Tells Iowa RFA: "I Want Ethanol Sold To, Through, and Beyond the E15 Blend."

By AJ Taylor, KIOW • • Posted April 20, 2018

Congressman Steve King, a member of the House Agriculture Committee, released the following statement after meeting today with members of the Iowa Renewable Fuels Association. During their meeting, Congressman King re-affirmed his strong support for biofuels, telling participants that he wants to see ethanol sold in blends that go "to, through, and beyond" the E15 mix. [read more ...]

Policy & Politics

Air pollution can be bad for the brain — these are the cleanest and the smoggiest places in America

By Sarah Berger, CNBC • • Posted April 20, 2018

Ozone pollution, or smog (created by emissions from industrial facilities and electric utilities, vehicle exhaust, gasoline vapors and chemical solvents, according to the Environmental Protection Agency) is worse than in 2017, according to the report, released Wednesday. It also found nearly 128.9 million people live in 185 counties that earned an "F" grade for ozone. [read more ...]

China cuts smog but health damage already done: study

By David Stanway, Reuters • • Posted April 20, 2018

While China has made progress cutting smog, the damage to the health of millions of people may already have been done, especially as the population ages, the head of a U.S.-based research agency said. China faces about 1.6 million premature deaths a year as a result of air pollution, the U.S.-based Health Effects Institute (HEI) said in a report, based on data going back to 1990, published on Tuesday [read more ...]

EPA regs spurred public health gains in Atlanta — study

Sean Reilly, E&E News reporter • • Posted April 20, 2018

For the sprawling Atlanta metro area, tighter regulations on power plants and vehicles yielded a long-term payoff in both dramatically improved air quality and fewer emergency room visits, according to a study released today by the Health Effects Institute. The study, carried out by researchers at the Georgia Institute of Technology and Emory University, examined the impact of a suite of EPA initiatives driven mainly by the 1990 Clean Air Act Amendments and primarily aimed at cutting emissions of sulfur dioxide and nitrogen oxides (NOx). [read more ...]

Pruitt on GHG drop: Trump's 'critics are wrong again'

Niina Heikkinen, E&E News reporter • • Posted April 20, 2018

while EPA touted the 11 percent decrease in carbon emissions between 2005 and 2016, the press release did not mention that carbon emissions actually increased by about 2.4 percent from baseline levels set during EPA's first inventory in 1990. The report shows that the transportation sector accounted for 28.7 percent of total greenhouse gas emissions in 2016, followed closely by the electric power sector at 28.6 percent and industry at 21.7 percent. Just as the power sector has

reduced emissions, industry emissions have also declined at least in part due to a shift away from manufacturing to more service-oriented jobs, according to the inventory. [read more ...]

Perdue's Strong First Year at USDA May Be Clouded By Ethanol Doubts

By Chuck Abbott, Agriculture.com • • Posted April 20, 2018

Sonny Perdue was a stranger to the Farm Belt when President Trump selected him as agriculture secretary – a former two-term governor from Georgia and only the second Southerner to lead USDA, a post that often goes to someone from the Midwest. Perdue minted his reputation as agriculture's ambassador during his first week on the job by helping to persuade Trump to renegotiate NAFTA rather than abandon it. [read more ...]

Trump's EPA argues more people will die in car accidents unless California fuel rules are weakened

By Evan Halper, Los Angeles Times • • Posted April 20, 2018

The Trump administration is embracing a curious — and some would say dated — argument as it builds its case to weaken federal rules championed by California that require cars and SUVs to average 55 miles per gallon by 2025. It is warning that the fuel-efficiency targets, seen by most as key to meeting climate and air quality goals in California and nationwide, could actually end up killing people. Trump's Environmental Protection Agency chief Scott Pruitt is tossing aside reams of federal and California data showing the fuel economy standards are perfectly safe. Instead, Pruitt's directive this month to potentially scale back the fuel standard says "an important factor" is the need to reexamine safety issues. [read more ...]

China Loosens Foreign Auto Rules, in Potential Peace Offering to Trump

By KEITH BRADSHER, New York Times • • Posted April 20, 2018

Beijing and Washington have threatened each other with tariffs for weeks, raising the prospect of a trade war. But on Tuesday, China took a step to lower tensions, offering to make it easier for foreign automakers and aerospace manufacturers to own factories in the country. The Chinese authorities said that in the next five years they would ease rules that have long required carmakers like General Motors, Toyota and Volkswagen to link up with a local partner before building a factory in China. For manufacturers of electric cars, as well as for companies that make jetliners, helicopters and drones, Beijing plans to move even faster, eliminating foreign ownership limits this year. [read more ...]

Trump's new energy guy is a 28-year-old known as 'the kid'

Zack Colman and Hannah Northey, E&E News reporters • • Posted April 20, 2018

Francis Brooke frequently wears purple — the Northwestern University alumnus and former Wildcats baseball pitcher is known to sport the school's plum shade whenever possible. When his name surfaced as President Trump's new energy aide, some people thought of a different color: green, as in inexperienced. That's the label 28-year-olds get when they step into a prominent White House role. [read more ...]

Anti-ethanol pundits show how Iowa uses less of its own product

By John Siciliano and Josh Siege, Washington Examiner • • Posted April 20, 2018

A study showing that U.S. ethanol leader Iowa doesn't use a lot of its own corn-based fuel is exciting some in the anti-ethanol crowd in Washington. "Iowa — the number one ethanol producer and corn grower in the United States — reaps arguably the greatest benefits from the Renewable Fuel Standard program, but on average, there is less ethanol in the motor fuels that Iowans buy [at their local retailers] than what consumers buy in the rest of the country as a whole," a summary of the new study reads. [read more ...]

Undermining Trump

By John Siciliano and Josh Siege, Washington Examiner • • Posted April 20, 2018

"Discontinuing the issuance of small refinery hardship waivers would be a violation of the Renewable Fuel Standard," EPA spokeswoman Liz Bowman said in a statement to John on Wednesday. "EPA doesn't have the authority to pick and choose which provisions of the RFS to follow," she said. [read more ...]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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Manage Your Subscription

This message was sent to grundler.christopher@epa.gov from larry@governorscoalition.org

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/1/2018 9:44:53 PM
To: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: RE: small refiner exemptions law suit

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Orlin, David
Sent: Tuesday, May 01, 2018 5:35 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: small refiner exemptions law suit

Deliberative Process; ACP / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Grundler, Christopher
Sent: Tuesday, May 01, 2018 5:05 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Charmley, William <charmley.william@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Fwd: small refiner exemptions law suit

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

> **From:** <Michael.McAdams@hklaw.com>
> **Date:** May 1, 2018 at 12:43:17 PM EDT
> **To:** <Wehrum.william@epa.gov>

Cc: <Lewis.josh@epa.gov>, <Loving.shanita@epa.gov>, <grundler.christopher@epa.gov>
Subject: small refiner exemptions law suit

Dear Assistant Administrator Wehrum:

I write today on behalf of the Advanced Biofuels Association (ABFA) to briefly address two issues.

First, thank you for your recent letter concerning the U.S. Environmental Protection Agency's (EPA) review bureaucratic hurdles preventing the use of biointermediates to produce renewable fuel compliant with the Renewable Fuel Standard (RFS). At this point, we have been working with EPA on this issue for more than five years and are eager to see resolution as quickly as possible. We believe further enabling the use of biointermediates will lead to additional U.S. production of cellulosic gallons while allowing more refiners to produce their own Renewable Identification Numbers (RINs) for compliance with the RFS.

Second, as you may know, ABFA represents over 35 member companies in America and around the world who develop, produce, and distribute advanced biofuels. Our members collectively produce over 4 billion gallons of biofuels annually including a variety of drop-in fuels such as isobutanol, DME, renewable jet fuel, and renewable diesel, as well as cellulosic heating oil, cellulosic ethanol, and biodiesel. We also represent several large U.S. diesel and heating oil marketers who are among the U.S.'s largest generators of D4 RINs.

Recent RFS compliance exemptions granted to small refineries have had a significant negative impact on ABFA's members and the RIN market in general. As such, ABFA has voted to file a lawsuit challenging EPA's authority to lower the threshold criteria for granting these exemptions insofar as it appears that EPA has suddenly granted significantly more exemptions than in the past. These recent exemptions lack transparency in terms of who, how, why, and when they were granted.

Since its inception, ABFA has always enjoyed a positive and constructive relationship with EPA. At this point, however, ABFA is left with few options to better understand to whom and on what grounds EPA granted these exemptions, potentially for the first time under the RFS program. As such, we would thank you for your understanding in this matter and look forward to continuing to work with you.

Michael McAdams | Holland & Knight
President, ABFA
Sr Policy Advisor
Holland & Knight LLP
800 17th Street N.W., Suite 1100 | Washington, DC 20006
Phone 202.469.5140 | Fax 202.955.5564
michael.mcadams@hklaw.com | www.hklaw.com

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/11/2018 1:05:55 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: draft note to Wehrum on RFS--SREs

Thx. I will send

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On May 11, 2018, at 8:58 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Chris:

Deliberative Process / Ex. 5

Thanks,
Ben

Bill,

Deliberative Process / Ex. 5

Thanks – Chris

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/21/2018 6:55:31 PM
To: Birgfeld, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]
Subject: Re: OTAQ: SP Global Platts - RFS Waivers - ASAP

Ok

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On May 21, 2018, at 2:51 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

Yup. Just confirmed that Robert sent the response as written to the reporter about 20 minutes ago.

Deliberative Process / Ex. 5

From: Grundler, Christopher
Sent: Monday, May 21, 2018 2:46 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: Re: OTAQ: SP Global Platts - RFS Waivers - ASAP

Pls double check that OPA sent an updated response and let me know

---
Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On May 21, 2018, at 2:43 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

Hi Chris,

We sent out a press response re: RFS small refinery waivers that shows we have approved 3 more waivers since the last time we made a public statement. Just want you to be prepared if reporters ask tomorrow. Let us know if you need more info.

Thanks,
Erin

Incoming from Platts (from last week) : Are there any updates to the small refinery waivers for 2017? Last I had was 25 approved out of 30 petitions received.

OTAQ Response (sent today): EPA has received 33 requests for small refinery waivers for the year 2017. EPA has granted 28 and 5 are pending.

From: Birgfeld, Erin
Sent: Monday, May 21, 2018 2:30 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: FW: OTAQ: SP Global Platts - RFS Waivers - ASAP

FYI – this response went to the reporter already. Should I send a note to Chris G. so he is prepared for any questions he might get tomorrow?

From: Birgfeld, Erin
Sent: Monday, May 21, 2018 1:38 PM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: RE: OTAQ: SP Global Platts - RFS Waivers - ASAP

We are not developing a Q and A. The questions will be best answered by the politicals I think.

From: Daguillard, Robert
Sent: Monday, May 21, 2018 1:16 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: Re: OTAQ: SP Global Platts - RFS Waivers - ASAP

Thank you, Erin. Are you developing a Q&A? Not a suggestion, I'm just curious.

Robert Daguillard
U.S. EPA
Office of Media Relations
Washington D.C.
202-360-0476 (M)
202-564-6618 (O)

On May 21, 2018, at 1:12 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

Hi John and Robert,

Below is our suggested response to the Platts request on RFS small refinery waivers from last week. Apologies for the delay. This response is likely to generate press interest. Ben has alerted Bill W.

-Erin

Incoming: Are there any updates to the small refinery waivers for 2017? Last I had was 25 approved out of 30 petitions received.

OTAQ Response: EPA has received 33 requests for small refinery waivers for the year 2017. EPA has granted 28 and 5 are pending.

From: Daguillard, Robert
Sent: Tuesday, May 15, 2018 11:19 AM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: OTAQ: SP Global Platts - RFS Waivers - ASAP

SP GLOBAL PLATTS
MEGHAN GORDON
ASAP

Hullo again team. Meghan's weekly inquiry:

Are there any updates to the small refinery waivers for 2017?

Last I had was 25 approved out of 30 petitions received.

Thanks in advance.

Cheers, R.

Robert Daguillard
Office of Media Relations
U.S. Environmental Protection Agency
Washington, DC
+1 (202) 564-6618 (O)
+1 (202) 360-0476 (M)

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/3/2018 9:39:20 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Reuters article on small refinery hardship

"In a typical year, the EPA would receive about 12 to 15 requests for hardship exemptions and would grant about half of them, **a former official** familiar with the program told Reuters."

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Tuesday, April 03, 2018 5:29 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Fwd: Reuters article on small refinery hardship

Begin forwarded message:

> **From:** "Sutton, Tia" <sutton.tia@epa.gov>
> **Date:** April 3, 2018 at 1:14:56 PM EDT
> **To:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>, "Mylan, Christopher" <Mylan.Christopher@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>
> **Subject: Reuters article on small refinery hardship**
>
> FYI...
>
> ---
>
> **From:** Boylan, Thomas
> **Sent:** Tuesday, April 03, 2018 12:53 PM
> **To:** Cohen, Janet <cohen.janet@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; McKenna, Chris <McKenna.Chris@epa.gov>; Michaels, Lauren <Michaels.Lauren@epa.gov>; Nelson, Karen <nelson.karen@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Piotrowski, Greg <piotrowski.greg@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Tom White <Thomas.White@hq.doe.gov>; Weihrauch, John <Weihrauch.John@epa.gov>
> **Subject:** RE: agenda for tomorrow
>
> FYI from the front page of Reuters website: https://www.reuters.com/article/us-usa-biofuels-epa-refineries-exclusive/exclusive-epa-gives-giant-refiner-a-hardship-waiver-from-regulation-idUSKCN1HA21P

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 4/5/2018 12:03:41 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Today's Biofuels News

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Governors' Biofuels Coalition" <larry@governorscoalition.org>
Date: April 5, 2018 at 7:59:33 AM EDT
To: <grundler.christopher@epa.gov>
Subject: Today's Biofuels News
Reply-To: larry@governorscoalition.org

Please add the Governors' Biofuels Coalition to your address book for uninterrupted delivery
View this email in a web browser.

GOVERNORS'BIOFUELS COALITION

NEWS UPDATE April 5, 2018

Top Stories

Philadelphia Energy Solutions gets court nod over RINs burden relief

By Arjun Panchadar and Jarrett Renshaw, Reuters • • Posted April 5, 2018

A federal bankruptcy judge approved a settlement on Wednesday between Philadelphia Energy Solutions and the U.S. Environmental Protection Agency allowing the refiner to shed a significant portion of financial obligation under the nation's biofuel laws. The approval marks the end of a break-neck-pace bankruptcy that began in late January, when the Carlyle Group-backed company sought Chapter 11 relief and blamed the costs of complying with the U.S. Renewable Fuel Standard for its financial woes. [read more …]

U.S. ethanol groups bristle as EPA frees refiners from biofuels law

By Jarrett Renshaw and Chris Prentice, Reuters • • Posted April 5, 2018

The U.S. Environmental Protection Agency has approved the request of 25 small refineries to be exempted from the nation's biofuels laws, an agency source said on Wednesday, marking a big increase from previous years and triggering an outcry from farm groups worried the move will hurt ethanol demand. The expansion of the waiver program represents the Trump administration's latest clash with the powerful corn lobby, as it seeks to help merchant refiners that claim the U.S. Renewable Fuel Standard costs them hundreds of millions of dollars a year. [read more …]

Policy & Politics

EPA Waiving Biofuel Quotas Spurs Rebuke From Ethanol Supporters

By Jennifer A Duoli, Mario Parker and Laura Blewitt, Bloomberg • • Posted April 5, 2018

The Environmental Protection Agency has given more than two dozen small refiners permission to ignore the nation's renewable fuel mandate, angering competitors as well as farm-state lawmakers who say the exceptions undermine the program. Roughly 30 refineries are seeking waivers from the Renewable Fuel Standard for the 2017 compliance year, and so far at least 25 have won them, according to two people familiar with the process. [read more …]

NFU says EPA RFS waiver undermines biofuels

By Nebraska Farmers Union • • Posted April 5, 2018

The National Farmers Union says a waiver exempting an oil refiner from having to comply with the Renewable Fuel Standard undermines the biofuel industry, farm prices and rural economies. NFU President Roger Johnson called the alleged actions "deeply disturbing," noting that waiving RFS requirements for large refining corporations undercut the effectiveness of the law. Johnson says hardship waivers "weren't designed for large corporations who net billions in profit each year." [read more …]

EPA draws fire for waiving refiner's RFS mandate

Marc Heller, E&E News reporter • • Posted April 5, 2018

U.S. EPA could land in court over its decision to waive the federal biofuel mandate for one of the nation's biggest refiners, an ethanol trade group said. The American Coalition for Ethanol said EPA's waiver for three refineries owned by Andeavor runs afoul of the renewable fuel standard, which allows such waivers for small refiners that show the fuel-blending mandate would cause financial hardship. [read more …]

Sen. Grassley Presses EPA on Refiner Exemption

By Todd Neeley, DTN/Progessive Farmer • • Posted April 5, 2018

U.S. Sen. Charles Grassley, R-Iowa, is pressing U.S. Environmental Protection Agency Administrator Scott Pruitt for answers as to why the agency granted a Renewable Fuel Standard waiver to a large refiner. Reuters reported Tuesday that Andeavor, one of the country's largest refiners, received an RFS obligation exemption for three of its smaller refineries. The RFS exemption was meant to apply to small refineries producing less than 75,000 barrels a day that demonstrate economic hardship. Andeavor posted $1.5 billion in profits last year, Reuters reported. Reuters reported that two sources informed the news agency of the waiver. [read more …]

China Hits Back at Trump Administration With Ethanol Tariffs, Farmers React

By Ben Oldach, WHO TV • • Posted April 5, 2018

Corn farmer Mark Kenney says it's at times like these when he feels like a cog in the machine. "Anytime that agriculture is used as leverage in a global, I guess, trade war, if we want to use that term, it's concerning," said Kenney. [read more …]

China tariffs on soy, sorghum spread fear in U.S. farm country

By Tom Polansek and P.J. Huffstutter, Reuters • • Posted April 5, 2018

China aimed a direct strike at America's heartland on Wednesday, moving to slap an aggressive 25 percent retaliatory tariff against U.S. soybeans, farm country's most valuable export to China last year, worth $12 billion. Over the past decade, fast-rising demand from China has fueled a sharp rise in production of U.S. soybeans, which are set to overtake corn as the country's most widely planted crop for the first time in 35 years. U.S. government data shows China now purchases 62 percent of soy exports. [read more …]

White House reviewing Pruitt's rental — Sanders

Hannah Northey, E&E News reporter • • Posted April 5, 2018

The White House is reviewing U.S. EPA Administrator Scott Pruitt's rental of a condominium tied to an energy lobbyist whose firm's clients have business before the agency, spokeswoman Sarah Huckabee Sanders said today. Asked whether President Trump is comfortable with Pruitt's rental arrangement, Sanders said the president is not and that the White House has begun a review. [read more …]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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This message was sent to grundler.christopher@epa.gov from larry@governorscoalition.org

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/12/2014 9:03:11 PM
To: Shaffer, Patricia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=47ce854437af49dab8ab700a46837fd5-PShaffer]
Subject: Pls Print Fw: Compiled 2014 standards rule for Chris' review
Attachments: Track Changes 6-5 versus 6-12.docx

Pat- pls print and put in small 3 ring binder for me before you leave

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Korotney, David <korotney.david@epa.gov>
Sent: Thursday, June 12, 2014 3:06 PM
To: Grundler, Christopher
Cc: Hengst, Benjamin; Argyropoulos, Paul; Simon, Karl; Audette, Lucie; Burkholder, Dallas; Ketcham-Colwill, Nancy
Subject: Compiled 2014 standards rule for Chris' review

Chris,

Attached is a draft of the 2014 standards rule with track changes Deliberative Process / Ex. 5
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 Let me know if you have any comments/edits.

Note I did not do all the formatting cleanup in this version that I would normally do for a submission to OMB.

David

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/30/2014 4:30:05 PM
To: Curtis, Rhonda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ade7345cde54db08c3f4ed749d506d9-Curtis, Rho]
Subject: Fw: RFS documents-pls print in color the large document
Attachments: 2014 RVOs, Track Changes 5-23 versus 5-29.docx; 2013 compliance extension date final rule 5-30-2014 4pm.docx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
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734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Sent: Thursday, May 29, 2014 9:47 PM
To: Grundler, Christopher
Cc: Argyropoulos, Paul; Ghanta, Venu
Subject: RFS documents

Chris -- attached are the two documents that went down to Janet's office.

The first is the latest redline of the RFS 2014 standards, reflecting Gina's comments.

The second is the current draft of the compliance date extension.

On the compliance date extension: we have a desk statement ready, which I'll make sure you get. I've also been in touch with OCIR, and Venu has been in touch with Chad at OMB. And as I mentioned earlier, Venu, Paul and team have been keeping OP in the loop.

I'll send you a status update tomorrow as things unfold.

Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/4/2018 1:25:37 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Meeting this Friday at 4pm

I do think a pre-brief is in order. Deliberative Process / Ex. 5

From: Hengst, Benjamin
Sent: Monday, June 04, 2018 9:20 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: FW: Meeting this Friday at 4pm

FYI

From: Hengst, Benjamin
Sent: Monday, June 4, 2018 9:03 AM
To: Stahle, Susan <Stahle.Susan@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Janet Cohen (cohen.janet@epa.gov) <cohen.janet@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Dallas Burkholder (burkholder.dallas@epa.gov) <burkholder.dallas@epa.gov>
Subject: Meeting this Friday at 4pm

Great timing for a meeting, right?

This Friday at 4, LeAnn is bringing her group in for a meeting with AA Wehrum. I shared this meeting request a few weeks ago as an FYI; Bill Wehrum decided to take the meeting. The topics, per LeAnn's email, are:

Re: small refinery hardship relief under the Renewable Fuel Standard, specifically, Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'm going to add a few people to the invite, including Sue S, Byron, Janet, Paul M, and Dallas. I have other requests:

1. Please let me know if others should be invited, though we probably don't need to make it much bigger.
2. Please let me know if folks believe a pre-brief is needed. We can also set aside time in our weekly with Bill/Mandy to do a mini-prebrief then, if that makes more sense.

Thanks,
Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/23/2018 5:03:14 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Samulski, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ecf1af23a134d2995fd354d03632d6c-Samulski, Michael]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Revelt, Jean-Marie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9a49fd1df8e4ea59fad579c16cc1fe0-Revelt, Jean-Marie]
Subject: RE: OTAQ Daily News Brief - article on the IMO 0.5% global 2020 sulfur standard

Bill—I think a letter to the editor pointing out the scale of public health benefits would be in order

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Charmley, William
Sent: Friday, March 23, 2018 12:34 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Samulski, Michael <samulski.michael@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Revelt, Jean-Marie <revelt.jean-marie@epa.gov>
Subject: RE: OTAQ Daily News Brief - article on the IMO 0.5% global 2020 sulfur standard

Chris

We did see this article earlier in the week, attached is a copy.

I don't know if there are any specific issues we would want to raise for corrections, nothing jumped out at me. Paul M. had Lester follow up with us, because the issue of the 2020 transition and whether or not the world-wide refining industry is ready is apparently a very active issue within the refining industry. Lester was at an AFPM conference last week, where several presenters were clear that much of the global refining industry is not ready (not the U.S., which is probably the best positioned region). Lester believes, based on what he heard, that there will be transition challenges in 2020.

I think what is really missing from this WSJ article is the say very little regarding the scale of the public health impact of global shipping and the use of bunker fuel with very high sulfur levels. Here is what the article says;

Ships contribute about 13% of total sulfur-dioxide emissions, according to the IMO, by burning heavy fuel with a 3.5% sulfur content. That is more than 2,000 times the level allowed for cars on U.S. highways. The pollution from burning high-sulfur fuel causes respiratory ailments and can aggravate heart disease, according to the World Health Organization.

That's it. "causes respiratory ailments and can aggravate heart disease, .. "

A recent (2018) article published in the peer-reviewed journal "Nature Communications" estimates that the **2020 world-wide sulfur cap will reduce ANNUAL pre-mature deaths by 266,300**. 97% of those benefits will occur in Asia, Africa, Latin American, and the Caribbean.

I have attached this article as well, and below are a few of the key elements on the impacts of high sulfur marine fuel and global shipping.

ARTICLE NATURE COMMUNICATIONS | DOI: 10.1038/s41467-017-02774-9

Chemical links between sulphate and nitrate species resulted in some ammonia becoming available for forming ammonium nitrate, partly offsetting the sulphate aerosol reductions. However, this effect is small and the offset only exceeds 1% around the east coast of China, with a maximum of 15% over the Yellow Sea.

Health impacts of global shipping. We apply concentration–response (C–R) functions to 2020 population projections to estimate health impacts due to ship emissions in the BAU case and the 2020 Action case (see Methods section). We calculate adult mortality from lung cancer and cardiovascular disease and childhood asthma morbidity, and report results using a linear C–R function as discussed in Lepeule et al.[31], and Zheng et al.[31, 32]. The vast majority of $PM_{2.5}$ exposure concentrations in our study area represent conditions similar to those in the Six Cities Study, indicating that functions derived from that study can also apply to our study.

Total premature mortality due to shipping in the 2020 BAU case is 403,300 per year (range of 212,300–595,400 based on the 95% confidence interval for relative risk); BAU mortality distribution is shown in Fig. 3. Total avoided premature mortality in 2020 with implementation of the low-sulphur fuel standards is expected to be 266,300 per year (range of 138,500–395,700), a reduction of ~34%); avoided mortality distribution is shown in Fig. 4. Childhood asthma morbidity due to shipping declines by 54%, from 14 million children affected in the BAU case, to 6.4 million children in the 2020 Action case (see Supplementary Note 1, Supplementary Figure 2. Detailed results are in Table 2, and Supplementary Table 1 and Supplementary Table 2 report regional results.

More than 97% of the adult mortality benefits from ship emissions reductions will be in Asia (80%), Africa (12%), and Latin America and the Caribbean (5%). More than 98% of the childhood morbidity benefits from ship emissions reductions also occur in Asia (54%), Africa (33%), and Latin America and the Caribbean (12%). The different distributions are primarily due to the different distributions of adult and youth populations among nations. Europe, North America, and Oceania combined will receive <3% and <2% of the mortality and morbidity benefits of the global sulphur standard, respectively. This is primarily due to

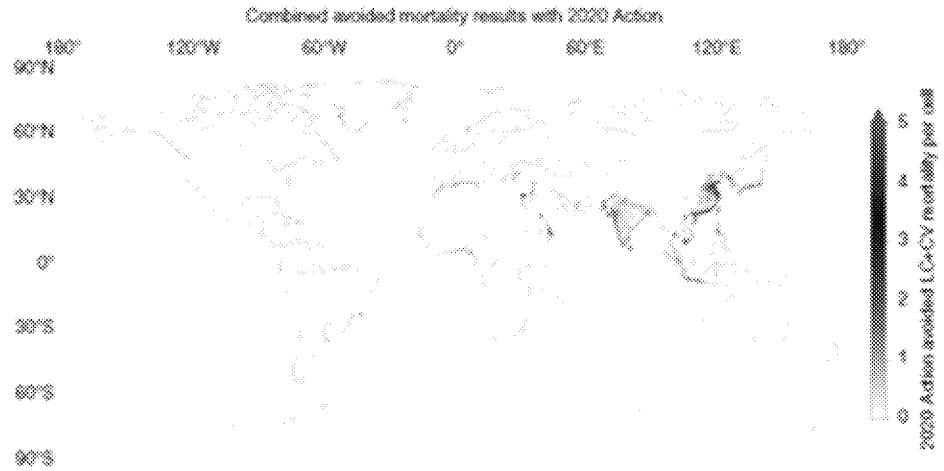

Fig. 4 Avoided mortality due to fuel sulphur standards. Map of avoided mortality (cardiovascular disease and lung cancer) from reduced ship $PM_{2.5}$ emissions due to implementation of the International Maritime Organization's low-sulphur fuel standards in 2020. Annual avoided mortality minimum and maximum are 0 and 800, respectively

---

From: Grundler, Christopher
Sent: Friday, March 23, 2018 11:53 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Samulski, Michael <samulski.michael@epa.gov>; Charmley, William <charmley.william@epa.gov>
Subject: RE: OTAQ Daily News Brief

Mike/Bill—pls advise if anything needs to correcting, and if so, if its worth it

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Friday, March 23, 2018 11:30 AM
To: Samulski, Michael <samulski.michael@epa.gov>; Charmley, William <charmley.william@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: FW: OTAQ Daily News Brief

Just wanted to draw your attention to this 1st article. I don't have access online to the WSJ but have a copy of the print version if you want me to scan you something. Pretty large coverage of a technical issues of ours. Goes into the technology, mentions folks like Wartsila, etc.

From: Mylan, Christopher
Sent: Tuesday, March 20, 2018 11:54 AM
To: Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: OTAQ Daily News Brief

Good Morning,

Welcome to OTAQ's daily news listserv. The OTAQ Daily News Brief compiles articles from around the world focused on our office's work; this includes everything from light-duty/heavy-duty vehicles, electric vehicles, air quality studies, aircrafts, boats and ships, to alternative fuels, and of course, climate change. If you'd like to be removed or would like to add another person to the listserv please contact Christopher Mylan at mylan.christopher@epa.gov. Feedback is welcomed. Thanks and enjoy!

Ship Owners' Multibillion-Dollar Quandary: Buy Cleaner Fuel or a Fuel Cleaner?

New sulfur caps taking effect in 2020 will cost industry an estimated $40 billion

Wall Street Journal

The owners of 60,000 cargo ships are bracing for tighter emissions rules that are forcing them to make a multibillion-dollar choice: Start buying cleaner-burning fuel or invest in a device that treats the ship's exhaust before letting it out.

It isn't an easy call. Retrofitting a vessel with a sulfur-trapping exhaust system called a "scrubber" costs as much as $10 million a ship, while cleaner fuels are about 55% more expensive than the ones shipping operators use now. Whether it makes sense to install scrubbers and absorb a bigger financial hit upfront depends on whether scrubbers will be adequate to meet even stricter pollution caps expected in the future and the availability and cost of cleaner fuels. Both factors are difficult to gauge.

Scrubbers involve "a complicated and expensive installation of $5 to $10 million per ship and the benefit to the environment is still not clear," said Soren Toft, chief operating officer at Maersk Line, the world's biggest container operator. "It's like installing small refineries in approximately 60,000 vessels and it's not a very sensible way of doing things,"

The deliberations stem from new caps on sulfur emissions, by global regulator International Maritime Organization, that will go into effect in January 2020.

Trump administration preparing list of possible biofuels tweaks: sources

Jarrett Renshaw, Reuters

NEW YORK - The heads of the U.S. Environmental Protection Agency and Agriculture Department are scheduled to meet on Tuesday to winnow down proposals to lower the cost of the nation's biofuels policy to oil refiners, according to two sources familiar with the matter.

The meeting in Washington marks the latest development in the Trump administration's efforts to find common ground between the rival oil and corn industries over the future of the Renewable Fuel Standard, a law requiring refiners to blend biofuels like ethanol into the nation's gasoline and diesel.

The program has created a vast new market for Midwest corn farmers, but refiners have complained the regulation costs them hundreds of millions of dollars a year - creating a rift between two of Trump's key electoral constituencies.

Electric Vehicles Are the Future, but Their Batteries Are Stuck in the Past

Kevin Spencer/Emily Cho, Futurism

Electric vehicles, many believe, will save the planet, and the humans that live on it. But that only if making them doesn't decimate it (and us) first. How's a car owner to choose?

Most traditional cars run on lead-acid batteries. Lead-acid batteries are fairly cheap, perform well in cold temperatures, and don't put drivers at risk if they're not charged properly.

But there's something sinister at play. One of the reasons lead-acid batteries are so much cheaper is because they're recyclable. But that process comes with its own host of problems. It's often workers in developing countries doing the recycling, using highly unsafe methods, as a recent investigation into a spate of debilitating — and even fatal — lead poisonings in Kenya showed. Wealthier nations like the U.S. have laws that require more careful (and, therefore, more expensive) processing for these batteries. So instead they export them to places with fewer regulations, causing workers to suffer.

AUTONOMOUS CARS - Crash could 'change the calculus' on bill — Blumenthal

Nick Sobczyk, E&E News reporter

Opponents of the autonomous car bill winding through the Senate said yesterday's self-driving car fatality in Arizona highlights potential dangers of the technology.

"It should definitely change the calculus — I think it will — because I think the risk and the danger are undeniable," Sen. Richard Blumenthal (D-Conn.) told reporters yesterday.

Blumenthal is one of five Democrats preventing S. 1885, the "AV START Act," from being fast-tracked through the Senate.

The quintet is pushing for additional safety provisions in the bill, which would exempt thousands of self-driving vehicles from safety regulations and expedite testing on public roads.

Still, the opposition looks more likely to slow down the bill than to stop it in its tracks.

Pruitt to defend Trump budget in House next month

Kevin Bogardus, E&E News reporter

U.S. EPA Administrator Scott Pruitt will be back on Capitol Hill next month.

The House Energy and Commerce Committee announced this morning that Pruitt will testify before its Environment Subcommittee on April 26.

Full committee ranking member Frank Pallone (D-N.J.) and Environment Subcommittee ranking member Paul Tonko (D-N.Y.) sent a letter earlier this month calling for the EPA chief to testify (*Greenwire*, March 8).

Democrats will question Pruitt over the Trump administration's fiscal 2019 budget plan, which has proposed a roughly 23 percent, or nearly $2 billion, cut in agency funds.

The administrator will also likely deal with queries about the agency's spending on his travel and security as well as outside work done by his aides.

Pruitt's Short-Term RFS Waivers May Relieve Pressure For Credit Price Cap

Inside EPA

EPA Administrator Scott Pruitt is expected to issue waivers for individual refineries from having to meet renewable fuel standard (RFS) mandates, which could reduce the price of RFS compliance credits in the short term and ease oil sector pressure on the agency to cap credit prices, say biofuels sources and a recent economic analysis.

One biofuels industry advocate tells *Inside EPA* that there might currently be 32 petitions from small refiners -- those processing up to 75,000 barrels per day of crude oil -- for one-year exclusions from having to meet RFS fuel blending requirements. If EPA grants most or all of those petitions, as some in the biofuel sector suspect it will, the effect when combined with a recent settlement with bankrupt refiner Philadelphia Energy Solutions (PES) may reduce the demand for compliance credits sufficiently to curb immediate pressure for credit price measures.

The PES settlement would relieve the refiner of much of its RFS compliance obligation. Under the current program, obligated parties -- refiners and importers of fuel -- must surrender compliance credits known as renewable identification numbers (RINs) sufficient to cover their obligations to blend biofuels into the fuel supply.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 5/30/2014 12:49:56 AM
To: Chris Grundler [kerchris@comcast.net]
Subject: Fw: Compiled 2014 standards final rule for submission to OP
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 FRM FRN_20140529.docx; Track Changes 5-23 versus 5-29.docx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Sent: Thursday, May 29, 2014 7:41 PM
To: Grundler, Christopher
Subject: Fw: Compiled 2014 standards final rule for submission to OP

The compiled 2014 doc. I don't have the final version of the extension. Ben can likely send that along later.

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Mobile: 202-577-9354

From: Korotney, David <korotney.david@epa.gov>
Sent: Thursday, May 29, 2014 3:50 PM
To: Hengst, Benjamin; Machiele, Paul; Argyropoulos, Paul; Ghanta, Venu; Scoville, Pat; Simon, Karl; Charmley, William; Bunker, Byron; Manners, Mary; Lie, Sharyn; Dubois, Roland; Horowitz, Michael
Subject: Compiled 2014 standards final rule for submission to OP

Here you go.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 9/26/2013 9:45:29 PM
To: Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Ghanta, Venu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]
Subject: FW: Draft 2014 RFS standards NPRM for your review
Attachments: Compiled 2014 standards NPRM for review 9-26-13.docx; Track Changes 8-26 versus 9-26.docx

---

From: Korotney, David
Sent: Thursday, September 26, 2013 1:44 PM
To: Machiele, Paul; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Lie, Sharyn; Burkholder, Dallas; Charmley, William; Beauvais, Joel; Grundler, Christopher
Subject: Draft 2014 RFS standards NPRM for your review

Joel etc:

Here is the draft of the 2014 standards NPRM for your review. It incorporates all suggested edits from OTAQ and OGC team members and addresses all of the remaining larger issues that have been discussed in the deputies meetings and higher. Our intention is to send the full package back to OMB tomorrow.

The Track Changes version compares the current draft to the Aug 26 version that went to OMB.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 1/24/2018 4:51:02 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Question on RVO Briefing
Attachments: RFS 2019 Annual Rule intro for Wehrumv3.pptx; ATT00001.htm

Briefing is good but **Deliberative Process / Ex. 5** ?

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Burkholder, Dallas" <burkholder.dallas@epa.gov>
Date: January 23, 2018 at 4:24:35 PM EST
To: OTAQ Materials <OTAQMaterials@epa.gov>
Cc: "Simon, Karl" <Simon.Karl@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Lie, Sharyn" <Lie.Sharyn@epa.gov>, "Weihrauch, John" <Weihrauch.John@epa.gov>, "Parsons, Nick" <Parsons.Nick@epa.gov>, "Argyropoulos, Paul" <Argyropoulos.Paul@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Manners, Mary" <manners.mary@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Korotney, David" <korotney.david@epa.gov>, "Burch, Julia" <Burch.Julia@epa.gov>, "Le, Madison" <Le.Madison@epa.gov>, "Dubois, Roland" <Dubois.Roland@epa.gov>, "Charmley, William" <charmley.william@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>, "Michaels, Lauren" <Michaels.Lauren@epa.gov>, "Shelby, Michael" <Shelby.Michael@epa.gov>, "Anderson, Robert" <Anderson.Robert@epa.gov>, "Sobel, Aaron" <Sobel.Aaron@epa.gov>, "Lie, Sharyn" <Lie.Sharyn@epa.gov>
Subject: Materials for Wed. 10am with Chris

Attached are materials for tomorrow's 10am meeting with Chris. The materials are a draft of a briefing for Bill W. currently scheduled for 2pm on Thursday.

Dallas Burkholder
Office of Transportation & Air Quality
US Environmental Protection Agency
(734)214-4766
Burkholder.Dallas@epa.gov

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 2/5/2018 5:39:22 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: CRS request: small refinery exemptions

Did OPA ever release the earlier statement?

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Hengst, Benjamin
Sent: Monday, February 05, 2018 12:34 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Cc: Cohen, Janet <cohen.janet@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: CRS request: small refinery exemptions

Chris, Byron:

Just an FYI that CRS is inquiring on this issue (how many petitions currently are before EPA). See note below.

Deliberative Process / Ex. 5

Please let us know if you have concerns. Ben

From: Haman, Patricia
Sent: Monday, February 05, 2018 11:09 AM
To: Sutton, Tia <sutton.tia@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>
Cc: Thundiyil, Karen <Thundiyil.Karen@epa.gov>
Subject: FW: CRS request: small refinery exemptions

Good Morning, Kelsi from CRS sent the note below a few minutes ago. Please let me know how you would like me to respond.

Deliberative Process / Ex. 5

Karen is taking a compressed day today so I am pinch hitting.

Thank you. Pat

Patricia E. Haman
Office of Congressional Affairs
U.S. EPA
202-564-2806

Hi Pat,

I hope your 2018 is off to a great start.

I am working on a request for congressional staff and would appreciate a response to the three questions below by COB today.

- Does EPA disclose the number of RFS small refinery petitions under consideration to the general public?
- Has EPA disclosed this information in previous years to the general public?
- What is the EPA protocol for disclosing such information?

A Reuters article, *Exclusive: U.S. small refiners make surge of biofuel waiver requests – sources*, reports that "Sources familiar with the matter said the EPA was currently reviewing 27 waiver applications from small refineries, covering multiple years."

Please contact me if you have any questions about this request.

Thanks,
Kelsi

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/22/2018 12:09:50 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Today's Biofuels News

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Governors' Biofuels Coalition" <larry@governorscoalition.org>
Date: March 22, 2018 at 7:59:50 AM EDT
To: <grundler.christopher@epa.gov>
Subject: Today's Biofuels News
Reply-To: larry@governorscoalition.org

Please add the Governors' Biofuels Coalition to your address book for uninterrupted delivery
View this email in a web browser.

GOVERNORS' BIOFUELS COALITION

NEWS UPDATE March 22, 2018

Top Stories

Assistant to President Says Search Continues for a Win-Win Proposal

By Chris Clayton, DTN/Progessive Farmer • • Posted March 22, 2018

Dinneen noted that sales of hundreds of millions of gallons of biofuels have been lost because EPA is granting waivers to small refineries that request a waiver from RFS obligations. These waivers also are being done with no transparency by EPA. The agency has declined requests from RFA to provide details on the waivers. "We understand there are upwards of 30 waiver requests that are being granted. That again translates into hundreds of millions of gallons. You really don't know because you don't find out about it until a year or two later when

they have to do a report that aggregates that kind of stuff. There's no transparency whatsoever." [read more …]

GM Exec Calls For Premium Gas To Be The New Regular

by Sam Abuelsamid, Forbes • • Posted March 22, 2018

During an address to the American Fuel and Petrochemical Manufacturers, General Motors' vice president of global propulsion systems called for premium gasoline to become the new baseline going forward to enable more efficient engines. This is hardly a new idea, but it comes as a bit of a surprise right now as GM wages a battle on two fronts with announced plans for 20 new zero-emissions vehicles in the next five years while also consulting with the Trump administration on changes to fuel economy standards. [read more …]

Policy & Politics

Congress unveils $1.3 trillion spending bill as shutdown looms

By Susan Heavey and Lisa Lambert, Reuters • • Posted March 22, 2018

The bill would fix a "grain glitch" included in the tax law enacted at the end of last year. Big grain buyers, such as Anheuser Busch, Cargill and the ethanol industry, have complained that the glitch gives lucrative tax breaks to grain producers for selling to farming cooperatives, and a lesser break for selling to agriculture companies. [read more …]

China's ethanol output expected to increase by up to 500,000 T in 2018 -SDIC exec

By Hallie Gu and Josephine Mason, Reuters • • Posted March 22, 2018

China's ethanol output expected to increase by up to 500,000 tonnes in 2018, said Zhang Guogang, a strategy development manager with State Development & Investment Corporation (SDIC), speaking at an industry conference in Guangzhou on Thursday. State grain trading house COFCO is currently China's top ethanol producer but SDIC plans to be market leader within five years, the company's chairman has previously said. [read more …]

Global carbon emissions hit record high in 2017

By Nina Chestney, Reuters • • Posted March 22, 2018

Global energy-related carbon emissions rose to a historic high of 32.5 gigatonnes last year, after three years of being flat, due to higher energy demand and the slowing of energy efficiency improvements, the International Energy Agency (IEA) said. [read more …]

Funding slashed for public outreach on 'clean energy'

Hannah Northey, E&E News reporter • • Posted March 22, 2018

The Department of Energy has dramatically shrunk a contract for "clean energy" outreach, as part of what one official said is an effort to streamline DOE messaging. The department signed three contracts granting public relations and market research firm Clean Energy Communications up to $1.47 million through March 2019 for outreach for the Office of Energy Efficiency and Renewable Energy (EERE). That's way down from previous DOE contracts with Clean Energy — including a four-year, $17 million deal. [read more …]

Ethanol Stocks Down from Record High

By DTN/Progressive Farmer • • Posted March 22, 2018

Domestic ethanol supply declined 500,000 barrels (bbl), or 2.1%, from a record high during the week-ended March 16 to 23.8 million bbl, although supply is up 1.2 million bbl, or 5.3%, versus a year ago, the U.S. Energy Information Administration's latest weekly report shows.
[read more …]

Ethanol industry recognizes farmers on National Agriculture Day

By Erin Voegele, Ethanol Producer Magazine • • Posted March 22, 2018

The U.S. celebrated National Agriculture Day March 20. President Donald Trump, Agriculture Secretary Sonny Perdue and representatives of the ethanol industry all spoke out to express appreciation for American agriculture and American farmers. Trump issued a proclamation on March 19 acknowledging "the tremendous work ethanol, ingenuity, determination, and perseverance that define generations of American farmers." [read more …]

Note: News clips provided do not necessarily reflect the views of coalition or its member governors.

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This message was sent to grundler.christopher@epa.gov from larry@governorscoalition.org

Governors' Biofuels Coalition
Governors' Coalition
P.O. Box 94922
Lincoln, NE 68509

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/25/2017 12:03:23 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: Update on PES

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 24, 2017, at 7:40 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

Begin forwarded message:

From: "Orlin, David" <Orlin.David@epa.gov>
Date: July 24, 2017 at 7:29:50 PM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Cc: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>
Subject: Re: Update on PES

Deliberative Process; ACP / Ex. 5

On Jul 24, 2017, at 6:33 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process; ACP / Ex. 5

Deliberative Process; ACP / Ex. 5 **Personal Matters / Ex. 6**

Personal Matters / Ex. 6

Sent from my iPhone

On Jul 24, 2017, at 6:20 PM, Orlin, David <Orlin.David@epa.gov> wrote:

Deliberative Process; ACP / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Grundler, Christopher
Sent: Monday, July 24, 2017 6:16 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Subject: Re: Update on PES

David-- **Deliberative Process; ACP / Ex. 5**

Deliberative Process; ACP / Ex. 5

Sent from my iPhone

On Jul 24, 2017, at 4:51 PM, Orlin, David <Orlin.David@epa.gov> wrote:

Deliberative Process; ACP / Ex. 5

Deliberative Process; ACP / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Hengst, Benjamin
Sent: Monday, July 24, 2017 4:42 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Subject: Update on PES

Sarah, Chris:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 10/20/2017 10:14:17 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: Review draft of the 2018 final RVO rule

Bravo

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Oct 20, 2017, at 5:14 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Mandy, Erik:

Attached is a draft of the 2018 RVO final rule for your review. We are asking for comments/edits back by COB Wednesday, October 25. As discussed in our briefing today, our goal is to transmit/upload to OMB on Monday, October 30.

A few notes:

Deliberative Process / Ex. 5

Also attached is the letter we received from EIA with their estimate of cellulosic biofuel and gasoline and diesel for 2018.

Thanks,
Ben

<2018 RFS Annual Rule FRM for Review 10.20.17.docx>

<2017-10-11 Letter- to E. Scott Pruitt of EPA-Clean Air Act.pdf>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 10/20/2017 2:06:14 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: 2018 RVO review

Ah...that's why I missed it. Thx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Oct 19, 2017, at 9:21 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Hey Chris--

Deliberative Process / Ex. 5

Ben

From: Grundler, Christopher
Sent: Thursday, October 19, 2017 6:56 PM

To: Hengst, Benjamin
Subject: 2018 RVO review

Ben--
I read the ES and a few sections of interest. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thx. I will let you know if I am able to call in for fuels. I definitely want to connect later on outcomes. Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 7/3/2013 4:06:42 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Korotney, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7b00e16e09654b94bc6146550ca87936-Korotney, David]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
CC: Ghanta, Venu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]
Subject: FW: SUBMITTED TO OMB - OTAQ final rule SAN 5615: RFS - 2013 Volume Standards
Attachments: EO12866_RFSAnnual Rule 2060-AR43 FRM FRN_20130702.docx

I think this is a record – perhaps we should upload right before a holiday more often.

From: Jutras, Nathaniel
Sent: Wednesday, July 03, 2013 11:37 AM
To: Owens, Nicole; Pritchard, Eileen; Cristofaro, Alexander; Scoville, Pat; Stewart, Lori; Eagles, Tom; Shaw, Betsy; Mcquilkin, Wendy; Morgan, Ruthw; Singelis, Nikos; Schaaff, Lesley; Ghanta, Venu; Korotney, David; Kenny, Shannon; Nickerson, William
Subject: SUBMITTED TO OMB - OTAQ final rule SAN 5615: RFS - 2013 Volume Standards

Today, 7/3/2013, OP approved and submitted to OMB OAR/OTAQ final rule **SAN: SAN 5615: RFS - 2013 Volume Standards**.

This is a tier 2 rule and ADP Tracker has been updated. Thank you.

Nathaniel Jutras | Regulatory Management Division | U.S. Environmental Protection Agency | 202.564.0301

ROCIS - EO Review Package - Mozilla Firefox

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ROCIS - EO Review Package

https://www.rocis.gov/rocis/ab/AgencyEOReviewPackage

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RIN: 2060-AR43 (201304) Agency/Sub Agency: 2060 EPA/AR Tracking #: 5615

Stage of Rulemaking: Final Rule Stage Submitted By: Nathaniel Jutras Submitted Date: 07/03/2013

Title: Renewable Fuel Standard (RFS) Volume Standards for 2013

EO Review Package 2060-AR43

EO Review Package was successfully submitted at 07/03/2013 11:31:04 AM.

Unfunded Mandates
No

Major
No

Priority
Other Significant

Legal Authority
CAA 211(o)

CFR Citation
40 CFR 80

Legal Deadline

Action	Source	Date	Description
Final	Statutory	11/30/2012	Statutory Deadline

Overall Description of Deadline

Abstract

In response to the Energy Independence and Security Act (EISA), EPA finalized the RFS2 program regulations in 2010. However, under EISA, the Environmental Protection Agency is required to promulgate regulations that specify the annual statutory volume requirements for renewable fuels, including cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that must be used in transportation fuel annually. In the case of the cellulosic biofuel standard, EISA specifically requires that the standard be set based on the volume projected to be available during the following year. If the volumes are lower than those specified under EISA, then EPA may also lower the advanced biofuel and total renewable fuel standards each year accordingly. This regulatory action will establish, as required, the annual statutory volume requirements for the RFS2 fuel categories (cellulosic, biomass-based diesel, advanced biofuel, and renewable fuel) that apply to all gasoline and diesel produced or imported in 2013. Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel.

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 7/1/2013 2:35:36 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]
Subject: FW: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am
Attachments: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am.docx

This is not looking like a quick turnaround.....

From: Korotney, David
Sent: Monday, July 01, 2013 10:25 AM
To: Larson, Robert; Lie, Sharyn; Dubois, Roland; Hannon, John
Cc: Simon, Karl; Machiele, Paul; Argyropoulos, Paul; Hengst, Benjamin; Stewart, Lori
Subject: FW: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am

I will make all of the easy edits. However, there are a number I don't know what to do with. If you make edits, please continue to do so in the separate section files on the i: drive, and I will recompile when they are done.

Bob/Sharyn, Deliberative Process / Ex. 5

Roland/John, Deliberative Process / Ex. 5

All: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

All: Deliberative Process / Ex. 5

Bob/Sharyn: Deliberative Process / Ex. 5

All: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Scoville, Pat
Sent: Monday, July 01, 2013 9:29 AM

To: Korotney, David
Cc: Stewart, Lori
Subject: FW: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am

Dave Joel had edits... please review.

From: Stewart, Lori
Sent: Monday, July 01, 2013 9:23 AM
To: Scoville, Pat
Subject: FW: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am

---

From: Beauvais, Joel
Sent: Monday, July 01, 2013 9:23 AM
To: Stewart, Lori; Ghanta, Venu; Simon, Karl
Cc: Knapp, Kristien
Subject: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am

Attaching my comments on the draft final. Most of this is stylistic, but there are some substantive edits throughout. Also, Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 I would like to see that language before this goes over to OMB. Thanks.

Joel

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 6/27/2013 1:17:46 AM
To: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]
Subject: Latest draft of RFS 2013 rule
Attachments: 2013 final rule draft 6-18-13 - to OAR.docx

Joel, **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5 Chris is just getting this as well. We are still expecting edits from ORD and OP based on today's FAR meeting.

From: Argyropoulos, Paul
Sent: Wednesday, June 26, 2013 8:09 PM
To: Stewart, Lori
Subject: RE: 2014 Forward-looking text (for 2013 preamble)

Here's the package from last week with the 2014 statement incorporated.

Please note this does not have the final WG edits.

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 1/25/2013 10:34:29 PM
To: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Simon, Karl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Ghanta, Venu [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]
Subject: Fw: 1/23 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]
Attachments: EO12866_RFS standards 2060-AR43 NPRM FRN_20130125.docx

Chris, in case you need this for any reason, here is the latest redline sent back to Chad. If Chad were to get back to us requesting an upload tonight Venu can email to Mariana Cubbedu in OP who can upload from home. However, I would suspect this won't happen until Monday morning (at which point we can go ahead and package it up and send forward to Gina's office while we are waiting for final clearance).

----- Forwarded by Lori Stewart/DC/USEPA/US on 01/25/2013 05:30 PM -----

From: Venu Ghanta/DC/USEPA/US
To: "Whiteman Chad" <Chad_S_Whiteman@omb.eop.gov>, David Korotney/AA/USEPA/US@EPA, Glenn Farber/DC/USEPA/US@EPA, Karl Simon/DC/USEPA/US@EPA, Lori Stewart/DC/USEPA/US@EPA, Nathaniel Jutras/DC/USEPA/US@EPA, Paul Argyropoulos/DC/USEPA/US@EPA, John Hannon/DC/USEPA/US@EPA
Date: 01/25/2013 05:21 PM
Subject: Re: 1/23 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]

Hi Chad-

Please find the redline of what we intend to be our final passback attached. I have added in the changes on pp. 11, 24, 43, and 50 that we discussed this morning. We also made some minor edits in light of today's DC Circuit decision.

Please contact me if you need anything else.

EO12866_RFS standards 2060-...

Venu Ghanta
Office of Transportation and Air Quality
US Environmental Protection Agency
202-564-1374 (phone)

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 1/28/2013 6:28:31 PM
To: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Fw: 1/28 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]
Attachments: EO12866_RFS standards 2060-AR43 NPRM FRN_20130128.docx

Chris, I hope I am not "over-informing" you on this but wanted to keep you in the loop. Once Chad signs off, we'll upload this version. Meanwhile, David can put this in the final format and we'll go ahead and package to send to Gina's office.

------ Forwarded by Lori Stewart/DC/USEPA/US on 01/28/2013 01:27 PM ------

From: Venu Ghanta/DC/USEPA/US
To: "Whiteman, Chad" <Chad_S_Whiteman@omb.eop.gov>
Cc: David Korotney/AA/USEPA/US@EPA, Karl Simon/DC/USEPA/US@EPA, Paul Argyropoulos/DC/USEPA/US@EPA, Lori Stewart/DC/USEPA/US@EPA, Glenn Farber/DC/USEPA/US@EPA, Nathaniel Jutras/DC/USEPA/US@EPA
Date: 01/28/2013 01:26 PM
Subject: 1/28 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]

Hi Chad-

Please find attached a clean version of the 2013 RFS Volume Standards proposed rulemaking for your final review.

Thanks, Venu

EO12866_RFS standards 2060-...

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 7/1/2013 1:28:14 PM
To: Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am
Attachments: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am.docx

Karl, as you will see, Joel's comments will require some rewriting/editing. Paul A. is out this week. Do you want to send to Dave Korotney? We don't have much time since this is suppose to go to OP today for uploading by Wednesday. Thanks.

From: Beauvais, Joel
Sent: Monday, July 01, 2013 9:23 AM
To: Stewart, Lori; Ghanta, Venu; Simon, Karl
Cc: Knapp, Kristien
Subject: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130628 +jcb 7-1am

Attaching my comments on the draft final. Most of this is stylistic, but there are some substantive edits throughout. Also, **Deliberative Process / Ex. 5** **Deliberative Process / Ex. 5** I would like to see that language before this goes over to OMB. Thanks.

Joel

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 6/26/2013 8:36:07 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]
Subject: Draft RFS rule - requested by Joel
Attachments: 2013 final rule draft 6-18-13 - to OAR.docx

Chris, Joel has asked when he can get a draft of the 2013 rule for he and Gina to review. There isn't much time for that since we are sending the package formally to OAR this Friday. Are you OK with sending this latest version? Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Thanks.

From: Argyropoulos, Paul
Sent: Wednesday, June 26, 2013 4:10 PM
To: Stewart, Lori
Subject: RE: 2014 Forward-looking text (for 2013 preamble)

Deliberative Process / Ex. 5

Please note this does not have the final WG edits.

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

From: Stewart, Lori
Sent: Wednesday, June 26, 2013 3:51 PM
To: Argyropoulos, Paul
Subject: Re: 2014 Forward-looking text (for 2013 preamble)

Thx - did you see Joel's request for the draft rule?

From: Argyropoulos, Paul
Sent: Wednesday, June 26, 2013 7:47:21 PM
To: Stewart, Lori
Subject: FW: 2014 Forward-looking text (for 2013 preamble)

FYI

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

From: Hengst, Benjamin
Sent: Tuesday, June 25, 2013 1:21 PM
To: Bunker, Byron; Machiele, Paul; Argyropoulos, Paul; Simon, Karl
Cc: Stewart, Lori; Hannon, John
Subject: FW: 2014 Forward-looking text (for 2013 preamble)

FYI. What I just sent Chris.

The only change I made from what I circulated earlier is Deliberative Process / Ex. 5 Deliberative Process / Ex. 5.

From: Hengst, Benjamin
Sent: Tuesday, June 25, 2013 1:18 PM
To: Grundler, Christopher
Cc: Simon, Karl
Subject: 2014 Forward-looking text (for 2013 preamble)

Chris – here's the finalized text, reflecting edits/comments.

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 8/6/2013 5:48:51 PM
To: Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Senator Carper Reacts to EPA Announcement on the Renewable Fuel Standard

Apologies if duplicate

From: Haman, Patricia
Sent: Tuesday, August 06, 2013 1:01 PM
To: Stewart, Lori; Ghanta, Venu; Machiele, Paul; Hengst, Benjamin
Subject: FW: Senator Carper Reacts to EPA Announcement on the Renewable Fuel Standard

---

From: Sams, Ian (Carper)
Sent: Tuesday, August 06, 2013 12:41 PM
To: Carper ALL Staff; HSGAC Full Dem
Subject: Senator Carper Reacts to EPA Announcement on the Renewable Fuel Standard

TOM CARPER
UNITED STATES SENATOR for DELAWARE

FOR RELEASE: August 6, 2013
CONTACTS:
Emily Spain, 202-224-2441 or emily_spain@carper.senate.gov
Ian Sams, 202-224-2441 or ian_sams@carper.senate.gov

Senator Carper Reacts to EPA Announcement on the Renewable Fuel Standard

WASHINGTON – Today, the Environmental Protection Agency (EPA) finalized the Renewable Fuel Standard (RFS) compliance requirements for refineries and importers for the calendar year 2013. This rule includes volume targets and percentages for cellulosic biofuel, biomass-based diesel, advanced biofuels and total renewable fuel. The rule reduces the targets of cellulosic and advanced biofuel based on current production, gives refineries and importers four more months to comply with the 2013 targets, and signals that the EPA will reduce targets in 2014 to address blendwall concerns.

"Today's announcement sends a strong signal to our refineries that the EPA is listening to their concerns and working responsibly to address them," said Senator Carper, chairman of the Senate Subcommittee

on Clean Air and Nuclear Safety. "By giving refineries more time to comply to the standard, and by signaling that the EPA will likely address blendwall issues in the upcoming 2014 targets, I'm hopeful that today's rule will settle the Renewable Identification Number (RIN) markets, which have been volatile over the past year and are a big concern for smaller refineries like the one in Delaware City. I encourage the EPA to move quickly on the 2014 targets and look forward to working with the agency to ensure we have a stable and transparent RIN market."

Through the Renewable Fuel Standard authorized in the Clean Air Act, the EPA is responsible for regulations that ensure our nation's transportation fuel supply is blended with a minimum amount of renewable fuels every year. In the Energy Policy Act of 2007, Congress greatly expanded the requirements of the RFS to ramp up toward a goal of 36 billion gallons of renewable fuel by 2022 and increased demand for second generation biofuels, like cellulosic and biodiesel. In implementing the RFS, the EPA is required to issue the year's volume targets for compliance prior to the beginning of the calendar year. Refineries and importers use these targets to determine how many Renewable Identification Number (RIN) credits will need to be given to EPA to meet compliance requirements. Unfortunately, due to court delays and other issues, the EPA is just now finalizing the targets for 2013. As a result of compliance uncertainty and the industry moving ever closer to the E10 blendwall – 10 percent levels of ethanol – RIN prices have spiked from 10 cents to $1.50. The increase in RIN prices results in an increase in costs of RFS compliance – especially for small refineries that have reduced or no blending capabilities.

"I have long supported the goals of Renewable Fuel Standard – incentivizing environmentally-friendly options that move our country away from foreign fossil fuels, while safeguarding our energy security," Senator Carper continued. "I also strongly believe that as we make investments in renewable fuels to lower our dependency on foreign oil, we must ensure that we don't have an adverse impact on the environment or our economy. In the past two years, with the extreme drought and blendwall concerns, we have seen some unintended economic consequences of the Renewable Fuel Standard. I believe Congress gave the EPA the tools to address economic concerns resulting from the RFS, and I'm happy to see the EPA is finally signaling that the agency is willing to use these tools."

For more information on the standards and regulations, please visit http://www.epa.gov/otaq/fuels/renewablefuels/regulations.htm.

###

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 1/22/2013 11:13:55 PM
To: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Fw: RFS volumes passback
Attachments: EO12866_RFS standards 2060-AR43 NPRM FRN_20130122.docx

I haven't read yet.....

Sent by EPA Wireless E-Mail Services

----- Original Message -----
From: Venu Ghanta
Sent: 01/22/2013 05:48 PM EST
To: Karl Simon; Paul Machiele; David Korotney
Cc: Paul Argyropoulos; Lori Stewart; John Hannon; Glenn Farber
Subject: Fw: RFS volumes passback

-----Forwarded by Venu Ghanta/DC/USEPA/US on 01/22/2013 05:46PM -----

==========
To: Venu Ghanta/DC/USEPA/US@EPA
From: "Whiteman, Chad" <Chad_S_Whiteman@omb.eop.gov>
Date: 01/22/2013 05:28PM
Subject: RFS volumes passback
==========
Hi Venu, Here is the latest passback on the volumes rule. Chad

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 7/26/2013 7:08:42 PM
To: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: 2013 package update, including edits to forward-looking statement
Attachments: EO12866_Review_EPA_RFS_Rule_Interagency Comments - 7_26_2013 edits to FLS only.docx

Joel:

Deliberative Process / Ex. 5

I would have copied this into another document, but you lose some of the tracked changes, etc.
Thanks,
Ben

***

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Ghanta, Venu [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7CF46C0305194992A35FD4FA7B1B78FC-VGHANTA]
Sent: 8/2/2013 11:50:42 PM
To: Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: 8/2 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]
Attachments: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130802.docx

Sorry, my email went haywire so I am just now getting this to you. We will convene with EIA first thing Monday and try to get that issue squared away.

From: Ghanta, Venu
Sent: Friday, August 02, 2013 6:38 PM
To: Whiteman, Chad
Cc: Korotney, David; Machiele, Paul; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Lie, Sharyn; Farber, Glenn; Nagelhout, Peter; Hannon, John
Subject: 8/2 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]

Chad-

Please find our response, which is in redline from your passback earlier today. This should address all comments except for the one remaining EIA issue. We plan to have a discussion Monday morning to resolve that.

Thanks, Venu

Message

From: Ghanta, Venu [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7CF46C0305194992A35FD4FA7B1B78FC-VGHANTA]
Sent: 7/23/2013 9:55:32 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
Subject: FW: 7/23 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]
Attachments: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130723.docx; Track changes - 7-2 versus 7-23.docx

FYI

From: Ghanta, Venu
Sent: Tuesday, July 23, 2013 5:13 PM
To: 'Whiteman, Chad'
Cc: Korotney, David; Machiele, Paul; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Lie, Sharyn; Farber, Glenn; Nagelhout, Peter; Hannon, John
Subject: 7/23 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]

Hi Chad-

Please find attached clean and redline versions of our response. As I noted in my voicemail, we are still working on text for two sections: GHG impacts of soy biodiesel (page 49) and 2014 volumes discussion (page 66). We have put placeholders in those two sections, and we hope to send you text tomorrow morning.

Let me know if you have questions.

Thanks, Venu

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/7/2013 9:51:40 PM
To: Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]
Subject: FW: EPA exempted one refiner from RFS rule

See below

From: McCabe, Janet
Sent: Wednesday, August 07, 2013 5:25 PM
To: Grundler, Christopher
Subject: FW: EPA exempted one refiner from RFS rule

He got a little ink.....We'd best have some details/a statement pulled together in case questions come in.

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

From: Drinkard, Andrea
Sent: Wednesday, August 07, 2013 4:40 PM
To: McCabe, Janet
Subject: FW: EPA exempted one refiner from RFS rule

From: POLITICO Pro Whiteboard
Sent: Wednesday, August 07, 2013 4:37:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: Drinkard, Andrea
Subject: EPA exempted one refiner from RFS rule

8/7/13 4:34 PM EDT

One small refiner was exempted from the requirements of EPA's 2013 volume standards for the Renewable Fuel Standard, officials from the American Petroleum Institute said today.

"It's an unnamed refinery — it's confidential," Bob Greco, API's group director for downstream and operations, told reporters today. "It got our attention when we saw that."

Greco said the result of exempting the refiner means the volume mandate "for everybody else was moved up" to compensate.

Under the RFS statute, EPA can grant an exemption for small refineries that face a disproportionate economic hardship. The agency exempted several refineries in 2011 and 2012 as the result of a congressionally-ordered Energy Department report.

This year, in the final 2013 RFS volume standards released yesterday, EPA only exempted one refinery, according to the rule. The rule does not specify which refiner received the exemption, or the basis for the hardship determination.

— *Erica Martinson*

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Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/7/2013 9:56:31 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: EPA exempted one refiner from RFS rule

Deliberative Process / Ex. 5

Fyi, this is not a new issue.

From: McCabe, Janet
Sent: Wednesday, August 07, 2013 5:25 PM
To: Grundler, Christopher
Subject: FW: EPA exempted one refiner from RFS rule

He got a little ink.....We'd best have some details/a statement pulled together in case questions come in.

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

From: Drinkard, Andrea
Sent: Wednesday, August 07, 2013 4:40 PM
To: McCabe, Janet
Subject: FW: EPA exempted one refiner from RFS rule

From: POLITICO Pro Whiteboard
Sent: Wednesday, August 07, 2013 4:37:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: Drinkard, Andrea
Subject: EPA exempted one refiner from RFS rule

8/7/13 4:34 PM EDT

One small refiner was exempted from the requirements of EPA's 2013 volume standards for the Renewable Fuel Standard, officials from the American Petroleum Institute said today.

"It's an unnamed refinery — it's confidential," Bob Greco, API's group director for downstream and operations, told reporters today. "It got our attention when we saw that."

Greco said the result of exempting the refiner means the volume mandate "for everybody else was moved up" to compensate.

Under the RFS statute, EPA can grant an exemption for small refineries that face a disproportionate economic hardship. The agency exempted several refineries in 2011 and 2012 as the result of a congressionally-ordered Energy Department report.

This year, in the final 2013 RFS volume standards released yesterday, EPA only exempted one refinery, according to the rule. The rule does not specify which refiner received the exemption, or the basis for the hardship determination.

— *Erica Martinson*

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Message

From: Millett, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C067CAA6C93544F78C26AB08CC567D27-MILLETT, JOHN]
Sent: 8/26/2013 12:24:06 PM
To: Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]; Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]; McMichael, Nate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58fb85a6a601456d87c58f23c40015d0-NMcMicha]
Subject: Fw: WSJ: No Special EPA Refinery Favor Here

Fyi --

From: Johnson, Alisha
Sent: Monday, August 26, 2013 7:15:26 AM
To: McCabe, Janet; Goffman, Joseph; Drinkard, Andrea; Millett, John; Bloomgren, David; Valentine, Julia; Reynolds, Thomas; Delp, Robert; Cohen, David
Subject: WSJ: No Special EPA Refinery Favor Here

No Special EPA Refinery Favor Here
The EPA evaluates small refinery exemption requests based on an analysis of facts.

The Journal recently published two misleading opinion pieces ("Behind an Ethanol Special Favor," op-ed, Aug. 14 and "Washington's Latest Special Favor," Potomac Watch, Aug. 9) by Kimberley Strassel questioning the EPA's reasoning and transparency around requests for a small-refinery hardship exemption under the congressionally mandated renewable transportation fuel program.

Ms. Strassel asks why, of the nation's 143 refineries, one was exempted from the EPA's ethanol mandate. She implies that the EPA is giving special deals to certain refiners at the expense of others behind closed doors. Nothing could be further from the truth. The EPA has received four waiver requests for 2013, out of the nation's 143 refineries. A list of companies that requested exemptions is available on our website.

As Congress directed, the EPA's regulations must establish the criteria used in considering a waiver request. In evaluating a claim of disproportionate economic hardship the EPA assesses many things, including a company's access to capital, whether compliance costs could lead to a shutdown and whether these small refiners are subject to exceptional state regulations.

The EPA takes seriously its responsibility under the law to safeguard information that a company claims is confidential business information that could harm a company's competitiveness if divulged. Contrary to the Journal's claim that the agency isn't being transparent, the EPA is complying with its legal obligations and has clearly explained the criteria and methods it uses when evaluating requests.

The EPA evaluates small refinery exemption requests based on an analysis of facts, consultation with the Department of Energy and commitment to the law—not hidden agendas.

Janet McCabe

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 7/24/2013 8:01:26 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Pennsylvania lawmakers press EPA on RIN prices

Anything further on the Carper/gov angle on potential DE waiver request? Should I check in directly with Ben on that?

From: POLITICO Pro Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Wednesday, July 24, 2013 3:25 PM
To: Beauvais, Joel
Subject: Pennsylvania lawmakers press EPA on RIN prices

7/24/13 3:24 PM EDT

Four Pennsylvania lawmakers wrote to EPA Administrator Gina McCarthy today to ask for her "prompt attention" to concerns about the price of Renewable Identification Numbers, the credits that oil companies can buy to meet renewable fuel mandates.

The lawmakers "have been told that the uncertainty about the obligation associated with [the] Renewable Fuel Standard has led to a spike in the price of [RIN] credits, creating upward pressure on fuel prices," wrote Sens. Pat Toomey and Bob Casey, along with Reps. Patrick Meehan and Robert Brady, in a letter sent today.

The four are "committed to working in a bipartisan manner to explore a solution to the issue," but said that in the meantime EPA must "act now through its 2013 RFS rulemaking process to bring rationality to the RIN market and lower costs. More specifically, the EPA should send a clear signal that it will exercise its authority under the RFS to ensure that the renewable volume obligations are in line with the market. We understand that a clear signal from the EPA will remove uncertainty from the RINs market."

Casey said in a statement: "The Renewable Fuel Standard is an important part of securing our nation's energy independence. However, the volatile market for refiners to comply with renewable fuel credits is currently hurting small refineries and putting at risk good jobs in Philadelphia."

— *Erica Martinson*

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Message

Sent: 12/18/2018 3:45:09 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: Follow up

Can you tell me the latest on the below – what I assume to be an SRE request? Have we received the petition referenced? What year is it? Has it been submitted to DOE? If so, where is it in the process.

From: Jackson, Ryan
Sent: Tuesday, December 18, 2018 10:15 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: Follow up

I meant to bring this up with you. Can we connect on what this means when you have an opportunity today?

Ryan Jackson
Chief of Staff
U.S. EPA
Direct Phone / Ex. 6

Begin forwarded message:

From: John Blount <john.blount@ervinhillstrategy.com>
Date: December 18, 2018 at 10:07:29 AM EST
To: "Ryan Jackson" <Jackson.ryan@epa.gov>
Subject: Follow up

I am writing to thank you for the meeting with Robert Finnegan of Tethys. Just checking in to see where EPA is on their marketing petition for exemption from the RFS obligation as discussed.

Thank you

John

John Blount
SVP, Global Government Affairs
Ervin | Hill Strategy
410 First Street, SE

Suite 300
Washington, D.C. 20003
Cell Phone / Ex. 6

Message

From: Gunasekara.Mandy@epa.gov [Gunasekara.Mandy@epa.gov]
Sent: 12/19/2018 11:23:15 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Re: Report: Exxon Mobil gets economic hardship RFS waiver

Deliberative Process / Ex. 5

Sent from my iPhone

On Dec 19, 2018, at 11:46 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Konkus, John
Sent: Wednesday, December 19, 2018 2:45 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: Re: Report: Exxon Mobil gets economic hardship RFS waiver

This is what we sent them when they asked about it...

Hey Eric, we can't confirm or deny any potential waivers. See our statement below on your second question.

"Congress defined small refineries by one factor: the level of a particular refinery's output. The statutory definition does not include consideration of any affiliated parent company or the parent company's financial standing. This was a decision Congress made when drafting the renewable fuel standard and EPA implements the small refinery exemption program consistent with that explicit direction. "– **EPA spokesman, Michael Abboud**

On Dec 19, 2018, at 2:28 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

So...

From: POLITICO Pro [mailto:politicoemail@politicopro.com]
Sent: Wednesday, December 19, 2018 2:24 PM

To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Report: Exxon Mobil gets economic hardship RFS waiver

By Eric Wolff

12/19/2018 02:21 PM EDT

Oil giant Exxon Mobil received an economic hardship waiver from the EPA exempting one of its refineries from compliance with the Renewable Fuel Standard, Reuters reported today, citing three unnamed sources.

The waiver was given to Exxon's Billings, Mont. refinery which has a processing capacity of 60,000 barrels of crude a day, well below EPA's "small refinery" threshold of 75,000 barrels a day. Exxon reported $6.24 billion in profits in the third quarter.

EPA's use of economic hardship waivers has generated controversy for the last two years, as it has used the waivers to reduce the mandate by more than 1 billion gallons.

Exxon declined to comment for the story.

EPA declined to confirm the report, but said its statutory process for determining whether a waiver is warranted "does not include consideration of any affiliated parent company or the parent company's financial standing."

EPA's website says it has granted 29 exemptions for the 2017 compliance year, and that it has seven more pending as well as 15 petitions for the 2018 year. The agency has not denied any petitions since 2015.

To view online:
https://subscriber.politicopro.com/agriculture/whiteboard/2018/12/report-exxon-mobil-gets-economic-hardship-rfs-waiver-2390023

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Appointment

From: Ex.6 Administrator Pruitt

Sent:

To: Ex. 6 Administrator Pruitt; Baptist, Erik [baptist.erik@epa.gov]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [bolen.brittany@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Briefing on CAFE Standards
Attachments: EPA RFS Options_principal mtg DRAFT.DOCX; Letter to EPA 6-23-17r.pdf
Location: Administrator's Office

Start: 8/1/2017 3:00:00 PM
End: 8/1/2017 3:45:00 PM
Show Time As: Busy

Handling: Erik, Mandy, Brittany, Sam

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 3/30/2017 8:23:51 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: RINS Hardship Relief - Calumet Superior Refining
Attachments: removed.txt

Deliberative Process / Ex. 5

From: Petek, Meris (Ron Johnson) [mailto:Meris_Petek@ronjohnson.senate.gov]
Sent: Thursday, March 30, 2017 4:22 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Cc: Riley, Sean (Ron Johnson) <Sean_Riley@ronjohnson.senate.gov>
Subject: FW: RINS Hardship Relief - Calumet Superior Refining

Hi Tate -

I reached out to Ryan yesterday but am forwarding you my bosses concerns as well. I know you all are busy but since we didn't get a response, I wanted to follow-up. Please let me know if you have any questions or if we can be of any assistance.

Best,
Meris

From: Petek, Meris (Ron Johnson)
Sent: Wednesday, March 29, 2017 5:22 PM
To: 'jackson.ryan@epa.gov' <jackson.ryan@epa.gov>
Cc: Riley, Sean (Ron Johnson) <Sean_Riley@ronjohnson.senate.gov>
Subject: RINS Hardship Relief - Calumet Superior Refining

Hi Ryan –

Hope all is well. Calumet Specialty Products Partners reached out to us with concerns over a decision due for a RINS hardship relief determination. It would seem that relief has already been granted for 3 of their 4 refineries but not for Calumet Superior Refining located in Wisconsin. It's my understanding that they qualify as a "small refiner" under the RFS and are entitled to petition. Failure to grant this petition will put the company in a harder predicament than they are already in and will likely result in even more layoffs and the possibility that the company can no longer continue operations.

Sen. Johnson asked that I reach out and urge that this situation be resolved as quickly as possible with the granting of a hardship relief to the Wisconsin refinery.

Please let me know if you have any questions. I'd appreciate any updates, my direct line is 202-228-0081.

Best,
Meris

Meris Petek | Legislative Assistant
United States Senate, Office of Senator Ron Johnson (WI)
Main 202.224.5323 I Fax 202.228.6965
Web: www.ronjohnson.senate.gov

Click here to sign-up for Senator Johnson's weekly newsletter

Message

From: McGartland, Al [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FE25FC1DF634F9798675527E0070429-AMCGARTL]
Sent: 3/29/2017 1:27:25 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Yes in at my desk.

Sent from my iPhone

On Mar 29, 2017, at 9:20 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Hey Al – are you at your desk and do you have a second to chat? If so, what's your direct?

From: McGartland, Al
Sent: Sunday, March 26, 2017 3:06 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

My pleasure. I'm always happy to help.

From: Jackson, Ryan
Sent: Sunday, March 26, 2017 3:04 PM
To: McGartland, Al <McGartland.Al@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Thank you Al, **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

From: McGartland, Al
Sent: Thursday, March 23, 2017 4:56 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: McGartland, Al [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FE25FC1DF634F9798675527E0070429-AMCGARTL]
Sent: 3/29/2017 1:27:16 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

202-566-2254.

Sent from my iPhone

On Mar 29, 2017, at 9:20 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Hey Al – are you at your desk and do you have a second to chat? If so, what's your direct?

From: McGartland, Al
Sent: Sunday, March 26, 2017 3:06 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

My pleasure. I'm always happy to help.

From: Jackson, Ryan
Sent: Sunday, March 26, 2017 3:04 PM
To: McGartland, Al <McGartland.Al@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Thank you Al, **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

From: McGartland, Al
Sent: Thursday, March 23, 2017 4:56 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 3/26/2017 7:02:58 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

So you're on the same page.

From: McGartland, Al
Sent: Thursday, March 23, 2017 4:56 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 3/24/2017 9:49:02 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: RFS hardship waiver pile.

On it.

From: Gunasekara, Mandy
Sent: Friday, March 24, 2017 4:14 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: RFS hardship waiver pile.

Deliberative Process / Ex. 5

From: Bennett, Elizabeth
Sent: Monday, March 20, 2017 10:39 PM
To: Gunasekara, Amanda <gunasekara.amanda@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re: RFS hardship waiver pile.

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 20, 2017, at 10:09 PM, Gunasekara, Amanda <gunasekara.amanda@epa.gov> wrote

> Ok-will look into it.
>
> Sent from my iPhone
>
> On Mar 20, 2017, at 10:00 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>
> **Deliberative Process / Ex. 5**
>
> I could use help on this one too.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
Direct line/Ex. 6

Message

From: Brown, Byron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9242D85C7DF343D287659F840D730E65-BROWN, BYRO]
Sent: 3/23/2017 9:28:56 PM
To: McGartland, Al [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5fe25fc1df634f9798675527e0070429-AMcGartl]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
CC: Gunasekara, Amanda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Adding Mandy, who has joined as senior advisor to the Administrator for air and radiation issues Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: McGartland, Al
Sent: Thursday, March 23, 2017 4:56 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: DOE and EPA assessments of 2016 Petitions for Small Refinery Hardship Exemptions

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 9/14/2018 4:29:00 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: PBF Energy's Comments on Proposed 2019 RVOs
Attachments: PBF Energy.pdf

EPA should include RIN trading reforms in the RVO. EPA took comment on such reforms last year and there is clear evidence that the RIN market is not functioning. These facts warrant EPA advancing RIN trading reforms sooner rather than later.

PBF's 2018 RFS RVO comments highlighted the need for RIN market reform. As stated last year, the RIN market is broken. There are many examples, starting with the fact that only up to three companies control all of the cellulosic RINs for sale in a given year - usually at take it or leave it prices. Extensive volatility across most RIN categories – often resulting in hundreds of percent swings over very short intervals - that occurs in periods of time when there is no significant impending regulatory action or market event provides even more proof of uneconomic, manipulative trading. Even biofuel interests have noted the need to address potential market manipulation. PBF believes EPA should advance reforms that eliminate the ability of entities to use RIN trading exclusively as a profit center, while ensuring both liquidity and that the primary obligated parties, refiners, have more RIN market flexibility than nonobligated parties. PBF recommends the following reforms in pursuit of this principle:

A. Only allow obligated parties to purchase RINs.

The lack of any RIN market controls or regulation, coupled with the lack of a central clearinghouse that provides transparency, allows multiple actors to participate in the RIN market in a manipulative manner without repercussion. RIN trading occurs mostly on web based messaging platforms and practices regulated or banned in other markets are not prohibited in the RINs market. One such practice is "spoofing," where traders place bids or orders with the intention of canceling before orders are filled. This is meant to generate high frequency trades that can manipulate the price. Congress made this illegal with other commodities in Dodd-Frank, but it is allowed in the RIN market. There have also been reports of "wash sales" in the RIN market, like money pass, where a transaction gives the appearance of a certain volume sold, but where the transaction does not result in actual change of ownership.

Additionally, public comments submitted to EPA indicate that traders often offer to sell RINs at a certain price, only to refuse to sell when the buyer takes the offer, which also serves to manipulate the price. These practices are exacerbated due to the fact that non-obligated parties can participate in such activities knowing that 1) refiners HAVE to buy RINs and prefer to do so on a ratable basis and 2) there is no regulation of or prohibition against manipulative activity. Given the lack of other regulation, efficient market structure or a central clearing house, limiting purchase of RINs to obligated parties will eliminate the ability of non-regulated entities to engage in manipulative behavior. It will also ensure RINs are made exclusively available to obligated parties that must purchase them for RFS compliance.

B. Institute a 120 percent position limit for obligated parties, enforced on a quarterly basis.

The structure of both the RFS and refining industry at large results in segments of the industry that have marketing and distribution businesses with throughput greater than their refining capacity acquiring significantly more RINs than they need for compliance through blending. Other segments of the refining industry that both lack the capital or face other market barriers to entry into large scale marketing

and distribution businesses (which would allow for greater RIN acquisition from blending) end up "RIN short." They rely on purchasing RINs for compliance, often from their "RIN long" competitors. This structure, coupled with the previously mentioned lack of regulation or a central clearinghouse, allows "RIN-long" obligated parties to use large excesses of RINs as an unnatural competitive advantage against "RIN-short" competitors. It also creates opportunity for market manipulation.

Public comments submitted to EPA indicated obligated parties with more RINs than they need for compliance often set artificial floors by posting blanket offers to buy RINs below a certain target price. The intent is to signal all other known potential RIN sellers not to sell below that price. Additionally, the market for certain RIN categories is often illiquid and in some cases dominated by RIN long obligated parties. As discussed earlier, EPA has received public comments in the past indicating that there have historically been only two to three parties selling D3 RINs at any time.

The EPA currently allows obligated parties to comply with the RFS in a current year with RINs from a previous year at an amount no greater than 20 percent of their obligation. In light of this existing structure, it would be fairly simple for EPA to establish a 120 percent position limit for obligated parties. Such a requirement would allow obligated parties to bank RINs in accordance with the existing structure of the regulation, while also preventing hoarding or creating the opportunity to use RIN excesses in an unnatural, anti-competitive manner. Such a limit is specifically needed to ensure liquidity in a structure where only obligated parties are allowed to purchase RINs. Enforcing this limit quarterly will provide obligated parties enough flexibility to address any unanticipated operational issue that may arise or other market disruptions, without allowing for too long an enforcement horizon, which could serve to negate the intent of the limit in the first place.

C. Enhance transparency of the RIN Bank

The RIN bank lacks transparency. As mentioned above, the public and market participants do not know exactly which entities hold what quantities of RINs. Making the RIN bank perfectly transparent to all obligated parties - and requiring those that are hoarding RINS to make those RINS readily available to all obligated parties within a specific time frame – would reduce price volatility and mitigate the potential for RIN price spikes.

D. *Require non-obligated RIN holders to sell RINs within 30 days. Require RIN-long entities to sell positions greater than their position limit within 30 days of the end of a quarter.*

A significant portion of RIN separation, approximately 24 percent in 2017 according to EPA data, is done by non-obligated parties; primarily large, independent marketers that control blending and distribution to retail in various markets throughout the country. These entities have no RFS obligation, but by nature of their business, control a sizeable portion of the RIN market. Limiting the RIN holding period for non-obligated parties to 30 days will ensure marketers have ample flexibility to attract a market rate, while also limiting their ability to hoard RINs in a manner that unnaturally drives up the price for merchant and small refiners dependent on purchasing RINs, often ratably, for RFS compliance. As previously mentioned, requiring obligated parties that are holding RINs above their position limit to make
those RINs readily available to all obligated parties within 30 days after the end of a quarter would advance this objective.

E. Establish a regulation dictating that RINs may only be transferred among parties twice before them must be used for compliance.

Several other environmental credit programs, such as those governing benzene and sulfur, contain such a restriction. Applying it to the RIN market can help limit the ability of entities to participate in volume driven price manipulation, such as the previously mentioned "wash trades."

F. EPA and the CFTC should explore requiring whether RINs should be traded on an exchange.

As previously mentioned, there is little transparency in the RIN market, because there is no central clearing house. In order to advance a more functioning and efficient market, EPA and the CFTC should explore the potential benefits of requiring RINs to be traded on an exchange, along with how such a system could be put in place if it is determined it would be beneficial.

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August 17, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Building Mail Code: 1101 A
1200 Pennsylvania NW
Washington, DC 20460

Re: Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020; Docket ID No. EPA-HQ-OAR-2018-0167

PBF Holding Company LLC, a subsidiary of PBF Energy Inc. ("PBF"), respectfully submits these comments in response to the Environmental Protection Agency's (EPA's) "Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020," (EPA-HQ-OAR-2018-0167; FRL-9980-37-OAR) (the "proposed RVO"). PBF is a member of and acknowledges the comments submitted by the American Fuel & Petrochemical Manufacturers (AFPM) (the "AFPM Comment Letter"). PBF's comments are intended to complement and emphasize those raised in the AFPM Comment Letter. In addition, this document addresses relevant issues from the unique perspective of PBF's role as a merchant refiner.

PBF is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. The company currently owns and operates five domestic oil refineries in five states – Delaware, New Jersey, Ohio, Louisiana and California - and related assets with a combined processing capacity of approximately 900,000 barrels per day. PBF employs more than 3,000 people nationally. As one of the largest U.S. merchant refiners - with the most East Coast refining capacity - the Renewable Fuel Standard (RFS) has a significant, negative impact on PBF.

I. The 2019 proposed conventional biofuel volumes should be lowered to avoid severe economic harm. Recent experience indicates setting unreasonable volume targets does result in such harm, but does NOT appreciably do anything to overcome the challenges of the blendwall and advance the RFS program's objectives.

This overly aggressive proposal threatens to increase RIN compliance costs, raise consumer prices, and put highly skilled domestic refining industry jobs at risk. To avoid this, EPA should use its waiver authority to reduce the proposed 15 billion gallon conventional biofuel requirement to a level representing 9.7 percent of projected gasoline demand, based on annual U.S. Energy Information Administration (EIA) demand projections, rather than EPA estimates. This reduction would accurately reflect the ethanol volume all vehicles and infrastructure can safely handle, 10 percent ethanol concentration which is referred to as the "E10 blendwall," while accounting for consumer E0 demand. These reductions are necessary to avoid severe economic harm to merchant and small refiners.

A. EPA has already acknowledged that skyrocketing RIN costs resulted in sever economic harm in accepting the Philadelphia Energy Solutions (PES) bankruptcy settlement agreement.

The government's acceptance of the PES bankruptcy settlement agreement is recognition and proof that a poorly structured RIN market, coupled with an overly aggressive Renewable Volume Obligation (RVO), resulted in skyrocketing compliance costs that caused severe economic harm. PBF's comments on the PES settlement agreement detail the acknowledged harm and are attached.[1] Given this experience, it is arbitrary and capricious for EPA to set a conventional requirement which EPA knows could result in a return to the market conditions that caused the PES bankruptcy in the first place, particularly since the company just recently emerged from bankruptcy. The excessive volumetric targets are even more unreasonable given the fact that several stakeholders, including PBF, predicted the harm to merchant refiners, particularly PES, in comments to the proposed 2018 RVO. When a company is spending twice its annual payroll on RFS compliance credits, without such costs advancing the objectives of the regulation, it is obvious that the system is broken. EPA has a responsibility to recognize these realities and reduce the conventional biofuel requirement to ensure an ample supply of RINs are available to prevent a return to the market conditions that have already proven to cause harm.

B. Market experience over the last several years indicates there is no correlation between RIN price and ethanol blending. Given this fact, it is arbitrary and capricious to set a standard EPA knows could result in exorbitant RIN costs without appreciably advancing the objectives of the RFS.

i. <u>Available data continues to show robust biofuel consumption as RIN prices have fallen and numerous retroactive Small Refiner Exemptions (SREs) have been issued.</u>

The AFPM Comment Letter accurately states that in refusing to assess likely RIN generation from E15 and E85, EPA neglects its responsibility to project reasonably attainable volumes of renewable fuel. Furthermore, an honest assessment of market experience over the last several years indicates there is no correlation between RIN price and biofuel blending. As a result, in setting an unreasonable volume standard, EPA is advancing a regulation that history shows will result in almost no benefit, but will likely result in extremely high costs.

PBF's comments to the 2018 proposed RVO highlight the lack of correlation between RIN prices and the blend rate over the history of the program.[2] Nothing has changed in the market since these comments were filed.

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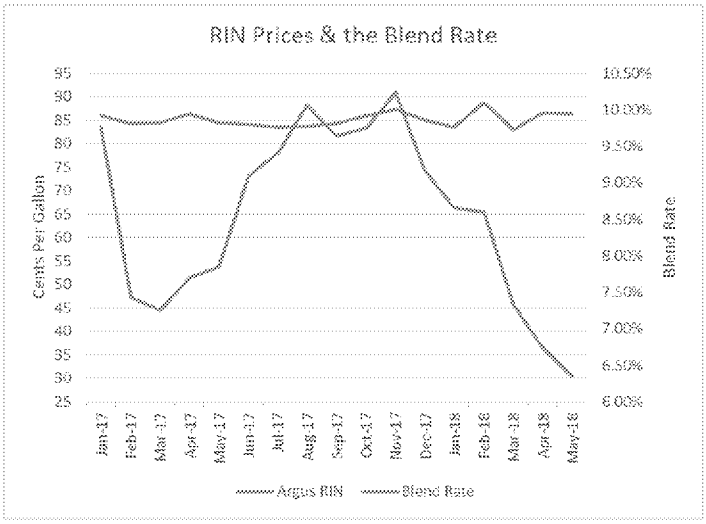
[1] Attachment A

[2] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091)



U.S. Energy Information Administration (EIA), Petroleum Supply Monthly; Argus RIN Price

As the chart above highlights, RINs have swung wildly over the last year and a half, but the blend rate has hovered around the blendwall limit. This is consistent with how the RIN market and blending rate have operated over the history of the program. It is important to emphasize that both the blend rate and overall ethanol use have neither appreciably increased when RINs were high, nor has ethanol consumption d*ecreased* when RIN prices drop (even when such drops are significant). In fact, the graph seems to indicate an *inverse* correlation between RINs and blending; meaning blending appears to *decrease* as RIN prices increase.

Market experience this year continues to prove EPA can set a volumetric standard below the blendwall in a manner that avoids severe economic harm, without adversely impacting biofuel blending. In the wake of falling RIN prices and retroactive small refiner exemptions (SREs), the Renewable Fuels Association (RFA) claimed Administrative actions on SREs "effectively lowered the volumetric obligations by at least 1.6 billion gallons"[3] and have continuously lamented alleged "demand destruction" for biofuel use. Reality tells a different story.

During the company's second quarter 2018 earnings call, The Andersons, Inc., President and Chief Executive Officer Pat Bowe stated SREs and weak RIN prices, "have not yet had a significant impact on domestic blending due to high gasoline prices and low corn ethanol prices."[4] Archer Daniels Midland (ADM) also projected increased ethanol demand growth for the rest of the year.[5] The EIA recently raised its estimates for 2018 domestic ethanol consumption to 946,000 barrels per day (b/d), up from its previous projection of 942,000 (b/d). Additionally, EIA recently touted increasing domestic ethanol production.[6] Furthermore, the U.S. Department of Agriculture (UDSA) Grain Crushings and Co-Products

[3] https://ethanolrfa.org/2018/04/epa-data-shows-small-refiner-waivers-have-lowered-2016-2017-rfs-blending-obligations-by-1-6-billion-gallons/

[4] The Andersons, Inc., Q2 2018 Earnings Transcript: https://seekingalpha.com/article/4198345-andersons-inc-ande-ceo-pat-bowe-q2-2018-results-earnings-call-transcript?part=single

[5] Archer-Daniels-Midland Q2 2018 Earnings Transcript: https://seekingalpha.com/article/4192680-archer-daniels-midland-adm-q2-2018-results-earnings-call-transcript?part=single

[6] U.S. Energy Information Administration. "U.S. fuel ethanol production capacity continues to increase." *Today In Energy.* August 1, 2018.

Production report notes that corn consumption for fuel in June of 2018 was 6 percent higher than June 2017.[7]

Testimony from a recent Congressional hearing on RINs provides more independent verification that domestic biofuel consumption and blending remains robust in a relatively low RIN price and SRE environment. Witnesses at this hearing stated the following:

- "Currently, the low RIN prices are the result of ***record domestic ethanol production and consumption***, and this abnormally high RIN bank."[8] (emphasis added)
- "The small refiner waivers are granted retrospectively, so the compliance year has already passed, but every refiner assumes they're going to be an obligated party during that year. They will continue to blend renewable fuels and buy RINs as needed because they don't know that they're going to get the exemption at the twelfth hour when they go to report to the EPA by March 31st of the following year.... Does it destruct the demand of the current year? If you look at the RIN data through June, we're at the same production level that we were in 2017 and we're halfway towards meeting the 2018 compliance RVOs."[9]

EIA Petroleum Supply Monthly data tells a similar story. Based on EIA's data through May (the most recent month with EIA monthly data), ethanol consumption thus far in 2018 is about 5.74 billion gallons, or about 30 million gallons higher than the same period last year.[10]

Such data indicates EPA does not have to set a market forcing standard that will result in high RIN prices to advance domestic ethanol blending, because market experience proves ethanol blending up to the blendwall is economic regardless of the RIN price (and even regardless of SREs). PBF detailed the positive economics of ethanol blending in comments submitted regarding EPA's Notice of Data Availability Concerning Potential Reductions in the Volume Requirements for the 2018 Renewable Fuel and 2019 Biomass-Based Diesel under the Renewable Fuels Standard Program ("the 2017 NODA").[11]

Robust ethanol use not only applies to E10 in the current environment. Significantly lower RIN prices in 2018 compared to last year do not seem to be holding back E15 sales either. EPA estimates there are 1,065 stations selling E15.[12] Minnesota is home to 253 of these stations,[13] representing approximately 24 percent of national outlets offering the fuel, and is one of the only states that regularly reports E15 sales. In June, the Minnesota Bio-Fuels Association reported 23 million gallons of E15 sold to date; a volume already exceeding the state's entire E15 consumption for 2017.[14]

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[7] U.S. Department of Agriculture. *Grain Crushings and Co-Products Production.* August 1, 2018. Available at: http://usda.mannlib.cornell.edu/usda/current/GrnCrush/GrnCrush-08-01-2018.pdf

[8] United States. Cong. House. Committee on Energy and Commerce. Hearing on Background on Renewable Identification Numbers under the Renewable Fuel Standard. July 25, 2018. 115th Cong. 2nd sess. Washington: GPO, 2018 (statement of Corey Lavinsky, Director of Global Biofuels, S&P Global Platts).

[9] Ibid. (statement of Sandra Dunphy, Director, Energy Compliance Services, Weaver and Tidwell, L.L.P.).

[10] U.S. Energy Information Administration. *Petroleum Supply Monthly.* July 31, 2018. Available at: https://www.eia.gov/petroleum/supply/monthly/

[11] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091; FRL-9968-70-OAR)

[12] "Market impacts of biofuels in 2019," June 26, 2018, EPA-HQ-OAR-2018-0167-0025.

[13] http://mnfuels.com/e15locations2.cfm?show=ALL

[14] Minnesota Bio-Fuels Association. "E15 Sales in MN Hit Record 23 Million Gallons." Press Release. June 6, 2018. Available at: https://mnbiofuels.org/media-mba/blog/item/2284-e15-sales-in-mn-hit-record-23-million-gallons

ii. Market experience and comments EPA has received in relation to other RFS related proposals indicate the RIN is NOT a factor that puts pressure on the market to exceed the blendwall.

History proves the RIN does NOT play significant role in impacting the "relative pricing of E15 and E85 versus E10"[15] or result in any noticeable ability to affect such pricing. The primary reasons for the ineffectiveness of the RIN to advance the program objectives are the misaligned point of obligation, which incentivizes blenders capturing RIN profits rather than investing in infrastructure to advance fuel with higher level ethanol blends, coupled with significant vehicle and infrastructure barriers noted in the AFPM Comment Letter and EPA memos in the docket. Without addressing these core issues, EPA has a responsibility to set a standard that will avoid the economic harm associated with skyrocketing RIN costs, particularly since EPA has received comments indicating that a high cost RIN market not only fails to advance the goals of the RFS program, but actually *disincentivizes* greater domestic biofuel blending.

EPA has long recognized the inability of E85 to appreciably close the gap between the blendwall and the 15 billion de facto conventional mandate implicit in statute. The focus more recently has been on whether E15 can do any better. Biofuel interests have long indicated the belief that simply allowing the one pound Reid vapor pressure (RVP) waiver to apply to E15 would help advance the objectives of the RFS and lower RIN prices, under the claim that "more E15 means more RINs" and, thus, lower RIN prices. However, one of the primary reasons that the current RIN program fails to advance the objectives of the program is that in a flat motor fuel demand environment, it is nearly impossible for E15 to make up the gap between the blendwall and an RVO requiring 15 billion gallons of conventional biofuel.

The previously mentioned E15 sales data provides insight into the inability of E15 to appreciably close the blendwall gap anytime in the next several years. EIA projects relatively flat, if not declining, gasoline demand for the foreseeable future.[16] With flat fuel demand, each gallon of E15 replaces an E10 gallon. Thus, each gallon of E15 only generates another 0.05 incremental RIN per gallon sold for compliance. As a result, if one were to assume Minnesota were able to double E15 sales to date for an annual total of 46 million gallons, it would only generate an additional 2.3 million RINs over the status quo. EIA's gasoline consumption estimates for next year indicates an E10 blendwall of 14.3-14.4 billion gallons[17]; which is 600-700 million gallons short of the proposed 15 billion gallon de facto conventional requirement in the proposed RVO. It would take approximately 14 billion gallons of E15 sales to generate enough RINs to overcome the blendwall, which represents 10 percent of all fuel demand. In May, ethanol producer Green Plains estimated only 175 million gallons of E15 would be sold in 2018[18], which based on the previous math, would only result in an incremental 8.75 million RINs. E15 sales would need to double each year for several years before the fuel could appreciably make any progress towards overcoming the blendwall.

The sheer magnitude of E15 that would need to be sold to make up the blendwall gap, coupled with the enormous infrastructure hurdles detailed in the AFPM Comment Letter and empirical data showing no correlation between RIN prices and ethanol blending – even in relation to E15 – proves that

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[15] "Market impacts of biofuels in 2019," June 26, 2018, EPA-HQ-OAR-2018-0167-0025.

[16] U.S. Energy Information Administration. *Annual Energy Outlook.* February 6, 2018; *Short Term Energy Outlook.* August 7, 2018.

[17] U.S. Energy Information Administration. *Short Term Energy Outlook.* August 7, 2018.

[18] Becker, Todd. Green Plains Presentation at BMO Farm to Market Conference. May 16, 2018. Available at: http://investor.gpreinc.com/static-files/3a76fb4e-5e66-45b6-82a6-526f4028cdb3

changes in RIN price will result in neither the "small increases in ethanol volume above 10%" nor, "pressure on the market to exceed the E10 blendwall,"[19] as EPA states in the 2014-2016 final RVO (which is referenced in EPA's memo on "Market Impacts of Biofuels in 2019.").

In comments to EPA's "Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation," PBF energy detailed how the misaligned point of obligation prevents merchant refiners from recovering RIN costs to the financial benefit of integrated refiners and non-obligated blenders.[20] Without rehashing the mountain of evidence in the record affirming this fact, and regardless of EPA's point of obligation petitions denial, it is worth emphasizing that neutral parties have long noted how the misaligned obligation creates a disincentive to advance greater biofuel blends. As Magellan Midstream Partners – which controls one of the largest midstream refined products networks and whose customers include all entities in the fuel supply chain, from refiners to ethanol producers and marketers – stated in comments on the 2017 RVO:

> "The current definition of obligated party and the RIN compliance scheme can act as a deterrent for renewable fuel demand and infrastructure investment which works against the policy objectives of the Renewable Fuels Standard.... The current definition of an obligated party does not provide the right party with the motivation to increase renewable fuel demand at the retail location."[21]

The facts are clear: there is no correlation between RINs and ethanol blending, even in relation to mid-level ethanol blends like E15. Therefore, an overly aggressive conventional biofuel requirement does nothing except raise compliance costs in a manner that fails to achieve the RFS' objectives and has already resulted in severe economic harm. Given this reality, EPA has a responsibility to use its waiver authority to lower the conventional biofuel requirement to a level below the blendwall. Doing so will prevent further losses of American manufacturing jobs without adversely impacting biofuel consumption or production.

II. The proposed cellulosic, biomass-based diesel (BBD) and advanced volumetric requirements for 2019 and 2020 are overly aggressive. They will result in higher RIN costs and a de facto foreign biofuel mandate. As a result, EPA should lower the requirements to better reflect accurate domestic production.

A. The proposed cellulosic volumes are unrealistic.

PBF agrees with the AFPM Comment Letter's assertion that the proposed increase in the "cellulosic" biofuel requirement is aspirational and should be lowered to reflect actual production. EPA has continuously overestimated cellulosic production and, despite using a modified methodology from years past in the 2019 proposal, still relies on what have historically proven to be extremely uncertain future growth projections. In light of such history, EPA should set the cellulosic requirement by annualizing the most recent three months of actual production. In addition to proposing questionable volume increases for "cellulosic" biofuel – which still does not actually exist in commercial quantities, resulting in biogas being the predominant source of "cellulosic" RINs – EPA should also err on the side of caution given the fact that the cellulosic RIN market is not very competitive. As PBF noted in previous

[19] 80 Fed. Reg. at 77,457
[20] See comments from PBF Holding Company LLC (PBF)(Docket Item No. EPA-HQ-OAR-2016-0544)
[21] See comments from Magellan Midstream Partners, L.P. (Docket ID No. EPA-HQ-OAR-2016-0004)

comments, there are never more than two or three entities offering D3 RINs for sale in the market at any given time. A history of missed projections, along with a non-competitive D3 RIN market, justifies EPA lowering proposed cellulosic volumes for 2019.

B. *Since the advanced and BBD requirements are essentially one and the same, and since this portion of the mandate is also the primary cost driver in relation to the conventional requirement, EPA must reduce the proposed volumes for advanced and BBD. Such an action is necessary to meet EPA's statutory requirement to assess the cost of the biodiesel mandate, as well as its impact on energy security, and to avoid severe economic harm.*

The proposed RVO recognizes that due to significantly reduced imports of sugarcane ethanol, imprecise estimates of potential future sugarcane ethanol imports and the lack of any significant volumes of other advanced biofuel, which EPA acknowledges "exhibited no consistent trend during 2013-2017," the vast majority of advanced biofuel mandate will be met via BBD.[22] Given these facts and the weighted nature of the BBD RIN (e.g. each gallon of BBD results in 1.5 RINs for the advanced and overall biofuel requirement), EPA's proposed RVO equates to a de facto 3.25 billion gallon BBD mandate associated with the advanced and BBD specific categories alone.

The requirement is much bigger when taking into account the fact that refiners need to over-comply with BBD to make up for the blendwall. As previously discussed, the gap between the 15 billion gallon proposed conventional biofuel requirement and the blendwall is 600-700 million RINs, which cannot feasibly be bridged using conventional biofuel RINs associated with E15 and E85. As a result, the overly aggressive conventional requirement creates a de facto BBD mandate of approximately 400-500 million gallons *in addition to the advanced and BBD biofuel proposed standards*. In other words, the combined impact of EPA's proposal is a 3.6-3.7 billion gallon biodiesel mandate. This volume necessitates foreign biodiesel, contrary to the energy security goals of the RFS statute.

Despite three years of specific and de facto (due to lack of other advanced biofuel) biodiesel RVOs in excess of 2 billion gallons, domestic biodiesel producers have failed to produce greater than 1.6 billion gallons annually, despite ample production capacity to do so.[23] Failure of domestic producers to make adequate volumes resulted in the use of as much as one billion gallons of foreign biodiesel last year. As PBF stated in comments to the 2017 NODA, relying on costly, tariff-laden, questionable foreign biodiesel supplies to meet the RFS is in direct contrast to Congress' original intent to bolster domestic biofuel supplies when passing the Energy Independence and Security Act of 2007 (EISA).[24]

The trend of reliance on foreign BBD to meet the RFS continues this year, despite the December 2017 tariffs the U.S. International Trade commission levied on Argentinian and Indonesian BBD imports (which represented the largest source of foreign BBD supplied to the U.S. market prior to this action). EIA notes that U.S. domestic biodiesel production is up every month this year compared to the two years

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[22] 83 Fed. Reg. at 32,041-32,043

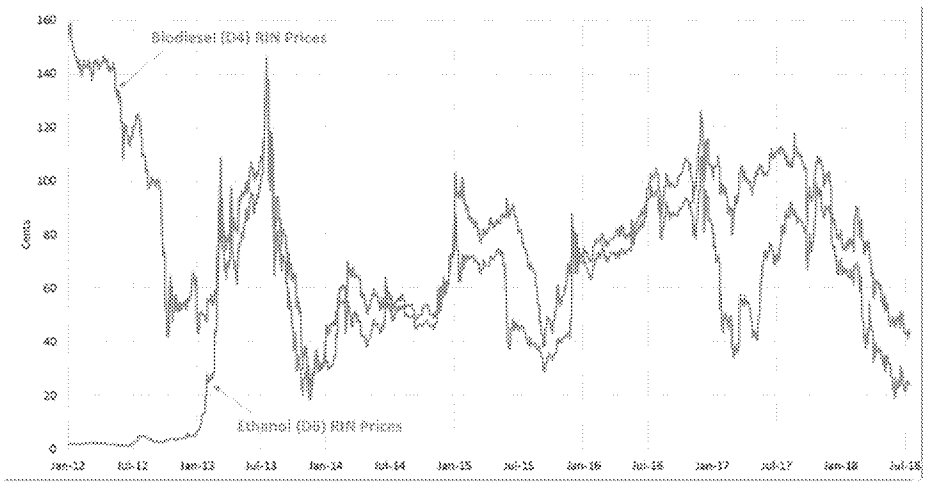
[23] U.S. Energy Information Administration. *Short Term Energy Outlook.* August 7, 2018; *Monthly Biodiesel Production Report.* July 31, 2018.

[24] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091; FRL-9968-70-OAR)

prior.[25] However, EIA still projects annual domestic biodiesel production will fall just short of 2 billion gallons.[26]

EPA EMTS data tells a similar story. It indicates through the first half of this year, domestic biomass-based diesel RIN generation totals approximately 1.5 billion RINs, or 971 million gallons; putting domestic biodiesel producers on course to make only 1.9 billion gallons in 2018.[27] This volume falls 200 million gallons short of the biodiesel requirement, let alone the de facto biodiesel mandate attributable to an unachievable conventional and excessive advanced proposal. Furthermore, foreign biofuel represents nearly 20 percent of all 2018 RIN generation to date. PBF agrees with the AFPM Comment Letter's conclusion that a de facto foreign biodiesel requirement runs contrary to the energy security goals of the RFS. As such, EPA should set the advanced requirement for next year and the BBD standard for 2020 at a level that better reflects likely actual domestic production.

The effects of the de facto foreign biodiesel proposed mandate are exacerbated when both the cost of biodiesel on consumers and to the rest of the RFS requirements are taken into account. Since the D4 RIN becomes the marginal gallon required to meet the D6 portion of the mandate (due to the previously mentioned constraints in generating 15 billion D6 RINs), the price of D6 RINs becomes tied to the higher priced D4 RIN, greatly increasing the costs of RFS compliance.



Source: Oil Price Information Service (OPIS)

In other words, the D6 price essentially becomes the D4 price due to the necessity to use biodiesel to meet overly aggressive BBD, advanced AND conventional requirements. We have seen a disconnect between the D6 and D4 price in recent months due to market perceptions surrounding SREs and talks within the Administration about controlling RIN costs. However, small shifts in perception would easily result in BBD raising the D6 price to the D4 level once again. The excessive advanced requirement could lead to such changing expectations. This risk of reverting back to a high cost RIN market is heightened when one considers that the brunt of the conventional requirement should essentially cost nothing, since ethanol is economic to blend up to E10 in the absence of the mandate. As previously discussed, market

[25] EIA. *Monthly Biodiesel Production Report.* July 31, 2018. Available at: https://www.eia.gov/biofuels/biodiesel/production/

[26] EIA. *STEO.* August 7, 2018.

[27] EPA EMTS Data for 2018. Available at: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard

experience this year reaffirms this fact and PBF's NODA comments from last year detail biofuel industry recognition of ethanol's economic viability in the absence of a mandate.[28] Recognizing this circumstance, the individual previously responsible for analyzing petroleum markets and biofuel technology for EIA highlighted the truly excessive cost of overly aggressive RFS targets:

> "Because it can be argued that ethanol would be blended at 10% even without the RFS, the cost of the program can be considered to be associated solely with pushing the blend level from 10.0% to 10.1%. Put another way, the $10 billion expenditure during 2017 served to increase ethanol blending by 0.15 billion gallons; a cost of over $65 per gallon. Even if the ethanol blend percentage would have been only 9% without the RFS, the incremental ethanol gallons pushed into the gasoline pool would have been only about 1.6 billion gallons, which represents a cost of about $6 per incremental gallon of ethanol demand."[29]

The market has already experienced severe economic harm associated with excessive biofuel requirements in relation to the PES bankruptcy. If the high RIN price environment were to materialize due to EPA's proposed RVO, PES and possibly other refiners would once again be put at risk, threatening both jobs, energy security and higher consumer costs associated with domestic fuel supplies that may not be available if a refinery closes down. Additionally, the higher cost of biodiesel itself is already hitting consumers. As noted in a National Public Radio story from earlier this year:

> "'This is an easy one, economically. Biodiesel is very expensive, relative to petroleum diesel,' says Scott Irwin, an economist at the University of Illinois, who follows biofuel markets closely. He calculates that the extra cost for biodiesel comes to about $1.80 per gallon right now, meaning that the biofuel law is costing Americans about $5.4 billion a year."[30]

EPA has a responsibility to recognize the potential of an overly aspirational RVO to raise compliance and consumer costs, risking severe economic harm and adversely impacting American energy security. In order to fulfill this responsibility, the Agency needs to lower the advanced biofuel requirement for 2019 and the BBD requirement for 2020 to a level that better reflects likely actual domestic production.

III. EPA correctly recognizes the importance of a robust RIN bank and PBF supports the Agency's proposal NOT to intentionally draw it down. However, EPA must also reduce the volumetric requirement to avoid a RIN bank drawdown. Additionally, PBF supports the Agency's decision to reject calls from the biofuel industry to illegally "reallocate" volumes associated with SREs.

PBF agrees with both the AFPM Comment Letter and EPA's own comments on the necessity of a robust RIN bank to enhance liquidity and act as an insurance policy against potential market disruptions.[31] However, PBF also agrees with the AFPM Comment Letter on the point that high volume proposals contradict EPA's stated intentions regarding the RIN bank:

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[28] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091; FRL-9968-70-OAR)

[29] See comments from A. Michael Schaal, Energy Ventures Analysis (PES Holdings, LLC., et al., D.J. Ref. No. 90-5-2-1-10993/1)

[30] Charles, Dan. "Turning Soybeans Into Diesel Fuel Is Costing Us Billions." National Public Radio. January 16, 2018. Available at: https://www.npr.org/sections/thesalt/2018/01/16/577649838/turning-soybeans-into-diesel-fuel-is-costing-us-billions

[31] 83 Fed. Reg. at 32,029

"EPA admits that 2.8 billion gallons in 2019 is risky bet, but the backstop are carryover RINs ("Alternatively, obligated parties could rely on the significant volume of carryover advanced RINs projected to be available in 2019.")."[32]

Additionally, it is important to emphasize that the RIN bank is not a communal pot of RINs available to all market participants. The public and market participants do not know exactly which entities hold what quantities of RINs. General market knowledge infers RIN-long obligated parties control the RIN bank and there is no requirement that such entities ever need to offer these RINs for sale in any market situation. This circumstance further warrants the RIN bank remain as robust as possible to ensure it is liquid enough to act as needed in the event of a market disruption.

Finally, we applaud EPA for rejecting calls from the biofuel industry to "reallocate" volumes associated with SREs. First, as previously discussed, there is nothing to "reallocate," because retroactive waivers have had zero impact on biofuel blending. Additionally, it would be arbitrary and capricious to assume future volume exemptions that may or may not occur in the context of the RVO formula. Biofuel industry calls for "reallocation" are simply attempts to try and force EPA into promulgating an RVO that exceeds the de facto statutory cap of 15 billion conventional biofuel gallons and EPA was wise to recognize and reject such proposals.

More importantly, EPA lacks authority to "reallocate" *any* waived volumes in *any* circumstance. This fact holds true whether EPA grants SREs retroactively or before setting a final RVO. The entire statutory construct of the RFS is crafted in a manner that *only* allows for downward adjustments. The language is clear in expressing Congress' recognition that the targets in the statute may be overly aggressive and, as a result, instituted a series of waiver authorities expressly intended to allow EPA to *reduce* the RFS requirement.

The various waiver authorities are all geared towards downward adjustment; including waivers for "inadequate domestic supply,"[33] severe economic harm,[34] reduction of the cellulosic requirement,[35] reduction of the biodiesel requirement,[36] and even a reduction in the requirement associated with SREs.[37] On this specific front, the statute exempts small refiners until 2011 and then allows for their exemption for an indeterminate amount of time thereafter. It also directly addresses renewable fuel that will be blended with small refiner production in spite of the exemption. Specifically, the statute says the Administrator shall make adjustments, "to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt."[38] In other words, the statute recognizes that small refiners may still blend renewable fuel regardless of the exemption in a manner that equates to over-compliance with the federal statute.

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[32] See comments from the American Fuel & Petrochemical Manufacturer (AFPM) (EPA-HQ-OAR-2018-0167)
[33] 42 U.S.C. § 7545(o)(7)(A)(ii)
[34] *Id.* § 7545(o)(7)(A)(i)
[35] *Id.* § 7545(o)(7)(D)(i)
[36] *Id.* § 7545(o)(7)(E)(ii)
[37] *Id.* § 7545(o)(3)(C)(ii)
[38] *Ibid.*

Given the statutory text and overall construct, EPA must *only act to reduce the overall requirement*: "to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt."[39] The law does not say EPA shall make up a deficit for renewable fuel NOT used due to the small refiner exemptions, nor does it state small refiner exemptions should be addressed through an increase in the obligation for non-exempt refiners. Congress said that any use of renewable fuel by exempted refineries should be accounted for in reducing the percentage obligations for non-exempt refineries. With this provision, Congress had a chance to address exempted volumes in another way but did not. As a result, EPA has no authority other than to adjust the RFS requirement downward to take into account what is essentially over-compliance when small refiner produced fuel is blended with renewable fuel, which the data suggests has been occurring over the last several years.

IV. EPA should include RIN trading reforms in the RVO. EPA took comment on such reforms last year and there is clear evidence that the RIN market is not functioning. These facts warrant EPA advancing RIN trading reforms sooner rather than later.

PBF's 2018 RFS RVO comments highlighted the need for RIN market reform. As stated last year, the RIN market is broken. There are many examples, starting with the fact that only up to three companies control all of the cellulosic RINs for sale in a given year - usually at take it or leave it prices. Extensive volatility across most RIN categories – often resulting in hundreds of percent swings over very short intervals - that occurs in periods of time when there is no significant impending regulatory action or market event provides even more proof of uneconomic, manipulative trading. Even biofuel interests have noted the need to address potential market manipulation. PBF believes EPA should advance reforms that eliminate the ability of entities to use RIN trading exclusively as a profit center, while ensuring both liquidity and that the primary obligated parties, refiners, have more RIN market flexibility than non-obligated parties. PBF recommends the following reforms in pursuit of this principle:

A. Only allow obligated parties to purchase RINs.

The lack of any RIN market controls or regulation, coupled with the lack of a central clearinghouse that provides transparency, allows multiple actors to participate in the RIN market in a manipulative manner without repercussion. RIN trading occurs mostly on web based messaging platforms and practices regulated or banned in other markets are not prohibited in the RINs market. One such practice is "spoofing," where traders place bids or orders with the intention of canceling before orders are filled. This is meant to generate high frequency trades that can manipulate the price. Congress made this illegal with other commodities in Dodd-Frank, but it is allowed in the RIN market. There have also been reports of "wash sales" in the RIN market, like money pass, where a transaction gives the appearance of a certain volume sold, but where the transaction does not result in actual change of ownership.

Additionally, public comments submitted to EPA indicate that traders often offer to sell RINs at a certain price, only to refuse to sell when the buyer takes the offer, which also serves to manipulate the price. These practices are exacerbated due to the fact that non-obligated parties can participate in such activities knowing that 1) refiners HAVE to buy RINs and prefer to do so on a ratable basis and 2) there is no regulation of or prohibition against manipulative activity. Given the lack of other regulation, efficient market structure or a central clearing house, limiting purchase of RINs to obligated parties will eliminate the ability of non-regulated entities to engage in manipulative behavior. It will also ensure RINs are made exclusively available to obligated parties that must purchase them for RFS compliance.

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[39] *Ibid.*

B. Institute a 120 percent position limit for obligated parties, enforced on a quarterly basis.

The structure of both the RFS and refining industry at large results in segments of the industry that have marketing and distribution businesses with throughput greater than their refining capacity acquiring significantly more RINs than they need for compliance through blending. Other segments of the refining industry that both lack the capital or face other market barriers to entry into large scale marketing and distribution businesses (which would allow for greater RIN acquisition from blending) end up "RIN short." They rely on purchasing RINs for compliance, often from their "RIN long" competitors. This structure, coupled with the previously mentioned lack of regulation or a central clearinghouse, allows "RIN-long" obligated parties to use large excesses of RINs as an unnatural competitive advantage against "RIN-short" competitors. It also creates opportunity for market manipulation.

Public comments submitted to EPA indicated obligated parties with more RINs than they need for compliance often set artificial floors by posting blanket offers to buy RINs below a certain target price. The intent is to signal all other known potential RIN sellers not to sell below that price. Additionally, the market for certain RIN categories is often illiquid and in some cases dominated by RIN long obligated parties. As discussed earlier, EPA has received public comments in the past indicating that there have historically been only two to three parties selling D3 RINs at any time.

The EPA currently allows obligated parties to comply with the RFS in a current year with RINs from a previous year at an amount no greater than 20 percent of their obligation. In light of this existing structure, it would be fairly simple for EPA to establish a 120 percent position limit for obligated parties. Such a requirement would allow obligated parties to bank RINs in accordance with the existing structure of the regulation, while also preventing hoarding or creating the opportunity to use RIN excesses in an unnatural, anti-competitive manner. Such a limit is specifically needed to ensure liquidity in a structure where only obligated parties are allowed to purchase RINs. Enforcing this limit quarterly will provide obligated parties enough flexibility to address any unanticipated operational issue that may arise or other market disruptions, without allowing for too long an enforcement horizon, which could serve to negate the intent of the limit in the first place.

C. Enhance transparency of the RIN Bank

The RIN bank lacks transparency. As mentioned above, the public and market participants do not know exactly which entities hold what quantities of RINs. Making the RIN bank perfectly transparent to all obligated parties - and requiring those that are hoarding RINS to make those RINS readily available to all obligated parties within a specific time frame – would reduce price volatility and mitigate the potential for RIN price spikes.

D. *Require non-obligated RIN holders to sell RINs within 30 days. Require RIN-long entities to sell positions greater than their position limit within 30 days of the end of a quarter.*

A significant portion of RIN separation, approximately 24 percent in 2017 according to EPA data,[40] is done by non-obligated parties; primarily large, independent marketers that control blending and

[40] EPA EMTS 2017 RIN Separation Data: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2017-renewable-fuel-standard-data

distribution to retail in various markets throughout the country. These entities have no RFS obligation, but by nature of their business, control a sizeable portion of the RIN market. Limiting the RIN holding period for non-obligated parties to 30 days will ensure marketers have ample flexibility to attract a market rate, while also limiting their ability to hoard RINs in a manner that unnaturally drives up the price for merchant and small refiners dependent on purchasing RINs, often ratably, for RFS compliance. As previously mentioned, requiring obligated parties that are holding RINs above their position limit to make those RINs readily available to all obligated parties within 30 days after the end of a quarter would advance this objective.

E. Establish a regulation dictating that RINs may only be transferred among parties twice before them must be used for compliance.

Several other environmental credit programs, such as those governing benzene and sulfur, contain such a restriction. Applying it to the RIN market can help limit the ability of entities to participate in volume driven price manipulation, such as the previously mentioned "wash trades."

F. EPA and the CFTC should explore requiring whether RINs should be traded on an exchange.

As previously mentioned, there is little transparency in the RIN market, because there is no central clearing house. In order to advance a more functioning and efficient market, EPA and the CFTC should explore the potential benefits of requiring RINs to be traded on an exchange, along with how such a system could be put in place if it is determined it would be beneficial.

V. EPA should also advance other changes to ensure RIN market liquidity and limit compliance costs.

Echoing its 2018 RVO comments, PBF believes EPA should allow RINs currently retired when biofuel is exported to be made available for RFS compliance. As detailed in last year's comments,[41] EPA has the authority do advance this policy. Allowing RINs from exported fuel to be used for compliance would add liquidity, while increasing the production of renewable fuels and enhancing energy security by furthering both the RFS's and Administration's stated policy objectives of American energy security and dominance respectively. Ensuring that both denatured and undenatured ethanol gallons can generate RINs for RFS compliance is also important to advance this objective, since much of the ethanol the U.S. exports travels to markets that require undenatured gallons due to differing fuel specifications and other considerations.

Such a policy change would greatly increase RINs available for compliance, partially alleviating the adverse impact of excessive RIN costs on the refining sector while simultaneously incentivizing biofuel production pursuant to the RFS. It would also remove a self-imposed non-tariff barrier to ethanol trade. We urge EPA to make such a change in the final 2019 RVO.

PBF also supports measures to directly control the cost of a D6 RIN through the use of a price fixed government RIN, much as is done with the cellulosic waiver credit (CWC). As previously discussed, ethanol blending is economic regardless of RIN price. Both history and 2018 market experience shows there is no correlation between ethanol blending and RIN price. Give these realities and to avoid the potential for severe economic harm, the government should generate and sell RINs to obligated parties at a low, fixed

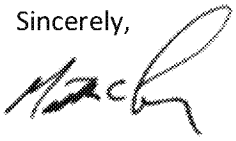
[41] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091)

price that they could use for D6 compliance if they are unable to obtain RINs cost effectively in the marketplace. Refiners would have the option of obtaining a RIN through blending, buying it off the market, or buying the RIN from the government. The government RIN should be made available at all times with no restriction on the number of credits.

Biofuel advocates have noted that such a proposal will not adversely impact ethanol blending up to E10.[42] Previously referenced available data on E15 shows that mid-level ethanol blends will also grow in a price fixed government RIN environment. Additionally, experience with the CWC indicates such mechanisms control costs without inhibiting biofuel growth. Despite the existence of the CWC, physical D3 RIN generation still occurs and has increased each of the prior three years.[43]

Finally, PBF echoes comments from last year and the AFPM Comment Letter in support of EPA revising its treatment of the CWC so that it can be used for advanced biofuel and total renewable fuel compliance. There is no basis in the Clean Air Act for preventing CWCs to be used in the nested nature as D3 RINs generated from physical biofuel. The purpose of the credit was to allow a compliance mechanism during times when statutory cellulosic volumes are unavailable, not to serve as a tax that is additive to the advanced biofuel requirement. Allowing CWCs to be used for compliance across all categories will help mitigate the cost of the cellulosic requirement, which is particularly relevant given the fact that the cellulosic RIN market is not competitive.

Sincerely,



Matthew Lucey
President

[42] Irwin, Scott. "The Grand Bargain? Trading an E15 RVP Waiver for a RINs Price Cap." farmdocDAILY blog. February 28, 2018. Available at: https://farmdocdaily.illinois.edu/2018/02/the-grand-bargain-trading-an-e15-rvp-waiver.html

[43] EPA EMTS Data on D3 RIN Generation: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2015-renewable-fuel-standard-data

ATTACHMENT A

PBF Energy Inc.
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Parsippany, NJ 07054
PH: 973-455-7500
www.pbfenergy.com

March 26, 2018

The Honorable Jeffrey H. Wood
Acting Assistant Attorney General,
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: PES Holdings, LLC, et al., D.J. Ref. No. 90–5–2–1–10993/1

Dear Acting Assistant Attorney General Wood:

PBF Holding Company LLC ("PBF") respectfully submits these comments in response to the U.S. Department of Justice, Environment and Natural Resources Division's ("ENRD") "Notice of Lodging of Proposed Consent Decree and Environmental Settlement Agreement Under The Clean Air Act," in relation to *PES HOLDINGS LLC., et al.* (collectively, "PES"), Civil Action No. 18–10122 (Bankr. D. Del.), published in the Federal Register on March 16, 2018 ("the proposed settlement agreement").[1]

PBF is one of the largest independent, merchant petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. The company currently has affiliates that own and operate five domestic oil refineries in five states: Delaware, New Jersey, Ohio, Louisiana and California - and related logistics assets with combined processing capacity of approximately 900,000 barrels per day. PBF employs more than 3,200 people nationally. As one of the largest U.S. merchant refiners and having the most refining capacity on the East Coast, Renewable Identification Number (RIN) costs associated with the Renewable Fuel Standard (RFS) have a well-documented, significant, negative impact on PBF. ENRD's proposed settlement agreement recognizes the significant, negative impact of RIN costs under the RFS on PES and therefore, notwithstanding the assertions to the contrary therein, the proposed settlement agreement will establish a precedent that is directly relevant to PBF.

As the following information summarizes, in order for PES to successfully operate post-bankruptcy, the RFS requires revision. A one-time forgiveness of RIN obligations fails to remedy the root cause for the bankruptcy and provides the wrong incentives to the RIN market, which can now allow some participants to continue to prey on similarly situated merchant refiners, potentially creating more bankruptcies knowing the government will simply forgive the obligations. Rather than only pursuing the proposed settlement agreement that provides temporary relief for just one market participant, the Environmental Protection Agency (EPA) can resolve PES' issues and prevent future bankruptcies from occurring by changing the RFS in a manner that provides immediate relief to PES ***and*** allows them to operate successfully going forward while at the same time addressing similar issues faced by other independent, merchant refiners burdened by the broken RFS and its manipulated RIN market. The survival of this vital market segment, crucial to energy independence, national security and a strong economy is dependent upon a full reform of the RFS.

[1] 83 Fed. Reg. 11,792

The proposed settlement agreement is acknowledgement by the Department of Justice (DOJ) and EPA that the RIN market is broken, causing severe economic harm to domestic refiners.

The government's acceptance of the PES bankruptcy plan is proof that escalating RIN costs are causing domestic refiners severe economic harm. The proposed settlement agreement means the government directly acknowledges the following factors identified in the PES bankruptcy filing:

- "As a result (of being a merchant refiner), PESRM (Philadelphia Energy Solutions Refining and Marketing) must purchase RINs for compliance from market participants that blend biofuels (typically large integrated oil companies and companies that own retail gasoline stations) or from companies that trade in RINs for profit."[2]
- "Unlike a tax, the amount paid by PESRM for RINs is not remitted to the government but generates profits for the sellers of the RINs. This unpredictable, escalating, and unintended compliance burden has cost the Debtors $832 million since their commencement of operations in September 2012 and, on an annual basis, the Debtors' expense associated with complying with the RFS Program is twice their annual payroll, nearly one and one-half times their annual average capital expenditures, four times their interest expense, and now represents their single largest expense after crude oil. *The effect of the RFS Program on the Debtors' business is the primary driver behind the Debtors' decision to seek relief under the Bankruptcy Code*."[3]
- "PESRM's ability to blend biofuels is very limited because it does not own sufficient blending infrastructure and its position in the fuel distribution chain limits its ability to sell blended gasoline and diesel fuel and capture the RINs needed for compliance with the RFS Program."[4]
- "Those without an RVO, such as large fuels retailers, can generate RINs and then sell them for a windfall profit to Obligated Parties like PESRM or other third parties for profit."[5]
- "Prior to 2013, ethanol RINs typically cost less than $0.05 per RIN, representing the cost of administering the RFS Program. In fact, from the Debtors' commencement of operations in September 2012 to the end of 2013, ethanol RINs cost just $0.04 per RIN on average and represented a manageable cost of compliance. But in 2017 ethanol RINs averaged $0.70 per RIN, representing a 17.5 fold average increase from these 2012 levels, and have sold for as much as $1.50 per RIN at their peak. This price increase has been fueled by a combination of escalating RVO requirements promulgated by the EPA through annual rule-making processes, practical limitations of existing downstream infrastructure and vehicle engines to handle the increased volume of biofuels, as well as market speculation. All of these factors create a real or perceived scarcity of RINs, which has had the effect of driving up prices and threatening the existence of independent merchant refiners such as the Debtors."[6]

Failure to address the problem of runaway RIN costs prospectively could result in PES and other refiners facing bankruptcy in the future.

Since the government now acknowledges the severe economic harm excessive RIN costs impose on merchant refiners, EPA must take action to address the crushing burden of RIN costs on all such refiners to save other facilities from bankruptcy. In fact, as PES itself has acknowledged in relation to the

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[2] In re PES Holdings LLC, Case No. 18-10122 (KG), Declaration of Gregory Gatta, Chief Executive Officer of PES Holdings LLC, in Support of Chapter 11 Petitions and First Day Motions [Docket 16, page3]
[3] Ibid. p. 4.
[4] Ibid. p. 13.
[5] Ibid. p. 29.
[6] Ibid.

proposed settlement, "This is only a partial and temporary reprieve, and we are hopeful that policymakers will substantively address the flawed RINs compliance mechanism so that a restructured PES and other independent merchant refiners can finally compete on a level playing field."[7][8]

As one recent article notes, "Under the proposed deal, the EPA would allow PES to use the roughly 210 million RINs it already has to cover its 467 million RINs deficit. The company said the average RIN price in 2017 was 70 cents, so it would save about $180 million under the EPA's deal, if it is approved."[9] Failing to address the RINs issue prospectively could result in PES facing the same financial stress it experienced prior to filing for bankruptcy. However, taking action that would appreciably lower RIN costs for all market participants immediately and over the long run will help both reduce PES' retrospective liability, while ensuring its future viability. Government should act expeditiously to advance prospective RIN relief, because evidence is clear that sky-high RIN costs are not a PES only problem.

Over 25 small refiners filed for economic hardship exemptions from the RFS this year; the most EPA has received at once and certainly among the highest number of filings historically.[10] Small refiners would not have to keep filing for such waivers if they were able to recover RIN costs. These facilities and companies are shutting down or being acquired by larger refiners because they can't compete with the unnatural advantage the RFS provides integrated oil companies. Antelope Refining in Wyoming shutdown in 2016. The Dakota Prairie refinery in North Dakota was acquired by Tesoro (now Andeavor) and Calumet's Shreveport refinery was acquired by Husky Energy. The competitive distortion in favor of integrated oil companies and large retail chain owners was predicted by the Department of Energy in its 2011 study for Congress.[11]

Additionally, even biofuel interests have recognized the RIN market is not operating as intended and have called on the U.S. Commodity Futures Trading Commission (CFTC) to investigate RIN market manipulation.[12] A flawed market structure, coupled with overly aggressive volume requirements have resulted in a nearly $20 billion RIN market that severely harms the merchants that must buy RINs for compliance without being able to recover costs, as EPA acknowledges by accepting the PES bankruptcy plan in the settlement agreement.

The proposed settlement agreement is a waiver of RFS program requirements and EPA has an obligation to maintain a level playing field with respect to enforcement of the RFS requirements.

EPA is charged with enforcing the RFS program requirements. On EPA's website, it states "[i]n order to protect the program's integrity ***and maintain a level playing field for regulated companies***, EPA is pursuing enforcement actions against renewable fuel producers and importers that generated invalid

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[7] Renshaw, Jarrett. "U.S. biofuels sector blasts EPA settlement with bankrupt Philadelphia refinery." Reuters. March 13, 2018. Available at: https://www.reuters.com/article/us-usa-biofuels-rins/u-s-biofuels-sector-blasts-epa-settlement-with-bankrupt-philadelphia-refinery-idUSKCN1GP1RC

[8] The fact that the proposed settlement provides PES with only a "temporary reprieve" of its obligations runs counter to the Bankruptcy Code requirement for plan confirmation that "Confirmation of a plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor…" See 11 U.S.C. § 1129(a)(11)

[9] Rodriguez, Juan Carlos. "EPA Lets Bankrupt Pa. Refiner Slide on Biofuel Payments." Law360. March 13, 2018. Available at: https://www.law360.com/articles/1021369/epa-lets-bankrupt-pa-refiner-slide-on-biofuel-payments

[10] Renshaw, Jarrett. "U.S. small refiners make surge of biofuel waiver requests." Reuters. January 25, 2018. Available at: https://www.reuters.com/article/us-usa-epa-biofuels-exclusive/exclusive-u-s-small-refiners-make-surge-of-biofuel-waiver-requests-sources-idUSKBN1FE1KA

[11] Comments from Small Refiners Coalition on EPA's Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019 (EPA-HQ-OAR-2017-0091- 3105)

[12] http://www.ethanolrfa.org/wp-content/uploads/2016/08/RFA-Letter-to-CFTC-and-EPA_re_RIN-volatility.pdf

RINs."[13] In furtherance of its mandate, EPA has implemented enforcement response policies relating to obligated parties or renewable fuel exporters that have broadly applied to obligated parties, without affording individual companies special treatment, and has issued notices of violation (NOVs) to parties who have violated the RFS program requirements. In the proposed settlement agreement with PES, EPA has not issued any NOV nor alleged any violation of RFS program requirements. Historically, EPA's practice has been to enter into administrative settlement agreements to ***resolve*** NOVs that it has issued. As no violation has occurred or even been alleged by EPA, the proposed settlement agreement is not actually a settlement but rather a waiver of RFS program requirements. As such, this waiver should be available to all independent refiners negatively impacted by the RFS program requirements and not limited to PES.

Thank you for considering our comments.

Sincerely,

Matthew Lucey
President

[13] https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 9/13/2018 9:15:47 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: PBF Energy One Pager DRAFT
Attachments: PBF Energy_September 2018.docx

Attached

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 9/9/2018 12:26:53 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: Fwd: Letter to M. Leopold from E. Scalia
Attachments: Letter to M. Leopold from E. Scalia - 9-5-18.pdf; ATT00001.htm; Monroe Comment Letter - 8-17-18.pdf; ATT00002.htm; Exhibit_A_Pirrong_Study.pdf; ATT00003.htm

Matt has asked me to share this with you all.

Sent from my iPhone

Begin forwarded message:

From: "Shelfer, Lochlan F." <LShelfer@gibsondunn.com>
To: "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>
Cc: "Schwab, Justin" <Schwab.Justin@epa.gov>, "Veney, Carla" <Veney.Carla@epa.gov>, "Scalia, Eugene" <EScalia@gibsondunn.com>, "Tayrani, Amir C." <ATayrani@gibsondunn.com>
Subject: Letter to M. Leopold from E. Scalia

Good afternoon,

Attached please find a letter to Matthew Z. Leopold, Esq. from Eugene Scalia regarding comments Mr. Scalia recently submitted to EPA on behalf of Monroe Energy, LLC responding to the EPA's notice of proposed rulemaking: "Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020; Proposed Rule," 83 Fed. Reg. 32,024 (July 10, 2018), EPA-HQ-OAR-2018-0167. Also attached are the comment letter that Mr. Scalia submitted on Monroe's behalf, and a new study that Mr. Scalia submitted in support of that letter, Craig Pirrong, *Analysis of the RFS Program and the 2019 Proposed Standards* (Aug. 17, 2018) (Exhibit A to Monroe's comments).

Thank you. We look forward to hearing from you.

Lochlan Shelfer

GIBSON DUNN

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August 17, 2018

Hon. Andrew R. Wheeler
Acting Administrator
United States Environmental Protection Agency
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Via Electronic Submission on Regulations.gov

RE: Comments on Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020; Proposed Rule, 83 Fed. Reg. 32,024 (July 10, 2018), EPA-HQ-OAR-2018-0167

Monroe Energy, LLC ("Monroe") respectfully submits these comments on EPA's Notice of Proposed Rulemaking ("NPRM") with respect to the Renewable Fuel Standard ("RFS") program for 2019. Monroe owns a refinery in southeastern Pennsylvania and is an obligated party under the RFS program.

EXECUTIVE SUMMARY

Monroe urges EPA to exercise its general waiver authority, which allows EPA to waive the RFS program's renewable fuel requirements "in whole or in part" if the EPA Administrator makes either of two determinations: (i) "that implementation of the requirement would severely harm the economy" of a "State, a region, or the United States"; or (ii) "that there is an inadequate

domestic supply."[1] Monroe believes that both of these standards have been satisfied for the 2019 RFS program.

First, EPA should invoke its severe-economic-harm waiver authority to reduce RFS volume requirements. Contrary to prior statements by EPA, the standard that EPA should use in deciding whether to exercise its severe-economic-harm waiver authority should not be a "generally high degree of confidence" that severe economic harm would result from the RFS volume requirements; instead, EPA should exercise its judgment based on the available evidence, without any heightened standard tilting the scale in either direction. Moreover, for a waiver to be appropriate, EPA should not require a demonstration that the RFS program would be the *sole* cause of the economic harm but should grant a waiver where the RFS volume requirements would be a significant factor in causing severe economic harm in combination with other economic factors. Nor should EPA consider any countervailing economic benefits of the RFS program in its economic-harm determination.

The severe-economic-harm standard is met here. When renewable fuel is produced, EPA issues a renewable identification number ("RIN") that obligated parties turn in to EPA to show compliance with the RFS requirements. Many refineries struggle with slim margins, and these RIN requirements, as well as the manner in which the RIN market operates, are currently inflicting serious economic harm on those businesses. In some years, Monroe must spend more on RINs than the amount it paid in 2012 to purchase its refinery and more than its annual costs for labor and capital investments. Last year, Monroe's RIN expenses exceeded every other category of expenses other than the crude oil it purchases to refine into fuel. Monroe is not alone in struggling under the weight of its RIN obligations. Earlier this year, Philadelphia Energy Solutions ("PES")

[1] 42 U.S.C. § 7545(o)(7)(A).

filed for Chapter 11 bankruptcy due to the devastating financial impact of its RIN obligations. And in recent years, several Pennsylvania refineries have closed—Marcus Hook in 2012, and Sunoco Eagle Point before that—and several others have come close to closing.

As demonstrated by a new study that examines the economic effects of the RFS program on PADD 1 refiners—information that was not previously available to EPA—"EPA's proposed 2019 RFS requirements have the potential to make a number of East Coast refineries unprofitable," which "will increase the probability that one or more of these refineries may be unable to continue production."[2] Furthermore, the dire economic consequences of the RFS program are not limited to Mid-Atlantic refiners. Each refining job has a large multiplier effect on the regional and national economy. Specifically, each refinery job supports an estimated 18.3 jobs in southeastern Pennsylvania, 22 jobs state-wide, and 61 jobs nationwide.[3] EPA should use its severe-economic-harm waiver authority to reduce RFS volume requirements to prevent further refinery shutdowns and job losses in Pennsylvania and throughout the entire Mid-Atlantic region.

Second, Monroe urges EPA to invoke its general waiver authority due to "inadequate domestic supply." EPA should interpret that phrase to exclude foreign imported fuel and should conclude that domestic supply is inadequate to attain the otherwise-applicable volumes of advanced biofuel and total renewable fuel. The NPRM itself confirms that the cellulosic waiver alone is not sufficient to reduce volume requirements for advanced biofuel and total renewable fuel to levels reasonably attainable based on domestic supply. EPA has projected that 2.65 billion

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[2] Craig Pirrong, *Analysis of the RFS Program and the 2019 Proposed Standards* 2 (Aug. 17, 2018) ("Pirrong Study") (attached as Exhibit A).

[3] Center for Workforce Information & Analysis, *Reemployment Assessment and Economic Impact of ConocoPhillips and Sunoco Closings*, Appendix C at 1 (Jan. 9, 2012) (attached as Exhibit B).

gallons of advanced biodiesel and renewable diesel are reasonably attainable in 2019.[4] That projection, however, depends upon hundreds of millions of gallons of imported advanced biodiesel and renewable diesel. Setting mandates that effectively require the importation of massive quantities of foreign fuel—while imposing onerous compliance costs on U.S. refineries—does nothing to advance Congress's objective in establishing the RFS program, which was to move the Nation toward energy independence. Moreover, the shortfall in advanced biodiesel and renewable diesel relative to EPA's projections is likely to be exacerbated by the recent tariffs imposed on renewable fuel imported from Argentina and Indonesia. Thus, even if EPA concludes that "domestic supply" encompasses imported fuel, a waiver would still be required to account for the unavailability of Argentine and Indonesian imports.

EPA should also take additional steps to improve the functioning of the RIN market. As currently structured, the RIN market is highly susceptible to speculation and manipulation, resulting in nearly $1 billion in fraudulent costs.[5] To address these shortcomings, EPA should adopt RIN trading reforms and encourage the Commodity Futures Trading Commission ("CFTC") to work with EPA to regulate RIN transactions by non-obligated parties and non-blenders. The purchase and sale of RINs by these entities—such as banks, speculators, and other middlemen who are not obligated parties—fall within the definition of "swaps" regulated by the CFTC, and increased CFTC scrutiny of transactions involving these parties would reduce market volatility, manipulation, and fraud. EPA should also adopt a collar or cap on the price of a RIN based on 2012 average RIN prices—the last year in which RIN prices were unaffected by speculation. A

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[4] *Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020*, 83 Fed. Reg. 32,024, 32,040 (July 10, 2018) ("NPRM").

[5] Doug Parker, E&W Strategies, *White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* 2 (Sept. 4, 2016), EPA-HQ-OAR-2016-0544-0063 ("I believe the cost of these fraud schemes to victims and consumers, including taxpayers and obligated parties, is approaching $1 billion.") (attached as Exhibit C).

price collar or cap would provide predictability to obligated parties and would substantially reduce the incentives and opportunity for market manipulation and fraud.

In addition, EPA should change its treatment of RINs separated from renewable fuel that is exported. Currently, such RINs are retired when the renewable fuel is exported. Instead, those RINs should be available for RFS compliance. That approach is consistent with the statutory goal of furthering American energy independence because it would incentivize further investments in domestic biofuel production facilities.

Finally, Monroe supports EPA's decision to exercise its cellulosic waiver authority to the maximum permissible extent. In particular, EPA is correct not to require the backfilling of missing cellulosic biofuel volumes with non-cellulosic fuels, not to rely on carryover RINs to reduce the size of the cellulosic waiver, and not to adjust RFS standards in light of small-refinery hardship exemptions.

TABLE OF CONTENTS

EXECUTIVE SUMMARY i

EXHIBITS vii

COMMENTS 1

I. EPA SHOULD EXERCISE ITS GENERAL WAIVER AUTHORITY 1

A. EPA Should Exercise Its General Waiver Authority For Severe Economic Harm 2

1. A waiver is appropriate whenever, in EPA's judgment, the evidence indicates that the volume requirements would cause severe economic harm 2

2. The RFS program need not be the sole cause of severe economic harm to warrant a waiver 8

3. Countervailing economic benefits from the RFS program cannot offset severe economic harm for purposes of the waiver determination 11

4. The RFS program is currently inflicting severe economic harm on the PADD 1 region 13

B. EPA Should Exercise Its General Waiver Authority For Inadequate Domestic Supply 25

II. EPA SHOULD REFORM THE RIN MARKET 32

A. The RIN Trading Market Needs Reform 32

B. EPA Should Encourage The CFTC To Actively Monitor The RIN Market 35

C. EPA Should Institute A RIN Price Cap 36

D. EPA Should Allow RINs From Exported Renewable Fuel To Be Used For Compliance By Obligated Parties 38

III. MONROE SUPPORTS EPA'S PROPOSAL TO APPLY THE CELLULOSIC WAIVER TO THE MAXIMUM EXTENT 39

CONCLUSION 43

EXHIBITS

Exhibit A — Craig Pirrong, *Analysis of the RFS Program and the 2019 Proposed Standards* (Aug. 17, 2018)

Exhibit B — Center for Workforce Information & Analysis, *Reemployment Assessment and Economic Impact of ConocoPhillips and Sunoco Closings* (Jan. 9, 2012)

Exhibit C — Doug Parker, E&W Strategies, *White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* (Sept. 4, 2016), EPA-HQ-OAR-2016-0544-0063

Exhibit D — David E. Dismukes & Gregory B. Upton, Jr., Acadian Consulting Group, *Economic Impact and Re-Employment Assessment of PES Philadelphia Refining Complex* (Aug. 31, 2017)

Exhibit E — Charles River Associates, *Unobligated RINs for Renewable Fuel Exports: Impact on Ethanol Volumes* (Oct. 16, 2017)

COMMENTS

I. EPA SHOULD EXERCISE ITS GENERAL WAIVER AUTHORITY.

In the NPRM, EPA has proposed to use its cellulosic waiver authority to reduce the statutory renewable fuel volume requirements.[6] Monroe supports EPA's decision to exercise its cellulosic waiver authority to reduce the statutory volumes. By itself, however, the cellulosic waiver is not sufficient to align volume requirements with amounts that can reasonably be obtained without inflicting severe economic harm on those regions in which refiners are concentrated—including Petroleum Administration for Defense District ("PADD") Region 1 where Monroe's refinery is located—and without requiring the importation of hundreds of millions of gallons of foreign advanced biodiesel and renewable diesel.

Congress afforded EPA the authority to adjust statutory volume requirements to prevent these serious economic consequences and this dangerous reliance on imported fuel. Specifically, EPA possesses the authority to waive the RFS program's renewable fuel requirements "in whole or in part" if the EPA Administrator makes either of two determinations: (i) "that implementation of the requirement would severely harm the economy" of a "State, a region, or the United States"; or (ii) "that there is an inadequate domestic supply."[7] EPA acknowledged this authority in the NPRM and "solicit[ed] comment on whether further reductions under the general waiver authority could be justified."[8] EPA would be justified in exercising its general waiver authority on either or both of these grounds.

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[6] 83 Fed. Reg. at 32,026.

[7] 42 U.S.C. § 7545(o)(7)(A).

[8] 83 Fed. Reg. at 32,029, 32,048.

A. EPA Should Exercise Its General Waiver Authority For Severe Economic Harm.

EPA can reduce the statutory volume requirements for renewable fuel upon determining that "implementation of the requirement would severely harm the economy . . . of a State, a region, or the United States."[9] Monroe and other obligated merchant refiners in the Northeast are experiencing severe economic harm as a result of the RFS volume requirements.[10] The onerous compliance obligations that the RFS program imposes on Monroe and other refiners make it extremely challenging for refiners to operate profitably, imperiling the livelihoods of their employees and creating damaging economic ripple effects throughout the entire Northeast region.[11] As demonstrated in a recent comprehensive study by economics expert Dr. Craig Pirrong, any further increases in the RFS mandates could inflict devastating financial effects on the PADD 1 region and beyond.[12]

To prevent further refiner bankruptcies and closures—and the far-reaching economic harm that these developments would impose on the broader economy of the PADD 1 region—EPA should exercise its authority to grant a severe-economic-harm waiver that reduces the advanced biofuel volume to 3.88 billion gallons and the total renewable fuel volume to 17.88 billion gallons.

1. A waiver is appropriate whenever, in EPA's judgment, the evidence indicates that the volume requirements would cause severe economic harm.

In the past, EPA has indicated that, before exercising its severe-economic-harm waiver authority, the agency must have "a generally high degree of confidence that severe harm would

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[9] 42 U.S.C. § 7545(o)(7)(A)(i).

[10] *See infra* Part I.A.4.

[11] *Id.*

[12] *See generally* Pirrong Study.

occur from implementation of the RFS."[13] The evidence of severe economic harm to the PADD 1 region discussed below more than meets that threshold. But EPA should not evaluate whether to grant a severe-economic-harm waiver using a "generally high degree of confidence" standard because that standard is inconsistent with the Energy Independence and Security Act of 2007 ("EISA") that established the RFS program. EPA should instead grant a severe-economic-harm waiver whenever, in EPA's judgment, the evidence indicates that the RFS volume requirements would severely harm the economy. This standard would better conform to the statute and the cases that have interpreted it.

EPA is not bound by its prior interpretation of EISA's severe-economic-harm waiver provision. As EPA has acknowledged, it "is not precluded from altering the interpretation of the term 'severe economic harm' that it articulated in prior waiver decisions."[14] EPA should take this opportunity to alter its prior interpretation because the statutory language and context, as well as relevant precedent, all indicate that a waiver is available whenever EPA, in its judgment, determines based on the available evidence that the RFS volume requirements would cause severe economic harm.

The general-waiver provision of EISA requires only "a determination by [EPA], after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy . . . of a State, a region, or the United States."[15] Thus, nothing in the plain language of the statute requires EPA to have a heightened "degree of confidence" about the

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[13] *See Notice of Decision Regarding the State of Texas Request for a Waiver of a Portion of the Renewable Fuel Standard*, 73 Fed. Reg. 47,168, 47,171-72 (Aug. 13, 2008) (denial of petition for waiver); *accord Notice of Decision Regarding Requests for a Waiver of the Renewable Fuel Standard*, 77 Fed. Reg. 70,752, 70,754 (Nov. 27, 2012) (same).

[14] EPA, *Renewable Fuel Standard Program - Standards for 2018 and Biomass-Based Diesel Volume for 2019: Response to Comments* 22, EPA-420-R-17-007 (Dec. 2017).

[15] 42 U.S.C. § 7545(o)(7)(A).

economic impact of the RFS volume requirements. Rather, by its terms, the statute requires nothing more than an evaluation of the evidence and exercise of judgment in the same manner as EPA and other federal agencies make a range of other consequential decisions.

Moreover, EPA's "generally high degree of confidence" standard conflicts with the D.C. Circuit's ruling in *American Petroleum Institute v. EPA* ("*API*") that EPA's cellulosic waiver authority[16] requires EPA to "take neutral aim at accuracy" in its projection of cellulosic biofuel production, without a thumb on either side of the scale.[17] The D.C. Circuit disapproved "EPA's decision to adopt a methodology in which the risk of overestimation is set deliberately to outweigh the risk of underestimation"—an approach that EPA believed would advance the objectives of the RFS program.[18] The D.C. Circuit instead interpreted EISA "plainly to call for a prediction of what will *actually* happen."[19]

EPA's "generally high degree of confidence" standard is incompatible with the "neutral aim at accuracy" required by the D.C. Circuit because it creates an unacceptable risk that EPA will put a thumb on the scale against a finding of severe economic harm and thereby underestimate the risk that the RFS volume requirements will in fact cause severe harm to the economy. In the absence of an explicit statutory mandate, agency determinations should not depend on the agency's specific level of "confidence." By requiring a "generally high degree of confidence" that the RFS requirements would cause severe economic harm, EPA is adding a second, extra-statutory requirement that must be satisfied before it can exercise its general waiver authority. EPA's determination should instead turn on the available evidence and the exercise of the agency's

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[16] *Id.* § 7545(o)(7)(D)(i).

[17] 706 F.3d 474, 476 (D.C. Cir. 2013); *see also id.* at 479 (in light of "the general structure of the RFS program," "the most natural reading of the provision is to call for a projection that aims at accuracy").

[18] *Id.* at 479.

[19] *Id.*

judgment. Thus, whenever EPA determines, in its judgment, that the evidence supports a finding that the statutory requirements would severely harm the economy of a State, a region, or the United States, it may exercise its general waiver authority (and should have a sound reason if it declines to do so). This standard comports with the D.C. Circuit's instructions in *API* because it is not weighted in favor of underestimation or overestimation.

In addition, *API* rejected EPA's reliance on the same vague notions of statutory purpose that EPA has used to justify its "generally high degree of confidence" standard. In its 2008 denial of a waiver for severe economic harm, EPA stated that it "believe[d]" that this standard "would appropriately implement Congress' intent for yearly growth in the use of renewable fuels."[20] Similarly, in *API*, EPA defended its potentially overestimated projection of cellulosic biofuel production on the ground that it "help[ed] drive the production of volumes that will be made available" and served "the objective of promoting growth in the industry."[21] The D.C. Circuit, however, rejected that policy-based reasoning, concluding that "a tilt . . . toward 'promoting growth' . . . has no basis in the relevant text of the Act."[22] The same is true here. EPA should evaluate the risk of severe economic harm from the RFS volume requirements by aiming for accuracy without a "tilt" in either direction.

The D.C. Circuit's 2013 decision in *API* postdates EPA's 2008 and 2012 severe-economic-harm waiver denials and thus represents a change in circumstances that would amply justify EPA's reconsideration and rejection of its prior interpretation of EISA's severe-economic-harm waiver provision.[23] EPA should bring its interpretation of the severe-economic-harm waiver authority in

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[20] 73 Fed. Reg. at 47,171-72.

[21] *API*, 706 F.3d at 478 (emphasis omitted).

[22] *Id.* at 479.

[23] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

line with *API* by making its determination based on the record evidence without any heightened standard.

In the past, EPA has sought to justify its "generally high degree of confidence" standard by reference to the Ninth Circuit's decision in *Davis v. EPA* upholding EPA's high burden of proof for waivers under former Section 211(k)(2)(B) of the Clean Air Act,[24] but EPA's reliance on *Davis* is misplaced. That section allowed a waiver of an oxygen-content requirement when "compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard."[25] EPA required an applicant seeking such a waiver to "clearly demonstrate" the effects of a waiver.[26] The Ninth Circuit's decision upholding that standard was largely premised on the extensive legislative history "indicating that Congress wanted the EPA closely to scrutinize waiver requests" related to those statutory oxygen-content requirements.[27] There is no equivalent legislative history regarding severe-economic-harm waivers under EISA.[28] And, even if there were some legislative history suggesting that Congress intended EPA to construe the severe-economic-harm waiver provision narrowly, "vague notions of a statute's 'basic purpose' are . . . inadequate to overcome the words of its text regarding the specific issue under consideration."[29]

Moreover, the Ninth Circuit did not conclude that the oxygen-content-waiver provision was unambiguous and compelled EPA's reading of that provision. Rather, it simply concluded

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[24] 348 F.3d 772, 779-80 (9th Cir. 2003).

[25] 42 U.S.C. § 7545(k)(2)(B) (2003).

[26] *Davis*, 348 F.3d at 779.

[27] *Id.* at 780.

[28] *See* 73 Fed. Reg. at 47,171-72 (referring to "intent" of Congress generally but citing no legislative history).

[29] *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 261 (1993) (emphasis omitted).

that EPA's interpretation was reasonable and therefore entitled to *Chevron* deference.[30] Thus, the Ninth Circuit's decision in *Davis* presents no obstacle to EPA's adopting a less stringent standard for assessing severe economic harm in the RFS context.

In fact, there are settings outside of the Clean Air Act where EPA does not require an elevated standard of proof to be satisfied before it exercises its waiver authority. For example, under the Toxic Substances Control Act, EPA may exempt toxic chemical manufacturers from certain requirements if the Administrator determines that the exemption "will not present an unreasonable risk of injury to health or the environment."[31] EPA has interpreted this statute to "require[ ] balancing of the harm to health or the environment that a chemical substance may cause and the magnitude and severity of that harm, against the social and economic effects on society of EPA action to reduce that harm."[32] In undertaking this assessment, EPA "will examine the *reasonably ascertainable* economic and social consequences" of its decision.[33] EPA should follow the same approach here.

Similarly, although the process is not transparent, EPA does not appear to apply the "generally high degree of confidence" standard in issuing waivers to small refineries "for the reason of disproportionate economic hardship."[34] None of the judicial opinions reviewing EPA's decisions under that provision indicates that EPA applied a standard comparable to a "generally

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[30] *See Davis*, 348 F.3d at 779-80 ("EPA's interpretation was a permissible one" and "prevails whether or not there is another interpretation consistent—even more consistent—with the statute") (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984)).

[31] 15 U.S.C. § 2604(h)(4).

[32] 40 C.F.R. § 725.67(c)(1).

[33] *Id.* (emphasis added).

[34] 42 U.S.C. § 7545(o)(9)(B)(i).

high degree of confidence."[35] There is no reason for EPA to utilize different standards when applying these two analogous waiver provisions that are part of the same statutory framework.

For all of these reasons, EPA should not apply a heightened standard when making its severe-economic-harm waiver determination, but should instead make its determination by exercising its judgment based on the available evidence.[36]

2. The RFS program need not be the sole cause of severe economic harm to warrant a waiver.

EPA has interpreted the severe-economic-harm waiver provision of EISA to mean that the agency cannot exercise its waiver authority unless it is shown that the RFS program would be the *sole* cause of severe harm to the economy.[37] But in the real world, severe macroeconomic harm seldom arises as a result of a single factor. In the context of an economy on the scale of a State or entire region of the United States, economic outcomes are almost always determined by multiple factors. It would be absurd to interpret the RFS's statutory framework to limit the availability of a severe-economic-harm waiver to the far-fetched setting in which a single factor—the RFS program's volume requirements—would be solely responsible for the creation of severe economic harm. That interpretation would nullify EPA's severe-economic-harm waiver authority, in violation of settled principles of statutory interpretation.[38] The statutory text should instead be

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[35] *See Ergon-W. Va., Inc. v. EPA*, --- F.3d --- , No. 17-1839, 2018 WL 3483282, at *5 (4th Cir. July 20, 2018) (vacating denial of exemption); *Sinclair Wyo. Ref. Co. v. EPA*, 887 F.3d 986 (10th Cir. 2017) (vacating denial of exemption); *Lion Oil Co. v. EPA*, 792 F.3d 978 (8th Cir. 2015) (denying petition for review of exemption); *Hermes Consol., LLC v. EPA*, 787 F.3d 568 (D.C. Cir. 2015) (vacating denial of exemption).

[36] Under the plain text of EISA, EPA may exercise its general waiver authority whenever it determines that "implementation of [EISA's statutory] requirements" under 42 U.S.C. § 7545(o)(2) would cause severe economic harm to a State, a region, or the United States. Thus, if requiring 13 billion gallons of advanced biofuel—the statutory volume requirement for 2019—would result in severe economic harm, then EPA may waive that requirement "in whole or in part" for that reason alone. *Id.* § 7545(o)(7)(A).

[37] 73 Fed. Reg. at 47,170-71.

[38] *See Ratzlaf v. United States*, 510 U.S. 135, 140-41 (1994) (holding that statutes should not be interpreted in a way that causes a provision to have "no consequence").

read to grant EPA the discretion to use its general waiver authority whenever the RFS program's volume requirements would be a significant factor in causing severe economic harm, even if those volume requirements operate in combination with other economic factors existing at the time to bring about that harm.

In reaching its contrary interpretation, EPA pointed to the fact that Congress did not use the word "contribute" to refer to the connection between the RFS program and "severe economic harm."[39] EPA contrasted the absence of the word "contribute" in EISA's severe-economic-harm waiver provision with the "numerous examples" in other parts of the Clean Air Act "where Congress authorized EPA action based on the contribution made by a factor or activity, and worded the statute to clearly indicate this intention."[40] EPA inferred from Congress's word choice that Congress intended to limit the agency's severe-economic-harm waiver authority to circumstances where the RFS program would be the sole cause of the economic harm.

But the uses of the word "contribute" in the other Clean Air Act contexts invoked by EPA are inapt because they *overwhelmingly* refer to an activity "contributing" to *pollution.*[41] In the pollution context, regulators, courts, and regulated parties are often able to determine whether a particular activity is the sole cause of pollution or merely one of several "contributing" factors.[42]

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[39] 73 Fed. Reg. at 47,171.

[40] *Id.*

[41] *See, e.g.*, 42 U.S.C. § 7403(c)(3)(A) ("emissions . . . that contribute to urban air pollution"); *id.* § 7410(a)(D)(i)(I) ("any source . . . which will . . . contribute significantly to nonattainment in . . . ambient air quality standard"); *id.* § 7412(m)(1)(C) ("contribution of atmospheric pollutants to total pollution loadings"); *id.* § 7412(m)(1)(D) ("contribution of such deposition to violations of water quality standards"); *id.* § 7412(m)(3) ("discharges that contribute to such emissions"); *id.* § 7474(e) ("emitting facility . . . will cause or contribute to a cumulative change in air quality"); *id.* § 7492(c)(1)(A) ("transport of air pollutants . . . significantly contributes to visibility impairment"); *id.* § 7503(a)(1)(B) ("major stationary source will not cause or contribute to emissions levels"); *id.* § 7511a(g)(4)(A) ("products the use of which contributes to ozone formation"); *id.* § 7512a(c)(1) ("stationary sources contribute significantly to carbon monoxide levels").

[42] *See, e.g.*, 33 U.S.C. § 1321(f)(2) (oil discharger may escape liability if it can show that the "discharge was caused solely by" some other party, act, or event); 42 U.S.C. § 9607(b) (releasing regulated party from liability under the

In the economic context, however, the distinction between a "significant contribution" to severe economic harm and the "cause" of that harm has little real-world significance because there is almost never a *sole* cause of any economic condition.[43] Indeed, EPA seems to have recognized as much. In the Administrator's recent letters responding to waiver petitions submitted by several States, the Administrator asked the States to identify "the extent to which harm may be attributable to RFS requirements, particularly when there may be *multiple causes contributing to economic difficulties* of a refinery."[44]

Accordingly, EPA should not draw any inferences based on the absence of the word "contribute" in Section 211(o)(7)(A) because there is no meaningful distinction between a significant contribution and causation in the economic setting. Relying on such a flawed inference would be just as atextual as "EPA's equation of 'hardship' and 'viability'" in the context of small-refinery exemptions under Section 211(o)(9)(B), which, the Tenth Circuit held, "improperly transforms Congress's statutory text into something far beyond what Congress plausibly intended."[45] Instead, EPA should adhere to the plain language of EISA and economic reality by inquiring whether the RFS program's volume requirements would be a significant factor in causing

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Comprehensive Environmental Response, Compensation, and Liability Act if it can show that the "release of a hazardous substance and the damages resulting therefrom were caused solely by" some other party, act, or event); *see also New York v. EPA*, 852 F.2d 574, 580 (D.C. Cir. 1988) (upholding EPA's determination that out-of-state sources contributed less than 20% of sulfate in the air in a Pennsylvania national ambient air quality standard subject area and therefore did not "significantly contribute" to the violation); *Air Pollution Control Dist. of Jefferson Cty. v. EPA*, 739 F.2d 1071, 1093 (6th Cir. 1984) (upholding EPA's determination that air pollution emissions from a power station contributed about 3% of the pollutants in an area that violated national ambient air quality standards and therefore did not "significantly contribute" to that violation).

[43] *See, e.g.*, John Lindauer, *Macroeconomics* 534 (4th ed. 2012) ("[I]t is often difficult to identify the precise cause of a[n economic] problem because multiple causes can be occurring at the same time."); Peter J. Moniel, *Macroeconomics in Emerging Markets* 685 (2d ed. 2011) ("There is no single cause of currency crises.").

[44] Letter from E. Scott Pruitt, Administrator of EPA, to Tom Wolf, Governor of Pennsylvania (Jan. 31, 2018) (emphasis added).

[45] *Sinclair*, 887 F.3d at 997.

severe economic harm in combination with other economic factors. At a minimum, EPA has discretion under EISA to apply that causation standard because the statute does not mandate a "sole cause" approach.[46]

3. Countervailing economic benefits from the RFS program cannot offset severe economic harm for purposes of the waiver determination.

In determining whether the RFS volume requirements would cause severe economic harm, the statutory text requires that EPA consider only economic harm to the region at issue and that it disregard any economic benefits that the RFS program might generate in that region or in other areas of the United States.

The plain language of EISA makes clear that economic benefits are irrelevant to the severe-economic-harm analysis. The statutory term "harm" encompasses injury, but not offsetting benefit.[47] Moreover, in other contexts, Congress has enacted statutes that have given EPA *express* authority to consider benefits in addition to harm. For example, in *Michigan v. EPA*, the Supreme Court concluded that when Congress instructs EPA to issue a regulation if, in the language of the statute, it "finds such regulation is appropriate and necessary," EPA must consider both costs and benefits.[48] And in *Entergy Corp. v. Riverkeeper, Inc.*, the Court deferred to EPA's determination that a statutory requirement that the agency establish standards to ensure that cooling-water intake structures at power plants reflect the "best technology available" mandated an analysis of both costs and benefits.[49] In contrast, here, Congress unambiguously instructed EPA to consider only "severe[ ] harm" without even hinting at a consideration of benefits. Thus, the statutory language

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[46] *See Chevron*, 467 U.S. at 845 (holding that agencies' statutory interpretations are upheld so long as they are "reasonable").

[47] *See, e.g.*, *Harm*, *Black's Law Dictionary* (10th ed. online 2014) ("Injury, loss, damage; material or tangible detriment").

[48] 135 S. Ct. 2699, 2706 (2015).

[49] 556 U.S. 208, 217-18 (2009).

in EISA, unlike the statutes at issue in *Michigan v. EPA* and *Entergy Corp.*, expressly focuses exclusively on economic harm to the exclusion of benefits.

Furthermore, although the statutory term "may waive" seems to confer discretion, the statutory context indicates that this discretion is very narrow. As the Supreme Court has stated, although "[t]he word 'may,' when used in a statute, usually implies some degree of discretion," this presumption "can be defeated by indications of legislative intent to the contrary or by obvious inferences from the structure and purpose of the statute."[50] For example, it is relevant in construing EISA's severe-economic-harm waiver provision that, when a government program would cause severe economic harm, the government should act to avert that effect, rather than to protect parties who may derive benefits from the market distortions the program creates. That is, the government should "first, do no harm"; the interests of those being "severely harmed" by the government should not take a back seat to the interests of incidental beneficiaries.

Here, the combination of Congress's use of "may waive" and specific criteria for granting a waiver creates at least some ambiguity about whether EPA has discretion to deny a waiver if the statutory criteria are satisfied, including, for example, where EPA determines that the RFS program creates countervailing benefits elsewhere in the economy. Given this ambiguity, the canon of constitutional avoidance requires rejecting an interpretation of the severe-economic-harm waiver provision that would violate the non-delegation doctrine by giving the Administrator unbridled discretion over use of his waiver authority. If the Administrator were able to deny a waiver despite severe economic harm caused by the RFS volume requirements, that would mean

[50] *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 198-99 (2000).

that Congress has not supplied the requisite "intelligible principle to which the person or body authorized to [act] is directed to conform."[51]

4. The RFS program is currently inflicting severe economic harm on the PADD 1 region.

Whether EPA applies its "generally high degree of confidence" standard or, as Monroe suggests, exercises its judgment based on the available evidence, it is clear that the RFS program is currently inflicting severe economic harm on the PADD 1 region and that this economic harm would become even more serious if EPA adopted its proposed 2019 standards. The compliance obligations imposed by the RFS program make it extremely difficult for refineries in the PADD 1 region to operate profitably. And the closure of even a single refinery, and the resulting job losses, would have widespread economic consequences for the entire Northeast. A severe-economic-harm waiver is therefore urgently needed.

This economic harm is documented in a comprehensive new study by Dr. Craig Pirrong, a leading economics expert, of the effects of the RFS program on PADD 1 refineries. "Using standard economic analysis, and extensive data on the production and refining of motor fuels and biofuels," Dr. Pirrong "quantif[ied] the impact of moving from a mandate where the price of RINs are zero, to the mandate proposed by the EPA for 2019," and found that the "impact is large, on

[51] *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) (alteration in original). The Supreme Court's recent grant of certiorari in *Gundy v. United States*, 138 S. Ct. 1260 (2018), suggests that the Court may be poised to reinforce the significance of the intelligible-principle requirement. *Gundy*, which will be argued on October 2, 2018, presents the question whether the statute authorizing the Attorney General to decide whether to apply the provisions of the federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901 *et seq.*, to offenses that occurred before that Act was passed violates the nondelegation doctrine. The grant of review is particularly significant in *Gundy* because, as the United States' brief in opposition noted, all eleven federal circuits that had ruled on that nondelegation claim had rejected it, and the Court had previously denied review on that question on fifteen separate occasions. Br. in Opp. at 21-22, *Gundy v. United States*, No. 17-6086 (Dec. 18, 2017). Given the Court's apparent interest in the nondelegation question, EPA should ensure that it does not adopt an interpretation of EISA's severe-economic-harm waiver provision that would contravene that doctrine.

both consumers and producers."[52] Specifically, "[t]he impact will fall particularly heavily on refiners on the East Coast of the United States," as their refining margins "will fall by 12.5 percent," a "decline in gross margin" that "is large enough to make many refineries on the East Coast unprofitable, and thereby is large enough to cause some refineries to shut down, with a consequent loss of jobs."[53]

The study begins by summarizing the history of multiple refinery closings in PADD 1 over the last decade, which underscores the serious "economic obstacles facing PADD 1 refineries."[54] Since 2009, seven refineries in PADD 1 have shut down, eliminating 641,300 barrels per day of capacity from the region.[55] As a result, only eight refineries currently remain in the PADD 1 region, with PADD 1 refinery production decreasing by more than 50% since 2005.[56] And "[a]s the number of refineries in PADD 1 has decreased, employment in the refinery industry has also decreased."[57]

One reason for these closures is the narrow profit margin with which PADD 1 refiners must grapple.[58] Monroe, for example, currently struggles to turn a profit and has been able to do so in only three of the past six years.[59] In an industry with often very slim margins, the cost to refiners of complying with the RFS program is potentially devastating. In some years, Monroe must spend more on RINs than the amount it paid to purchase its refinery, and more than on any other category

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[52] Pirrong Study at 29.

[53] *Id.*

[54] *Id.* at 9.

[55] *Id.*

[56] *Id.*

[57] *Id.* at 10.

[58] *Id.* at 10-13.

[59] *Id.* at 14-15.

of expenses—including labor and capital investments—except the purchase of crude oil. Indeed, when Monroe purchased its refinery in 2012, a D6 RIN cost less than five cents and RFS compliance costs were manageable. But last year, some RINs peaked at more than $1.20.[60] RIN compliance obligations make it difficult for Monroe just to break even, much less invest the necessary capital for sustaining and expanding operations.

Moreover, it is nearly impossible for refiners to plan for future RIN compliance obligations because the price of a RIN can fluctuate wildly. In one seven-month period during 2013, for example, the price ranged from $0.07-$1.43 per D6 RIN.[61] And last year the price of a D6 RIN peaked at well over a dollar.[62] The combination of annual changes in RIN obligations and highly volatile RIN prices makes it extraordinarily challenging for refiners to engage in mid-term economic planning and budgeting—let alone to attract capital to undertake long-term major investments that create new, high-quality jobs.

The full financial impact of the RFS program has only begun to be felt in PADD 1 in the last few years. Before 2016, PADD 1 refineries were shielded in part from the full impact of the RFS program by the shale boom, which created an "increased supply of low cost crude" in PADD 1.[63] PADD 1 was "a more attractive destination" for shale crude than other parts of the country, "partly [as] a result of transportation bottlenecks" that meant that shale crude could most easily be transported into PADD 1.[64] But "resolution of the supply bottlenecks and a lift on the U.S. crude

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[60] 83 Fed. Reg. at 32,053, Fig. VI.B.2-1.

[61] Gretchen Morgensen & Robert Gebeloff, *Wall St. Exploits Ethanol Credits, and Prices Spike*, N.Y. Times (Sept. 14, 2013), https://www.nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike.html.

[62] 83 Fed. Reg. at 32,053, Fig. VI.B.2-1.

[63] Pirrong Study at 11.

[64] *Id.*

export ban" in recent years has "led to a decline in the price differential between domestic and international crude and subsequently a decline in rail shipments from the Midwestern United States to PADD 1."[65] As a result, the relative benefits of the shale boom to PADD 1 have diminished.[66] Furthermore, beginning in 2016, stocks of gasoline rose to historic levels, and "[t]he combination of high stocks and weaker than expected demand has put downward pressure on prices, which in turn places refiners under greater financial pressure."[67] Now, the adverse economic pressures that result from the RFS program are being borne in full by PADD 1 refineries. In fact, the RFS program has a particularly dire effect on PADD 1 because refiners in that region are generally less profitable than refiners in the other two regions in the east, PADD 2 (Midwest) and PADD 3 (Gulf Coast).[68] Current margins for PADD 1 refiners "appear to be close to 2009 and 2010 levels, when the United States was in a deep recession and many PADD 1 refiners went out of business."[69]

These RFS-induced economic pressures recently drove PES—the largest PADD 1 refiner, producing 335,000 barrels per day (approximately 27% of PADD 1's capacity)—into Chapter 11 bankruptcy.[70] PES had been created in 2012 when a combination of $25 million in state grants and intervention by Pennsylvania's governor and the White House helped entice the Carlyle Group and Sunoco to rescue the South Philadelphia Refinery from financial distress.[71] As of late 2012, there was "wide speculation and good reason to hope that the region [could] become a leading

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[65] *Id.*

[66] *Id.* at 11-12.

[67] *Id.* at 10.

[68] *Id.* at 11-12.

[69] *Id.* at 13.

[70] *See id.* at 16-17 & Ex. 7.

[71] Patrick Kerkstra, Temple University Center for Regional Politics, *Taking Care of Our Own: How Democrats, Republicans, Business, and Labor Saved Thousands of Jobs and Our Refineries* 27-32 (Dec. 2012), http://www.cla.temple.edu/corp/files/2012/12/Refinery-story-011113.pdf.

energy hub" and could "reassert its old role as one of the leading energy centers on the East Coast."[72] But RIN prices spiked in 2013, and between 2012 and 2017 PES spent $832 million on RINs, which created an "unpredictable, escalating and unintended compliance burden" that amounted to "twice [its] annual payroll, nearly one and one-half times [its] annual average capital expenditures, four times [its] interest expense, and now represents [its] single largest expense after crude oil."[73] As PES explained in its Disclosure Statement in bankruptcy court, the RFS program was "the primary driver behind [PES's] decision to seek relief under the Bankruptcy Code."[74]

PES's bankruptcy "demonstrates the financial fragility of the PADD 1 refiners,"[75] as well as the serious harm that the RFS program causes to PADD 1 refineries, the men and women who work there, and the economy and energy security of both the PADD 1 region and the United States as a whole. Indeed, after PES filed for bankruptcy, EPA entered into a settlement agreement with PES, agreeing that PES "has limited ability to comply with its" RFS obligations and relieving PES of approximately 70% of its renewable fuel obligation—thus highlighting the untenable situation PES was in due to the RFS requirements and to which PES may return in the future absent policy changes by EPA.[76] The bankruptcy court approved the settlement, finding that there was "just cause for the relief granted."[77] And EPA recently made a joint request with PES that, in light of "the unforeseen circumstance of the delay of [PES's] emergence from bankruptcy," the court should extend the settlement agreement's deadlines.[78] EPA's settlement with PES reflects the

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[72] *Id.* at 38.

[73] *In re PES Holdings, LLC*, No. 18-bk-10122, Dkt. 10, at 1 (Bankr. D. Del. Jan. 22, 2018).

[74] *Id.*

[75] Pirrong Study at 16.

[76] *PES Holdings, LLC*, No. 18-bk-10122, Dkt. 244-1, at 5 (Mar. 12, 2018); *see also* Pirrong Study at 16-17.

[77] *PES Holdings, LLC*, No. 18-bk-10122, Dkt. 376, at 2 (Apr. 5, 2018).

[78] *PES Holdings, LLC*, No. 18-bk-10122, Dkt. 510, at 2-3 (July 25, 2018).

agency's recognition that the RIN program is not economically sustainable, at least in the case of the largest PADD 1 refinery.

When refineries struggle or close, the rest of the economy suffers because the direct and indirect impacts of layoffs from refineries are "substantial."[79] A study commissioned by the Commonwealth of Pennsylvania estimated that for every refinery layoff, 18.3 jobs will be lost in southeastern Pennsylvania, 22 jobs will be lost across the State, and 61 jobs will be lost across the Nation.[80] Accordingly, if a refinery with 800 employees closes and only half of those employees are able to find employment elsewhere, the refinery's closure will result in more than 7,300 direct, indirect, and induced job losses in the southeastern Pennsylvania region alone, an average labor income loss of $73,000, and a total labor income loss from direct, indirect, and induced job losses in southeastern Pennsylvania of more than $539 million.[81]

These employment multipliers for refinery jobs are much higher than for other industries; iron and steel foundries, for example, have a multiplier of only 6.5 jobs for Pennsylvania and 12 jobs for the Nation.[82] Monroe now supports almost 500 direct refining jobs, which translates into 9,000 indirect and induced jobs in southeastern Pennsylvania and 30,000 nationwide indirect and induced jobs.[83] As the governor of Pennsylvania has explained to EPA, in addition to Monroe's nearly 500 employees, PES employs 1,600 people, and together "these direct jobs support over

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[79] Center for Workforce Information & Analysis, *Reemployment Assessment and Economic Impact of Conoco Phillips and Sunoco Closings*, Appendix C at 1 (Jan. 9, 2012) (attached as Exhibit B).

[80] *Id.*

[81] Pirrong Study at 17-18 & Ex. 28.

[82] Center for Workforce Information & Analysis, *supra*, Appendix C

[83] *Id.*

35,000 indirect jobs in Southeastern Pennsylvania."[84] The Commonwealth's study also details that a thousand lost refinery jobs would cost state and local governments $280 million in tax revenue.[85]

Thus, if Monroe or another PADD 1 refiner were to close, the effects would be immediate, dramatic, and widespread. As the Pirrong Study concludes, "[i]f these significant job losses were to be realized, it would constitute a substantial negative economic impact on the local and regional economy."[86] Each of these job losses is the loss of essential income not merely to a single person, but in many cases to an entire family. The effect in each instance is one of the most serious challenges an adult breadwinner can face—in a word, "severe" economic loss for that person, for those who depend on him or her for support, and—often—for others around them. When households throughout a locale or region are beset by these economic challenges, the harm to that area is itself severe.

Indeed, the effects of a refinery closure in PADD 1 would reverberate across the region and throughout the Nation. A recent report analyzing the economic effects if PES were to close estimated that half of PES's 1,100 workers would have "difficult" re-employment prospects, and another 21% would have "fair to difficult" re-employment prospects.[87] And "any negative actions that could result in a discontinuation of refinery operations could have a significantly negative local economic impact."[88] For every 100 PES employees who are out of work for one year, the

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[84] Letter from Tom Wolf, Governor of Pennsylvania, to Scott Pruitt, Administrator, Environmental Protection Agency, at 2 (Nov. 2, 2017).

[85] Center for Workforce Information & Analysis, *supra*, Appendix C.

[86] Pirrong Study at 18.

[87] David E. Dismukes & Gregory B. Upton, Jr., Acadian Consulting Group, *Economic Impact and Re-Employment Assessment of PES Philadelphia Refining Complex* 13 (Aug. 31, 2017) (attached as Exhibit D).

[88] *Id.* at 4.

Philadelphia area would lose 585 jobs, almost $60 million in labor income, more than $627 million in output, and $12 million in state and local taxes.[89] The Commonwealth of Pennsylvania would lose 1,333 jobs, $128 million in labor income, $797 million in output, and $21 million in state and local taxes.[90] The Central Atlantic region, in turn, would lose 1,483 jobs, $140 million in labor income, $826 million in output, and $23 million in state and local taxes.[91] And the U.S. economy, in the aggregate, would lose 2,669 jobs, $227 million in labor income, $1 billion in economic output, and $45 million in state and local taxes.[92] "In the long-term," moreover, "the sum of these negative economic consequences would be even greater."[93] As the study concluded, "[a] plant closure" on the level of PES would "induce serious economic harm [in] the region."[94] Nor are these concerns merely theoretical. In 2016, PES was forced to lay off approximately 100 workers due to ever-increasing RIN prices.[95] If the RFS program were to lead a refinery like PES to lay off yet more workers, the serious consequences would be felt throughout the entire PADD 1 region and beyond.

In addition, compensating for the loss of refining capacity in the Philadelphia region—which has recently accounted for half of the East Coast's refining capacity[96]—would be logistically difficult and would increase the cost of gasoline and diesel fuel to residents of the

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[89] *Id.* at 20.

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.* at 26.

[94] *Id.* at 27.

[95] Pirrong Study at 16.

[96] *See* U.S. Energy Info. Admin., *Potential Impacts of Reductions in Refinery Activity on Northeast Petroleum Product Markets* (May 11, 2012), https://www.eia.gov/analysis/petroleum/nerefining/update/pdf/neprodmkts.pdf.

Northeast. For example, moving fuel from alternative sources along the Gulf Coast would "require overcoming both pipeline and vessel constraints" because the pipeline delivering fuel from the Gulf Coast "is at or near capacity,"[97] and chartering Jones Act vessels is very expensive. Furthermore, the shipping infrastructure for receiving that fuel in Northeast ports—which have traditionally received unrefined crude oil—would "require considerable modification before [it] can be used to receive products."[98] Together, these challenges raise the prospect of substantial job losses, "higher gas prices," and potentially "serious spikes in some areas."[99]

Thus, the closure of even a single refinery in PADD 1 would produce cascading effects that, under any measure, would qualify as severe economic harm. As demonstrated by the recent PES bankruptcy and by the numerous PADD 1 refineries that have shuttered in the past decade, there is a material risk that a PADD 1 refinery will close in the near future. Monroe's recent profitability challenges will only be exacerbated if EPA moves forward with its proposed 2019 RFS standards. As the Pirrong Study explains, "the 2019 RFS proposed requirements are likely to substantially exacerbate the financial difficulties of [PADD 1] refiners, potentially pushing profitable refiners into unprofitability."[100] Indeed, if the proposed 2019 standards had been applied between 2012 and 2018, Monroe would have lost hundreds of millions of dollars almost every year and never would have come close to being profitable.[101] And even PADD 1 refineries that are consistently profitable would have lost hundreds of millions—if not billions—of dollars every

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[97] *Id.* at 4.

[98] *Id.* at 5.

[99] Kerkstra, *supra*, at 28.

[100] Pirrong Study at 14.

[101] *Id.* at 14-15.

year since 2012 if the 2019 proposed standards had been in place in those years.[102] Plainly, these outcomes (and their cascading effects) are not what Congress intended when it adopted the RFS requirements—and the severe-economic-harm waiver authority is the tool EPA was given to avert them.

The serious economic harm currently being inflicted by the RFS program is confirmed by the fact that EPA in recent years has found the need to provide a far larger number of hardship exemptions than ever before. The EPA Administrator is authorized to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program for "disproportionate economic hardship."[103] For the 2016 compliance year, EPA granted 19 out of the 20 petitions it received, and for compliance year 2017, EPA has already granted 29 of the 33 petitions, with the four others still pending.[104] In addition, in recent years, courts of appeals have repeatedly vacated EPA's denials of hardship exemptions.[105] These exemptions are concrete evidence of the economic damage that the RFS program is currently causing and will continue to cause in the absence of a severe-economic-harm waiver.[106] Rather than continuing to resort to a

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[102] *Id.* at 14-15 & Exs. 24-26. The fact that some refiners in a region may be profitable in a given year does not preclude EPA from exercising its general waiver authority. Indeed, Congress has indicated that even if a small refinery is profitable, it may still be eligible for a small-refinery hardship waiver. As a Senate report recently explained, "the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program"; "[s]mall refinery profitability," the report continued, "does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority . . . to reduce or eliminate this burden." S. Rep. No. 115–132, at 94 (July 20, 2017). The same principle should also apply to larger refiners. Congress has given EPA the authority to reduce the regulatory burden imposed by the RFS program when the statutory volume requirements would result in severe economic harm to a State or region. The fact that in some years some refiners are able to turn a profit does not mean that the RFS program is not inflicting severe economic harm within the meaning of EISA.

[103] 42 U.S.C. § 7545(o)(9)(B).

[104] Letter from William L. Wehrum, Assistant Administrator, Environmental Protection Agency, to Senator Charles E. Grassley (July 12, 2018), *available at* https://www.eenews.net/assets/2018/07/13/document_daily_01.pdf.

[105] *Ergon*, 2018 WL 3483282; *Sinclair*, 887 F.3d 986; *Hermes*, 787 F.3d 568.

[106] It would be erroneous for EPA to rely on these small-refinery waivers as evidence that a severe-economic-harm waiver is unnecessary. These hardship exemptions underscore the serious economic harm that the RFS program

patchwork of facility-specific exemptions, however, EPA should mitigate the economic harm caused by the RFS program on a comprehensive, even-handed basis using the general waiver authority provided by Congress. The small-refinery exemptions and bankruptcy-induced settlements are *ad hoc* solutions to an industry-wide problem that should be anticipated and addressed in a holistic, fair, and uniform manner at the time the annual RFS standards are set.

Numerous States have sought waivers due to the severe economic harm directly attributable to the RFS program. Tom Wolf, the governor of Pennsylvania, asked EPA to exercise its waiver authority "in order to provide relief to refiners in Pennsylvania and elsewhere that are struggling to remain operational given the current and proposed volume requirements."[107] The "request is based upon the high cost of compliance associated with the RFS and the impact these costs have on the continued viability of the oil-refining sector in the Northeast, as well as on the local and regional economies."[108] Governor Wolf noted that the 2018 volume requirements would severely harm "the Commonwealth of Pennsylvania, the entire East Coast region, and the national economy by levying significant and unreasonable costs on merchant petroleum refiners, causing harm to their employees and the states and regions in which they operate. A waiver is imperative to protect not only refining jobs, but also the domestic refining capacity in the U.S."[109]

John Carney, governor of Delaware, has also recently requested that EPA exercise its waiver authority because "[t]he sharp and significant increases in costs to the refinery industry" from the RFS program "will directly lead to devastating job losses in Delaware and throughout the

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is inflicting on those refiners, such as Monroe, that are ineligible for the exemption due to their size, and therefore provide compelling evidence of the need for EPA to exercise its general waiver authority.

[107] Letter from Tom Wolf, Governor of Pennsylvania, to Scott Pruitt, Administrator, Environmental Protection Agency, at 2 (Nov. 2, 2017).

[108] *Id.*

[109] *Id.*

region" and a waiver is necessary to "preserve the steady refinery jobs in Delaware."[110] The governors of Texas and New Mexico have likewise sought waiver relief due to the severe economic harm that the RFS program is inflicting on their States' economies as a result of volatile, unpredictable, and frequently spiking RIN prices.[111]

PADD 1 refiners are already in a tenuous economic position as a direct result of the RFS program. Increasing refiners' RFS compliance costs through adoption of EPA's proposed 2019 volume requirements may make it impossible for at least some of those refiners to realize a profit and remain in operation. A further reduction in East Coast refining capacity, and the attendant losses of direct and indirect employment, would exacerbate the severe economic harm that the RFS program is already causing to Pennsylvania and the entire PADD 1 region. EPA should put an end to these pernicious economic effects by exercising its general waiver authority for severe economic harm.

The Pirrong Study examined the difference in economic impact between EPA's proposed 2019 standards and RFS requirements that are below the blend wall,[112] as Monroe urges EPA to adopt. Monroe believes that EPA should set the RFS requirements so that the implied ethanol inclusion rate is 9.7%, just under the blendwall. As the Pirrong Study calculates, the difference between Monroe's proposed 2019 standards and EPA's proposed standards would "represent[ ] a 12.3 percent decline in PADD 1 refinery margins," a difference of $1.6 billion in lost refiner profits, and a difference of $248 million in lost profits for Monroe alone.[113] Monroe urges EPA

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[110] Letter from John Carney, Governor of Delaware, to Scott Pruitt, Administrator, Environmental Protection Agency, at 1 (Jan 30, 2018).

[111] *See* Letter from Greg Abbott, Governor of Texas, to Scott Pruitt, Administrator, Environmental Protection Agency (Dec. 1, 2017); Letter from Susana Martinez, Governor of New Mexico, to Scott Pruitt, Administrator, Environmental Protection Agency (Nov. 22, 2017).

[112] Pirrong Study at 13-14.

[113] *Id.*

to exercise its general waiver authority to avert the severe economic harm that would result from imposing these additional burdens on refiners.

B. EPA Should Exercise Its General Waiver Authority For Inadequate Domestic Supply.

EPA also has the authority to reduce statutory volume requirements where there is an "inadequate domestic supply" of renewable fuel.[114] EPA should exercise that authority for the 2019 RFS volume requirements because, as EPA's own data demonstrate, there is an insufficient domestic supply of advanced biofuel to meet either the statutory mandate or EPA's proposed volume requirements.[115]

The NPRM proposes a total volume requirement for advanced biofuel of 4.88 billion gallons for 2019.[116] EPA premised that total on its expectation that 2.8 billion gallons of advanced biodiesel and renewable diesel (equaling 4.34 billion ethanol-equivalent gallons) will be available in 2019.[117] But EPA further recognized that only 2.65 billion gallons of advanced biodiesel and renewable diesel are "reasonably attainable" in 2019.[118] According to EPA, any higher volume requirement "has a greater potential to increase the incentive for switching advanced biofuel feedstocks from existing uses to biofuel production," and has the potential to cause "market disruptions and/or higher costs."[119] Moreover, a large portion of the estimated 2.65 billion gallons of "reasonably attainable" volume is made up of imported fuel; according to EPA's own numbers, in 2017, there were only 2.33 billion gallons of advanced biodiesel and renewable diesel available

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[114] *See* 42 U.S.C. § 7545(o)(7)(A)(ii).

[115] *See* 83 Fed. Reg. at 32,043, Tbl. IV.B.2-1.

[116] *Id.* at 32,025, Tbl. I-1.

[117] *See id.* at 32,042, Tbl. IV.B.3-1.

[118] *Id.* at 32,040.

[119] *Id.* at 32,039-40.

in the United States, and of that amount, 655 million gallons were imported, leaving only 1.67 billion gallons of domestically produced advanced biodiesel and renewable diesel.[120] The numbers were similar in 2016, when there were only 1.73 billion gallons of domestically produced advanced biodiesel and renewable diesel.[121]

These figures make clear that the NPRM's proposed advanced biofuel requirement is not attainable without substantial amounts of foreign imported fuel and, even then, will cause unwarranted "market disruption." And EPA's conclusion that 2.8 billion gallons are "attainable" is little more than *ipse dixit*, as it "require[s] finding alternative sources for biodiesel imports" from unknown locations, and is further premised on there being a "diversion of advanced feedstocks and/or advanced biodiesel and renewable diesel from existing uses," in order to help make up for lost volumes.[122] Accordingly, there is "inadequate domestic supply" to meet the NPRM's proposed volume requirement for advanced biofuel. EPA should reduce that volume requirement to a level that can be attained without foreign imports and without disrupting the market for advanced biodiesel and renewable diesel.

In last year's final rule, EPA expressly declined to "resolve at this time the interpretive issue regarding whether the term 'domestic supply' should include consideration of imports."[123] EPA should use this year's rulemaking as an opportunity to answer that question and confirm that "domestic supply" excludes imported fuels.

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[120] *Id.* at 32,043, Tbl. IV.B.2-1.

[121] *Id.*

[122] *Id.* at 32,047.

[123] *Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019*, 82 Fed. Reg. 58,486, 58,517 (Dec. 12, 2017).

Any other interpretation would strip the statutory term "domestic" of all meaning. Congress did not direct EPA to focus on the adequacy of the *total* supply of renewable fuel, but instead on the adequacy of *domestic* supply. The term "domestic" means "[p]roduced in or indigenous to a particular country"[124]—*i.e.*, produced in the United States. If "domestic supply" included foreign imports, it would leave the term "domestic" with no force because the statute would direct EPA to consider the worldwide supply of fuel available to meet RFS volume requirements, which is the same inquiry that would be required if the word "domestic" were omitted altogether from the statute. "[O]ne of the most basic interpretive canons," however, is that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."[125] Construing "domestic" to encompass foreign imports cannot be reconciled with that settled canon of construction.

Other provisions of EISA underscore that "domestic supply" excludes foreign imports. For example, the criteria that EPA "shall" consider when determining the volume requirements for biomass-based diesel (beginning in 2013) and all other renewable fuel (beginning in 2023) include "the impact of renewable fuels on the energy security of the United States," "the infrastructure of the United States," "job creation," and "rural economic development"[126]—all of which are exclusively domestic concerns.

Excluding imports from the "domestic supply" of renewable fuel would also further the objectives of EISA. Congress enacted the RFS program to "'move the United States toward greater energy independence and security.'"[127] To that end, Congress sought to reduce the United States'

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[124] *Domestic*, *American Heritage Dictionary of the English Language* 533 (5th ed. 2011).

[125] *Corley v. United States*, 556 U.S. 303, 314 (2009).

[126] 42 U.S.C. § 7545(o)(2)(B)(ii).

[127] *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 911 (D.C. Cir. 2014) (quoting Energy Independence and Security Act of 2007, Pub. L. No. 110–140, 121 Stat. 1492, 1492 (2007)).

dependence on imported petroleum by fostering a market for biofuels grown in the United States. As Congress stated in EISA, the production of transportation fuels from renewable energy would help "reduce the dependence of the United States on energy imported from volatile regions of the world that are politically unstable, stabilize the cost and availability of energy, and safeguard the economy and security of the United States."[128]

But one of the principal effects of EPA's annual RFS mandates has been to increase the United States' dependence on foreign imports of renewable fuel. Since the RFS program took effect, imports of advanced biodiesel and renewable diesel have constituted an ever-increasing share of the total volume of those fuels consumed domestically, and for the last two years have made up almost 30% of the total.[129] Indeed, because EPA looks to data from previous years to estimate renewable fuel supplies in coming years and to set volume requirements, this past reliance on imported fuel locks in dependence upon foreign-produced biofuel in the future. Construing "domestic supply" to encompass foreign imports would therefore continue to increase U.S. refiners' reliance on imported biofuel and further impair the RFS program's objectives of energy security and independence.

Moreover, the supply of imported biofuel is subject to geopolitical and economic uncertainties that make it a particularly inappropriate factor to take into account when predicting the "domestic supply" of biofuel for the upcoming year because it exposes obligated parties to the risk that the foreign biofuel may not ultimately be available. This is a real possibility in 2019 because, as EPA recognizes, "in December 2017 the U.S. International Trade Commission adopted tariffs on biodiesel imported from Argentina and Indonesia," and "no biodiesel was imported from

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[128] Pub. L. No. 110–140, § 806(a)(4), 121 Stat. 1492, 1722 (2007).

[129] *See* 83 Fed. Reg. at 32043-44, Tbl. IV.B.2–1.

Argentina or Indonesia from September 2017—February 2018, after a preliminary decision to impose tariffs on biodiesel imported from these countries was announced in August 2017."[130] Biodiesel imports from these two countries accounted for over 550 million gallons in 2016 and 290 million gallons in 2017.[131] And "[t]he volume of imported biodiesel in 2017 sourced from countries not impacted by the tariffs" was "significantly less than the volume supplied by Argentina and Indonesia," with only 100 to 150 million gallons of biodiesel "imported from countries unaffected by the recent tariffs."[132] Congress would not have intended to subject obligated parties to the risk that trade disputes, wars, or other unpredictable international conditions would limit the availability of imported biofuel. To eliminate that risk—and the inherent unfairness of subjecting obligated parties to the uncertainties of the international fuel trade—foreign imports must be excluded from "domestic supply."

Exercising EPA's general waiver authority based on the inadequate supply of domestically produced renewable fuel would also be consistent with the D.C. Circuit's recent decision in *Americans for Clean Energy v. EPA* concerning the agency's use of the inadequate-domestic-supply waiver in the 2014-2016 rule.[133] The D.C. Circuit rejected EPA's interpretation of the word "supply" in the phrase "inadequate domestic supply" as permitting consideration of "demand-side factors" that "affect[ed] the availability of renewable fuel to market actors downstream from refiners, importers, and blenders, such as fuel retailers or consumers."[134] The court made clear that the term "supply" refers only to "the supply of renewable fuel available to

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[130] *Id.* at 32,046.

[131] *Id.*

[132] *Id.* at 32,047.

[133] 864 F.3d 691, 710 (D.C. Cir. 2017).

[134] *Id.* at 709-10.

refiners, blenders, and importers to meet the statutory volume requirements" and "does not authorize EPA to consider demand-side factors affecting the demand for renewable fuel."[135]

That conclusion is relevant here because statutory words should be interpreted "in their context and with a view to their place in the overall statutory scheme."[136] Accordingly, just as the D.C. Circuit interpreted the term "supply" not to apply to "downstream" market participants "such as fuel retailers or consumers,"[137] EPA should interpret the adjacent statutory term "domestic" to refer only to renewable fuel domestically produced, not to the "upstream" supply of foreign-produced fuels.

To be sure, the D.C. Circuit assumed that the phrase "inadequate domestic supply" would apply to "importers" and noted that, in determining whether to find "inadequate domestic supply," EPA "*may*" consider factors such as "the amount of renewable fuel available for import from foreign producers."[138] But the meaning of the word "domestic" was not before the D.C. Circuit in *Americans for Clean Energy*, where the parties' dispute about the inadequate-domestic-supply waiver focused solely on the term "supply." The court's off-hand comment regarding foreign-produced supply—which was included as one of a long list of factors that EPA "may" consider when determining the available "supply"[139]—was therefore dicta because courts are "bound" only by "those portions of the opinion necessary to th[e] result."[140] In any event, a court's interpretation of an ambiguous statute does not prevent an agency from adopting a different reasonable

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[135] *Id.* at 710.

[136] *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989).

[137] *Americans for Clean Energy*, 864 F.3d at 709-10.

[138] *Id.* at 709 (emphasis added).

[139] *Id.*

[140] *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996).

interpretation of that statute,[141] and nothing in *Americans for Clean Energy* suggests that the term "domestic" *must* be read to encompass foreign imports.

Congress did not enact the RFS program to mandate increased dependence on foreign biofuel—particularly at the expense of U.S. refineries, which, as discussed above, are struggling to survive in the face of onerous RFS compliance costs. Accordingly, EPA should invoke its general waiver authority to reduce the advanced biofuel requirement by at least 655 million gallons, which is the quantity of advanced biodiesel and renewable diesel that was imported in 2017, because that imported fuel is not part of the "domestic supply" and, without it, there is inadequate "domestic supply" to meet EPA's proposed volume requirements for 2019. Moreover, even if EPA concludes that foreign imports can be included within the "domestic supply," EPA should reduce the proposed volume requirements for 2019 by 550 million gallons, which is the volume imported from Argentina and Indonesia in 2016, the last full year before the imposition of tariffs that have effectively shut off access to biofuel produced in those two countries. Under either approach, EPA should further reduce the advanced biofuel volume by an additional 150 million gallons to reflect the difference between the 2.8 billion gallons of advanced biodiesel and renewable diesel on which its 2019 proposal is premised and the 2.65 billion gallons of advanced biodiesel and renewable diesel that EPA concluded were "reasonably attainable."[142]

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[141] *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005).

[142] To be clear, Monroe agrees with EPA that "imported volumes qualify to be used for compliance with the [RFS] standards." EPA, *Renewable Fuel Standard Program - Standards for 2018 and Biomass-Based Diesel Volume for 2019: Response to Comments* 7, EPA-420-R-17-007 (Dec. 2017). Monroe is *not* arguing that imported biofuel should not be eligible for the RFS program. Monroe's position is that EPA should not set RFS volume requirements based on the expectation of a certain volume of foreign biofuel imports.

II. EPA SHOULD REFORM THE RIN MARKET.

EPA has invited comments regarding potential reforms to the RIN market, explaining that if EPA chooses to initiate a rulemaking on that topic, the agency "would be informed by comments received in response to" the current notice.[143] Monroe urges EPA to initiate a rulemaking on RIN market reforms. Currently, the RIN market is essentially unregulated and is uniquely subject to manipulation, leading to highly volatile prices. In order to improve the operation of the RIN market and eliminate speculation, EPA should limit the purchase of RINs to obligated parties and adopt additional RIN market reforms to increase the liquidity of RINs in the market and prevent the hoarding of RINs. EPA should also work with the CFTC to regulate the RIN market and should institute a RIN price cap. Finally, EPA should allow obligated parties to use RINs associated with exported renewable fuel for RFS compliance.

EPA also solicited comments on "potential changes to the RIN trading system" during last year's comment period, stating that it takes "seriously" the "concerns th[at] current provisions related to RIN trading render the RFS program vulnerable to market manipulation."[144] In last year's Final Rule, however, EPA concluded that it was "not in a position to make significant changes to the RIN system at this time."[145] The agency has now invited comments on RIN market reform for a second time. Two rounds of comments on this topic are more than enough to provide EPA with the information it needs to promulgate meaningful RIN market reforms.

A. The RIN Trading Market Needs Reform.

EPA designed RINs to serve as both a compliance tool and a tradable credit in the EPA-created RIN market. As a result of inadequate monitoring and safeguards, the RIN market has

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[143] 83 Fed. Reg. at 32,027.

[144] 82 Fed. Reg. 34,206, 34,211 (July 21, 2017).

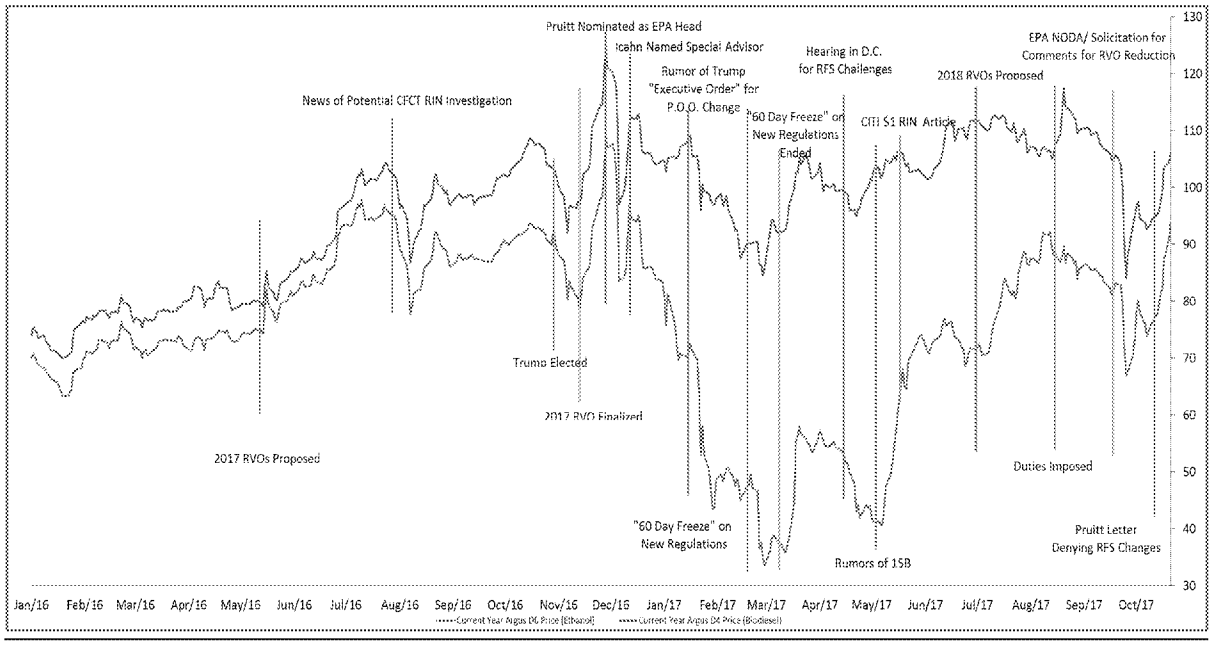
[145] 82 Fed. Reg. at 58,525.

grown into an unregulated $6-$15 billion market (depending on the price of RINs) in which RINs are being hoarded, bought, and sold for profit. Volume is thin, price signals are opaque, and the market is subject to manipulation. On numerous occasions, Monroe has received phantom offers that suddenly vanished and reappeared at higher prices when Monroe attempted to buy at the purported asking price.

RIN prices are also highly volatile, particularly in response to perceived or anticipated regulatory action by EPA. Although the RIN market lacks transparency and EPA has refused to disclose information concerning who holds RINs at any given moment, Monroe believes—and EPA has the information to confirm—that large quantities of RINs are held by banks and other financial intermediaries that are not obligated parties. These entities have no compliance-based reason to buy or sell RINs; instead, their interest is in speculating on changes in RIN prices. That activity further obscures price signals and aggravates volatility.

The structural flaws in EPA's RIN program and inadequate regulatory oversight have led to unpredictable, extreme volatility in the RIN market. The chart below exemplifies how actions or statements can affect the RIN market, making it susceptible to market manipulation and speculation that have resulted in nearly $1 billion in fraudulent costs.[146] For example, the news of a potential CFTC RIN investigation in August 2016 caused RIN prices to fall. This price drop can only be attributed to financial institutions' sales of RINs, as there was no statutory change in volume obligations.

[146] Doug Parker, E&W Strategies, *White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* 2 (Sept. 4, 2016), EPA-HQ-OAR-2016-0544-0063 ("I believe the cost of these fraud schemes to victims and consumers, including taxpayers and obligated parties, is approaching $1 billion.") (attached as Exhibit C).



The opacity and structural weakness of the RIN market have created an avenue for criminal conduct. An investigative study completed in September 2016 by a former Director of EPA's Criminal Investigation Division found approximately $271 million in documented fraud loss as well as $71 million in seizures of illicit profits by federal authorities resulting from RFS fraud cases (as of the date of the study).[147]

Yet merchant refiners and other obligated parties have no choice but to participate in this market because they need to acquire and submit RINs to EPA to demonstrate compliance with the RFS. Refiners like Monroe that have limited capacity to blend renewable fuel are dependent upon the RIN market to establish compliance. For Monroe, the 2016 cost of compliance was more than $200 million, greater than the cost of purchasing its refinery. Similar to other merchant refiners, Monroe's cost of acquiring RINs in some years is greater than its annual labor costs and is exceeded only by the cost of acquiring crude oil. The market desperately needs to be reformed.

[147] *Id.* at 7.

Monroe has participated in multiple RFS reform discussions with EPA, the Department of Agriculture, and industry representing renewable fuel producers and farmers to improve the RIN market. Monroe urges EPA to adopt the following rules to regulate the RIN market, many of which were derived from prior negotiations with government and industry:

- data related to the RIN market, such as public posting of RIN prices, must be made publicly available;
- non-obligated parties must sell RINs 30 days after a RIN is generated, in order to prevent the hoarding of RINs;
- only obligated parties may purchase RINs;
- a RIN may not be transferred more than two times before it is turned in for compliance;
- manipulation of the RIN market (including activities such as spoofing, setting artificial price floors, reporting false transaction data, and round trip trades) is forbidden;
- in a given compliance year, any obligated party and any RIN-generating party that has RIN inventory greater than 120% of its prior year's obligation must sell to an obligated party whose RIN inventory is less than 120% of its prior year's obligation, but EPA may issue a waiver of this requirement for asset purchases or other one-time transactions that would affect the party's obligation;
- unobligated parties must sell RINs to an obligated party within 30 days of RIN acquisition.

If EPA adopted these reforms, it would begin to eliminate the vulnerabilities of the current RIN market and to establish a well-functioning market.

B. EPA Should Encourage The CFTC To Actively Monitor The RIN Market.

Monroe was pleased to see EPA enter into a Memorandum of Understanding ("MOU") with the CFTC in March 2016.[148] In the MOU, EPA and the CFTC announced that they can share information, pursuant to 40 C.F.R. § 2.209(c)(1), and conduct joint or separate investigations into

[148] *Memorandum of Understanding Between the Environmental Protection Agency and the Commodity Futures Trading Commission on the Sharing of Information Available to EPA Related to the Functioning of Renewable Fuel Standard and Related Markets*, at 2 (Mar. 16, 2016), https://www.epa.gov/sites/production/files/2016-03/documents/epa-cftc-mou-2016-03-16.pdf.

potential fraud, market abuse, deceptive practices, commodity market manipulation, or other violations relating to the generation of, and trading in, the RIN market.[149]

EPA should encourage the CFTC to oversee RIN market transactions to prevent market manipulation by middlemen who are not obligated parties and do not intend to use the RIN to comply with RFS requirements. Transactions involving these parties fall squarely within the definition of "swaps" subject to CFTC jurisdiction because the non-obligated party is not intending to consume the RIN to comply with the RFS, as required for physical settlement.[150] The CFTC has the jurisdiction and the expertise to help EPA regulate the RIN market. EPA should actively encourage that partnership.

Monroe also urges EPA to act on the prior CFTC recommendations regarding EPA's oversight of the RIN market and implement regulatory changes to allow EPA to collect the data needed to monitor RIN trading in a manner equivalent to other regulated markets. In addition, EPA should seek advice from the Treasury Department on how best to regulate the market and increase its coordination with Treasury and the CFTC to ensure that EPA has the tools to police RIN market manipulation.

C. EPA Should Institute A RIN Price Cap.

EPA should also impose a cap on RIN prices. A price cap would reduce volatility in the market, discourage speculation, and promote the objectives of the RIN system.

As noted above, the dysfunction in the RIN market stems in part from the fact that RIN prices are highly responsive to speculation regarding EPA regulatory actions—specifically, how

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[149] *Id.*

[150] *See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 Fed. Reg. 48,208, 48,233-34 (Aug. 13, 2012) (explaining that trades in environmental commodities constitute "swaps" and are eligible for the forward exclusion only if ownership is transferred "so that the buyer can consume the commodity in order to comply with the terms of mandatory . . . environmental programs").

much renewable fuel EPA will require to be blended in an annual rulemaking—and disconnected from economic fundamentals concerning the relative cost of producing renewable fuel. The result is significant price volatility and enormous risks for obligated parties dependent on the secondary RIN market. These parties cannot hedge away the volatility in RIN prices, which means that these risks impose real costs on obligated parties. As a result of these large and highly unpredictable regulatory compliance costs, refiners are hindered in evaluating whether to make capital investments that will be recovered over many years. It is extremely challenging for Monroe and other refiners to make capital investments when they need to preserve cash on hand to mitigate the risk of an unanticipated, significant increase in RIN prices.

One solution to this problem—which not only would reduce price volatility but would also significantly reduce the incentives for speculation by non-obligated parties and the ability of such parties to engage in market manipulation—is for EPA to cap or place a collar on the price of RINs. Monroe proposes that the price of a RIN be capped at the average price in 2012, which was 2.8 cents per D6 RIN; 61.7 cents per D5 RIN; $1.097 per D4 RIN; and 77 cents per D3 RIN.[151] That cap is appropriate because 2012 was the last year in which RIN prices reflected the economic fundamentals of blending renewable fuel in place of petroleum. Beginning in 2013, RIN prices were strongly influenced by speculation concerning the degree to which EPA would set volume requirements in excess of the E10 blendwall, thereby drawing down on the RIN bank and introducing the prospect of RIN scarcity.

From the beginning of the RFS program, EPA has recognized the importance of a neutral compliance mechanism that applies to all obligated parties equally. For example, when EPA first set a 20% rollover RIN limit in its 2007 regulation, EPA declared that the limit would "apply

[151] Source: Argus.

equally to all obligated parties," thus "provid[ing] the certainty all parties desire in implementing the program."[152] Instituting a price cap or collar would promote the purpose of the RIN system by enabling it to serve as an efficient and neutral compliance mechanism that would allow obligated parties to comply on an equal footing regardless of whether they blend renewable fuel.[153]

D. EPA Should Allow RINs From Exported Renewable Fuel To Be Used For Compliance By Obligated Parties.

Under current regulations, an exporter of renewable fuel must retire RINs associated with that exported renewable fuel and cannot use those export RINs to demonstrate compliance with its RFS obligations.[154] This system penalizes domestically produced, exported renewable fuel in comparison to foreign-produced, imported renewable fuel. EPA should instead allow these RINs to be used for compliance by obligated parties.

As a recent presentation by Charles River Associates explained, EPA should allow RINs for exported volumes of ethanol to be used for compliance purposes because "[p]roviding RIN value" for ethanol would "improve[ ] the price position of US-produced ethanol in global markets."[155] Because of the restrictions of the blend wall, there is a limit on the amount of ethanol that can be used domestically. But if EPA allowed RINs for exported volumes to be used for compliance, the "increased exports would result in a net increase in ethanol demand."[156] If EPA instituted this regulation, "[b]y 2020, the RIN value for exporters could increase exports by 1.2

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[152] *Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program*, 72 Fed. Reg. 23,900, 23,934 (May 1, 2007).

[153] 42 U.S.C. § 7545(o)(5); 72 Fed. Reg. at 23,904, 23,908.

[154] 40 C.F.R. §§ 80.1427(c), 80.1430.

[155] Charles River Associates, *Unobligated RINs for Renewable Fuel Exports: Impact on Ethanol Volumes* 2 (Oct. 16, 2017), *available at* http://www.fuelingusjobs.com/library/public/1-CRA_EthanolVolumes_ExportProposal_10_17_2017.pdf (attached as Exhibit E).

[156] *Id.*

billion gallons."[157] Allowing RINs for exported biofuel to be used for compliance purposes would thus increase ethanol demand while also easing the burden caused by the blendwall.

EPA has the statutory authority to adopt this change. To be sure, EISA expressly authorizes EPA to provide for credits for "the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline" that contains renewable fuel.[158] But the statute does not limit EPA to providing credits only to these parties. There is no reason EPA could not allow an appropriate amount of credits to be used for compliance by an entity that exports renewable fuel as well.

Making this change would enhance RIN market liquidity and provide financial incentives for biofuel producers to invest in expanded production facilities, thus furthering the goal of energy independence. The proposed change would also advance EISA's environmental goal of reducing greenhouse gas emissions. By promoting the production of additional renewable fuel for export, the program would reduce greenhouse gas emissions abroad through the substitution of renewable fuel for petroleum—reductions that Americans would benefit from no less than if they had occurred within our geographic boundaries.

III. MONROE SUPPORTS EPA'S PROPOSAL TO APPLY THE CELLULOSIC WAIVER TO THE MAXIMUM EXTENT.

Although Monroe urges EPA to exercise its general waiver authority to implement further reductions to the RFS volume requirements for 2019, it supports EPA's proposal to exercise its cellulosic waiver authority to the maximum extent, without requiring the backfilling of missing

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[157] *Id.* at 6.

[158] 42 U.S.C. § 7545(o)(5).

cellulosic biofuels with non-cellulosic fuels, relying on carryover RINs to minimize the extent of the waiver, or adjusting RFS standards in light of small-refinery hardship exemptions.

First, EPA is correct not to mandate the backfilling of missing volumes of cellulosic biofuel by requiring increased usage of other fuels.[159] Congress recognized that cellulosic technology might not develop as quickly as it anticipated. Accordingly, Congress gave EPA the cellulosic waiver authority so that EPA could reduce the total and advanced renewable fuel requirements by the amount that cellulosic volumes fall short of the statutory requirement,[160] rather than mandating backfilling that would compensate for the shortfall in cellulosic biofuel through increased volumes of other types of renewable fuel. As the D.C. Circuit recently affirmed, EPA enjoys "broad discretion" in exercising its cellulosic waiver authority to reduce the total renewable fuel and advanced biofuel statutory requirements.[161] The "text places only one limitation on EPA's cellulosic waiver authority: Any reduction EPA makes to the advanced biofuel or total renewable fuel volume requirements may not exceed the amount of EPA's reduction to the cellulosic biofuel volume requirement. Beyond that, the provision does not prescribe any factors that EPA must consider in making its decision to lower the advanced biofuel or total renewable fuel volume requirements."[162] Accordingly, EPA has "discretion to consider a range of factors in determining whether to exercise its cellulosic waiver authority."[163] EPA's decision to exercise that authority to the maximum permissible extent, without requiring backfilling, is therefore consistent both with the plain language of EISA and with the case law construing the relevant statutory provision.

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[159] 83 Fed. Reg. at 32,038.

[160] *See* 42 U.S.C. § 7545(o)(7)(D)(i).

[161] *Americans for Clean Energy*, 864 F.3d at 733.

[162] *Id.* (citation omitted).

[163] *Id.* at 734.

Second, Monroe also fully agrees with EPA's decision not to rely on carryover RINs to avoid or minimize the need to reduce the 2019 statutory volume requirements. EPA is correct that "a bank of carryover RINs is extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace."[164] Carryover RINs are one of the few mitigants for what is otherwise a highly distorted RIN market. Carryover RINs help provide some stability for costs because, as EPA recognizes, they offer a measure of "liquid[ity]" to the market "when sufficient carryover RINs are held in reserve."[165] If carryover RIN reserves were drawn down and then a shock to the system caused an unexpected shortfall in the renewable fuel supply, obligated parties could be left entirely unable to meet their compliance obligations. And, as EPA noted, such a circumstance "could lead to the need for a new waiver."[166] These possibilities confirm the importance of maintaining the current bank of carryover RINs. Moreover, over the last year, the number of advanced biofuel carryover RINs has decreased from 810 million to 640 million,[167] so there is no reason to fear spiraling quantities of carryover RINs. The current volume constitutes only 14% of the advanced renewable fuel volume requirement proposed in the NPRM, well below the 20% maximum allowed by EPA's regulations.[168]

The D.C. Circuit has upheld EPA's treatment of carryover RINs in prior rulemakings, reasoning that "the statute is better read not to require EPA to consider carryover RINs" when

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[164] 83 Fed. Reg. at 32,029.

[165] *Id.*

[166] *Id.*

[167] *Id.* at 32,030.

[168] 40 C.F.R. § 80.1427(a)(5).

determining whether to exercise its waiver authority.[169] "[N]othing in the text of" EISA "indicates that the 'supply' of renewable fuel available in a year must include any available 'carryover' credits from the prior year."[170] The D.C. Circuit therefore concluded that "EPA need not consider carryover RINs as a supply source of renewable fuel for purposes of determining the supply of renewable fuel available in a given year."[171]

Finally, Monroe supports EPA's decision not to adjust the RFS standards for 2019 in light of volumes exempted under Section 211(o)(9), which authorizes EPA to exempt small refineries from the RFS program on the basis of disproportionate economic hardship.[172] As EPA has explained, "at this time no exemptions have been approved for 2019," so any adjustment would be on the basis of an estimate and subject to revision.[173] More fundamentally, hardship exemptions are often evidence of economic harm that is resulting from the RFS program itself. The fact that the program is imposing economic hardship on small refineries is reason to grant relief across the board, not to impose even more onerous obligations on other refineries. EPA is thus correct to "maintain[ ] its approach that any exemptions for 2019 that are granted after the final rule is released will not be reflected in the percentage standards that apply to all gasoline and diesel produced or imported in 2019."[174]

Accordingly, while Monroe believes that EPA should also exercise its general waiver authority based on severe economic harm and inadequate domestic supply, Monroe supports EPA's decision to exercise its cellulosic waiver authority to the maximum permissible extent.

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[169] *Americans for Clean Energy*, 864 F.3d at 714.

[170] *Id.*

[171] *Id.* at 716.

[172] 83 Fed. Reg. at 32,056-57 (citing 42 U.S.C. § 7545(o)(9)).

[173] *Id.* at 32,057.

[174] *Id.*

CONCLUSION

Monroe appreciates the opportunity to submit comments on the proposed 2019 Rule.

Dated: August 17, 2018

Respectfully submitted,

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Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 8/24/2018 7:06:45 PM
To: Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Briefing material for Monday
Attachments: BP America_ August 27 2018.docx

Attached! Thank you!

From: Dickerson, Aaron
Sent: Friday, August 24, 2018 3:04 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Briefing material for Monday
Importance: High

Following-up as I need to leave in the next 20 minutes. Are we going to have anything soon for the Administrator's book?

From: Dominguez, Alexander
Sent: Friday, August 24, 2018 8:47 AM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Briefing material for Monday

Will do Aaron.

+ Mandy for her awareness as she will want to review prior to submitting.

From: Dickerson, Aaron
Sent: Friday, August 24, 2018 8:37 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: Briefing material for Monday

Good morning Josh/Alex

Can I get the briefing materials for Monday's meeting with BP no later than 3pm today? I need to leave early and the agents will be taking the Administrator his book when they pick him up from the airport this evening.

Aaron Dickerson
Office of the Administrator
U.S EPA

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 8/14/2018 9:13:29 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: RE: August 2, 2018 Letters from the Auto Alliance & Global Automakers to President Trump and separately Governor Brown on the LD CAFE/GHG proposal
Attachments: Valero_August 15 2018.docx

If any of you want to give the okay or revise I plan to send to Aaron at 5:20. Primarily the anticipated topics of discussion. The remainder is all RFS background AW received for Iowa.

From: Gunasekara, Mandy
Sent: Tuesday, August 14, 2018 4:19 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Fwd: August 2, 2018 Letters from the Auto Alliance & Global Automakers to President Trump and separately Governor Brown on the LD CAFE/GHG proposal

It would be good to include the auto alliance letter in the materials sent to Aaron for the auto alliance meeting.

Sent from my iPhone

Begin forwarded message:

> **From:** "Grundler, Christopher" <grundler.christopher@epa.gov>
> **Date:** August 14, 2018 at 3:13:56 PM CDT
> **To:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>
> **Cc:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Subject: August 2, 2018 Letters from the Auto Alliance & Global Automakers to President Trump and separately Governor Brown on the LD CAFE/GHG proposal**
>
> Sorry if you've already seen these.
>
> _____
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington, DC)
> 734.214.4207 (Ann Arbor, MI)

Message

From: Dickerson, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D0440D9F06994021827E0D0119126799-DICKERSON,]
Sent: 7/19/2018 5:54:43 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: Transpo Brief

Yes.

-----Original Message-----
From: Jackson, Ryan
Sent: Thursday, July 19, 2018 1:54 PM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Re: Transpo Brief

Is the Rosen call at 2pm?

Ryan Jackson
Chief of Staff
U.S. EPA
Ex. 6

> On Jul 19, 2018, at 1:42 PM, Dickerson, Aaron <dickerson.aaron@epa.gov> wrote:
>
> CAFE will be tomorrow from 3:30pm - 5:00pm. Can you let me know whom to invite and I assume your staff will be by VTC so I will need to know where to connect them? We can have the meeting in the Alm Room.
>
> -----Original Message-----
> From: Jackson, Ryan
> Sent: Thursday, July 19, 2018 10:41 AM
> To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> Cc: Molina, Michael <molina.michael@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
> Subject: Re: Transpo Brief
>
> We'll get it.
>
>
>
>
>
>
>
> Ryan Jackson
> Chief of Staff
> U.S. EPA
Ex. 6
>
>
>> On Jul 19, 2018, at 10:40 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>>
>> Hi All:
>>

>> We talked a couple times, but we need to get on AAWs calendar early next week or Air issues from our transportation office:

Deliberative Process / Ex. 5

>>
>> Both of these will need to be with our technical staff. We can work out who all from our end and whether they will fly up or join via video conference. We will adjust our calendars. Tuesday Bill will be in Michigan.
>>
>> Let me know what else you need.
>>
>> Best,
>> Mandy
>>
>> Sent from my iPhone

Message

From: Williams, Brendan [Brendan.Williams@pbfenergy.com]
Sent: 12/6/2018 3:22:35 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RINs Rising

Just an FYI, for some reason, RINs have risen all the way from 8 cents the other week to 18 cents today. There is no rational reason for them more than doubling over this time, since the RVO is essentially as expected. The only possible explanation could be that folks are interpreting the Reuters story on the SRE hold and trying to run up RINs until there is more news on SREs, but that even seems like a thin reason for the run up. Just another example of why we need a more permanent solution.

Would love to touch base next week if you have time. Please let me know if you have any openings for a call and thanks in advance for your consideration.

Brendan Williams
Government Relations
PBF Energy
601 Pennsylvania Avenue, NW
Suite 900 South
Washington, DC 20004
O: (202) 434-8254
M: (703) 863-6825
brendan.williams@pbfenergy.com
www.pbfenergy.com

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Message

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 8/1/2018 2:12:14 PM
To: Hamilton, Sabrina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=68d3167c798743848aafcdfb73bb74f1-shamiltn]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: RE: RFS Letter
Attachments: Grassley Rewrite_FINAL with BW Edits.docx; image2018-08-03-101439.pdf

Importance: High

Hi Sabrina,

Just talked to Mandy about this . . . it is a follow up letter to Senator Grassley for a now closed control he sent in April 2018.

This signed follow up response from Bill should not go out until Mandy gives us the go ahead, which may be later today or Thursday.

I will be sure to check in with Mandy later on today about the status and let you know what action, if any needs to be taken today.

Thanks.
Emily

Emily Atkinson
Special Assistant
Management Analyst
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406E, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

From: Hamilton, Sabrina
Sent: Wednesday, August 01, 2018 10:00 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: RE: RFS Letter

Thanks Emily. Which control number is this one associated with?

Sabrina Hamilton

Sabrina Hamilton
Air and Radiation Liaison Specialist
and FOIA Coordinator
Office of Air and Radiation
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W. (6101-A)
Washington, D.C. 20460
Tel: (202) 564-1083

From: Atkinson, Emily
Sent: Wednesday, August 1, 2018 9:57 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: RE: RFS Letter

Attached is the final Word version (Bill made two small edits) and a PDF of the signed letter.

Let me know if you need anything else.

Emily Atkinson
Special Assistant
Management Analyst
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406E, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

From: Gunasekara, Mandy
Sent: Wednesday, August 01, 2018 9:43 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: RFS Letter

Hey Emily- attached is the letter. Can you please print it on letterhead and have it ready for signature?

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/19/2018 10:09:32 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Revised text on Small Refinery Exemptions

Will do

On Jun 19, 2018, at 6:06 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Ben – This looks fine. Please send this text, along with the other pieces we discussed with OIRA/USDA, to OIRA ASAP. Thanks.

_____

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Hengst, Benjamin
Sent: Tuesday, June 19, 2018 9:19 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: FW: Revised text on Small Refinery Exemptions

Bill, Mandy:

Below is the revised text on small refinery exemptions. In the "redline" version, the highlighted text is new – and the text with strikethrough has been deleted.

OGC has reviewed this. We will prepare a new package of the NPRM to share with OMB once you give us the word. Thanks, Ben

***

Clean Version

EPA has granted exemptions pursuant to this process in the past, and has historically not accounted for small refinery exemptions in calculating the percentage standards unless they were granted prior to EPA establishing the percent standards. EPA is taking a different approach in this proposed rule. Our proposed approach for 2019 is consistent with CAA 211(o)(3)(B)(i)

which provides that EPA "shall determine and publish . . . the renewable fuel obligation that ensures that the requirements of" the RFS program are met.

For 2019, we have calculated the percentage standards adjusting for estimated exempted volumes, using the exempted volume for 2017. EPA finds that this number is appropriate because it represents the most recent year for which EPA has granted small refinery exemptions. In a separate action, EPA intends to propose changes to our regulations that would allow EPA to precisely account for any small refinery exemptions in establishing the percentage standards for future years.

"Redline"

Deliberative Process / Ex. 5

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/19/2018 5:48:11 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Fwd: Transpo Brief

Will you please put together a list? Need to include OGC.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
Date: July 19, 2018 at 1:45:57 PM EDT
To: "Dickerson, Aaron" <dickerson.aaron@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Molina, Michael" <molina.michael@epa.gov>
Subject: Re: Transpo Brief

We will get you the invite list shortly. Can we plan to do this in my conference room in the 5400 suite? Will be much better than the Alm Room for this type of discussion.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

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CAFE will be tomorrow from 3:30pm - 5:00pm. Can you let me know whom to invite and I assume your staff will be by VTC so I will need to know where to connect them? We can have the meeting in the Alm Room.

-----Original Message-----

From: Jackson, Ryan

Sent: Thursday, July 19, 2018 10:41 AM

To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>

Cc: Molina, Michael <molina.michael@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>

Subject: Re: Transpo Brief

We'll get it.

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

On Jul 19, 2018, at 10:40 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Hi All:

We talked a couple times, but we need to get on AAWs calendar early next week or Air issues from our transportation office:

Deliberative Process / Ex. 5

Both of these will need to be with our technical staff. We can work out who all from our end and whether they will fly up or join via video conference. We will adjust our calendars. Tuesday Bill will be in Michigan.

Let me know what else you need.

Best,
Mandy

Sent from my iPhone

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/13/2018 12:10:05 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Fwd: ABFA litigation - draft motion to dismiss for your review
Attachments: ABFA v EPA - motion to dismiss - draft - clean - 071218.doc; ATT00001.htm

Mandy,

The only version of the pleading that I've seen was the one that Susan had attached to the initial message in this email chain. I believe Alex printed out a copy of that version for you earlier this afternoon, but, of course, you may not have been able to pick it up, if you are now at home, as I am now.)

I am forwarding this message off of Susan's original, the one with the attachment, in the hopes that that will pull it to the top of the chain, for your convenience. But, I admit, I've never really figured out how these phones we have thread email messages.

No doubt there is by now a later version of the draft, and Deliberative Process; ACP / Ex. 5

Deliberative Process; ACP / Ex. 5

Sent from my iPhone

Begin forwarded message:

> **From:** "Stahle, Susan" <Stahle.Susan@epa.gov>
> **Date:** July 12, 2018 at 1:19:59 PM EDT
> **To:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>
> **Cc:** "Harlow, David" <harlow.david@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
> **Subject: ABFA litigation - draft motion to dismiss for your review**
>
> Hi Bill –
>
> Attached is a clean version of the draft motion to dismiss in the ABFA litigation Attorney Client / Ex. 5

Attorney Client / Ex. 5

Thanks,

Sue

Message

From: Graham, Cheryl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC456030F1A7475397AFE7895933BAEC-CGRAHAM]
Sent: 7/31/2018 8:46:47 PM
To: Harnett, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=437834c4b30541d2beb0386cc3d0e253-WHARNETT]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Henigin, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cbe828e291f4facb492fc28261db45f-MHenigin]; Davis, Alison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c309f42d5d44d18a52b027bd0112778-ADAVIS06]; Montoro, Marta [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=02244a49b2b14d77b2a9e749dd87f704-MMONTORO]; Rush, Alan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=87bd4df8264d4490afe9414cb28062b9-ARush]; Schillo, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a71c3eb16aeb4bd2a0b3e1c950c44111-Bschill]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Mazakas, Pam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fde3017279c64e3ebff1ad7dc5d5b835-Pmazakas]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; South, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ead249df78840c9928874ec2ec4f9a6-PSouth]; Lipshultz, Jon (ENRD) [Jon.Lipshultz@usdoj.gov]; Christopher.Vaden@usdoj.gov; Wood, Anna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39055f080135414ca3b8c18d4f578755-AWood02]; Edwards, Crystal [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0d40b5f15b2a4c438f44bbae579d829a-Edwards, Crystal]; Mathias, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4be52cdccca348eeb5cd1efebe6caf24-SMATHIAS]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; South, Mia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ffac1c6273e4b439a0852a1159885ca-South, Mia]; Cortelyou-Lee, Jan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=75b1eec7b16e46d5b9114935fc6a771e-JCORTELY]; Smith, Kristi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ed7a08d522c54f2fa8387a7b5771d8d5-Smith, Kristi]; Iglesias, Amber [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ed1da89f33f24b5b9f2c4b9bcf91a2ad-Iglesias, A]; Schachter, Scott (ENRD) [Scott.Schachter@usdoj.gov]; Doyle, Andrew (ENRD) [Andrew.Doyle@usdoj.gov]; leslie.hill@usdoj.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user01591315]; Maghamfar, Dustin (ENRD) [Dustin.Maghamfar@usdoj.gov]; Mitchell, Ken [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e49335e2f5a64cbfa97c39cbf1faff2b-Mitchell, Kenneth]; Wortman, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a6a4541680f4c89adaf1198de1925c4-Wortman, Eric]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Purdy, Angeline (ENRD) [Angeline.Purdy@usdoj.gov]; Debra Carfora [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user02767177]; Perez, Idalia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=03b7a08fdfbe4934911f17550d78491d-IPEREZ]; martha.mann@usdoj.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user07624bb3]; Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; McLamb, Marguerite [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=85f0f472928e4767965c94e609fedc45-McLamb, Marguerite]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]

Subject: ARLO Deadline Calendar as of July 30, 2018

Attachments: 18-07-30 ARLO Deadline Calendar.docx

Attached is the current deadline calendar and other information that is sent out weekly from ARLO. If information in the attachment raises questions, please contact Gautam Srinivasan. Thanks

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

Message

From: Dickerson, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D0440D9F06994021827E0D0119126799-DICKERSON,]
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CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]
Subject: RE: Transpo Brief

Sure that will be fine.

-----Original Message-----
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Sent: Thursday, July 19, 2018 1:46 PM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Molina, Michael <molina.michael@epa.gov>
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Bill Wehrum
Assistant Administrator
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> On Jul 19, 2018, at 1:42 PM, Dickerson, Aaron <dickerson.aaron@epa.gov> wrote:
>
> CAFE will be tomorrow from 3:30pm - 5:00pm. Can you let me know whom to invite and I assume your staff will be by VTC so I will need to know where to connect them? We can have the meeting in the Alm Room.
>
> -----Original Message-----
> From: Jackson, Ryan
> Sent: Thursday, July 19, 2018 10:41 AM
> To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> Cc: Molina, Michael <molina.michael@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
> Subject: Re: Transpo Brief
>
> We'll get it.
>
>
>
>
>
>
>
> Ryan Jackson
> Chief of Staff
> U.S. EPA
> 202-564-6999
>
>
>> On Jul 19, 2018, at 10:40 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>>
>> Hi All:
>>
>> We talked a couple times, but we need to get on AAWs calendar early next week or Air issues from our transportation office:
>>

Deliberative Process / Ex. 5

>>
>> Both of these will need to be with our technical staff. We can work out who all from our end and whether they will fly up or join via video conference. We will adjust our calendars. Tuesday Bill will be in Michigan.
>>
>> Let me know what else you need.
>>
>> Best,
>> Mandy
>>
>> Sent from my iPhone

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 6/19/2018 9:59:37 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Re: WH Sign-Off on Event

I'll have more outside officials shortly to add/ updated attendee list shortly. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

On Jun 19, 2018, at 5:50 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

RJ – see below per your request. I'm looping in Tate to see if she has heard anything else or has anything to add.

Deliberative Process / Ex. 5

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 7/19/2018 4:35:06 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: QFRs
Attachments: SAC QFRs Final for review_mmg edits cw.docx

Added Deliberative Process / Ex. 5, and I'm good otherwise.

From: Gunasekara, Mandy
Sent: Thursday, July 19, 2018 12:04 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: QFRs

Attached is the version with my edits. There is one remaining question to be answered regarding Deliberative Process / Ex. 5 Deliberative Process / Ex. 5. Clint, I'm leaving that one to you. Feel free to adjust others as needed.

From: Gunasekara, Mandy
Sent: Thursday, July 19, 2018 9:53 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Subject: RE: QFRs

Can you send around the latest version of the QFRs please?

From: Dominguez, Alexander
Sent: Tuesday, July 17, 2018 8:42 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Fwd: QFRs

I verbally told Mandy but I figured you'd both like to see. I didn't apologize.

Sent from my iPhone

Begin forwarded message:

> **From:** "Hanson, Paige (Catherine)" <hanson.catherine@epa.gov>
> **Date:** July 17, 2018 at 3:52:12 PM EDT
> **To:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>
> **Subject: QFRs**
>
> I just left you a message, but then I was thinking and you're probably really busy and voicemails are slow. So in short: we really need the QFRs.
>
> OAR is the only shop we're waiting on at this point and it's holding everyone else's responses up. I know there's a ton going on, but even if y'all could clear two today, two tomorrow, etc. it'd be helpful. I'm also happy to come up with one of our budget directors and help draft if y'all are stuck on one or two. Just let us know how to help. My understanding is they're currently with Bill.

Thanks! And now you can just delete my voicemail. :)

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/20/2018 2:45:55 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RVO text
Attachments: Small Refinery Reallocation Text 20180620 v2.DOCX; ATT00001.htm

Bill, Mandy:

A few quick few updates on the RVO rule:

— OMB confirmed they have the new text. Chad has spoken with Rosario and USDA already. I shared with Chad Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Ben

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 6/20/2018 2:18:50 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Starling, Raymond - OSEC, Washington, DC [Raymond.Starling@osec.usda.gov]; Appleton, Brooke - OSEC, Washington DC [Brooke.Appleton@osec.usda.gov]
Subject: Re: RFS Event

I spoke with Francis just this morning.

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

On Jun 20, 2018, at 10:03 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

> Agreed. Frances is looped in. I have not touched base with Shahira. I actually don't know her as well- Ray, could you follow up with her?
>
> Sent from my iPhone
>
> On Jun 20, 2018, at 9:54 AM, Starling, Raymond - OSEC, Washington, DC <Raymond.Starling@osec.usda.gov> wrote:
>
> > **Thanks, Mandy. We are glad this is coming together.**

Deliberative Process / Ex. 5

> **From:** Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
> **Sent:** Wednesday, June 20, 2018 9:41 AM
> **To:** Starling, Raymond - OSEC, Washington, DC <Raymond.Starling@osec.usda.gov>; Appleton, Brooke - OSEC, Washington DC <Brooke.Appleton@osec.usda.gov>
> **Cc:** Jackson, Ryan <jackson.ryan@epa.gov>
> **Subject:** RFS Event

Hey Ray and Brooke,

To keep y'all in the loop on the status of things, Ryan (ccd) reached out to the White House and got sign off/thumbs up for the Friday event. He information he used is included below. Bill and I are working with OMB to get this wrapped up on the regulatory side. Our press team has a draft advisory notice just need Tim Murtaugh's (sorry if I spelled that wrong) contact info- can you have him reach out to Daniell.Kelsi@epa.gov. Tate Bennett from our team is working with Blake on your team to hash out attendance. I think that is it for now.

I'll call if anything crazy happens.

Best,
Mandy

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Message

From: Renshaw, Jarrett (Reuters) [jarrett.renshaw@thomsonreuters.com]
Sent: 6/18/2018 3:24:06 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: HollyFrontier and Sinclair

Do you have a second to chat today?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Friday, June 15, 2018 11:19 AM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Cc: Block, Molly <block.molly@epa.gov>
Subject: RE: HollyFrontier and Sinclair

Looping in Molly.

From: Renshaw, Jarrett (Reuters) [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Friday, June 15, 2018 10:57 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: HollyFrontier and Sinclair

I see you gave some comments to OPIS. Were they written comments? If so, can we get them?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Thursday, May 31, 2018 1:56 PM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Subject: Re: HollyFrontier and Sinclair

Yes/ please do.

Sent from my iPhone

On May 31, 2018, at 1:50 PM, "jarrett.renshaw@thomsonreuters.com" <jarrett.renshaw@thomsonreuters.com> wrote:

One more thing, and thanks for the clarification. Can we say the review doesn't extend beyond the holly and sinclair case, according to an EPA official familiar with the process. That would provide the market some clarity.

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Thursday, May 31, 2018 1:44 PM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Press <Press@epa.gov>
Subject: Re: HollyFrontier and Sinclair

Not on record, but please see clarifying background below: the recent exemption actions are solely confined to the petitions that were timely submitted and timely challenged in the Sinclair/Holly cases before the Tenth Circuit. Note that there were 3 separate, related cases: a Sinclair case challenging 2014 denials; a Sinclair case challenging 2015 denials; and a Holly case challenging 2015 denials.

Since the 2015 cases were reliant on the outcome in the 2014 case, those two actions were held in abeyance while the court decided the 2014 case. That decision came out last summer (2017). Once epa charted out a path to comply with the courts order for the 2014 case, EPA applied that same approach to the 2015 cases. In sum and to your original point, these actions are limited in scope and confined to the Petitions at issue in the Sinclair/Holly cases.

Because this is an extremely sensitive issue I will add that any suggestion that our review of past denials extends beyond the petitions at issue in the Tenth Circuit cases decided last year, would be completely false.

Sent from my iPhone

On May 31, 2018, at 1:20 PM, "jarrett.renshaw@thomsonreuters.com" <jarrett.renshaw@thomsonreuters.com> wrote:

> WE need some clarification. The statement says "revisiting," meaning present tense. That suggests it's beyond the Sinclair/Holly decision that we already reported about today (and which we got no response from you guys) Can anyone just clarify, please, on or off record.
>
> Jarrett Renshaw
> National Energy Markets Reporter
> Reuters
> jarrett.renshaw@thomsonreuters.com
> Office: (646) 223-6193

Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Wilcox, Jahan [mailto:wilcox.jahan@epa.gov]
Sent: Thursday, May 31, 2018 1:11 PM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Press <Press@epa.gov>
Subject: RE: HollyFrontier and Sinclair

"EPAs actions are narrow in scope and consistent with direction from the 10th Circuit. The Agency has been revisiting some prior denials in light of a recent court opinion holding that EPA had been applying the hardship exemption for small refineries too narrowly. Last summer, the Tenth Circuit found that EPA cannot make an exemption conditional on a refinery showing that its continued survival was at risk. EPA will continue to administer this statute attentive to all policy considerations, fulfilling the duty Congress has given the Agency in light of orders and opinions from the courts." – EPA Spokesperson

---

From: jarrett.renshaw@thomsonreuters.com [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Thursday, May 31, 2018 1:09 PM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: HollyFrontier and Sinclair

Hello, I saw this tweet and had some questions:

Meghan Gordon @meghangordon 2m2 minutes ago
.@EPA has confirmed it is revisiting some refiners' requests for waivers to the US biofuel mandate that were denied by the Obama administration, after @JarrettRenshaw's scoop this morning. #OOTT #RINs

Is the EPA revisiting a larger number of refiners' request for waivers under the Obama administration than Sinclair and Holly, which we reported today?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Wednesday, May 30, 2018 2:31 PM
To: 'wilcox.jahan@epa.gov' <wilcox.jahan@epa.gov>
Subject: RE: HollyFrontier and Sinclair

Wanted to resend these questions, below. Story running tomorrow

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Tuesday, May 22, 2018 2:10 PM
To: wilcox.jahan@epa.gov
Subject: HollyFrontier and Sinclair

Hello, we are reporting of a recent decision by the EPA to award Sinclair Oil and HollyFrontier so-called vintage 2018 renewable fuel credits after a judge said the agency erred in denying Sinclair Oil's 2014 and 2015 applications for a small refinery exemption from the U.S. Renewable Fuel Standard. The move creates a situation where there are excess 2018 RINs in the market and driving the price of the credits down.

Here are some questions:

1. Did the EPA explore other options other than giving vintage credits?
2. Given the market impact of the decision, why didn't the EPA disclose the decisions?
3. Has the EPA given any other company vintage RINs to remedy past denials of the small refinery exemption?
4. Has any other refiner sought retroactive relief from a previous denial of a small refinery exemption?

Our story is running tomorrow.

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/20/2018 12:53:59 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: RE: FOR REVIEW: Farm World -- Hardship Waiver Question

I can definitely make those changes. Thanks all!!

From: Schwab, Justin
Sent: Wednesday, June 20, 2018 8:48 AM
To: Block, Molly <block.molly@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: FOR REVIEW: Farm World -- Hardship Waiver Question

Attorney Client - Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 20, 2018, at 8:42 AM, Block, Molly <block.molly@epa.gov> wrote:

Thanks! I made those two edits and took out the penultimate bullet altogether. Attorney Client - Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Wednesday, June 20, 2018 8:35 AM
To: Block, Molly <block.molly@epa.gov>

Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: FOR REVIEW: Farm World -- Hardship Waiver Question

Attorney Client - Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 20, 2018, at 8:29 AM, Block, Molly <block.molly@epa.gov> wrote:

Thoughts on the following response? **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Jnstrickler@protonmail.com [mailto:Jnstrickler@protonmail.com]
Sent: Tuesday, June 19, 2018 11:46 AM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Subject: Farm World -- Hardship Waiver Question

Hi Mr. Daguillard,

My name is Jordan Strickler and I am a freelance writer for Farm World News. I have been covering the RFS hardship waiver news for our paper recently and just had a couple of questions, I was hoping I could have answered.

The first is, what is the formula for deciding a "hardship"? If there is none currently, do you think that there might be a standard in the future? The second is what do you think the chances are that the EPA would allow E-15 year round.

Any help with one or both of those questions would be greatly appreciated.

Thanks!

Jordan Strickler
859-229-9699
jnstrickler@protonmail.com

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/20/2018 12:29:16 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: FOR REVIEW: Farm World -- Hardship Waiver Question

Thoughts on the following response? I've pared down something we've used before. In terms of the formula, should we just refer them to DOE? Thanks all!

"The criteria used to grant waivers has not changed since previous administrations. EPA follows a long-standing, objectively determined process where the Agency uses a Department of Energy analysis to inform decisions about refiner exemptions/waivers, for refineries that are below the statutory threshold. EPA decisions on waivers are based on refinery-specific information that is subject to confidential business information protections. We continue to work through petitions received for 2017 and will provide updated information, as soon as complete." **EPA spokesperson**

Additional background (not for attribution):

- As requests for waivers are based on CBI, EPA cannot share company-specific information.
- Any refinery that produces 75,000 barrels or less per day on an annualized basis can apply for the Small Refinery Hardship exemption.
- When first established, the program automatically exempted refineries based solely on their output, which resulted in 59 small refineries being exempted from 2007 to 2010. Post-2010, qualifying refineries seeking a small refinery hardship exemption submit financial information to EPA. EPA then shares this information with DOE and DOE uses a scoring matrix to quantify structural, economic and refinery-specific factors that may contribute to "disproportionate economic hardship."
- During the Obama Administration, there was often disagreement by EPA with DOE's recommendation. Since the start of this administration, EPA has worked to better coordinate with DOE to ensure cross-administration consistency.
- On August 15, 2017, EPA received an adverse decision from the Tenth Circuit Court of Appeals, which found the agency's viability analysis employed by the previous administration to be inconsistent with congress's intent of the hardship exemption and outside its statutory authority (Sinclair Wyoming Refining Company v. EPA). Specifically, the court found EPA's requirement that refineries demonstrate an "existential threat" to their long-term viability as the standard for demonstrating "disproportionate economic hardship" inconsistent with EPA's

statutory authority and vacated a previously denied hardship exemption and remanded Sinclair's hardship petitions back to EPA for further consideration.

From: Jnstrickler@protonmail.com [mailto:Jnstrickler@protonmail.com]
Sent: Tuesday, June 19, 2018 11:46 AM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Subject: Farm World -- Hardship Waiver Question

Hi Mr. Daguillard,

My name is Jordan Strickler and I am a freelance writer for Farm World News. I have been covering the RFS hardship waiver news for our paper recently and just had a couple of questions, I was hoping I could have answered.

The first is, what is the formula for deciding a "hardship"? If there is none currently, do you think that there might be a standard in the future? The second is what do you think the chances are that the EPA would allow E-15 year round.

Any help with one or both of those questions would be greatly appreciated.

Thanks!

Jordan Strickler
859-229-9699
jnstrickler@protonmail.com

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/15/2018 3:16:40 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: HollyFrontier and Sinclair

I'm happy to send him what we sent OPIS. OPIS had questions about reallocation.

"Currently, our regulations only allow reallocation of an exempted refinery's RIN obligations for a given year if the exemption is granted before we finalize the volumes for that year. Those regulations were passed as substantive rules that went through notice and public comment. Binding precedent holds that agencies can only impose retroactive obligations if Congress has given them the authority to do so. EPA will administer the RFS program within the legal constraints. Continued conversations with people affected by the program are vital to our work." – EPA Spokesperson

Also, wanted to make sure you had the following statement from EPA's Office of Air and Radiation Principal Deputy Assistant Administrator Mandy Gunasekara on Administrator Pruitt's midwest trip:

"There are those who are willing to engage in solutions and those who want to promote a false sense of division between Administrator Pruitt and farmers across the country."

"While tensions were high when we walked into the room with corn and sorghum farmers and other RFS stakeholders, at the end of those discussions there was a sincere appreciation reflected by all in the room of the willingness to engage on these important issues and the commitment to find meaningful solutions. The lingering impression of these visits is most represented by the standing ovation Administrator Pruitt received at the end of the discussion in South Dakota from a room full of farmers, association representatives, and other RFS interests."

"Decision-making is a difficult process, but instead of playing it safe and staying in Washington, Administrator Pruitt has been and continues to go out to communities impacted by the Agency's decisions – an approach embraced by those who care more about the policy versus the politics."

From: Gunasekara, Mandy
Sent: Friday, June 15, 2018 11:12 AM
To: Block, Molly <block.molly@epa.gov>
Subject: FW: HollyFrontier and Sinclair

Can you follow-up? Should we?

From: Renshaw, Jarrett (Reuters) [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Friday, June 15, 2018 10:57 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: HollyFrontier and Sinclair

I see you gave some comments to OPIS. Were they written comments? If so, can we get them?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com

Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Thursday, May 31, 2018 1:56 PM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Subject: Re: HollyFrontier and Sinclair

Yes/ please do.

Sent from my iPhone

On May 31, 2018, at 1:50 PM, "jarrett.renshaw@thomsonreuters.com" <jarrett.renshaw@thomsonreuters.com> wrote:

> One more thing, and thanks for the clarification. Can we say the review doesn't extend beyond the holly and sinclair case, according to an EPA official familiar with the process. That would provide the market some clarity.
>
> Jarrett Renshaw
> National Energy Markets Reporter
> Reuters
> jarrett.renshaw@thomsonreuters.com
> Office: (646) 223-6193
> Cell: (917) 482-9738
> Twitter: @jarrettrenshaw
> IM: jrenshaw_reuters08
>
> **From:** Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
> **Sent:** Thursday, May 31, 2018 1:44 PM
> **To:** Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
> **Cc:** Wilcox, Jahan <wilcox.jahan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Press <Press@epa.gov>
> **Subject:** Re: HollyFrontier and Sinclair
>
> Not on record, but please see clarifying background below: the recent exemption actions are solely confined to the petitions that were timely submitted and timely challenged in the Sinclair/Holly cases before the Tenth Circuit. Note that there were 3 separate, related cases: a Sinclair case challenging 2014 denials; a Sinclair case challenging 2015 denials; and a Holly case challenging 2015 denials.
>
> Since the 2015 cases were reliant on the outcome in the 2014 case, those two actions were held in abeyance while the court decided the 2014 case. That decision came out last summer (2017). Once epa charted out a path to comply with the courts order for the 2014 case, EPA applied that same approach to the 2015 cases. In sum and to your original point, these actions are limited in scope and confined to the Petitions at issue in the Sinclair/Holly cases.
>
> Because this is an extremely sensitive issue I will add that any suggestion that our review of past denials extends beyond the petitions at issue in the Tenth Circuit cases decided last year, would be completely false.
>
> Sent from my iPhone

On May 31, 2018, at 1:20 PM, "jarrett.renshaw@thomsonreuters.com" <jarrett.renshaw@thomsonreuters.com> wrote:

> WE need some clarification. The statement says "revisiting," meaning present tense. That suggests it's beyond the Sinclair/Holly decision that we already reported about today (and which we got no response from you guys) Can anyone just clarify, please, on or off record.
>
> Jarrett Renshaw
> National Energy Markets Reporter
> Reuters
> jarrett.renshaw@thomsonreuters.com
> Office: (646) 223-6193
> Cell: (917) 482-9738
> Twitter: @jarrettrenshaw
> IM: jrenshaw_reuters08
>
> ---
>
> **From:** Wilcox, Jahan [mailto:wilcox.jahan@epa.gov]
> **Sent:** Thursday, May 31, 2018 1:11 PM
> **To:** Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
> **Cc:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Press <Press@epa.gov>
> **Subject:** RE: HollyFrontier and Sinclair
>
> "EPAs actions are narrow in scope and consistent with direction from the 10th Circuit. The Agency has been revisiting some prior denials in light of a recent court opinion holding that EPA had been applying the hardship exemption for small refineries too narrowly. Last summer, the Tenth Circuit found that EPA cannot make an exemption conditional on a refinery showing that its continued survival was at risk. EPA will continue to administer this statute attentive to all policy considerations, fulfilling the duty Congress has given the Agency in light of orders and opinions from the courts." – EPA Spokesperson
>
> ---
>
> **From:** jarrett.renshaw@thomsonreuters.com [mailto:jarrett.renshaw@thomsonreuters.com]
> **Sent:** Thursday, May 31, 2018 1:09 PM
> **To:** Wilcox, Jahan <wilcox.jahan@epa.gov>
> **Subject:** RE: HollyFrontier and Sinclair
>
> Hello, I saw this tweet and had some questions:
>
> **Meghan Gordon** @meghangordon 2m2 minutes ago
> .@EPA has confirmed it is revisiting some refiners' requests for waivers to the US biofuel mandate that were denied by the Obama administration, after @JarrettRenshaw's scoop this morning. #OOTT #RINs
>
> Is the EPA revisiting a larger number of refiners' request for waivers under the Obama administration than Sinclair and Holly, which we reported today?
>
> Jarrett Renshaw
> National Energy Markets Reporter

Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Wednesday, May 30, 2018 2:31 PM
To: 'wilcox.jahan@epa.gov' <wilcox.jahan@epa.gov>
Subject: RE: HollyFrontier and Sinclair

Wanted to resend these questions, below. Story running tomorrow

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Tuesday, May 22, 2018 2:10 PM
To: wilcox.jahan@epa.gov
Subject: HollyFrontier and Sinclair

Hello, we are reporting of a recent decision by the EPA to award Sinclair Oil and HollyFrontier so-called vintage 2018 renewable fuel credits after a judge said the agency erred in denying Sinclair Oil's 2014 and 2015 applications for a small refinery exemption from the U.S. Renewable Fuel Standard. The move creates a situation where there are excess 2018 RINs in the market and driving the price of the credits down.

Here are some questions:

1. Did the EPA explore other options other than giving vintage credits?
2. Given the market impact of the decision, why didn't the EPA disclose the decisions?
3. Has the EPA given any other company vintage RINs to remedy past denials of the small refinery exemption?
4. Has any other refiner sought retroactive relief from a previous denial of a small refinery exemption?

Our story is running tomorrow.

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw

IM: jrenshaw_reuters08

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/15/2018 2:30:16 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Rakosnik, Delaney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=274573739a9f446883072599086ededd-Rakosnik, D]
Subject: FW: Clean and RLSO versions of combined OTAQ/OGC docs attached
Attachments: EDIT Midwest Swing RFS Announcements_2018 06 15 OGC and OTAQ RLSO.DOCX; EDIT Midwest Swing RFS Announcements_2018 06 15 OGC and OTAQ clean.DOCX

Delaney—would you please print 5 copies of each of these for the 10:30?

Thanks
Ben

From: Hengst, Benjamin
Sent: Friday, June 15, 2018 10:30 AM
To: Master, Barbora <Master.Barbora@epa.gov>; Le, Madison <Le.Madison@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Nelson, Karen <nelson.karen@epa.gov>; Janet Cohen (cohen.janet@epa.gov) <cohen.janet@epa.gov>; Mary Manners (manners.mary@epa.gov) <manners.mary@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Dallas Burkholder (burkholder.dallas@epa.gov) <burkholder.dallas@epa.gov>; Larson, Ben <Larson.Ben@epa.gov>; Weihrauch, John <weihrauch.john@epa.gov>
Cc: Bunker, Byron <bunker.byron@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; William Charmley (charmley.william@epa.gov) <charmley.william@epa.gov>
Subject: Clean and RLSO versions of combined OTAQ/OGC docs attached

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/15/2018 2:18:41 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Midwest Swing RFS Announcements_2018 06 15.docx
Attachments: EDIT Midwest Swing RFS Announcements_2018 06 15.docx

Here's the OGC mark-up

I'll have an OTAQ mark-up shortly. Mandy or someone else will have to reconcile all this, of course, but we can discuss the various drafts at 10:30

From: Srinivasan, Gautam
Sent: Friday, June 15, 2018 10:16 AM
To: Stahle, Susan <Stahle.Susan@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Michaels, Lauren <Michaels.Lauren@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>; Nelson, Karen <nelson.karen@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>
Subject: RE: Midwest Swing RFS Announcements_2018 06 15.docx

Here it is.

++++++++++++
202-564-5647 (o)
202-695-6287 (c)

From: Stahle, Susan
Sent: Friday, June 15, 2018 10:00 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FW: Midwest Swing RFS Announcements_2018 06 15.docx

FYI – I told the group that we just spent time with Justin editing this document. Do you think we could get the edited version from him to share with them?

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-1272 (ph)
202-564-5603 (fax)
stahle.susan@epa.gov

From: Hengst, Benjamin
Sent: Friday, June 15, 2018 9:36 AM
To: Michaels, Lauren <Michaels.Lauren@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>; Nelson, Karen <nelson.karen@epa.gov>; Manners, Mary <manners.mary@epa.gov>; Parsons, Nick <Parsons.Nick@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>
Subject: Fwd: Midwest Swing RFS Announcements_2018 06 15.docx

Pls provide thoughts ASAP

I haven't opened it yet

Ryland and Sue: if either of you are in I can call and explain what this is.

We can talk about it at the 10:30 with Bill and Mandy

Begin forwarded message:

> **From:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Date:** June 15, 2018 at 9:31:08 AM EDT
> **To:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
> **Subject: Midwest Swing RFS Announcements_2018 06 15.docx**

Take a look. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Timeline is as soon as possible. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 6/15/2018 1:55:16 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: One More
Attachments: EDIT Midwest Swing RFS Announcements_2018 06 15.docx

Please find redline attached.

From: Gunasekara, Mandy
Sent: Friday, June 15, 2018 9:16 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>
Subject: One More

I know this is an early draft, but take a look. I'll explain more later, but SP wants to issue this (or something like it) today.

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/13/2018 6:59:39 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: RE: FOR REVIEW: From Steve Jordon, Omaha World-Herald

What about this?

Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Wednesday, June 13, 2018 12:56 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: FOR REVIEW: From Steve Jordon, Omaha World-Herald

I'm going to tinker with this a bit. Working on now

Sent from my iPhone

On Jun 13, 2018, at 11:06 AM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Block, Molly
Sent: Wednesday, June 13, 2018 11:50 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: FOR REVIEW: From Steve Jordon, Omaha World-Herald

Deliberative Process / Ex. 5

-----Original Message-----
From: Jordon, Steve [mailto:JORDON@owh.com]
Sent: Wednesday, June 13, 2018 11:45 AM
To: Block, Molly <block.molly@epa.gov>
Cc: Press <Press@epa.gov>
Subject: From Steve Jordon, Omaha World-Herald

Molly:

I'm doing a story on comments by Emily Skor, CEO of Growth Energy, an ethanol advocacy group, from an interview I did with her this morning.

She said the EPA, and specifically Administrator Scott Pruitt, is destroying ethanol demand by granting waivers to petroleum refineries and not reassigning those blending requirements elsewhere, thus reducing the amount of ethanol that will be produced this year below the 15 billion-gallon target required under the law.

She says President Trump promised to uphold the 15 billion gallon requirement; Pruitt's actions are destroying demand, breaking the law and making the president a liar, she said.

Can you give me a response on this? My deadline is 4 p.m Eastern time.

Steve Jordon, reporter
The Omaha World-Herald
Omaha, Nebraska
Office: Administrator / Ex. 6

Message

From: Hanson, Paige (Catherine) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=95ADC1B2AC3B40AB9DC591801D594DF8-HANSON, CAT]
Sent: 11/30/2018 6:38:31 PM
To: Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Re: Administrator Wheeler Meeting Follow Up

Deliberative Process / Ex. 5

Sent from my iPhone

On Nov 30, 2018, at 12:32 PM, Frye, Tony (Robert) <frye.robert@epa.gov> wrote:

Hey Mandy – Do you have anything in response to James's follow up?

Also, included Holly and Paige for awareness on appropriations.

Tony Frye
Special Advisor
Office of Congressional Affairs
Environmental Protection Agency
Cell: 202.603.3225

From: Rice, James (Grassley) <James_Rice@grassley.senate.gov>
Sent: Thursday, November 29, 2018 4:58 PM
To: Frye, Tony (Robert) <frye.robert@epa.gov>; Kozeny, Jill (Grassley) <Jill_Kozeny@grassley.senate.gov>; Brandt, Andrew (Grassley) <Andrew_Brandt@grassley.senate.gov>
Cc: Lyons, Troy <lyons.troy@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: RE: Administrator Wheeler Meeting Follow Up

Thanks, Tony. We have access to that already. However, there have been many reports that EPA was not following the DOE recommendations, or that when they recommended a partial waiver, EPA granted a full waiver. Also, Administrator Wheeler referenced the appropriation report language, which specifically encourages EPA to give waivers to refineries even if DOE doesn't recommend one, and seemed to indicate that he felt somewhat bound by it, although he acknowledged that it wasn't legally binding. Senator Grassley does have an interest in understanding how EPA is making its decisions on granting small refinery waivers as a fundamental matter of congressional oversight.

Can EPA definitively state that it always follows the DOE recommendations to the letter? If not, what are EPA's criteria for deviating?

Also, I would appreciate some additional clarification about to what degree EPA feels bound by the appropriations report language, which is included by appropriators in a report that the Senate never votes on an never becomes law. If this provision were included in an appropriations bill, Senator Grassley surely would take advantage of opportunities to amend it on the floor, and if it was not amended, I would be inclined to recommend he vote against such a bill. As it stands, Senator Grassley's vote for any Interior-Environment Appropriations Bill has been on the understanding that he is not necessarily voting for anything included the accompanying report written by the appropriators. Should he be viewing things differently?

I am very interested in seeing the legal opinion about what is considered confidential business information that Mandy said you could provide. The public surely has a right to know at least who got the waivers. Regardless, for Congress to conduct appropriate oversight, there needs to be some appropriate process to review the waiver applications in full and Senator Grassley would like to pursue how to make that work. It isn't constitutionally appropriate for that to just be a black box.

James Rice
Legislative Director
Office of Senator Charles E. Grassley
135 Hart Senate Office Building
Washington, DC 20510
202-224-3744

<image001.png><image002.png> <image003.png> <image004.jpg><image005.jpg><image006.png> <image007.png>

From: Frye, Tony (Robert) <frye.robert@epa.gov>
Sent: Thursday, November 29, 2018 4:33 PM
To: Rice, James (Grassley) <James_Rice@grassley.senate.gov>; Kozeny, Jill (Grassley) <Jill_Kozeny@grassley.senate.gov>; Brandt, Andrew (Grassley) <Andrew_Brandt@grassley.senate.gov>
Cc: Lyons, Troy <lyons.troy@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: Administrator Wheeler Meeting Follow Up

Hello James, Jill, and Andrew – Thank you for joining the meeting yesterday afternoon with Administrator Wheeler. As mentioned toward the end of the discussion, here is the link to the DOE studies regarding the Small Refinery Exemption: https://www.epa.gov/renewable-fuel-standard-program/small-refinery-exemption-studies-department-energy. Specifically, tables 10 and 11 detail the criteria for analyzing conditions likely to lead to disproportionate economic hardship, which can be found on pages 31 to 37.

Please don't hesitate to let us know if you have any further questions. Have a great day!

Best,
Tony

Tony Frye
Special Advisor
Office of Congressional Affairs
Environmental Protection Agency
Cell: 202.603.3225

Message

From: Graham, Cheryl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC456030F1A7475397AFE7895933BAEC-CGRAHAM]
Sent: 7/18/2018 4:16:18 PM
To: Harnett, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=437834c4b30541d2beb0386cc3d0e253-WHARNETT]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Henigin, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cbe828e291f4facb492fc28261db45f-MHenigin]; Davis, Alison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c309f42d5d44d18a52b027bd0112778-ADAVIS06]; Montoro, Marta [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=02244a49b2b14d77b2a9e749dd87f704-MMONTORO]; Rush, Alan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=87bd4df8264d4490afe9414cb28062b9-ARush]; Schillo, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a71c3eb16aeb4bd2a0b3e1c950c44111-Bschill]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Mazakas, Pam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fde3017279c64e3ebff1ad7dc5d5b835-Pmazakas]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; South, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ead249df78840c9928874ec2ec4f9a6-PSouth]; Lipshultz, Jon (ENRD) [Jon.Lipshultz@usdoj.gov]; Christopher.Vaden@usdoj.gov; Wood, Anna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39055f080135414ca3b8c18d4f578755-AWood02]; Edwards, Crystal [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0d40b5f15b2a4c438f44bbae579d829a-Edwards, Crystal]; Mathias, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4be52cdccca348eeb5cd1efebe6caf24-SMATHIAS]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; South, Mia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ffac1c6273e4b439a0852a1159885ca-South, Mia]; Cortelyou-Lee, Jan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=75b1eec7b16e46d5b9114935fc6a771e-JCORTELY]; Smith, Kristi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ed7a08d522c54f2fa8387a7b5771d8d5-Smith, Kristi]; Iglesias, Amber [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ed1da89f33f24b5b9f2c4b9bcf91a2ad-Iglesias, A]; Schachter, Scott (ENRD) [Scott.Schachter@usdoj.gov]; Doyle, Andrew (ENRD) [Andrew.Doyle@usdoj.gov]; leslie.hill@usdoj.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user01591315]; Maghamfar, Dustin (ENRD) [Dustin.Maghamfar@usdoj.gov]; Mitchell, Ken [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e49335e2f5a64cbfa97c39cbf1faff2b-Mitchell, Kenneth]; Wortman, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a6a4541680f4c89adaf1198de1925c4-Wortman, Eric]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Purdy, Angeline (ENRD) [Angeline.Purdy@usdoj.gov]; Debra Carfora [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user02767177]; Perez, Idalia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=03b7a08fdfbe4934911f17550d78491d-IPEREZ]; martha.mann@usdoj.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user07624bb3]; Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; McLamb, Marguerite [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=85f0f472928e4767965c94e609fedc45-McLamb, Marguerite]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]

Subject: ARLO Deadline Calendar as of July 16, 2018

Attachments: 18-07-16 ARLO Deadline Calendar.docx

Attached is the current deadline calendar and other information that is sent out weekly from ARLO. If information in the attachment raises questions, please contact Gautam Srinivasan. Thanks

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

Message

From: Graham, Cheryl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC456030F1A7475397AFE7895933BAEC-CGRAHAM]
Sent: 7/24/2018 9:29:21 PM
To: Harnett, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=437834c4b30541d2beb0386cc3d0e253-WHARNETT]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Henigin, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cbe828e291f4facb492fc28261db45f-MHenigin]; Davis, Alison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c309f42d5d44d18a52b027bd0112778-ADAVIS06]; Montoro, Marta [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=02244a49b2b14d77b2a9e749dd87f704-MMONTORO]; Rush, Alan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=87bd4df8264d4490afe9414cb28062b9-ARush]; Schillo, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a71c3eb16aeb4bd2a0b3e1c950c44111-Bschill]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Mazakas, Pam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fde3017279c64e3ebff1ad7dc5d5b835-Pmazakas]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; South, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ead249df78840c9928874ec2ec4f9a6-PSouth]; Lipshultz, Jon (ENRD) [Jon.Lipshultz@usdoj.gov]; Christopher.Vaden@usdoj.gov; Wood, Anna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39055f080135414ca3b8c18d4f578755-AWood02]; Edwards, Crystal [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0d40b5f15b2a4c438f44bbae579d829a-Edwards, Crystal]; Mathias, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4be52cdccca348eeb5cd1efebe6caf24-SMATHIAS]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; South, Mia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ffac1c6273e4b439a0852a1159885ca-South, Mia]; Cortelyou-Lee, Jan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=75b1eec7b16e46d5b9114935fc6a771e-JCORTELY]; Smith, Kristi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ed7a08d522c54f2fa8387a7b5771d8d5-Smith, Kristi]; Iglesias, Amber [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ed1da89f33f24b5b9f2c4b9bcf91a2ad-Iglesias, A]; Schachter, Scott (ENRD) [Scott.Schachter@usdoj.gov]; Doyle, Andrew (ENRD) [Andrew.Doyle@usdoj.gov]; leslie.hill@usdoj.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user01591315]; Maghamfar, Dustin (ENRD) [Dustin.Maghamfar@usdoj.gov]; Mitchell, Ken [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e49335e2f5a64cbfa97c39cbf1faff2b-Mitchell, Kenneth]; Wortman, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a6a4541680f4c89adaf1198de1925c4-Wortman, Eric]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Purdy, Angeline (ENRD) [Angeline.Purdy@usdoj.gov]; Debra Carfora [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user02767177]; Perez, Idalia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=03b7a08fdfbe4934911f17550d78491d-IPEREZ]; martha.mann@usdoj.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user07624bb3]; Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; McLamb, Marguerite [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=85f0f472928e4767965c94e609fedc45-McLamb, Marguerite]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]

Subject: ARLO Deadline Calendar as of July 23, 2018

Attachments: 18-07-23 ARLO Deadline Calendar.docx

Attached is the current deadline calendar and other information that is sent out weekly from ARLO. If information in the attachment raises questions, please contact Gautam Srinivasan. Thanks

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

Message

From: Wheeler, Andrew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=17A1669EF5B54FBA8CB457845308787E-WHEELER, AN]
Sent: 7/24/2018 5:00:58 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Fwd: Document on RVP Deal
Attachments: RIN Reform and RVP.docx; ATT00001.htm

Let's discuss, thanks.

Sent from my iPhone

Begin forwarded message:

> **From:** "Walther, Robert" <Robert.Walther@POET.COM>
> **Date:** July 24, 2018 at 8:26:26 AM EDT
> **To:** Andrew Wheeler <wheeler.andrew@epa.gov>
> **Subject: Document on RVP Deal**
>
> Andy,
>
> Here is the suggested path forward that would give refiners even greater certainty around RIN prices. Much of this was requested in prior comments.
>
> We are certain RVP would keep RINs low, but the reform kickers contained herein would virtually guarantee it. Moreover, there is nothing to preclude EPA from instituting more punitive measures (small refinery waivers, export RINs, backstop, cap, etc) to reduce RIN prices should they spike again. They won't because we would be over-producing the 15B in the RFS just as we were prior to 2012 when RINs remained around 10 cents. But that could be the sword hanging over our neck and could be memorialized in the text of any proposed rule.
>
> If you or your team have thoughts on this "deal" I am happy to discuss. I am confident our full side would coalesce around and support this based on previous conversations with stakeholders and champions.
>
> I remain wary that RINs/cost of compliance really is the goal of the refiners in this negotiation and not barring competition/market access to E15. We continue to negotiate in good faith and hope all parties will be held to that standard.
>
> Thanks again for your time and interest on this.
>
> Rob

Robert Walther
Vice President of Federal Advocacy

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900 7th Street NW, Suite 820

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poet.com

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POET
ethanol products
P / 318 305 1500 3200 N. WEBB RD., WICHITA, KS 67226 POETEP.COM

Date: June 14, 2018

To: File

From: Bob Casper

RE: Concept – RIN Reform and RVP

Key Assumptions:

- POTUS requires RVP linked with something beneficial to the refining industry.
- Near impossible task to reach alignment with corn growers on any concept that reduces RFS volumes, multiplies RINs, caps RINs, or is tied to performance.
- Without a proposal on the table, a vacuum has the potential to create a detrimental outcome.
- USDA has reached out and is looking for concepts.

Concept:

1.) RIN Reform Side of Equation

- The market for RINs is not transparent, has limited liquidity, and can be manipulated by market participants. Reform the regulation on RINs as follows:
  - Reduce the holding period for RINs to 90 days.
  - The carry-over period to be 90 days and the carry-over volume to be 5% of obligated parties RVO.
  - Limit participants to the regulated parties.

2.) RVP Side of the Equation

- E15 RVP waiver.

The Pitch:

RINs were developed to be a market based mechanism to allow obligated parties to determine the best method to meet their RVO by either blending renewable fuel or purchasing RINs. However, the current regulations allow for market manipulation by large holders of RINs, some of which are only speculators and not blenders. This has created an inflated and false RIN market price that is placing an artificial economic burden on certain obligated parties. The proposed RIN reform will allow the market to function as originally intended by Congress and remove this economic burden from obligated parties. WIN. E15 RVP waiver. WIN. The President has brought forward the win-win solution he envisioned.

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 6/11/2018 9:35:42 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: Fwd: Travel Memo
Attachments: OAR Travel Memo (V1).docx_mmg.docx; ATT00001.htm

Attached memo includes a page on sorghum

Sent from my iPhone

Begin forwarded message:

> **From:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>
> **Date:** June 11, 2018 at 2:23:41 PM EDT
> **To:** "Bennett, Tate" <Bennett.Tate@epa.gov>
> **Subject: FW: Travel Memo**

> **From:** Gunasekara, Mandy
> **Sent:** Monday, June 11, 2018 2:21 PM
> **To:** Dominguez, Alexander <dominguez.alexander@epa.gov>
> **Subject:** RE: Travel Memo
>
> With edits. This is good to go. Thank you!

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 8/7/2018 5:13:16 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RLSOs of QFRs
Attachments: dshRLSOMUR-002+ng.docx; dshRLSOUDA-015+ng.docx; dshRLSOUDA-019.docx

Flag: Flag for follow up

Mandy,

Attached are the documents I left on your chair a short while ago. I hadn't wanted to attach them to my earlier email response to Jonathan, just in case the documents, as reviewed and further edited by me only were (inadvertently) perceived to be OAR's final word on the subject and got put into final production before you had a chance to review and weigh in yourself.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/18/2018 1:37:02 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: RE: Reuters

Deliberative Process; ACP / Ex. 5

From: Schwab, Justin
Sent: Monday, June 18, 2018 9:35 AM
To: Block, Molly <block.molly@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: Reuters

Deliberative Process; ACP / Ex. 5

Sent from my iPhone

On Jun 18, 2018, at 9:25 AM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Renshaw, Jarrett (Reuters) [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Monday, June 18, 2018 9:03 AM
To: Press <Press@epa.gov>
Subject: Reuters

Hello, this is Jarrett Renshaw, an energy reporter at Reuters. We are writing a story regarding the EPA's handling of the small refinery waiver program under the U.S. Renewable Fuel Standard. The story could run as early as late afternoon today, but likely tomorrow morning.

Based on sources, we are reporting that the EPA has ignored recommendations from the Department of Energy to award partial waivers from the RFS. This is a break from tradition, where the EPA has largely taken the DOE's advice. We are citing court records where the EPA considers the DOE a primary factor in their decision making.

We are also reporting that Administrator Pruitt was the one who decided to expand the program beyond the DOE reccomendations, in part because of his efforts to help refiners who have asked for regulatory relief.

We are reporting that Andeavor was one of the companies who get the extra relief.

Why is the EPA breaking from tradition and ignoring the DOE.

How do you explain Mr. Pruitt's role in the decisions?

Any other comments.

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: Administrator / Ex. 6
Cell: Administrator / Ex. 6
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/4/2018 9:39:08 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]
CC: Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: RE: FOR APPROVAL: RFS response

Awesome. Thank you so much!!!

From: Gunasekara, Mandy
Sent: Monday, June 4, 2018 5:38 PM
To: Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: FOR APPROVAL: RFS response

I think this is really good. One little change. I'll have additional changes to the background info. I'll get to it later tonight, which it seems like will work fine with the current state of things.

From: Beach, Christopher
Sent: Monday, June 4, 2018 5:08 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Block, Molly <block.molly@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: FOR APPROVAL: RFS response

Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Monday, June 4, 2018 4:26 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: FOR APPROVAL: RFS response

Yes, but that one is based on hearsay from industry and biofuels sources. When it says the "White House announced," we'll have the green light.

Sent from my iPhone

On Jun 4, 2018, at 4:23 PM, Block, Molly <block.molly@epa.gov> wrote:

> There's already one out there... thanks!
>
> Sent from my iPhone
>
> On Jun 4, 2018, at 4:22 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> > It's all in flux. When I know, I'll let you know but odds are we will get a politico alert first ☹
> >
> > Sent from my iPhone
> >
> > On Jun 4, 2018, at 3:35 PM, Block, Molly <block.molly@epa.gov> wrote:
> >
> > > Any update on timing on this?
> > >
> > > **From:** Block, Molly
> > > **Sent:** Monday, June 4, 2018 10:14 AM
> > > **To:** Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
> > > **Cc:** Wilcox, Jahan <wilcox.jahan@epa.gov>
> > > **Subject:** Re: FOR APPROVAL: RFS response
> > >
> > > Adding Kelsi - she'll be with SP all day and he's been asking about this.
> > >
> > > Sent from my iPhone
> > >
> > > On Jun 4, 2018, at 9:38 AM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Lubetsky, Jonathan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E125D09A658E48119789CCAE5712B4A5-JLUBETSK]
Sent: 8/7/2018 1:58:36 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: DRAFT SAC QFR IO Review Email
Attachments: MUR-002+ng.docx; UDA-015+ng.docx; UDA-019.docx

With Josh out until tomorrow, I am sending you the Senate Appropriations Committee QFRs that are back from OGC review for the next round of OAR review. Three of OAR's responses had comments that need your review. They are included in the tracked changes of the attached documents. OCFO is coordinating the review and shared them with OPMO for our consideration.

Please let me know how you would like to address these comments/edits.

Thank you,
Jonathan

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/18/2018 1:28:29 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: RE: Reuters

Sounds good to me. Let me know what works in your schedule Mandy and Justin.

From: Schwab, Justin
Sent: Monday, June 18, 2018 9:27 AM
To: Block, Molly <block.molly@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: Reuters

We should all discuss this together today.

Sent from my iPhone

On Jun 18, 2018, at 9:26 AM, Block, Molly <block.molly@epa.gov> wrote:

> And one more follow up from the reporter: Also, one more thing: Mr. Pruitt said this last week: "Every exemption we've granted is in line with the Dept of Energy."
>
> That is not accurate. How does Mr. Pruitt defend those remarks?
>
> Jarrett Renshaw
> National Energy Markets Reporter
> Reuters
> jarrett.renshaw@thomsonreuters.com
> Office: Ex. 6
> Cell: Ex. 6
> Twitter: @jarrettrenshaw
> IM: jrenshaw_reuters08
>
> ---
>
> **From:** Block, Molly
> **Sent:** Monday, June 18, 2018 9:26 AM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
> **Cc:** Wilcox, Jahan <wilcox.jahan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
> **Subject:** FW: Reuters

Deliberative Process / Ex. 5

From: Renshaw, Jarrett (Reuters) [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Monday, June 18, 2018 9:03 AM
To: Press <Press@epa.gov>
Subject: Reuters

Hello, this is Jarrett Renshaw, an energy reporter at Reuters. We are writing a story regarding the EPA's handling of the small refinery waiver program under the U.S. Renewable Fuel Standard. The story could run as early as late afternoon today, but likely tomorrow morning.

Based on sources, we are reporting that the EPA has ignored recommendations from the Department of Energy to award partial waivers from the RFS. This is a break from tradition, where the EPA has largely taken the DOE's advice. We are citing court records where the EPA considers the DOE a primary factor in their decision making.

We are also reporting that Administrator Pruitt was the one who decided to expand the program beyond the DOE reccomendations, in part because of his efforts to help refiners who have asked for regulatory relief.

We are reporting that Andeavor was one of the companies who get the extra relief.

Why is the EPA breaking from tradition and ignoring the DOE.

How do you explain Mr. Pruitt's role in the decisions?

Any other comments.

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: Ex. 6
Cell: Ex. 6
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 6/26/2018 12:40:30 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]
Subject: RE: RVO Announcement
Attachments: 2019 RFS NPRM Roll Out Plan.DOCX; RFS 2019 Press Statement.DOCX

Attached are the latest comms materials.

From: Gunasekara, Mandy
Sent: Tuesday, June 26, 2018 6:19 AM
To: Lyons, Troy <lyons.troy@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Re: RVO Announcement

Roll out is going to be moved up. Plan for 11 am. Alex will send around the latest version of comms materials when he gets in his morning.

Sent from my iPhone

On Jun 25, 2018, at 8:09 PM, Lyons, Troy <lyons.troy@epa.gov> wrote:

> Thanks so much, Mandy!
>
> Sent from my iPhone
>
> On Jun 25, 2018, at 6:35 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> > Team OCIR:
> > Attached are DRAFT materials. **Deliberative Process / Ex. 5**
> > **Deliberative Process / Ex. 5**

Please do not distribute the attached as they will likely change - OPA is just now taking a look and not yet signed off. We will follow-up with a doc you can send to key folks with an embargo stamp tomorrow morning. Alex is point for that as I'll be traveling.

Happy almost RVO day and have a good night!
Mandy

From: Lyons, Troy
Sent: Monday, June 25, 2018 5:33 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>
Subject: RVO Announcement

Bill, Mandy---are you all still on track for releasing the RVO's tomorrow? Any heads up you can give so we can make notifications would be greatly appreciated.

Many thanks,

Troy

Troy M. Lyons
Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency
Ex. 6 (cell)

<RFS 2019 Press Statement_DRAFT.docx>

<2019 RFS NPRM Roll Out Plan_DRAFT.docx>

RFS SMALL REFINERY EXEMPTIONS

BACKGROUND:

- In the Renewable Fuel Standard (RFS), Congress established exemptions from RFS volume obligations for small refineries (statutorily defined as refineries with a crude oil throughput of 75,000 barrels per day or less).
  - The statute provided an automatic exemption for all small refineries through 2010.
  - After 2010, the statute provided that those small refineries could also receive an extension of the exemption for up to two years (2011-2012) following a small refinery study by DOE.
  - Beginning in 2013, refineries may petition EPA annually for an extension of the exemption if the agency finds the refinery will suffer **"disproportionate economic hardship"** from complying with its RFS obligations.
  - Because the exemption program is for small "refineries" and not "refiners," the presence of "disproportionate economic harm" is a facility-specific determination. Accordingly, the agency does not take into account the economic standing of a parent company in making the determination, which is why small refineries that are owned by large corporations like Andeavor can and have qualified for the exemption.
- The statute directs EPA to consult with DOE, and to consider the DOE study and other economic factors, but authority and responsibility for decisions resides with EPA.
  - DOE uses a scoring matrix to quantify specific factors that may contribute to disproportionate economic hardship, and provides a recommendation to EPA.
  - EPA considers DOE's recommendation in its evaluation as well as consider the DOE study and "other economic factors."
- Most applicants claim their petition, supporting information, and EPA's decision on that petition as Confidential Business Information (CBI).
  - Until EPA makes a final determination on that CBI claim, the Agency does not release information regarding small refinery petitions to third parties.
- EPA has received two recent court decisions that have impacted (or will impact) the administration of the program:
  - ***Sinclair Decision***: Last summer, EPA received an adverse decision from the Tenth Circuit Court of Appeals, which found the agency's viability analysis employed by the previous administration to be inconsistent with congress's intent of the hardship exemption and outside its statutory authority (*Sinclair Wyoming Refining Company v. EPA)*. Specifically, the court found EPA's requirement that refineries demonstrate an "existential threat" to their long-term viability as the standard for demonstrating "disproportionate economic hardship" inconsistent with EPA's statutory authority and vacated a previously denied hardship exemption and remanded Sinclair's hardship petitions back to EPA for further consideration.
  - ***Ergon West Virginia:*** In July 2018 (last week), EPA received an adverse decision from the Fourth Circuit where petitioners (Ergon WV Refinery) challenged EPA's denial of a small refinery exemption in 2016. The court found DOE's analysis which did not appropriately account for RIN (renewable identification number) costs to be facially-deficient so EPA's reliance on that analysis was arbitrary and capricious. Accordingly, the court vacated the action and remanded it back to the agency for further consideration.

KEY POINTS:

- Although EPA continues to preserve the small refinery's claim that both the petition and the decision itself are CBI, EPA has released aggregated information showing an increase in the number of petitions granted and an increase in the exempted volumes for 2016 and 2017, generating both political activity and litigation by other stakeholders.
- We have received 34 petitions for 2017 and have issued 29 decisions to date.
- We have received 2 petitions for 2018 to date but have not yet started to evaluate 2018 petitions.

Year	Petitions		Decisions Issued		
	Pending	Received	Grant	Deny	Total
2013	1	16	8	7	15
2014	2	15	8	5	13
2015	1	14	7	6	13
2016	0	20	19	1*	20
2017	5	34	29		29
2018	2	2			
TOTAL	**11**	**101**	**71**	**19**	**90**

* Decision was challenged. 4th Circuit Court vacated decision on 7/20/2018 and remanded to EPA.

TALKING POINTS:

- EPA administers the small refinery exemption program consistent with the statutory requirements.
- Since the start of this administration, EPA has worked hard to better coordinate with DOE in making small refinery exemption determinations.
- EPA has received additional direction from Congress in appropriations language and received direction from the Courts that have impacted the administration of the program.
- The most recent decision (*Ergon West Virginia*) was issued last week. The agency is still assessing its impact on the administration of the program.

Message

From: Hanson, Paige (Catherine) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=95ADC1B2AC3B40AB9DC591801D594DF8-HANSON, CAT]
Sent: 6/12/2018 10:39:16 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]
Subject: RE: Confirming QFR Response
Attachments: OMBedits for PT61118 - OCFO Recommendations (002).docx; CAL-015-018.docx

In addition to the questions below, we also wanted to confirm these additional responses look okay with you, especially since others have edited them.

I'm also attaching the original document so you don't have to print from two emails.

Responses in question: **Deliberative Process / Ex. 5**

If at all possible to get these by 10:00am tomorrow, that'd be great.

From: Hanson, Paige (Catherine)
Sent: Tuesday, June 12, 2018 4:36 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Confirming QFR Response

Mandy,

Please find attached a question for the record from House Approps that we understand Bill cleared last month, however, they've since been reviewed (and possibly edited) by OCIR and OGC. Before sending to OMB, we want to confirm this is still an acceptable response.

Thanks, as always, for the help,
Paige

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 7/24/2018 3:06:56 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: For review: final five fact sheets for the Administrator's hearing
Attachments: OAR- NSR General.docx; OAR-Gliders.docx; OAR-RFS.DOCX; OAR- CA Waiver.docx; OAR-SREs.docx

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 6/25/2018 11:39:09 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: DRAFT RFS Materials
Attachments: EDIT OGC RFS 2019 Press Statement_DRAFT.DOCX; EDIT 2019 RFS NPRM Roll Out Plan_DRAFT.DOCX

Please find redlines attached.

From: Gunasekara, Mandy
Sent: Monday, June 25, 2018 6:37 PM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: DRAFT RFS Materials

Adding Justin for OGC input too. Justin, the Roll-out doc is meant for internal use only; press release is obviously public.

From: Gunasekara, Mandy
Sent: Monday, June 25, 2018 6:31 PM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: DRAFT RFS Materials

Hi All: Attached are draft press materials (roll out and press statement). Y'all take a look and edit as needed. Deliberative Process / Ex. 5 **Deliberative Process / Ex. 5** This can be adjusted. I just want to make sure there is enough time for the RVO to get through the signature process.

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 6/11/2018 5:38:48 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Travel Memo
Attachments: OAR Travel Memo (V1).docx

Last two pages include additional info on small refinery waivers and butamax you requested.

Alex Dominguez
Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency

Message

From: Beach, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B124299BB6F46A39AA5D84519F25D5D-BEACH, CHRI]
Sent: 6/4/2018 9:07:37 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
CC: Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: RE: FOR APPROVAL: RFS response

Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Monday, June 4, 2018 4:26 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: FOR APPROVAL: RFS response

Yes, but that one is based on hearsay from industry and biofuels sources. When it says the "White House announced," we'll have the green light.

Sent from my iPhone

On Jun 4, 2018, at 4:23 PM, Block, Molly <block.molly@epa.gov> wrote:

> There's already one out there... thanks!
>
> Sent from my iPhone
>
> On Jun 4, 2018, at 4:22 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> > It's all in flux. When I know, I'll let you know but odds are we will get a politico alert first ☹
> >
> > Sent from my iPhone
> >
> > On Jun 4, 2018, at 3:35 PM, Block, Molly <block.molly@epa.gov> wrote:
> >
> > > Any update on timing on this?

From: Block, Molly
Sent: Monday, June 4, 2018 10:14 AM
To: Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: FOR APPROVAL: RFS response

Adding Kelsi - she'll be with SP all day and he's been asking about this.

Sent from my iPhone

On Jun 4, 2018, at 9:38 AM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 5/7/2018 8:42:37 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Backgrounder for 5-8-18
Attachments: Backgrounder for 5-8-18.docx

Me again! Attached is a backgrounder for tomorrow's WH meeting – with small refinery and historic RIN information. Hopefully this is what you guys are looking for, but please let us know if you have any questions.

Thanks!
-Tia

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/11/2018 9:40:05 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: RFS meeting tomorrow with OMB and USDA

Sure. I will get the right folks to come to 5400

On Jun 11, 2018, at 5:33 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

> I'd like to briefly talk through these issues tomorrow morning prior to the call. Can we plan to talk at 9:15 or so?
>
> _____
> Bill Wehrum
> Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency
> (202) 564-7404
>
> **From:** Hengst, Benjamin
> **Sent:** Monday, June 11, 2018 4:35 PM
> **To:** Wehrum, Bill <Wehrum.Bill@epa.gov>
> **Cc:** Grundler, Christopher <grundler.christopher@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Subject:** RFS meeting tomorrow with OMB and USDA
>
> Bill:
>
> Tomorrow at 10:30, a few staff from OTAQ and OGC will join you for your call with OMB and USDA on the 2019 RVO NPRM.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We put together a one-page backgrounder on topic #2 that might be good to glance through before tomorrow. I've also included two responses to comments we've sent back to OMB as part of the interagency process that should give you a feel of what we've been saying to USDA/OMB. These are probably less important to review if you are pressed for time.

Thanks,
Ben

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 5/7/2018 4:18:06 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: RE: RFS

Thanks, Deliberative Process / Ex. 5!

From: Gunasekara, Mandy
Sent: Monday, May 7, 2018 12:12 PM
To: Block, Molly <block.molly@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>
Subject: RE: RFS

Hey Molly,

Deliberative Process / Ex. 5

Best,
Mandy

From: Block, Molly
Sent: Monday, May 7, 2018 11:58 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RFS

OAR rockstars –

In anticipation of the RFS meeting tomorrow at the White House, we will definitely be receiving a bunch of media inquiries. In the past **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Also, **Deliberative Process / Ex. 5**
Thanks!

Please let me know if you have any questions,
Molly

Previous response: "The criteria used to grant waivers has not changed since previous administrations. EPA follows a long-standing, objectively determined process where the Agency uses a Department of Energy analysis to inform

decisions about refiner exemptions/waivers, for refineries that are below the statutory threshold. EPA decisions on waivers are based on refinery-specific information that is subject to confidential business information protections. We continue to work through petitions received for 2017 and will provide updated information, as soon as complete." **Jahan Wilcox, EPA spokesperson**

Additional background (not for attribution):

- As requests for waivers are based on CBI, EPA cannot share company-specific information.
- Any refinery that produces 75,000 barrels or less per day on an annualized basis can apply for the Small Refinery Hardship exemption. As of 4/24/18: 24 approvals, 1 denial and 4 pending – total applicants are 29. There are 38 plants who could qualify for exemptions in the U.S.
- In 2016, EPA received 20 petitions and granted 19 based on DOE's recommendation.
- When first established, the program automatically exempted refineries based solely on their output, which resulted in 59 small refineries being exempted from 2007 to 2010. Post-2010, qualifying refineries seeking a small refinery hardship exemption submit financial information to EPA. EPA then shares this information with DOE and DOE uses a scoring matrix to quantify structural, economic and refinery-specific factors that may contribute to "disproportionate economic hardship."
- During the Obama Administration, there was often disagreement by EPA with DOE's recommendation. Since the start of this administration, EPA has worked to better coordinate with DOE to ensure cross-administration consistency.
- On August 15, 2017, EPA received an adverse decision from the Tenth Circuit Court of Appeals, which found the agency's viability analysis employed by the previous administration to be inconsistent with congress's intent of the hardship exemption and outside its statutory authority (Sinclair Wyoming Refining Company v. EPA). Specifically, the court found EPA's requirement that refineries demonstrate an "existential threat" to their long-term viability as the standard for demonstrating "disproportionate economic hardship" inconsistent with EPA's statutory authority and vacated a previously denied hardship exemption and remanded Sinclair's hardship petitions back to EPA for further consideration.

Message

From: Morrison, Matthew W. [matthew.morrison@pillsburylaw.com]
Sent: 6/7/2018 3:31:42 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; grundler.chris@epa.gov; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Bob M Dinneen (BobD@ethanolrfa.org) [BobD@ethanolrfa.org]
Subject: DC Circuit filings on Small Refineries
Attachments: Small Refinery 2010 Rule Petition DC Circuit 4821-9478-4359 v.4.pdf; DC Circuit Motion to Hold in Abeyance 4847-4427-9143 v.4.pdf

Bill,

Following up on my earlier email, I'm forwarding our Petition for Review to the DC Circuit and our motion to hold the DC Circuit proceedings in abeyance during EPA's reconsideration. Like our petition for reconsideration to EPA, our petition for review to the DC Circuit and our motion to hold the proceedings in abeyance were filed on Monday.

I did not attach the Exhibits to our Petition for Review to the DC Circuit because they are essentially the same as the Appendices to our Petition for Reconsideration to EPA, all of which I just sent to you in my earlier email.

Again, please let us know when you'd like to get together to discuss these filings.

Best regards,

Matt

Matthew W. Morrison | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.8036 | f 202.663.8007 | m 571.253.3335
matthew.morrison@pillsburylaw.com | website bio

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pillsbury

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RENEWABLE FUELS ASSOCIATION, AMERICAN COALITION FOR ETHANOL, BIOTECHNOLOGY INNOVATION ORGANIZATION, GROWTH ENERGY, NATIONAL BIODIESEL BOARD, NATIONAL CORN GROWERS ASSOCIATION, and NATIONAL FARMERS UNION, Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No.:_____

PETITION FOR REVIEW

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure; the Renewable Fuels Association, American Coalition for Ethanol, Biotechnology Innovation Organization, Growth Energy, National Biodiesel Board, National Corn Growers Association, and National Farmers Union (collectively, "Petitioners" or "Coalition") hereby petition the United States Court of Appeals for the District of

Columbia Circuit for review of the following final agency actions issued by the Environmental Protection Agency ("EPA"):

1. Annual Standard Equations at 40 C.F.R. § 80.1405(c) (hereinafter referred to as the "Annual Standard Equations"), which were published in *Regulation of Fuels and Fuel Additives, Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 14,670* (Mar. 26, 2010) ("RFS2 Final Rule") (attached as Exhibit 1);

2. *Periodic Reviews for the Renewable Fuel Standard Program, 82 Fed. Reg. 58,364* (Dec. 12, 2017) (attached as Exhibit 2).

EPA is obligated under 42 U.S.C. § 7545(o)(3)(B) to each year "determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of [42 U.S.C. § 7545(o)(2)] are met." Since the RFS2 Final Rule, EPA has calculated the value of the annual percentage standards of renewable fuel required to be blended into transportation fuel in order to ensure that the annual renewable fuel volume requirements set forth in 42 U.S.C. § 7545(o)(2)(B) are met using the equation set forth at 40 CFR § 80.1405(c). Two variables in the denominator of the Annual Standard Equations—GE_i and DE_i—account for the volumes of gasoline and diesel "projected to be produced by exempt small refineries and small refiners, in year $_i$, in gallons in any year they are exempt per §§ 80.1441 and 80.1442, respectively."

The Annual Standard Equations do not include variables, however, to account for small refinery exemptions that are granted *retroactively* after EPA had finalized a given year's renewable volume obligation ("RVO"). Notwithstanding

this limitation inherent in EPA's formula, recent news reports—which have been confirmed in relevant part by Administrator Pruitt—have revealed that EPA has suddenly reversed its longstanding practice of granting retrospective small refinery waiver exemptions sparingly. Instead, EPA has granted unprecedented numbers of such retroactive waiver extensions in 2017 and 2018, thus ignoring a key limitation in EPA's Annual Standard Equations and ensuring that the annual volume requirements will be missed by a significant amount. EPA's choice to continue to apply the equations set forth in 40 C.F.R. § 80.1405(c) is arbitrary and capricious because, in light of the recent dramatic increase in retroactive small refinery exemptions, the Annual Standard Equations no longer fulfil EPA's obligation to ensure that the statutory annual renewable fuel volume requirements are met.

This Court may hear a petition for review of a final agency action after the initial period for review has closed, when the petition is based upon "new information" that may "dictate a revision or modification of any promulgated standard or regulation established under the act." *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654, 660 (D.C. Cir. 1975) (quoting S. Rep. No. 91-1196, at 41-42 (1970)); *see also* 42 U.S.C. § 7607(b)(1) (providing for judicial review after the initial 60-day review period expires if the "petition is based solely on grounds arising after such sixtieth day," and is "filed within sixty days after such grounds arise"). Thus, although the 2010 final rule was promulgated eight years

ago, this Court has jurisdiction to hear the Petition because such new grounds for review exist here, and because this Petition is being filed "within sixty days after such grounds ar[o]se." 42 U.S.C. § 7607(b)(1).

Specifically, there are new grounds for review because it has recently been revealed that one of the key assumptions that once supported the Annual Standard Equations is no longer valid. At the time of the RFS2 Final Rule in 2010, there was no need for the Annual Standard Equations to account for retroactive exemptions prior to 2010 because Congress had mandated that *all* small refineries were exempt from the standard until 2011, 75 Fed. Reg. 14,716, and that after that, EPA stated, it did not anticipate granting additional small refinery hardship exemptions prospectively except in rare circumstances, 75 Fed. Reg. 14,736 (Department of Energy "thus determined that small refineries would not be subject to disproportionate economic hardship under the proposed RFS2 program, and that the exemption should not, on the basis of the study, be extended for small refineries (including those small refiners who own refineries meeting the small refinery definition) beyond December 31, 2010."); 75 Fed. Reg. 76,790, 76,804 (Dec. 9, 2010) ("Beginning in 2011, gasoline and diesel volumes produced by small refineries and small refiners will generally no longer be exempt, and thus there is no adjustment to the gasoline and diesel volumes in today's final rule to account for such an exemption.").

Until recently, EPA's assumption was not challenged by the available information. Although EPA extended the small refinery exemptions for 2011 and 2012 to 13 of 59 small refineries based on a 2011 study by the Department of Energy, *see Sinclair Wyo. Refining Co. v. EPA*, 874 F.3d 1159, 1163 (10th Cir. 2017), those extensions should, per the Clean Air Act, have been determined before the RVOs for 2011 and 2012 were finalized and thus there would have been no reason to expect those exemptions to be retroactive. *See* 42 U.S.C. § 7545(o)(9)(A)(ii). After 2012, and until recently, EPA granted exemptions on a case-by-case basis only sparingly. Based on limited available data, EPA granted on average seven or eight hardship exemptions per year for the first four years in which it made case-by-case exemption determinations based on extension petitions filed by the refineries. *See* Exhibit 2 at 11 n.33; Jarrett Renshaw, *U.S. Small Refiners Make Surge of Biofuel Waiver Requests – Sources*, Reuters, Jan. 25, 2018, Appendix G to Exhibit 3. More recently, in December 2015, EPA acknowledged granting three exemptions for 2014 and none for 2015. *See* 80 Fed. Reg. 77,420, 77,511 (Dec. 14, 2015); *see also* 78 Fed. Reg. 49,794, 49,825 (Aug. 15, 2013) ("EPA has granted one exemption for 2013").

As recently as the Proposed Rule for the 2018 RVOs, EPA continued to assert that most small refineries would not qualify for an economic hardship exemption because, as EPA admitted, "Currently available information shows that

the impact on small entities from implementation of this rule would not be significant." 82 Fed. Reg. 34,243 (July 21, 2017). Even using conservative estimates, "the costs to small entities of the RFS standards are far less than 1 percent of the value of their sales." *Id.* Moreover, EPA concluded that "obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program." *Id.*

Despite all of this, EPA has drastically changed course. The Coalition has learned, through credible news reports that first broke in April of this year, that EPA had granted a large number of retroactive small refinery hardship exemptions for calendar years for which RVOs were already finalized. *See* Jarrett Renshaw & Chris Prentice, *Chevron, Exxon Seek 'Small Refinery' Waivers from U.S. Biofuels Law*, Reuters, Apr. 12, 2018, Appendix C to Exhibit 3. Based on such reports, the number of exemptions—and of retroactive exemptions specifically—granted for 2017 is about three times higher than the historical average. *See* Jarrett Renshaw & Chris Prentice, *Large U.S. Refiner Marathon Seeks Biofuel Hardship Waiver-Sources*, Reuters, May 23, 2018, attached as Appendix E to Exhibit 3. EPA Administrator Scott Pruitt confirmed in testimony to the House Energy and Commerce Committee on April 26, 2018, that EPA approved approximately 25

small refinery waivers in 2017 and an even higher number for 2018. *Transcript of U.S. House of Representatives Energy and Commerce Committee, Subcommittee on Environment Hearing on Fiscal Year 2019 Environmental Protection Agency Budget,* attached as Appendix H to Exhibit 3, at ln. 1231-32 (April 26, 2018).

Prior to the April 2018 news reports, there was no public information to suggest that EPA's small refinery waiver policy had changed so drastically. EPA did not even provide public notice that it had received or had acted upon *any* recent requests for an extension of a small refinery exemption.

To date, EPA has refused to disclose information requested by Petitioners Renewable Fuels Association, Growth Energy, and National Biodiesel Board in response to their separate Freedom of Information Act ("FOIA") requests to the agency. *See* Appendix F to Exhibit 3. The Coalition is also aware of an April 12, 2018 letter from a bipartisan group of United States Senators to EPA requesting additional information from EPA regarding small refinery exemptions. *See* Letter from Charles E. Grassley, United States Senator, to Scott Pruitt, EPA Administrator (Apr. 12, 2018), Appendix Q to Exhibit 3. To Petitioners' knowledge, EPA has yet to release this requested information as of the date of this Petition.

Consequently, while the Coalition does not yet have *actual* knowledge of EPA's actions here that constitute new grounds for review, it believes there is

sufficient credible evidence – particularly Administrator Pruitt's April 26 testimony – to establish that such grounds exist. Out of an abundance of caution, therefore, the Coalition is filing this Petition within 60 days of the first news article (April 12, 2018) that suggested EPA had granted an unusually high number of retroactive exemptions to otherwise profitable refineries, to ensure that it is timely filed with this Court. *See* Appendix C to Exhibit 3.

As required by this Court's precedent, *Oljato*, 515 F.2d at 666, the Coalition has filed a petition for reconsideration with EPA presenting the Administrator with the reasons why a rule change is required. *See* Exhibit 3. That petition is currently pending before the Agency. In light of that fact, the Coalition plans to file a Motion to stay this action until the EPA acts upon the Coalition's petition imminently following docketing of this Petition.

The Corporate Disclosure Statement required by Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1 is attached as Exhibit 4. The Certificate of Service is attached as Exhibit 5.

Date: June 4, 2018

Respectfully submitted,

/s/ Matthew W. Morrison
Matthew W. Morrison
Cynthia Cook Robertson
Bryan M. Stockton
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, NW

Washington, DC 20036
T: (202) 663-8036
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matthew.morrison@pillsburylaw.com
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bryan.stockton@pillsburylaw.com

Counsel for Petitioners Renewable Fuels Association, American Coalition for Ethanol, Biotechnology Innovation Organization, National Corn Growers Association, and National Farmers Union

Seth P. Waxman
David M. Lehn
Saurabh Sanghvi
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1875 Pennsylvania Avenue NW
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bryan.killian@morganlewis.com
douglas.hastings@morganlewis.com

Counsel for Petitioner National Biodiesel Board

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 7/2/2018 8:57:00 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: For Review: HEC Budget QFRs
Attachments: 06-11-2018-HEC QFR_Pruitt_Compiled_Responses_ajd edits.docx

HEC QFRs attached for your review.

From: Lewis, Josh
Sent: Tuesday, June 12, 2018 8:41 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: For Review: HEC Budget QFRs

Attached are a first draft of responses to QFRs following the Administrator's HEC budget hearing. Not sure if you've heard directly from OCIR on these, but my understanding is there's a rush to get these to OMB and then to the Hill (I think OCIR wanted them last Friday for their review). Not sure of the reason, so for now I vote for adding them to the queue of things to review, and we'll get them turned around as soon as we can.

Note there's one Loebsack QFR that needs to be drafted here in the IO:

Loebsack:

7. **OAR** Did you inform President Trump or White House staff of the unusually large number of small refinery exemptions EPA was granting and of the potential effects on the renewable fuel market of exempting additional gallons and facilities and the fact that these actions would not be well received by the agricultural community?

Deliberative Process / Ex. 5

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 4/30/2018 5:10:29 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
CC: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: RE: latest RFS statement

Thanks! Will send this as a response for incoming inquiries.

From: Bowman, Liz
Sent: Monday, April 30, 2018 1:10 PM
To: Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
Cc: Letendre, Daisy <letendre.daisy@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: RE: latest RFS statement

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

###

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/15/2018 4:20:14 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Next draft of RFS announcement
Attachments: EDIT Midwest Swing RFS Announcements_2018 06 15 v4.DOCX

Bill, Mandy:

Here's the revised draft. OGC and OTAQ are both good with this version.

Thanks,
Ben

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 5/15/2018 1:53:01 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: RFS RVO TPs
Attachments: RFS TPs_May 2018 Hearing_Draft (V1).docx

See attached for updated talkers on various RFS topics. These could all be expanded on but I tried to keep it concise and to language you've previously approved.

While this is mainly for Stephen Gordon's request on general info, we may be able to use it for Paige's question below.

What Paige provided is not reflective of what sent to OMB and, as she explained it to me, if she was to hand SP a sheet of paper during the hearing he should be able immediately read from it – in which case what she provided would probably be quite confusing since its talking about 2018 RVOs.

From: Hanson, Paige (Catherine)
Sent: Friday, May 11, 2018 11:08 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RFS RVO TPs

Alex,

Happy Friday! I heard from Mandy y'all are sending something up to OMB today. In light of that, are these still appropriate talking points for the Administrator in his hearing next week?

Thanks,
Paige

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Lyons, Troy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15E4881C95044AB49C6C35A0F5EEF67E-LYONS, TROY]
Sent: 6/21/2018 9:44:32 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: FW: Barrasso Statement on Forthcoming Biofuel Mandate for 2019
Attachments: ATT00001.txt

From: Memmott, Justin (EPW) [mailto:Justin_Memmott@epw.senate.gov]
Sent: Thursday, June 21, 2018 5:43 PM
To: Memmott, Justin (EPW) <Justin_Memmott@epw.senate.gov>
Subject: FW: Barrasso Statement on Forthcoming Biofuel Mandate for 2019

Today, Chairman Barrasso issued the following statement on EPA's pending RVOs for 2019.

From: Danylak, Mike (EPW)
Sent: Thursday, June 21, 2018 5:23 PM
To: Danylak, Mike (EPW) <Mike_Danylak@epw.senate.gov>
Subject: Barrasso Statement on Forthcoming Biofuel Mandate for 2019

For Immediate Release:
June 21, 2018

Contact: Mike Danylak ~202.224.1049
Mike_Danylak@EPW.Senate.Gov

Barrasso Statement on Forthcoming Biofuel Mandate for 2019

WASHINGTON, D.C. — Today, U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), issued the following statement on the forthcoming biofuel mandate for 2019.

"I will carefully examine EPA's proposed rule, especially its impact on small refineries," **said Barrasso**. "The law requires EPA to provide relief to any small refinery that suffers disproportionate economic hardship under the Renewable Fuel Standard. EPA must not take any steps that would limit the ability of small refineries to obtain hardship relief in the future. That includes restricting when they can apply for hardship relief or increasing the burdens on other refineries in the process."

Background Information:

The EPW Committee has jurisdiction over the Renewable Fuel Standard.

On April 24, 2018, Barrasso and Sen. Shelley Moore Capito (R-WV), chair of the EPW Subcommittee on Clean Air and Nuclear Safety, sent a letter to Environmental Protection Agency (EPA) Administrator Scott Pruitt and Energy Sec. Rick Perry calling on them to protect the confidential business information of America's small refineries.

On April 12, 2018, Barrasso released a statement on the necessity and importance of EPA granting hardship relief for small refineries under the Renewable Fuel Standard.

On March 5, 2018, Barrasso and Capito sent a letter to Administrator Pruitt and Energy Sec. Perry emphasizing the importance of granting hardship relief for America's small refineries. The letter also reminded the administrator and the secretary that small refineries submit confidential business and other highly sensitive information that the agencies and their contractors must protect from all outside parties.

###

http://epw.senate.gov
Twitter | YouTube

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 6/15/2018 3:57:51 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Attachments: EDIT Midwest Swing RFS Announcements_2018 06 15 v3.DOCX

Mandy—here's the current draft, reflecting all edits to date. I sent this to the team and asked for any final edits by 1pm, but hopefully this is pretty close to being done

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 5/14/2018 11:12:49 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Re: Small Refinery exemptions from the renewable fuel standard

Thanks- he covers political affairs for the state of Pennsylvania. Should have provided that context earlier.

> On May 14, 2018, at 5:24 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> Small refinery Exemptions move forward through a regular order process at EPA. Per statute (clean air act) once a petition is filed, the agency has 90 days to respond. The agency sends information to DOE for analysis and makes a decision to grant or deny consistent with DOE's recommendation. DOEs recommendation is based on a two part analysis to measure the level of "disproportionate economic harm," which is the statutory threshold that must be triggered for a small refinery to qualify for an exemption.

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 4/23/2018 10:58:23 PM
To: Ross, David P [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=119cd8b52dd14305a84863124ad6d8a6-Ross, David]; Forsgren, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a055d7329d5b470fbaa9920ce1b68a7d-Forsgren, D]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]
Subject: Fwd: 04-23-2018 - House Budget Hearing Program Cheat Sheets V11.docx
Attachments: 04-23-2018 - House Budget Hearing Program Cheat Sheets V11.docx; ATT00001.htm

Dave/Bill/Mandy/Lee,

Wanted to make sure you all had the latest program summary doc before the administrator's pre-hearing briefings tomorrow. Let us know if you have any questions!

Best,
Aaron

Sent from my iPhone

Begin forwarded message:

> **From:** "Shimmin, Kaitlyn" <shimmin.kaitlyn@epa.gov>
> **Date:** April 23, 2018 at 5:57:57 PM EDT
> **To:** "Brown, Byron" <brown.byron@epa.gov>
> **Cc:** "Ringel, Aaron" <ringel.aaron@epa.gov>
> **Subject: 04-23-2018 - House Budget Hearing Program Cheat Sheets V11.docx**
>
> Attached is the latest. Aaron is running point.
>
> Let us know if you have any questions!

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/15/2018 3:24:07 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Renshaw, Jarrett (Reuters) [jarrett.renshaw@thomsonreuters.com]
CC: Press [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]
Subject: RE: HollyFrontier and Sinclair

Jarrett –

Please see below. And please send media inquiries to press@epa.gov.

"Currently, our regulations only allow reallocation of an exempted refinery's RIN obligations for a given year if the exemption is granted before we finalize the volumes for that year. Those regulations were passed as substantive rules that went through notice and public comment. Binding precedent holds that agencies can only impose retroactive obligations if Congress has given them the authority to do so. EPA will administer the RFS program within the legal constraints. Continued conversations with people affected by the program are vital to our work." – EPA Spokesperson

Also, wanted to make sure you had the following statement from EPA's Office of Air and Radiation Principal Deputy Assistant Administrator Mandy Gunasekara on Administrator Pruitt's Midwest trip:

"There are those who are willing to engage in solutions and those who want to promote a false sense of division between Administrator Pruitt and farmers across the country."

"While tensions were high when we walked into the room with corn and sorghum farmers and other RFS stakeholders, at the end of those discussions there was a sincere appreciation reflected by all in the room of the willingness to engage on these important issues and the commitment to find meaningful solutions. The lingering impression of these visits is most represented by the standing ovation Administrator Pruitt received at the end of the discussion in South Dakota from a room full of farmers, association representatives, and other RFS interests."

"Decision-making is a difficult process, but instead of playing it safe and staying in Washington, Administrator Pruitt has been and continues to go out to communities impacted by the Agency's decisions – an approach embraced by those who care more about the policy versus the politics."

From: Gunasekara, Mandy
Sent: Friday, June 15, 2018 11:19 AM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Cc: Block, Molly <block.molly@epa.gov>
Subject: RE: HollyFrontier and Sinclair

Looping in Molly.

From: Renshaw, Jarrett (Reuters) [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Friday, June 15, 2018 10:57 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: HollyFrontier and Sinclair

I see you gave some comments to OPIS. Were they written comments? If so, can we get them?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Thursday, May 31, 2018 1:56 PM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Subject: Re: HollyFrontier and Sinclair

Yes/ please do.

Sent from my iPhone

On May 31, 2018, at 1:50 PM, "jarrett.renshaw@thomsonreuters.com" <jarrett.renshaw@thomsonreuters.com> wrote:

> One more thing, and thanks for the clarification. Can we say the review doesn't extend beyond the holly and sinclair case, according to an EPA official familiar with the process. That would provide the market some clarity.
>
> Jarrett Renshaw
> National Energy Markets Reporter
> Reuters
> jarrett.renshaw@thomsonreuters.com
> Office: (646) 223-6193
> Cell: (917) 482-9738
> Twitter: @jarrettrenshaw
> IM: jrenshaw_reuters08
>
> ---
>
> **From:** Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
> **Sent:** Thursday, May 31, 2018 1:44 PM
> **To:** Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
> **Cc:** Wilcox, Jahan <wilcox.jahan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Press <Press@epa.gov>
> **Subject:** Re: HollyFrontier and Sinclair
>
> Not on record, but please see clarifying background below: the recent exemption actions are solely confined to the petitions that were timely submitted and timely challenged in the Sinclair/Holly cases before the Tenth Circuit. Note that there were 3 separate, related cases: a Sinclair case challenging 2014 denials; a Sinclair case challenging 2015 denials; and a Holly case challenging 2015 denials.
>
> Since the 2015 cases were reliant on the outcome in the 2014 case, those two actions were held in abeyance while the court decided the 2014 case. That decision came out last summer (2017). Once epa charted out a path to comply with the courts order for the 2014 case, EPA applied that same approach to the 2015 cases. In sum and to your original point, these actions are limited in scope and confined to the Petitions at issue in the Sinclair/Holly cases.

Because this is an extremely sensitive issue I will add that any suggestion that our review of past denials extends beyond the petitions at issue in the Tenth Circuit cases decided last year, would be completely false.

Sent from my iPhone

On May 31, 2018, at 1:20 PM, "jarrett.renshaw@thomsonreuters.com" <jarrett.renshaw@thomsonreuters.com> wrote:

> WE need some clarification. The statement says "revisiting," meaning present tense. That suggests it's beyond the Sinclair/Holly decision that we already reported about today (and which we got no response from you guys) Can anyone just clarify, please, on or off record.
>
> Jarrett Renshaw
> National Energy Markets Reporter
> Reuters
> jarrett.renshaw@thomsonreuters.com
> Office: (646) 223-6193
> Cell: (917) 482-9738
> Twitter: @jarrettrenshaw
> IM: jrenshaw_reuters08
>
> ---
>
> **From:** Wilcox, Jahan [mailto:wilcox.jahan@epa.gov]
> **Sent:** Thursday, May 31, 2018 1:11 PM
> **To:** Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
> **Cc:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Press <Press@epa.gov>
> **Subject:** RE: HollyFrontier and Sinclair
>
> "EPAs actions are narrow in scope and consistent with direction from the 10th Circuit. The Agency has been revisiting some prior denials in light of a recent court opinion holding that EPA had been applying the hardship exemption for small refineries too narrowly. Last summer, the Tenth Circuit found that EPA cannot make an exemption conditional on a refinery showing that its continued survival was at risk. EPA will continue to administer this statute attentive to all policy considerations, fulfilling the duty Congress has given the Agency in light of orders and opinions from the courts." – EPA Spokesperson
>
> ---
>
> **From:** jarrett.renshaw@thomsonreuters.com [mailto:jarrett.renshaw@thomsonreuters.com]
> **Sent:** Thursday, May 31, 2018 1:09 PM
> **To:** Wilcox, Jahan <wilcox.jahan@epa.gov>
> **Subject:** RE: HollyFrontier and Sinclair
>
> Hello, I saw this tweet and had some questions:
>
> **Meghan Gordon** @meghangordon 2m2 minutes ago
> .@EPA has confirmed it is revisiting some refiners' requests for waivers to the US biofuel mandate that were denied by the Obama administration, after @JarrettRenshaw's scoop this morning. #OOTT #RINs

Is the EPA revisiting a larger number of refiners' request for waivers under the Obama administration than Sinclair and Holly, which we reported today?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Wednesday, May 30, 2018 2:31 PM
To: 'wilcox.jahan@epa.gov' <wilcox.jahan@epa.gov>
Subject: RE: HollyFrontier and Sinclair

Wanted to resend these questions, below. Story running tomorrow

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Tuesday, May 22, 2018 2:10 PM
To: wilcox.jahan@epa.gov
Subject: HollyFrontier and Sinclair

Hello, we are reporting of a recent decision by the EPA to award Sinclair Oil and HollyFrontier so-called vintage 2018 renewable fuel credits after a judge said the agency erred in denying Sinclair Oil's 2014 and 2015 applications for a small refinery exemption from the U.S. Renewable Fuel Standard. The move creates a situation where there are excess 2018 RINs in the market and driving the price of the credits down.

Here are some questions:

1. Did the EPA explore other options other than giving vintage credits?
2. Given the market impact of the decision, why didn't the EPA disclose the decisions?
3. Has the EPA given any other company vintage RINs to remedy past denials of the small refinery exemption?
4. Has any other refiner sought retroactive relief from a previous denial of a small refinery exemption?

Our story is running tomorrow.

Jarrett Renshaw

National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 4/20/2018 6:24:29 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: Administrator's Hearing Prep - Program Office Summary Sheets for Review
Attachments: 04-20-2018 - House Budget Hearing Program Cheat Sheets V9 OGC-OCSPP-OLEM....docx

Importance: High

Alex, appreciate you to taking a look at OARs section as soon as possible so we can finalize this. Attached is the most up to date version.

Thanks,
-Aaron

From: Ringel, Aaron
Sent: Thursday, April 19, 2018 4:52 PM
To: Mandy Gunasekara (Gunasekara.Mandy@epa.gov) <Gunasekara.Mandy@epa.gov>; Lee Forsgren (Forsgren.Lee@epa.gov) <Forsgren.Lee@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Beck, Nancy <beck.nancy@epa.gov>; Kelly, Albert <kelly.albert@epa.gov>; Cook, Steven <cook.steven@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Burke, Marcella <burke.marcella@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Troy Lyons (lyons.troy@epa.gov) <lyons.troy@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Christian Rodrick (Rodrick.Christian@epa.gov) <Rodrick.Christian@epa.gov>; Christian Palich (palich.christian@epa.gov) <palich.christian@epa.gov>; Tony Frye (frye.robert@epa.gov) <frye.robert@epa.gov>; Falvo, Nicholas <falvo.nicholas@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Administrator's Hearing Prep - Program Office Summary Sheets for Review
Importance: High

Colleagues,

Attached is a program office summary document with topics we wanted to highlight for the administrator during his hearing prep next week. This is similar to what we have prepared for his use during previous hearings and takes into account likely policy based questions we expect.

Please take a moment to review/make edits in your relevant areas. We are planning to have this finalized for Ryan's review by tomorrow so if you could return with any comments by noon on Friday it would be greatly appreciated. Please feel free to reach out if you have any questions.

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 4/20/2018 3:03:17 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Forsgren, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a055d7329d5b470fbaa9920ce1b68a7d-Forsgren, D]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Kelly, Albert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08576e43795149e5a3f9669726dd044c-Kelly, Albe]; Cook, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=394f5dede6184bc083cf9390e49a192c-Cook, Steve]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Burke, Marcella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5066626ec70846439b8d3f6c35d92be8-Burke, Marc]
CC: Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Falvo, Nicholas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=424ac90ea7d8494a93209d14d37f2946-Falvo, Nich]; Hanson, Paige (Catherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=95adc1b2ac3b40ab9dc591801d594df8-Hanson, Cat]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: RE: Administrator's Hearing Prep - Program Office Summary Sheets for Review
Attachments: 04-20-2018 - House Budget Hearing Program Cheat Sheets V6 OGC Edits.docx

All, attached is the updated version with OGC's edits. If you haven't had a moment to review please do so before noon today. We are going to be compiling the Administrators binder this afternoon and plan to give him a copy by COB today for review over the weekend.

Best,

-Aaron

From: Ringel, Aaron
Sent: Thursday, April 19, 2018 4:52 PM
To: Mandy Gunasekara (Gunasekara.Mandy@epa.gov) <Gunasekara.Mandy@epa.gov>; Lee Forsgren

(Forsgren.Lee@epa.gov) <Forsgren.Lee@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Beck, Nancy <beck.nancy@epa.gov>; Kelly, Albert <kelly.albert@epa.gov>; Cook, Steven <cook.steven@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Burke, Marcella <burke.marcella@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Troy Lyons (lyons.troy@epa.gov) <lyons.troy@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Christian Rodrick (Rodrick.Christian@epa.gov) <Rodrick.Christian@epa.gov>; Christian Palich (palich.christian@epa.gov) <palich.christian@epa.gov>; Tony Frye (frye.robert@epa.gov) <frye.robert@epa.gov>; Falvo, Nicholas <falvo.nicholas@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Administrator's Hearing Prep - Program Office Summary Sheets for Review
Importance: High

Colleagues,

Attached is a program office summary document with topics we wanted to highlight for the administrator during his hearing prep next week. This is similar to what we have prepared for his use during previous hearings and takes into account likely policy based questions we expect.

Please take a moment to review/make edits in your relevant areas. We are planning to have this finalized for Ryan's review by tomorrow so if you could return with any comments by noon on Friday it would be greatly appreciated. Please feel free to reach out if you have any questions.

Best,
Aaron

Aaron E. Ringel
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Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 5/9/2018 10:20:21 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Additional Submitted Comments
Attachments: Valero Nov 2017.pdf; Valero Nov 2017 2.pdf; Valero_POO Oct 2017.pdf; Valero Sep 2017.pdf

Alex Dominguez
Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency

Jason Fraser
Vice President – Public Policy & Strategic Planning

Submitted via eRulemaking Portal

October 19, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 28221T
Washington, D.C. 20460
Attn: Docket ID No. EPA-HQ-OAR-2017-0091

Re: Renewable Fuel Standard: Proposed RVOs for 2018 and Biomass-based Diesel Volume for 2019: Availability of Supplemental Comments and Request for Further Comment

Dear Administrator Pruitt:

The Valero Energy Corporation and its subsidiaries (collectively, "Valero") hereby submit comments on EPA's Request for Further Comment for the Proposed RVOs for 2018 and Biomass-based Diesel Volume for 2019. As EPA already recognized, Valero's comments in the docket submitted on the proposal[1] address some of EPA's requests for further comment. In response to EPA's specific requests for additional feedback and additional comment, Valero includes each specific request below and provides Valero's response to the request.

I. Biofuel Imports

1. *EPA requests comment on whether it is appropriate to consider possible impacts of these volumes (domestic biofuel production and imports) on U.S. energy independence and security in setting the applicable standards under the RFS program, insofar as they impact those factors that we are permitted to consider and evaluate under the available waiver authorities, and/or the standard-setting authority for BBD.*

Valero's comment:

As Valero and others stated in comments on the proposed rule, the goals of the Renewable Fuel Standard ("RFS") – U.S. energy independence and security – were to be met by promoting the growth of U.S. production of renewable fuel. Congress did not design the RFS to promote imports of foreign fuels, particularly foreign-produced renewable fuel that compete directly with U.S. produced fuels. EPA should consider the volumes of domestic production and the volumes of imports as they relate to the RFS goals. Thus, as recommended in comments already submitted, considering only domestically produced renewable fuel in determining domestic supply of renewable fuel is consistent with the RFS goals. The RFS statutory

[1] Valero Energy Corporation, Comments on Renewable Fuel Standard: Proposed RVOs for 2018 and Biomass-based Diesel Volume for 2019 (Aug. 31, 2017), Docket ID No. EPA-HQ-OAR-2017-0991-3988. Valero incorporates those comments (and any attachments submitted with them) by reference.

provisions, however, also mandated a credit-trading program to ease compliance with the volume mandates. To the extent that imported volumes can fairly compete within the domestic market, imported renewable fuel should be available for compliance with the standard. Additionally, precluding the importation of or denying a Renewable Identification Number ("RIN") to foreign produced biofuel would likely violate the requirements of the World Trade Organization.

2. *EPA remains concerned about the high cost of advanced biofuels. As a result, and in light of the pending action on countervailing duties on imported biodiesel from Argentina and Indonesia which we believe could, if finalized, further increase the cost and/or decrease the supply of advanced biofuel in the U.S., we believe it is appropriate to request further comment on appropriate ways to determine the applicable volume requirements for 2018, and the BBD volume requirement for 2019.*

Valero's Comment:

First, EPA should not include biofuel imports in setting the RVO. The BBD volume requirement should be based on the volumes produced and available within the U.S. This also means that EPA should not consider cellulosic biofuel imports in setting the RVO for cellulosic or advanced biofuel. By setting an RVO that is partly dependent on imported fuel, the program mandates fuel imports at the expense of domestic production; this is inconsistent with the statutory goals of energy independence and security and ignores the term "domestic" in the statute.

Second, although imported biofuel can be used for compliance, the cost of such imports must be considered by EPA when setting the RVO. To the extent, the costs of biodiesel in the U.S. is impacted by the costs imposed on imported biodiesel, EPA must consider that cost in setting the mandates and in evaluating the need to issue waivers for any year.

Third, in setting the applicable BBD volume for 2019, EPA must account for U.S. produced biofuel that is blended into ultra-low sulfur diesel ("ULSD") and used as a marine fuel oil cutter stock and reduce the mandated volume by that amount. With a January 1, 2020 compliance date for 0.5wt% S IMO marine fuel oil, marine fuel oil blenders will likely commence blending lower sulfur fuel oil in 2019. ULSD may be an optimum blend component to achieve the more stringent sulfur specification or marine fuel oil. Since marine fuel oil does not meet the definition of "transportation fuel," any biofuel blended into ULSD that is subsequently used as a fuel oil cutter stock will not qualify for RFS compliance. This scenario also creates an opportunity for errors in RIN generation and accounting as well as fraud.

II. General Waiver Authority

1. *We sought comment on the possible use of the general waiver authority in the proposal, and here are once again seeking comment in light of the data provided in Section III of this document and a possible revised interpretation of the inadequate domestic supply waiver authority.... We also solicit further comment on our use of the general waiver authority under a determination of either inadequate domestic supply or severe economic harm to reduce volumes of renewable fuel.*

Valero's Comment:

Valero submitted comments on the definition of "domestic supply" that is consistent with the comments submitted by American Fuel & Petrochemical Manufacturers ("AFPM") referenced by EPA.[2] Even after the court decision in *Americans for Clean Energy v. EPA* ("*ACE*"),[3] EPA retains substantial discretion to use the general waiver authority for inadequate domestic supply and for severe economic harm to reduce the RVO. EPA should appropriately define "domestic supply" as the supply of renewable fuel produced in the U.S. and evaluate whether such supply is adequate to support a reasonable program.

As discussed in Valero's comments submitted on the proposal, EPA must consider within the "domestic supply" all U.S. produced biofuel and recognize exported biofuel for compliance with the RFS. Exported biofuel meets the definition of transportation fuel "sold or introduced into commerce" in the U.S.[4] Including exported biofuel for compliance is consistent with the statute and the goals of the RFS. If EPA does not allow exported biofuel for compliance with the RFS and continues to deny RINs for exported biofuel, EPA should not include exported biofuel within "domestic supply" for purposes of setting the RVO.

EPA may define "inadequate" to include consideration of the cost of available renewable fuel for compliance. In other words, "domestic supply" means the amount of renewable fuel produced within the United States and the determination of whether that supply is "inadequate" includes not simply domestic supply but also the expected costs to obligated parties for using that supply and any other sources of renewable fuel for compliance.

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[2] AFPM, Comments on Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019 (Aug. 31, 2017), Docket ID No. EPA-HQ-OAR-2017-0091-3645.
[3] 864 F.3d 691 (2017).
[4] 42 U.S.C. § 7545(o)(2)(A).

A. Inadequate Supply Waiver

2. *We request comment on whether [interpreting "inadequate domestic supply" to account for only volumes of renewable fuel that are produced domestically] would comply with the Court's direction in* ACE *that we only consider "supply-side factors" in determining whether there is an inadequate domestic supply. Although the Court in* ACE *explained that EPA "may" or is "authorized" to consider renewable fuel imports as part of a supply-side assessment under this waiver authority, we note that these statements were made in the context of comparing supply-side considerations to demand-side considerations, and finding EPA's demand-side consideration to be impermissible. Thus, the court's statements may indicate the scope of permissible, but not required, interpretations, and not foreclose further consideration by EPA of the scope of appropriate supply-side considerations in light of the statute and the court's decision.*

Valero's Comment:

Valero agrees with AFPM's comments on this issue and agrees that the court decision does not address whether imports must be included as part of a supply-side assessment. As noted above, Valero believes that EPA should not include foreign produced biofuel imports as "domestic supply." EPA must include exported volumes of renewable fuels for compliance and therefore, eliminate the export RVO and provide RINs for all biofuel that is transportation fuel when exported. If EPA does not include exported volumes of renewable fuel for compliance, retains the export RVO and does not allow RINs for exported biofuel, EPA should exclude exported biofuels from domestic supply in setting the RVO. EPA can consider costs in determining whether the domestic supply is adequate for reasonable compliance with the proposed RVO.

The RFS should not be designed to mandate fuel imports as it does for cellulosic, BBD, advanced, and renewable fuel. EPA should set the RVO for cellulosic, BBD, and advanced renewable fuel to promote the domestic production of advanced renewable fuel but not to promote or mandate renewable fuel production in other countries. In implementing the court's directive to consider only "domestic supply" for setting the RVO and determining whether to use waiver authority, EPA must interpret the statute in a manner that is consistent with the goals of the statute – energy independence and security; promoting or mandating renewable fuel imports to replace domestically produced petroleum fuels is not consistent with the goals of the statute. The RVO for cellulosic, BBD, and advanced renewable fuels must be set at levels that can be met with domestic production, not foreign production.

3. *We solicit comment on data and methodologies we should use for estimating the 2018 supply of domestically-produced BBD and other advanced biofuels if we adopt this interpretation.*

Valero's Comment:

To determine the domestic supply of BBD and advanced biofuels, EPA must look to the historical volumes of domestically produced BBD and advanced biofuels introduced into commerce in the U.S. minus volumes retired for non-compliance reasons and – if excluded from

compliance – exported volumes. When using historical volumes to project 2018, EPA should use 2017 year to date domestically produced BBD and advanced biofuels, as these numbers reflects actual domestic production without a Blender Tax Credit ("BTC"). EPA cannot rely on nameplate capacities when setting future year volume obligations for BBD and other advanced renewable fuels. The BBD and advanced renewable fuel production in 2016 demonstrates that producers did not approach nameplate capacities even in a year in which the BBD and advanced renewable fuel industries (D5 & D6 generating BBD) had both a BTC and high BBD and advanced renewable fuel RIN prices to subsidize production and blending.

4. *We also invite comment on the potential impact on imports and the domestic production of advanced biofuel if EPA were to further reduce the proposed applicable volume of advanced biofuel on the basis of an interpretation of the term "inadequate domestic supply" as discussed in this section.*

Valero's Comment:

Through unfair trade practices, U.S. market share of biofuel imports has increased significantly and impaired development of domestic production. Now the costs of imported biofuel are expected to increase – in part in response to anticipated actions intended to eliminate the unfair competition – resulting in uncertainty regarding the availability of biofuel imports for RFS compliance. Additionally, foreign biofuels were also subsidized by the BTC, which has lapsed. If the tax credit is not reinstated or if it is converted to a production credit, imported biodiesel will be significantly less economic.

The actions by the Department of Commerce will substantially remedy the unfair competition from some imported biofuel. Reducing the RVO to ease the RIN market will reduce the incentives for imports embodied in the RIN. To the extent that domestic producers will be able to more fairly compete as a result of the Department of Commerce action and the reduced import incentives, domestic production should regain some of its market share. The Department of Commerce documents included evidence that, although the BBD mandates had increased over the years and the volumes from domestic production had increased, the value to domestic producers had not increased. Domestic producers lost market share and received less value for more volumes. The trade-off of value for increased volumes was not good for domestic producers. The combination of the actions by the Department of Commerce and the adjustments to the RVO to reduce the import-incentives that the RFS support should reverse the loss of market share of domestic production.

Because of the increasing cost of advanced biofuels, RIN costs have risen and, without an RVO reduction, are expected to continue to rise and to impose substantial burdens on the refining sector. EPA should provide some relief by using one or more of its waiver authorities as appropriate to reduce the advanced biofuels RVO. Such a reduction would ease the market for advanced biofuel RINs and thereby make compliance with the program more reasonable.

5. *We also request comment on whether and how EPA should consider the potential level of imports in determining whether to use its discretionary general waiver authority to reduce the required volume requirements should this interpretation be adopted.*

Valero's Comment:

EPA should not consider the potential level of imports in determining the available "domestic supply." EPA should consider only domestically produced and not foreign produced biofuels when evaluating the level of domestic supply. EPA must consider U.S. production of all biofuel production when evaluating the level of domestic supply for meeting the total renewable fuel mandate. If EPA does not allow exported biofuel to count for compliance, EPA must exclude exported biofuel from "domestic supply" when setting RVOs. As discussed in Valero's comments, biofuel exported from the U.S. is transportation fuel that has entered into commerce in the U.S. These volumes meet the statute's requirements because they have been "sold or introduced into commerce" in the U.S.[5] However, EPA cannot include these volumes in the determination of domestic supply if EPA does not allow these volumes to count for compliance.

Although the volume of exported biodiesel is not comparable to the volume of imported biodiesel, the BBD mandates have already met the statutory goal of 1.0 billion gallons.[6] EPA need not use the general waiver authority for BBD. However, the waiver may be needed for advanced biofuel and total renewable fuel RVOs in light of the determination of the domestic supply of BBD.

However, the total renewable fuel that has been introduced into commerce in the U.S. has exceeded the statutory mandates. EPA has said that when using the waiver for advanced biofuel "absent a commensurate reduction, the implied volume for conventional biofuels (i.e., the difference between advanced and total volumes), would exceed the 15 billion gallon implied cap that can be discerned from the statutory tables."[7] Because EPA has not counted biofuel exports for compliance, EPA has not properly accounted for all biofuel that has entered into commerce in the U.S. Including exports for conventional biofuels in the volumes shows that the U.S. transportation fuel has exceeded the 15 billion gallon implied cap for conventional biofuels.

EPA notes that "both the cellulosic waiver authority in CAA section 211(o)(7)(D) and the BBD waiver authority in section 211(o)(7)(E) stipulate that when nested cellulosic or BBD volumes, respectively, are waived under these authorities, that reductions in the advanced and total renewable fuel volume requirements are authorized."[8] This means that there is no need for EPA to issue RVOs that exceed the implied cap on conventional biofuels; yet EPA has already done so. EPA needs to revise the RFS to properly account for all U.S. produced biofuels for the RVO and for compliance and adjust the RVOs so that they do not exceed the cap for conventional biofuels.

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[5] 42 U.S.C. § 7545(o)(2)(A)(i).
[6] *Id.* § 7545(o)(2)(B)(IV).
[7] 82 Fed. Reg. 46174, 46178 (Oct. 4, 2017).
[8] *Id.*

6. *We seek comment on the extent to which EPA should interpret the inadequate domestic supply waiver authority in CAA section 211(o)(7)(A) as also authorizing EPA to make a commensurate reduction in total renewable fuel volumes when waiving advanced biofuel volumes on the basis of inadequate domestic supply.*

Valero's Comment:

We agree that the fact that the RFS was designed with a nested structure means that any use of the statutory waiver authority for a volume nested within another fuel type triggers commensurate reductions to the category containing the nested fuel. If EPA uses any statutory waiver authority or any other authority to reduce the RVO for specific fuel categories, EPA must reduce the other categories in which the fuel subject to the waiver is nested. Thus, if EPA reduces the volume mandate for BBD, EPA must reduce the mandate for advanced renewable fuels and the mandate for total renewable fuel by the same amounts. To do otherwise would run contrary to the nested design of the statute as well as the implied cap on conventional ethanol.

B. Severe Economic Harm Waiver

1. *We note that EPA has previously expressed an interpretation of the severe economic harm waiver in denying petitions to exercise the waiver.[9] We solicit comment on the appropriateness of this interpretation, as well as rationales and data to support approaches for identifying volumes that would be associated with severe economic harm, or other means of implementing this waiver authority consistent with the statutory provision.*

Valero's Comment:

The statute provides EPA broad discretion to waive the statutory volumes in whole or in part "based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy…of a State, a region, or the United States…."[10] EPA has interpreted the statutory criteria for use of this waiver authority in prior non-binding decisions[11] in response to petitions to use this waiver authority. In those non-binding decisions, EPA said that the RFS program itself must be the cause of the severe economic harm, the harm must be the "most likely result" of the RFS, that "severe harm" is a very high threshold – higher than "significant adverse impacts" in the section 211(o)(8)(A) waiver, and that the statute provides EPA with discretion to decline to issue a waiver even if it finds that the severe harm test is satisfied.[12] Nothing in the statute mandates this interpretation.

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[9] Here, EPA refers to 73 Fed. Reg. 47168 (Aug. 13, 2008) (Notice of Decision Regarding the State of Texas Request for a Waiver of a Portion of the Renewable Fuel Standard and 77 Fed. Reg. 70752 (Nov. 27, 2012) (Notice of Decision Regarding Requests for a Waiver of the Renewable Fuel Standard).
[10] 42 U.S.C. § 7545(o)(7)(A)(i).
[11] 73 Fed. Reg. at 47183 ("EPA notes that this guidance is not a rule, and therefore is not binding on the public or EPA.").
[12] *See* 73 Fed. Reg. at 47169.

The term "severe" is susceptible to more than one meaning.[13] Contrary to EPA's assertion in its prior non-binding decisions that the degree of harm necessary to authorize a waiver must be higher than "significant," EPA can interpret "severe" based on one of its common meanings: "of a great degree."[14] This is very similar to several of the dictionary definitions of "significant": "having meaning; especially"; "important" or "of a noticeably or measurably large amount."[15] Thus, EPA has discretion to interpret "severe." Where economic harm is already evident and further economic harm is certain, EPA should not decline to rely on the waiver authority simply because of debate over degrees.

Just as the court in *Sinclair*[16] held that EPA's requirement that a small refinery suffer economic devastation in order to qualify for a hardship waiver was far more than the statute required for the waiver, EPA's suggestions in response to prior petitions are similarly beyond what the statute provides. Nothing in the statute requires economic devastation or evidence of nationwide harm arising solely from the RFS. Harm to the transportation sector – including shifts in the market that reduce competition, shifts that endanger fuel production in parts of the country, and shifts in the market that result in increased fuel imports at the expense of domestic production – is harm to the economy.

Nonetheless, the harm caused by high RIN prices meets EPA's test – as reflected in prior non-binding interpretations – for "severe[ ] harm [to] the economy" under CAA section 211(o)(7)(A)(i). EPA's interpretation requires a "generally high degree of confidence that there will be severe harm as a result of implementation of the RFS."[17] According to the prior EPA decision, it is not enough for RFS implementation to contribute to harm, it must be the cause of the harm and the harm must be the "most likely result." Both standards are met in this case – high price of RINs and their inequitable distribution among obligated parties is currently causing severe harm to the economy. This harm is more than just "the most likely result." It is actually occurring. Implementation of the 2018 RFS as proposed would continue the current harm.

2. *In particular, we seek input on whether there is information indicating that severe economic harm is occurring under current standards or would occur for any volume requirement that could be established in the current rulemaking and, if so, whether and how volumes should be adjusted to address such harm.*

Valero's Comment:

As Valero pointed out in its comments on the proposed 2018 standards, the current structure of the RFS has caused numerous constraints on the ethanol market. High RIN prices and, consequently severe economic harm, have resulted from EPA's failure to address these constraints by moving the point of obligation.[18] EPA itself identified these constraints, including

[13] *See PDK Labs. Inc. v. DEA*, 362 F.3d 786, 796 (D.C. Cir. 2004) ("That a statute is susceptible of one construction does not render its meaning plain if it is also susceptible of another, plausible construction….").
[14] *See* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/severe (last visited Oct. 19, 2017).
[15] *See* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/significant (last visited Oct. 19, 2017).
[16] *Sinclair Wyo. Refining Co. v. EPA*, 867 F.3d 1211 (10th Cir. 2017).
[17] 77 Fed. Reg. at 70773.
[18] *See* Valero 2018 RVO Comments at 4, 29.

the blendwall; the number of retail stations offering E15 and E85; the number of vehicles that can legally and practically consume E15 and E85; the relative pricing of E15 and E85 versus E10 and the ability of RINs to affect this relative pricing; and the supply of E0.[19] Severe economic harm has also resulted from constraints on the supply of RINs, such as the export RVO, and from depleting the RIN bank while simultaneously increasing the RVO year over year.[20]

These constraints along with other RFS regulations (as described above, including among other things the limited RIN bank and the current point of obligation) limit the availability of RINs in the market which, when coupled with the proposed 2018 volumes, would result in severe economic harm.[21]

As Valero also explained in its recent comments, this severe economic harm is evident in that the agency still regularly considers petitions for small refineries seeking hardship waivers.[22]

> In a recent decision regarding EPA's authority to grant such small refinery hardship exemptions, the Tenth Circuit Court of Appeals found that EPA must consider relative economic impact and suggested that at least one company may have demonstrated economic harm from the RFS. *See Sinclair Wyo. Refining Co. v. EPA,* No. 16-9532, slip op. at 22, 26. There are at least 59 small refineries that may be eligible to request small refinery hardship waivers; in light of current RIN prices and the unaddressed market constraints, economic harm to just a few of these small refineries would amount to severe economic harm in the communities and states relying on the refineries for fuel production and as parts of their industrial base. The harm to small refineries also indicates broader economic harm to other parties under the RFS, including small retail and merchant refiners.[23]

Severe harm to these refineries is severe harm to the economy. EPA has (twice) previously declined to determine whether severe harm to a <u>sector</u> of the economy is sufficient to justify use of EPA's general waiver authority.[24]

It is well within EPA's discretion to resolve this issue in the context of the current RVO and to determine that harm to the refining sector is sufficient to justify use of the waiver. The current RFS is materially and severely harmful to Valero. As evidenced by the number of hardship waiver petitions that refiners have submitted to EPA, the RFS is harmful to a whole segment of the refining industry. The merchant refiner segment makes up half the nation's refining capacity. Since the RFS goal is energy independence and security, the RFS should not

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[19] *See* 82 Fed. Reg. 34206, 34230 (July 21, 2017).
[20] *See* Valero 2018 RVO Comments at 5.
[21] *See id.* at 29.
[22] *See id.*
[23] *Id.*
[24] *See e.g.,* 77 Fed. Reg. at 70774-75 ("In its Texas waiver determination EPA found that it did not need to resolve the issue of whether a waiver could be granted based solely on a demonstration of harm to one sector of the economy, since the circumstances in that case did not warrant a waiver under either interpretation. Similarly, despite the comments EPA received on this interpretative issue within the current waiver requests, we find that EPA does not need to resolve this issue of interpretation since the circumstances in this case do not warrant a waiver under either interpretation.").

harm half the nation's refining capacity and create a risk of loss in that segment of the energy sector. In light of the goals of the RFS, any adverse impact of this nature is a severe economic harm that does not serve the goals of the statute.

The harm to Valero for 2017 is estimated to be approximately $850 million. The harm to Valero that can be expected from the 2018 RVO is over $850 million. The expected harm to a subset of the merchant refiners is over $2.2 billion for 2017. [25] If EPA were to calculate the economic harm from environmental pollution or any environmental damage, EPA would classify this level - $2.2 billion in one year – as severe harm.

The harm to just one refinery risks severe economic harm and it risks severe economic harm to specific regions of the country. Professor Alex Holcomb, analyzing the RIN market and the economic impacts of the RIN market on behalf of various labor organizations, concluded:

> [I]f the EPA does not choose to relocate the point of obligation, the burden of the RIN mandate may very well force those refiners already in precarious financial positions into acute financial distress, and possibly even bankruptcy. As is usually the case in bankruptcy, it is the employees of the firm who will suffer the most acute economic hardship, especially if they are unable to quickly find comparable re-employment. In addition, estimates suggest that the ripple effect of a large bankruptcy will also have a substantial negative impact on the economic output of the surrounding region, beyond what occurs due to the direct jobs lost in any closure.[26]

A refinery closure impacts employees and investors but also other business that have dealings with the refiner and consumers (via higher prices at the pump). These impacts are felt across the State and the region.[27] The loss of a refinery results in an additional loss of 10-18 jobs in the area of the refinery for every refinery employee laid off.[28]

The harm to merchant refiners as a whole segment – both large and small refineries – threatens not just a business model but also the nature of the fuel market. The U.S. Supreme Court advised EPA against making decisions that restructure the economy rather than making reasonable interpretations of the applicable statutory provisions.[29] The harm caused by the RFS is not limited to one or just a few refineries. EPA should recognize and account for the threat to the entire segment of the fuel sector and consider that the RFS is likely to cause a

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[25] Tristan R. Brown, Seeking Alpha, *Merchant Refiners Didn't Expect To Break This Record In 2017* (Aug. 18, 2017, 10:43 AM ET), https://seekingalpha.com/article/4100077-merchant-refiners-expect-break-record-2017, provided here as Attachment 1.

[26] Alex Holcomb, *Market Analysis of the Proposed Change to the RFS Point of Obligation* at 19 (Feb. 22, 2017).

[27] *See* Holcomb, *Market Analysis* at 16.

[28] *See id.* at 18.

[29] *Utility Air Regulatory Grp. v. EPA*, 134 S.Ct. 2427, 2444 (2014) ("EPA's interpretation is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization. When an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.") (internal quotations and citations omitted).

disproportionate economic harm to all refineries in the merchant segment – not just small refineries. The economic harm from the RFS threatens the viability of multiple refineries.

The threat to the viability of independent or merchant refineries not only threatens the jobs provided by those refineries, it also threatens the economies of states like Oklahoma and Pennsylvania that are home to more than one merchant refinery and that have whole communities that rely on the jobs and many businesses that support the refineries.

Some regions of the country are particularly vulnerable. East coast refineries and mid-continent refineries are at the greatest risk. The loss of one refinery, as noted by Professor Holcomb, is a loss to the region's economy with employment ripple effects throughout the state and the region. The loss of one or more refineries in one region will impact fuel supply as well as the overall economy of the region. Valero's comments noted that transportation fuel shortages arising from pipeline disruptions and temporary refinery curtailments due to severe weather, such as Hurricane Harvey, have demonstrated the price sensitivity of fuel. The east coast and mid-continent are particularly vulnerable to fuel price changes arising from these events because of limitations on the ability of imports to make up for any fuel supply disruptions. Shorting a region of the country and encouraging fuel imports is not what the statute was intended to do. Rather, it is exactly what the waiver exists to prevent.

The threat to the refineries is also a threat to the level of competition in the fuel market. Experts have noted that competition in the fuel market is important for consumer protection. But the recent trends in the market may endanger consumer choice.[30] The RFS also currently harms others in the fuel sector including small fuel retail businesses and minority-owned businesses; harm to this segment will further undermine competition and consumer choice.

There is no evidence that high RIN prices increase renewable fuel market penetration. EPA recognized the disconnect between RIN prices and renewable fuel market penetration in the 2014-2016 RVO rulemaking. High RIN prices do not result in increased consumption of renewable fuel and reducing RIN prices will not decrease renewable fuel consumption. Valero's and others' requests that EPA reduce the RVO using the available waiver authorities are targeted at reducing the RIN price and not reducing the already widely accepted marketing of E10. Actions to make RIN prices more reasonable will not undermine ethanol in the fuel market; instead such actions are necessary to protect the transportation fuel market. Reducing the RVO to cool the RIN market so that RIN prices are more consistent with the cost of ethanol blending will reduce the disparity between merchant RIN-short refineries and RIN-long refineries and will reduce the RIN subsidy supporting unfair competition between large retailers and small retailers.

The EPA should, in its discretion, use its waiver authority on the basis of "severe economic harm" because the relief requested – a partial waiver on the basis of "severe[ ] harm [to] the economy" under section 211(o)(7)(A)(i) – would remedy these harms.

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[30] Diana L. Moss, *Competition in U.S. Petroleum Refining and Marketing: Part I – Industry Trends*, American Antitrust Institute Working Paper No. 07-02 (Jan. 2007), provided here as Attachment 2; The Economist, *America's uncompetitive markets harm its economy; New research suggests that too little competition deters investment* (July 27, 2017), *available at* https://www.economist.com/news/finance-and-economics/21725552-new-research-suggests-too-little-competition-deters-investment-americas.

III. BBD Waiver

1. *EPA solicits comment on whether it would be appropriate to implement the provision by waiving the annual standard (in circumstances where use of the provision is authorized) by a volume that does not exceed 15%. Alternatively, it may be possible to implement the provision by allowing each refiner or importer to subtract from its compliance obligation calculations an amount of gasoline and diesel produced or imported during a specific 60-day period, subject to a 15% limitation on the reduction in their annual RVO. We note that the statute also allows for an extension of any initial waiver for additional 60-day periods if the feedstock disruption or other market circumstance persists.*

Valero's Comment:

The simplest and most appropriate approach to using the BBD waiver is to reduce the annual mandated volume by 15% for the year each time EPA justifies use of the waiver and to reduce the RVO for advanced biofuels and the total renewable fuel by corresponding amounts. Although it is possible to apply the waiver for a specific 60 day period(s), as the statute appears to provide, implementing the 60 day waiver for an annual volume mandate any way other than adjusting the annual mandate creates compliance uncertainties, administrative confusion, and other administrative risks.

The statute clearly provides that with the appropriate findings, EPA shall reduce the BBD mandate "by an appropriate quantity that does not exceed 15% of the applicable annual requirement for biomass based diesel."[31] And "for any calendar year in which the Administrator makes a reduction under this subparagraph, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume."[32] The provision grants EPA authority to reduce the annual standard for BBD and for advanced and total renewable fuel if the conditions trigger the waiver authority.

While it may be difficult to give meaning to the phrase "for up to a 60 day period" in the context of the waiver, EPA may give meaning to the 60 day period in the context of the extensions and addressing longer term conditions that justify adjustments to the BBD mandate. The statute provides that if EPA determines that the circumstances for the waiver "is continuing beyond the 60 day Period," EPA may reduce the annual mandate "by an appropriate quantity that does not exceed an additional 15% of the applicable annual requirement for biomass-based diesel."[33] Although feedstock disruptions might be short-term, as Congress recognized, they could also last longer than 60 days as might other significant market circumstances.

It is evident that this BBD waiver is designed to remedy harm from market circumstances that arises during the 14 month period between the time that EPA sets the RVO for BBD and the compliance year. As required by statute, EPA set the 2018 BBD RVO in December 2016. In the

[31] 42 U.S.C. § 7545(o)(7)(E)(ii).
[32] *Id.*
[33] *Id.* § 7545(o)(7)(E)(iii).

intervening months, market circumstances have arisen that will impact the ability and the costs of complying with the RVO: the BTC expired and the Department of Commerce preliminarily determined that it would be appropriate to place countervailing duties on certain biodiesel imports. It is appropriate for EPA to use the BBD waiver authority for the 2018 RVO to address the market impacts expected from the biodiesel import tariffs as well as the loss of the biofuel BTC. Each of these conditions will last longer than 60 days; therefore, EPA should adjust the 2018 RVO to account for the real impacts of the import tariffs and the loss of the BTC.

EPA acknowledged that the statute "allows for an extension of any initial waiver for additional 60-day periods if the feedstock disruption or other market circumstance persists."[34] Valero agrees that nothing in the statute prohibits EPA from relying on the BBD waiver for periods longer than 120 days or from reducing the BBD RVO by an amount greater than 30%. EPA may also reduce the mandate for advanced biofuels and total renewable fuel by corresponding amounts.

In setting the RVO for 2019, EPA should assume that the biofuel BTC will not return in 2019 and that the Department of Commerce will impose tariffs on biodiesel from Argentina and Indonesia that will remain in place at least through 2019. To the extent these facts are fully accounted for in the determination of domestic supply (based on U.S. produced volumes only) as EPA sets the RVOs for BBD, advanced biofuels and total renewable fuel for 2019, EPA need not use this waiver authority at this time for 2019. If EPA finds that it cannot fully account for these impacts in setting the 2019 BBD RVO, EPA must consider use of this waiver authority. No action that EPA takes in 2017 should limit EPA's ability to use this waiver authority in 2018 and/or 2019.

2. *We invite comment on how to interpret and implement the BBD waiver provision consistent with the text and goals of the Act.*

Valero's Comment:

EPA has calculated that it may waive 315 million gallons of BBD in 2018 using its CAA section 211(o)(7)(E)(ii) waiver authority. But section 211(o)(7)(E)(iii) allows EPA to issue an order to extend a waiver by another 60 days and waive an additional 15% of the applicable annual BBD requirement. This extension of an existing waiver means that for the 2018 RFS compliance year, EPA has authority to waive an additional 315 million gallons if warranted under the criteria specified in section 211(o)(7)(E)(ii)-(iii). As a result, EPA could lower the BBD volume requirement by a total of 630 million gallons in 2018 simply by finding that the conditions for a waiver and an extension exist as part of its final 2018 RFS rule.

EPA may proactively approve a 120-day waiver following consultation with the Secretaries of Energy and Agriculture.[35] EPA need only find that market circumstances "would make the price of BBD increase significantly."[36] There is no requirement that EPA wait until

[34] 82 Fed. Reg. at 46179 (emphasis added).
[35] 42 U.S.C. § 7545(o)(7)(E)(ii).
[36] *Id.*

price increases occur; indeed, waiting until price increases take hold would at least partially, if not fully, undermine the breadth of the relief contemplated by the statute. Neither is the 60-day extension of a waiver contingent upon "waiting" for the initial 60-day waiver period to commence. As CAA section 211(o)(7)(E)(iii) makes clear, the Administrator may issue an order reducing the annual BBD requirement for up to an additional 60 days "if the feedstock disruption or circumstances described in clause (ii) is continuing beyond the 60-day period described in clause (ii)…."[37] EPA may find that a feedstock disruption or market conditions "is continuing" beyond an initial 60 day period if it has sufficient information in the record to draw the conclusion that market conditions or feedstock disruptions are unlikely to abate. EPA should assume that (1) the BTC will not return in 2018 (and even if it does, it may apply only to domestic producers of biofuel and not to blenders of foreign-produced biofuels) and (2) the Department of Commerce will impose tariffs on biodiesel from Argentina and Indonesia and require cash deposits as it has already proposed to do.

3. *We request comment on the possible use of the waiver authority provided in CAA section 211(o)(7)(E)(ii) to reduce the 2018 volume requirement for BBD by as much as 315 million gallons, and to concurrently reduce the advanced biofuel and total renewable fuel volume requirements by as much as 473 million gallons.*

Valero Comment:

Valero agrees that EPA should concurrently reduce the advanced biofuel and total renewable fuel volume mandates by the same amount that EPA reduces the BBD mandate. Valero agrees with AFPM that EPA should consider reducing BBD volumes by approximately 630 million gallons and concurrently reduce the advanced and total renewable fuel volume requirements by 945 million gallons, consistent with AFPM's analysis of reasonably achievable volumes for 2018, submitted as part of its comments on the proposed rule. Valero believes this reduction is appropriate in light of the volumes of imported biodiesel from Argentina and Indonesia.

[37] *Id.*

IV. BBD Price Increases

1. *In particular, we seek data on recent BBD price increases and expectations for additional price increases, and we seek comment on the extent to which these price increases should be considered "significant" for purposes of the CAA section 211(o)(7)(E)(ii) waiver authority and the extent of a waiver (up to 15%) that would be necessary to address or avoid a significant price increase.*
2. *We seek comment on the likely result of [the expiration of the BTC and the expected imposition of new duties on biodiesel from Argentina and Indonesia] and any other factors on biodiesel prices, and the extent to which any expected price increases should be considered "significant" for purposes of the waiver authority in CAA section 211(o)(7)(E)(ii).*

Valero's Comment:

Data on Recent and Anticipated Biodiesel Price Increases

As the following tables demonstrate, BBD is a significant part of the RFS. It consistently makes up 16% of the renewable fuel mandated by the RFS, yet it accounts for 17% and 21% of the cost of the RVO in 2016 and 2017, respectively.

RVO (in billions of RINs and as percentage of Total Obligation)

	Annual Volume Obligation (RINs)			% of Total Obligation		
Renewable Volume Obligations[38]	**2016**	**2017**	**2018**	**2016**	**2017**	**2018**
Cellulosic Biofuel	0.230	0.311	0.238	1%	2%	1%
Biomass-Based Diesel	**2.85**	**3.00**	**3.15**	**16%**	**16%**	**16%**
Other Advanced (Implied)	0.53	0.97	0.85	3%	5%	4%
Total Advanced	**3.61**	**4.28**	**4.24**	**20%**	**22%**	**22%**
Other Renewable Fuel	14.50	15.00	15.00	80%	78%	78%
Total Renewable Fuel	**18.11**	**19.28**	**19.24**	**100%**	**100%**	**100%**

RVO (in billions of dollars and as percentage of Total Obligation)

	Annual Volume Obligation ($$$)			% of Total Obligation		
Renewable Volume Obligations[39]	**2016**	**2017**	**2018**	**2016**	**2017**	**2018**
Cellulosic Biofuel	$ 0.44	$ 0.85		3%	6%	
Biomass-Based Diesel	**2.61**	**3.08**		**17%**	**21%**	
Other Advanced (Implied)	0.47	0.98		3%	7%	
Total Advanced	**$ 3.52**	**$ 4.91**		**23%**	**33%**	
Other Renewable Fuel	11.93	9.90		77%	67%	
Total Renewable Fuel	**$ 15.45**	**$ 14.80**		**100%**	**100%**	

There is no substitute for compliance with the RFS; it is a government intervention that attaches to a necessary component of the economy – transportation fuel. Where a mandated renewable fuel (such as biodiesel as demonstrated in the table below) is available only at a significant

[38] All volumes in billions of ethanol equivalent gallons (RINs).
[39] All values in billions of dollars.

premium to its nonrenewable counterpart, EPA should respond to drastic price increases with one of the "fixes" Congress provided in the agency's waiver authority under section 211(o)(7).

Biodiesel Premiums versus ULSD

Biodiesel Premiums[40, 41]	2016 Actual[42]	2017 YTD Actual	2018 Estimate[43]	2018 Estimate[44]
Chicago Biodiesel vs Chicago ULSD	$ 0.94	$ 1.60	$ 2.90	$ 3.76
Gulf Coast Biodiesel vs GC ULSD	0.85	1.52	2.78	3.61
NY Harbor Biodiesel vs NYH ULSD	0.92	1.59	2.89	3.75
Average Price Premium	**$ 0.90**	**$ 1.57**	**$ 2.86**	**$ 3.70**
Biomass-Based Diesel RVO (Billions of Gallons)	1.90	2.00	2.10	2.10
Cost to Industry (Billions of Dollars)	**$ 1.72**	**$ 3.13**	**$ 6.00**	**$ 7.78**

The following table shows how the price of biodiesel has increased since 2016 and is expected to continue to do so.

BBD Price Increases versus 2016

Biodiesel Cost Increase	2017 vs '16 % Increase	2018 vs '17 % Increase[45]	2018 vs '17 % Increase[46]	2018 vs '16 % Increase[47]	2018 vs '16 % Increase[48]
Chicago Biodiesel vs Chicago ULSD	70%	82%	135%	209%	300%
Gulf Coast Biodiesel vs GC ULSD	78%	83%	138%	226%	323%
NY Harbor Biodiesel vs NYH ULSD	72%	82%	136%	213%	306%
Average Price Increase	73%	82%	136%	216%	310%
Average Price Increase (Dollars per Gallon)	**$ 0.66**	**$ 1.29**	**$ 2.14**	**$ 1.95**	**$ 2.80**
Industry Cost Increase	82%	91%	148%	249%	352%
Industry Cost Increase (Billions of Dollars)	**$ 1.41**	**$ 2.86**	**$ 4.65**	**$ 4.28**	**$ 6.06**

Analysis of the BTC in another context that would drastically impact biodiesel imports suggests that the "restriction of biodiesel imports could have a much larger impact on compliance costs for the RFS in future years if the degree of 'push' above the E10 blend wall signaled in the EPA's latest proposal has to be met to a significant degree by biodiesel RINs generation."[49] The analysis was based on different scenarios and projections for 2016 but concluded that the restriction of biodiesel imports would cause biodiesel prices for consumers to increase by $0.33 per gallon of biodiesel.[50] While this analyst considers such an increase to be

[40] All values in dollars per gallon unless otherwise noted.
[41] Premiums reflect the bulk price of biodiesel relative to the bulk price of conventional ULSD for the market referenced.
[42] 2016 premiums are net of the $1.00 per gallon BTC, 2017 and 2018 assume no BTC in effect.
[43] Countervailing duties expected to range from 41% to 68% (estimate assumes 41%).
[44] Countervailing duties expected to range from 41% to 68% (estimate assumes 68%).
[45] Estimate assumes countervailing duty of 41%.
[46] Estimate assumes countervailing duty of 68%.
[47] Estimate assumes countervailing duty of 41%.
[48] Estimate assumes countervailing duty of 68%.
[49] Scott Irwin, *Implications of Changing the Biodiesel Tax Credit from a Blender to Producer Credit,* Farmdoc Daily (5):142 (Aug. 5, 2015), http://farmdocdaily.illinois.edu/2015/08/implications-of-changing-biodiesel-tax-credit html, provided here as Attachment 3.
[50] *Id.*

"a non-trivial amount,"[51] we believe this is a staggering price increase. 2017 year to date market pricing indicates the actual effect of the BTC expiring could be as much as $0.66 per gallon of biodiesel. This would result in a severe drag on the U.S. economy and adversely affect American consumers, particularly those on fixed or limited incomes that cannot respond to such dramatic cost increases. This would also severely impact truck freight rates and increase the cost of goods.

The Significance of Recent and Anticipated Biodiesel Price Increases

EPA has asked for comment on whether the price increases described above should be considered "significant" for purposes of triggering EPA's waiver authority under section 211(o)(7)(E)(ii). "Significant" is defined as "having meaning; especially"; "important" or "of a noticeably or measurably large amount."[52] The "significance" threshold pursuant to EPA's biodiesel waiver authority is analogous to the government's authority to release volumes from the Strategic Petroleum Reserve ("SPR") in response to an emergency. Like the RFS's dual purposes of energy independence and national security, the SPR exists (in part) to "diminish the vulnerability of the United States to the harmful effects of petroleum supply disruptions."[53] This is accomplished through releases of SPR inventory through loans and sales to help with supply issues that arise under emergency situations. Under the Energy Policy and Conservation Act, a drawdown and sale of petroleum products from the SPR may be made only when the President determines that a "severe energy supply interruption" has occurred. One way that this occurs is when

> an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration; a severe increase in the price of petroleum products has resulted from such emergency situation; and such price increase is likely to cause a major adverse impact on the national economy.[54]

In 2005, Hurricane Katrina caused extensive damage to oil production facilities, refineries, and transportation assets; and DOE estimates that about 25% of domestic production was shut-in immediately following the storm.[55] As a result, gasoline prices increased (from an average of $2.60 a gallon) by $.49 to $1.00 per gallon[56] – an increase of roughly 18-38%. The impact to the supply of petroleum and refined products and these price increases were notable and considered significant – enough so that the President George W. Bush authorized drawing down the SPR by 11 million barrels to increase the supply of petroleum and petroleum products

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[51] *Id.*
[52] *See* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/significant (last visited Oct. 19, 2017).
[53] DOE, *Comparing the Impacts of the 2005 and the 2008 Hurricanes on U.S. Energy Infrastructure* 33 (Feb. 2009), provided here as Attachment 4.
[54] 42 U.S.C. § 6241(d).
[55] DOE, History of SPR Releases, https://www.energy.gov/fe/services/petroleum-reserves/strategic-petroleum-reserve/releasing-oil-spr (last visited Oct. 19, 2017).
[56] Jad Mouawad, *Hurricane Katrine: The Oil Supply; Gas Prices Surge as Supply Drops,* NY Times (Sept. 1, 2005), *available at* http://query nytimes.com/gst/fullpage html?res=9D00E2DA1731F932A3575AC0A9639C8B63 &pagewanted=all.

following that storm.[57] The SPR has been tapped as recently as Hurricane Harvey to reduce severe economic harm based on fuel price signals.[58]

The increasing price of biodiesel has a similarly significant impact on refiners. Independent refiners make up about 50% of the nation's refining capacity. BBD makes up between 17 and 21% of the RFS compliance cost. As shown above, the industry cost of biodiesel has risen by $1.44 billion year to date over 2016, an increase of 82%. Valero believes it would be appropriate for EPA to construe this increase as severe, consistent with the type of price increases signifying an appropriate need to draw down the SPR. However EPA quantifies the threshold for significance, it is clear that the recent and anticipated price increases shown above meet it.

3. *We also seek comment on whether the relevant biodiesel prices are those paid by refiners, importers and blenders, and if so whether it is appropriate to consider the increase in the "effective price" of biomass-based diesel (net of any tax credit) to blenders for these purposes.*

Valero's Comment:

The relevant biodiesel prices are those paid by refiners, importer and blenders. As shown in EPA's Figure III-1, during periods in which there is no BTC the price of biodiesel and the "effective price" of biodiesel to blenders are the same. When the BTC expired at the end of 2016, the "effective price" of biodiesel increased for refiners, blenders and importers to the actual price of biodiesel. As such, when EPA considers the current and expected impacts of the current market circumstances on the actual price of biodiesel, it is also considering the "effective price" of biodiesel to refiners, importers, and blenders.

V. 2019 BBD Volumes

1. *We request comment on how EPA should take into consideration the costs of biodiesel and the factors that influence those costs, together with other relevant factors discussed above or which commenters may wish to bring to our attention, in setting the appropriate required volume of BBD for 2019.*

Valero's Comment:

As stated above, in setting the RVO for 2019, EPA should assume that the biofuel BTC will not return in 2019 and that the Department of Commerce will impose tariffs on biodiesel from Argentina and Indonesia that will remain in place at least through 2019. To the extent EPA defines domestic supply to mean renewable fuel produced in the U.S. and EPA accounts for the restrictions on imports when it sets the RVOs for BBD, advanced biofuels and total renewable fuel for 2019, EPA may not need to use this BBD waiver authority at this time for 2019. If EPA

[57] DOE, History of SPR Releases, *supra* note 55.
[58] DOE, Office of Fossil Energy, *Refiners Find Relief from Hurricane Harvey in the Strategic Petroleum Reserve* (Oct. 5, 2017), https://energy.gov/fe/articles/refiners-find-relief-hurricane-harvey-strategic-petroleum-reserve.

finds that it cannot fully account for these impacts on biofuel imports and EPA does not base the RVO on domestically produced biofuel in setting the 2019 BBD RVO, EPA must consider use of the BBD waiver authority. No action that EPA takes in 2017 should limit EPA's ability to use the BBD waiver authority in 2018 and/or 2019.

2. *We also request comment on what the volume requirement should be, noting that it could be equal to or greater than the statutory minimum of 1.0 billion gallons.*

Valero's Comment:

To determine the domestic supply of BBD and advanced biofuels, EPA must look to the historical volumes of domestically produced BBD and advanced biofuels introduced into commerce in the U.S. minus volumes retired for non-compliance reasons. When using historical volumes to project 2019, EPA should use 2017 year to date domestically produced BBD and advanced biofuels, as it reflects actual domestic production without a BTC. EPA cannot rely on nameplate capacities when setting future year volume obligations for BBD and other advanced renewable fuels. The BBD and advanced renewable fuel production in 2016 demonstrates that producers did not utilize nameplate capacities even in a year in which the BBD and advanced renewable fuel industries (D5 & D6 generating BBD) had both a BTC and high BBD and advanced RIN prices to subsidize production and blending.

Consistent with AFPM's comments requesting that EPA reduce the BBD 2018 mandate to 1.74 billion gallons. The 2019 BBD mandates should be the same as 2018 since the market circumstances are not expected to change but also for 2019, EPA should account for domestic production of biodiesel and advanced biofuel in setting 2019 mandates. If EPA does not define "domestic supply" to only include only domestically produced biofuels and does not include biofuel exports for compliance, EPA must consider the economic harm that would result from increasing the mandates.

In addition, EPA must evaluate the economic harm already caused by the current mandated level. EPA should reduce the total renewable fuel mandate to alleviate the economic harm caused by high RIN prices and the disproportionate impact on the obligation.

Valero is committed to working with EPA in a constructive way that will further the goals of the RFS program. I am available at your convenience to discuss the issues raised in these comments and the recommendations. Please contact me at (210) 345-2000 should you have any questions.

Sincerely,

Jason Fraser,
Vice President, Public Policy & Strategic Planning
Valero Energy Corporation

Message

From: Kurt Kovarik [kkovarik@biodiesel.org]
Sent: 4/12/2018 5:01:52 PM
To: Catanzaro, Michael J. EOP/WHO [Michael.J.Catanzaro@who.eop.gov]; Starling, Ray A. EOP/WHO [Raymond.A.Starling@who.eop.gov]
CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Letter to President Trump from NBB, ASA and NRA
Attachments: NBB ASA NRA Letter to President Trump Re EPA Exemptions.pdf

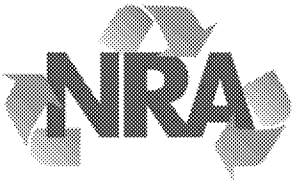
Good afternoon gentlemen,

I have attached a letter we're sending to the President expressing concerns regarding press reports of EPA's granting of small refiner hardship exemptions. Please don't hesitate to contact me if you have any questions.

Regards,

Kurt

Kurt Kovarik
Vice President of Federal Affairs
National Biodiesel Board
Office: (202) 737-8801
www.nbb.org | *www.biodiesel.org*
Biodiesel, America's Advanced Biofuel



April 12, 2018

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President,

Thank you for your support for rural America, agriculture and the jobs and industries that support local economic prosperity. We appreciate your ongoing efforts to champion the entrepreneurs, farmers, and manufacturers working to grow our nation's domestic renewable energy industry.

We represent the unique visionaries who have made investments in homegrown, domestically produced renewable fuels. The domestic biodiesel industry supports more than 60,000 jobs across the U.S. and delivers more than 2 billion gallons of domestically produced, cleaner burning fuel to consumers every year.

We laud the commitment you made to support the Renewable Fuel Standard. Many of our stakeholders were there in Iowa when you promised to stand behind this important policy driver to enhance biofuel blending as a means to grow our economy and bolster our nation's energy independence.

However, recent actions taken by the Environmental Protection Agency (EPA) threaten your commitment to uphold the statutory intent of the RFS. Contrary to your steadfast support, the EPA has undermined the RFS through recent actions granting so-called "hardship" exemptions designed for small refiners. According to press reports, the EPA has granted exemptions to roughly 20 refineries for 2016 obligations and 25 refineries for 2017 obligations, with many more currently under consideration. One of the nation's largest refiners, Andeavor, received a hardship exemption for three refineries, while their net profits last year were approximately $1.5 billion dollars. At least two other refineries with hundreds of millions of dollars in annual profits were also granted exemptions. This is hardly evidence of hardship, nor are these "small" refiners.

The EPA's efforts to reduce compliance obligations for enormously profitable companies will have an immediate and significant impact on the very farmers and industries you committed to support. The exemptions granted to these refiners could lead to a reduction of hundreds of millions of gallons of domestically produced biodiesel. This has a direct impact on consumers, renderers, fuel marketers, biofuel producers and hundreds of thousands of American soybean

farmers. These actions are set amidst a backdrop of trade challenges and already low commodity prices which are contributing to severe economic uncertainty in rural America.

The actions taken by the EPA undermine the integrity of the RFS and stand in direct contrast to your pledge of support in Iowa. Farmers and biofuel producers across the nation share your vision for a strong and economically vibrant rural America, but the EPA's actions call into question that commitment. We therefore wish to add our voice to those urging you to call on the EPA to cease all RFS waiver actions until, at the very least, a more transparent and impartial process for considering and granting waivers is in place. We share the concern that EPA continues to take actions that will undermine the RFS and violate the good-faith discussions you have fostered toward a true win-win solution.

We look forward to working with you and Administrator Pruitt to support a strong RFS and carry out the vision you outlined to fulfill our energy needs while growing our economy.

Sincerely,

Ryan Findlay	Donnell Rehagen	Nancy Foster
CEO	CEO	President & CEO
American Soybean Association	National Biodiesel Board	National Renderers Association

Message

From: Morrison, Matthew W. [matthew.morrison@pillsburylaw.com]
Sent: 6/7/2018 3:23:38 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; grundler.chris@epa.gov; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Bob M Dinneen (BobD@ethanolrfa.org) [BobD@ethanolrfa.org]
Subject: Renewable Fuels Coalition Petition for Reconsideration on Small Refineries
Attachments: Small Refinery Petition to EPA Revised with Appendices 4840-6794-0455 v.1 4839-2599-4087 v.9.pdf; Appendices.pdf

Bill,

Thank you very much for taking the time to meet with Bob and me this morning. As you requested, I am forwarding a copy of the petition for reconsideration we filed with EPA on Monday.

I will send you the corresponding DC Circuit filings by a separate email.

We look forward to discussing our petition with you at your earliest convenience.

Best regards,

Matt

Matthew W. Morrison | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.8036 | f 202.663.8007 | m 571.253.3335
matthew.morrison@pillsburylaw.com | website bio

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Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 4/4/2018 5:49:48 PM
To: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
Subject: RE: Request for data/comment on RFS

We sent her this:

"The criteria used to grant waivers has not changed since previous administrations. EPA follows a long-standing, established process where the Agency uses a DOE analysis to inform decisions about refiner exemptions/waivers. These waivers are only considered for refineries that submit applications and that are below the blending threshold," **EPA spokesperson, Liz Bowman**

On background (not for attribution): DOE's analysis is developed based on information submitted to EPA, and DOE provides a recommendation with regard to the waiver. While the applications continue to come in, EPA has granted roughly 25 so far. For calendar year 2016, EPA granted an annual exemption for 14 small refineries. We do not have specifics on overall refining capacity.

From: Wilcox, Jahan
Sent: Wednesday, April 4, 2018 1:49 PM
Cc: Press <Press@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: RE: Request for data/comment on RFS

Let's work on getting a response to this please.

From: Jennifer A. Dlouhy (BLOOMBERG/ NEWSROOM:) [mailto:jdlouhy1@bloomberg.net]
Sent: Wednesday, April 4, 2018 12:05 PM
To: Press <Press@epa.gov>
Subject: Request for data/comment on RFS

Good morning, EPA press.

I have a *policy*-related request.

I know you cannot release refinery-specific information on the number of RFS waivers granted under the small refinery hardship exemption program. Of course, we have a couple related FOIA requests pending for some other detail on waivers (as do plenty of others).

However, you have been able to provide aggregated numbers of refinery waivers (if not total RVO waived) on an annual basis in the past.

Can you confirm how many small refineries have been granted waivers under the program for the 2016 compliance year? The final RVO rule for 2018, issued last November, said that EPA

"successfully implemented these provisions by evaluating petitions for exemptions from 14 small refineries for the 2016 RFS standards" and said that small refinery hardship exemptions for 2016 "led to the return to the RIN marketplace of approximately 125 million 2016 RINs that would otherwise have been required for compliance by the small refineries granted an exemption for 2016." But we understand more exemptions have since been granted for the 2016 compliance year, and the total now stands at 16 to 18.

What can you say about the status/number of exemptions so far granted under the program for the 2017 compliance year? We'll obviously see some total in the proposed RVO rule expected to be issued sometime later this spring.

Finally, **if you want to say anything substantive in response to the criticism from Sen. Chuck Grassley** (his statement is below) and various biofuel advocates casting this as a secretive way to undermine the mandate -- and not, say, following the law as Congress wrote it -- I would welcome that.

Thank you,
Jen.

Grassley statement:
"If the reporting is accurate, it appears EPA granted a secret waiver that is legally reserved for small refiners to one of the largest oil refining companies in the country. If refineries are being allowed to retroactively get out of the renewable volume obligations the EPA assigned them in November, that fundamentally undermines the Renewable Fuel Standard. It would also amount to a massive government handout to a big corporation that made billions in profits just last year. Giving big corporations like Andeavor a free pass when other companies are required to follow the law of the land isn't just unfair, it may be illegal. The executive branch is required to follow the law as passed by Congress. There are legitimate questions being raised about whether EPA is following the law with these exemptions. I plan on writing to Administrator Pruitt to ask him about these reports. The public deserves transparency about this secret waiver and I expect EPA to be forthcoming." – Sen. Chuck Grassley

---

Jennifer A. Dlouhy
jdlouhy1@bloomberg.net / jendlouhyenergy@gmail.com
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Cell/Text/Signal: 202.905.3257
Twitter: @jendlouhyhc
Stories: http://bloom.bg/23Crpvk

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 5/11/2018 8:23:41 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: FOR REVIEW: Small refinery exemptions

Follow up from the reporter: Hopefully final clarification – by "RINs of value" in response to the court case, did EPA issue valid 2016 vintage RINs, or 2017 vintage RINs?

From: Block, Molly
Sent: Friday, May 11, 2018 4:04 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: FOR REVIEW: Small refinery exemptions

Thanks!

From: Gunasekara, Mandy
Sent: Friday, May 11, 2018 4:03 PM
To: Block, Molly <block.molly@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: FOR REVIEW: Small refinery exemptions

Deliberative Process / Ex. 5

Hypothetical Example: If a small refinery were to petition us today seeking a waiver from compliance obligations in 2013 and that waiver was granted, then the small refinery would receive 2013 RINs equivalent to the number of exempted gallons. Because there is an up to two-year life to a RIN, the 2013 RINs would essentially be valueless.

From: Block, Molly
Sent: Friday, May 11, 2018 3:36 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: FOR REVIEW: Small refinery exemptions

Please see request below. I'm not sure if we want to comment, but want to put this on your radar. Let me know how you want to proceed on this. Thanks!

Molly

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Friday, May 11, 2018 1:51 PM

To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Subject: FW: Small refinery exemptions

To follow up on this question, it's my understanding from some of the recipients that for these older exemptions the agency generates new, fungible RINs to be used toward 2017 or sold (basically used the way any other valid RIN would be used). I'd like to confirm with EPA that is what is happening.

Thank you,

Elliott

From: Elliott Blackburn
Sent: Thursday, May 10, 2018 9:37 AM
To: 'Daguillard, Robert' <Daguillard.Robert@epa.gov>
Subject: RE: Small refinery exemptions

Robert,

What are the mechanics of the exemptions for older years? I know that RINs can be held for two years and that some of these compliance deadlines fell later. But do any of the waivers for 2016 involve RINs that were already submitted to the EPA by these refineries? How does that work?

If I've overlooked this part of the process in EPA material or statute somewhere, I'm happy to read it there. Appreciate your help.

Elliott

From: Daguillard, Robert [mailto:Daguillard.Robert@epa.gov]
Sent: Wednesday, May 9, 2018 5:38 PM
To: Elliott Blackburn <elliott.blackburn@argusmedia.com>
Cc: Press <Press@epa.gov>
Subject: Re: Small refinery exemptions

Notice: external email – please use caution.

Elliott, on background, please:

Q1: What is the current number of small refinery waivers granted for the 2017 compliance year? As of about a month ago, it was 25. What is the current number for 2016?

A1: Currently, the number of small refinery waivers granted for the 2017 compliance year is 25. For the 2016 compliance year, 19 were granted.

Q2: How does EPA determine what qualifies as confidential business information? What formal determination or opinion does EPA rely on in classifying material associated with small refinery waivers as confidential business information?

A2: EPA follows its regulations under 40 CFR Part 2, Subpart B, Confidentiality of Business Information. Those regulations contain the definitions and the procedures the Agency follows when handling information claimed by a small refinery to contain confidential business information

Robert Daguillard
U.S. EPA
Office of Media Relations
Washington D.C.
202-360-0476 (M)
202-564-6618 (O)

On May 9, 2018, at 12:16 PM, Elliott Blackburn <elliott.blackburn@argusmedia.com> wrote:

> Good afternoon,
>
> Following up on this inquiry. Thank you.
>
> Elliott
>
> ---
>
> **From:** Elliott Blackburn
> **Sent:** Wednesday, May 2, 2018 12:47 PM
> **To:** 'press@epa.gov' <press@epa.gov>
> **Subject:** Small refinery exemptions
>
> Good afternoon,
>
> What is the current number of small refinery waivers granted for the 2017 compliance year? As of about a month ago, it was 25. What is the current number for 2016?
>
> How does EPA determine what qualifies as confidential business information? What formal determination or opinion does EPA rely on in classifying material associated with small refinery waivers as confidential business information?
>
> Thank you,
>
> Elliott

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Downstream Reporter

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Message

From: Draper, Jennifer [Jennifer.Draper@Motiva.Com]
Sent: 6/21/2018 1:52:13 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Jordan Bason, Amy [Amy.Jordan@aramcoservices.com]
Subject: 2019 RVO and small refinery exemptions: input from Motiva

Good morning, Mandy.

I'm following up on a voice mail I just left you. Amy (cc'd here) and I represent Motiva and its 2300 employees in Port Arthur and Houston, Texas. We were calling in response to recent reports that the EPA is considering reallocating some 1.5 billion gallons of renewable volume obligations from small refineries with waivers to large refineries. We'd like to discuss our opposition to this plan with you.

Motiva has always been fundamentally against the concept of small refinery waivers ten years into the RFS. Small refineries have had sufficient time to adjust to the requirements of the RFS. However, we find the concept of reallocating those billions of gallons of waivers to non-exempt refineries is especially egregious. Motiva feels that the current proposal not only creates a windfall for those refineries with exemptions, but further exacerbates an unlevel playing field by placing a disproportionate economic burden on the remaining obligated parties. This amounts to federally mandated transfer of hundreds of millions, possibly a billion, dollars from non-exempt refineries to small refineries. Because small refineries with waivers can still generate RINs, which are not required to be turned in for compliance, they are put in an economically advantageous position when non-exempt refineries are forced to buy those RINs to meet the higher mandate. Refiners without SREs will face an unjust increase in regulatory costs.

Moreover, the regulations only allow reallocation of an exempted refinery's RIN obligations for a given year if the exemption is granted before the volumes are finalized for that year. These regulations were passed as substantive rules that went through notice and public comment. Congress has not changed the statute to give EPA the ability to reallocate volumes prior to granting waivers. EPA itself made a clear statement last week that dealing with the reallocation of small refiner exemptions on a retroactive basis is illegal. In reallocating RVOs, EPA would be imposing a penalty on refiners that do not qualify for small refinery exemptions but have otherwise been complying with the law. This creates troubling statutory and due process problems.

We strongly encourage the EPA to reconsider this proposal. Creating such a significant imbalance in the market based on nothing more than an arbitrary number of 75 KBPD is unreasonable and inconsistent with free market principles. Please reach out to me if you would like to discuss further. We appreciate your consideration.

Regards,

Jennifer Draper, Ph.D.
Fuels Advocacy and Assurance Manager

MOTIVA
ENTERPRISES LLC

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Houston, TX 77002
Mobile: 281.660.2438
Email: jennifer.draper@motiva.com
Internet: http://www.motiva.com/

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Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/27/2018 6:08:37 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
Subject: FW: Small Refiners Press Release re Hardship Waivers April 2018 Clean (003).docx
Attachments: ATT00001.txt; Small Refiners Press Release re Hardship Waivers April 2018 Clean (003).docx

For awareness, if you haven't already seen attached is a press release from the Small Refiners Coalition on the small refinery hardship exemptions.

Alex

From: Braniff, Mimi P [mailto:mimi.braniff@delta.com]
Sent: Friday, April 27, 2018 10:55 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Small Refiners Press Release re Hardship Waivers April 2018 Clean (003).docx

Alex- Thanks for the time today. As promised, attached is the small refiners release. Let me know if I can be helpful in any way.

Have a good weekend. Mimi

Mimi Braniff | [redacted] | Managing Director–Government Affairs
P: Phone/ Ex. 6 1212 New York Ave NW Ste 200 Washington, DC 20005

Contact: LeAnn Johnson Koch
202-654-6209
LeAnnJohnson@perkinscoie.com

For Immediate Release

Small Refiners Coalition: RFS Waivers are Necessary to Preserve Refining Jobs and Prevent Oil Industry Consolidation

WASHINGTON – April 26, 2018 – In response to recent attacks on the small refinery hardship exemption provision of the Renewable Fuel Standard (RFS) by the biofuels industry, corn state politicians, and the American Petroleum Institute (API), the Small Refiners Coalition issued the following statement:

"The Small Refiners Coalition supports EPA Administrator Pruitt's defense of small refinery hardship waivers and concurs with his opinion that denying hardship relief would violate the Clean Air Act.

The artificial market for ethanol created by the 2005 Energy Policy Act has had real consequences for small refineries in all of the ways predicted by the Department of Energy in its 2011 report for Congress. The harm has become increasingly acute, as predicted by the DOE study, since the E10 blendwall was reached in 2013 and RIN prices increased by up to 5,000%.

Obama's EPA responded by pulling up the ladder and denying hardship relief to numerous small refineries. As a result, several small refineries were divested and sold to larger oil companies. Others cut capital investments needed to remain competitive, froze employee compensation and benefits, implemented hiring freezes, and laid off workers in order to pour cash into the wildly volatile, speculative and fraudulent market for RFS compliance credits, called Renewable Identification Numbers (RINs).

Four times Congress reminded EPA and DOE that it did not intend for small refineries to bear a disproportionate regulatory burden. But it wasn't until the 10th Circuit Court of Appeals pushed back last year that the agency was forced to review its scoring and return to its congressional mandate.

Now that EPA is following the law, the biofuels industry, corn state politicians, and API are pressing Administrator Pruitt to stop granting hardship waivers claiming that small refinery hardship relief results in "demand destruction". Lowering RIN purchasing "obligations" through small refinery hardship exemptions does not result in less blending. Small refineries control very little blending because they lack capital to make investments in blending infrastructure. The Department of Energy acknowledged this reality back in 2011 and it holds true today.

Those small refineries that have found the capital to invest in blending have had their investments displaced by large distributor/retailers that demand discounts on blended fuel to capture the RIN value or refuse to buy blended fuel, because they want to do their own blending in order to capture windfall profits from an unregulated RIN market. Large distributor/retailers that buy fuel from small refineries largely control blending, often have no RFS obligation, and still blend gasoline with up to ten percent ethanol because it is economic to do so. In 2017,

Murphy USA reported earning $160 million selling RINs. Murphy USA is not going to stop lucrative blending simply because an upstream small refinery received a hardship exemption.

More fundamentally, small refinery waivers issued in 2018 for the 2017 compliance year cannot impact past demand. Additionally, when small refineries receive waivers and can sell previous year RINs, they often use that revenue to purchase current year RINs, since they do not know whether they will receive future waivers.

This war on small business to facilitate a massive wealth transfer and to prop up an artificial market for ethanol is both illogical and misinformed."

The Small Refiners Coalition was formed provide a voice to small refineries increasingly harmed by the RFS program. Small refineries provide thousands of jobs in local communities and are often the primary supplier of petroleum products in rural areas.

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 4/19/2018 12:57:27 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Budget Hearing Info - RINS/E15

Sounds good, thanks.

-Aaron

From: Gunasekara, Mandy
Sent: Thursday, April 19, 2018 7:31 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Re: Budget Hearing Info - RINS/E15

Aaron, below are TPs on RINS and RVP. I'll call you later this morning to explain the purpose of the pass through.

Sent from my iPhone

On Apr 18, 2018, at 9:51 AM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

From: Gunasekara, Mandy
Sent: Wednesday, April 18, 2018 9:01 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Budget Hearing Info - RINS/E15

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Ringel, Aaron
Sent: Tuesday, April 17, 2018 3:25 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Budget Hearing Info - RINS/E15

Hey Mandy, we are putting together the program office cheat sheets for the Administrator's budget hearing briefings and after reviewing everything from OAR think we need two more, specifically on everyone's favorite topics that are more than likely going to get brought up during the E&C hearing: RINS and E15/RVP year round waiver.

I've pasted what we have for the RFS Small Refinery Hardship Exemption topic below so you can have an idea of what we are looking for. If you or Alex could send along some info we can include it would be much appreciated! We are sitting down with Ryan tomorrow afternoon to go over our doc so it would be great if we could get something by tomorrow morning.

Thanks!
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

RFS Small Refinery Hardship Exemption

- Any refinery that produces 75,000 barrels or less per day on an annualized basis can apply for the Small Refinery Hardship exemption.
- During the Obama Administration, there was often disagreement by EPA with DOE's recommendation. Since the start of this administration, EPA has worked to better coordinate with DOE to ensure cross-administration consistency.
- Further, on August 15, 2017, EPA received an adverse decision from the Tenth Circuit Court of Appeals, which found the agency's viability analysis employed by the previous administration to be inconsistent with congress's intent of the hardship exemption and outside its statutory authority (Sinclair Wyoming Refining Company v. EPA). Specifically, the court found EPA's requirement that refineries demonstrate an "existential threat" to their long-term viability as the standard for demonstrating "disproportionate economic hardship" inconsistent with EPA's statutory authority and vacated a previously denied hardship exemption and remanded Sinclair's hardship petitions back to EPA for further consideration.
- In 2016, EPA received 20 petitions and granted 19 based on DOE's recommendation.
- We continue to work through petitions received for 2017 and will provide updated information (also being gathered for FOIA requests) as soon as complete.

Message

From: Millett, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C067CAA6C93544F78C26AB08CC567D27-MILLETT, JOHN]
Sent: 4/4/2018 2:57:07 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: Re: Small refinery hardship numbers

Will do. Thanks!

Sent from my iPhone

On Apr 4, 2018, at 10:31 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

> John, given the sensitivity of the RFS right now, please pass associated inquiries to Liz.
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> Sent from my iPhone
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Thanks Ben.

From: Hengst, Benjamin
Sent: Tuesday, April 3, 2018 6:05 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Millett, John <Millett.John@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Small refinery hardship numbers

Bill:

This is a follow-up to your email regarding information we can share with press outlets on the small refinery decisions.

As mentioned, we are about to send out a response to a FOIA request on this topic (we aim to send this out tomorrow). I have attached that FOIA response, as it has been vetted by our team and OGC for any CBI concerns. From our perspective, you can share the information in this response (e.g., cut and paste the heart of the document, with the numbers). Doing so should largely address the reporters' inquiries.

Thanks,

Ben

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 5/11/2018 5:39:38 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: three questions that need answers (Re: Administrator's HAC QfRs)
Attachments: House IE FY 2019 EPA QFRs - IO Questions.docx

Can you take a shot at responses to the attached 3? I recall in earlier QfRs you had responded to similar Qs but I can't seem to find them. Deadline is COB next Wednesday.

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Budget Hearing: Environmental Protection Agency
April 26, 2018

Questions for the Record – Administrator of the
Environmental Protection Agency

Questions from Mr. Calvert

Mid-term Evaluation & the California Waiver

The current light-duty vehicle emission standards are a critical component of California's efforts to attain federal air quality standards. Additionally, multiple other states have adopted California's standards such that approximately 40% of US vehicles sold are sold in states following California's standards.

Calvert Q27: If you decide to rollback the light-duty vehicle emission standards, will you honor California's waiver to retain more stringent standards? IO

Small Refinery Exemptions

Administrator, I'm concerned about EPA's small refinery exemptions under the RFS. I've heard and read refiners have noted, "Anyone with a brain submitted an application. The EPA was handling out those exemptions like trick or treat candy." It's hard to understand the definition of "hardship" when a company like Andeavor, who had a $1.5 billion profit, qualifies for a waiver.

Young Q3: Did you tell or otherwise give indication to anyone the EPA would be viewing small refinery hardship exemptions with leniency or otherwise solicit, request, or recommend refiners submit such waiver requests in order to evade their responsibilities under the RFS? IO

Questions from Mr. Kilmer

Climate Change

During your testimony before the Subcommittee last week, you acknowledged that greenhouse gas (GHG) emissions are contributing to global climate change and that the EPA had published an advanced notice of proposed rulemaking (ANPRM; Docket ID No. EPA–HQ–OAR–2017–0545) to solicit input on guidelines to limit GHG emissions from existing electric utility generating units. The comment period for the ANPRM closed on February 26, 2018.

Kilmer Q5: Will you reconfirm for the Committee that you recognize that GHG emissions contribute to the earth's increasing atmospheric and oceanic temperatures – commonly referred to as 'climate change' – and that the EPA does have the authority to regulate GHG emissions like other pollutants under the Clean Air Act as determined by the Supreme Court in 2014? IO

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 5/31/2018 6:25:39 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: FW: Small refinery exemptions

And just a few more.

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Thursday, May 31, 2018 2:24 PM
To: Block, Molly <block.molly@epa.gov>; Press <Press@epa.gov>
Subject: RE: Small refinery exemptions

Thank you, that is very helpful clarification. Can you clear up these other two points of market concern:

- What vintage RIN has EPA reinstated to avoid the "justice delayed, justice denied" outcome: 2016, 2017 or 2018? Clearly 2014/15 vintage would be useless.
- Does EPA continue to accept new applications for any previous compliance year? Which years?

From: Block, Molly <block.molly@epa.gov>
Sent: Thursday, May 31, 2018 1:14 PM
To: Elliott Blackburn <elliott.blackburn@argusmedia.com>; Press <Press@epa.gov>
Subject: RE: Small refinery exemptions

Notice: **external email – please use caution.**

Elliott –

This should be some helpful clarification.

On background (not for attribution): The recent exemption actions are solely confined to the petitions that were timely submitted and timely challenged in the Sinclair/Holly cases before the Tenth Circuit. Note that there were the separate, but related cases: a Sinclair case challenging 2014 denials; a Sinclair case challenging 2015 denials; and a Holly case

challenging 2015 denials. In the previous email, I characterized this package of cases as the "one exception" given the interrelatedness and general knowledge of that interrelatedness.

Since the 2015 cases were reliant on the outcome in the 2014 case, those two actions were held in abeyance while the court decided the 2014 case. That decision came out last summer (2017). Once EPA charted out a path to comply with the courts order for the 2014 case, EPA applied that same approach to the 2015 cases. In sum and to your original point, these actions are limited in scope and confined to the petitions at issue in the Sinclair/Holly cases.

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Thursday, May 31, 2018 1:46 PM
To: Block, Molly <block.molly@epa.gov>; Press <Press@epa.gov>
Subject: RE: Small refinery exemptions

Molly —

- When did this change following your 11 May statement on behalf of the agency, which said that there "is one exception" — Sinclair v EPA — to Agency policy reinstating only RINs from the same year as the requesting petition? Or is that what you mean in this latest response?
- Does the reconsideration of "some prior denials" include applications by refineries not a party to Sinclair v EPA? How many?
- What vintage RIN has EPA reinstated to avoid the "justice delayed, justice denied" outcome: 2016, 2017 or 2018?
- Does EPA continue to accept new applications for any previous compliance year? Which years?

I can be reached at this email or at Ex. 6

From: Block, Molly <block.molly@epa.gov>
Sent: Thursday, May 31, 2018 12:34 PM
To: Elliott Blackburn <elliott.blackburn@argusmedia.com>; Press <Press@epa.gov>
Subject: RE: Small refinery exemptions

Notice: external email – please use caution.

Elliott –

Here's our statement:

"EPAs actions are narrow in scope and consistent with direction from the 10th Circuit. The Agency has been revisiting some prior denials in light of a recent court opinion holding that EPA had been applying the hardship exemption for small refineries too narrowly. Last summer, the Tenth Circuit found that EPA cannot make an exemption conditional on a refinery showing that its continued survival was at risk. EPA will continue to administer this statute attentive to all policy considerations, fulfilling the duty Congress has given the Agency in light of orders and opinions from the courts." – EPA Spokesperson

---

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Thursday, May 31, 2018 1:28 PM
To: Press <Press@epa.gov>
Subject: FW: Small refinery exemptions

In what sense is EPA "revisiting" previous small refinery waiver decisions? What is the criteria for such reconsideration?

And:

- What vintage of RINs did EPA issue to "avoid a justice delayed, justice denied outcome" from the Sinclair v EPA decision?
- How many refiners not originally a party to Sinclair v EPA received RINs for years beyond current expiration? Or: Is this exception available exclusively to parties of Sinclair v EPA?
- Does EPA continue to accept small refinery waiver applications for the 2017 compliance year?

Elliott Blackburn
Downstream Reporter

www.argusmedia.com
Direct: Ex. 6
Email: elliott.blackburn@argusmedia.com
ICE: eblackburn
Skype ID: elliott.blackburn@argusmedia.com
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www.argusmedia.com

Tel: +1 713 968 0000 | Fax: +1 713 622 2991 |
Argus Media Inc., 2929 Allen Parkway, Suite 700, Houston, Texas 77019, USA

illuminating the markets

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Argus Media Limited has moved offices. Please note our new address below.

Argus Media Limited, Lacon House, 84 Theobald's Road, London WC1X 8NL Registered in England and Wales, Company Registration No: 1642534 VAT Registration No: GB 229 7149 41

Message

From: Bowman, Liz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C3D4D94D3E4B4B1F80904056703EBC80-BOWMAN, ELI]
Sent: 4/4/2018 2:50:50 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Small refinery hardship numbers

Good, thank you!

From: Gunasekara, Mandy
Sent: Wednesday, April 4, 2018 10:49 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: Small refinery hardship numbers

THis is good- no need to add additional information.

Sent from my iPhone

On Apr 4, 2018, at 10:47 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

> This is what I was sending, but should we add to it? Can you take a look?
>
> The criteria used to grant waivers has not changed since previous administrations. EPA follows a long-standing, established process where the Agency uses a DOE analysis to inform decisions about refiner exemptions/waivers. These waivers are only considered for refineries that submit applications and that are below the blending threshold. Thank you – Liz
>
> **On background** (not for attribution): DOE's analysis is developed based on information submitted to EPA, and DOE provides a recommendation with regard to the waiver. While the applications continue to come in, EPA has granted roughly 25 so far. We do not have specifics on overall refining capacity.
>
> ---
>
> **From:** Gunasekara, Mandy
> **Sent:** Wednesday, April 4, 2018 10:31 AM
> **To:** Millett, John <Millett.John@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
> **Cc:** Wehrum, Bill <Wehrum.Bill@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
> **Subject:** Re: Small refinery hardship numbers
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> > **To:** Wehrum, Bill <Wehrum.Bill@epa.gov>
> > **Cc:** Grundler, Christopher <grundler.christopher@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Millett, John <Millett.John@epa.gov>; Orlin, David <Orlin.David@epa.gov>
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Thanks,

Ben

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 6/27/2018 10:44:06 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: Re: RFS Statements and Articles

He and Jim Talent cochair Americans for Energy Security and Innovation. See below:

Likewise, the Americans for Energy Security and Innovation (AESI) Co-Chairs Jim Talent and Rick Santorum urged the Environmental Protection Agency to put a stop to abusive waivers that have enriched well-connected refiners at the expense of rural workers and farmers.

On Jun 27, 2018, at 6:35 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

> Santorum?
>
> **From:** Bennett, Tate
> **Sent:** Wednesday, June 27, 2018 6:22 PM
> **To:** Wehrum, Bill <Wehrum.Bill@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
> **Cc:** Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
> **Subject:** Fwd: RFS Statements and Articles
>
> Thought you all also might want to see the below general responses from ethanol/ commodity groups on RVO's yesterday. I also noticed Santorum's involvement on the Ag side, just to flag:
>
> The AESI also called on EPA Administrator Pruitt to put President Trump's vision for rural prosperity back on track by taking action on E15 regulations.
>
> **"Right now, it is vital that Administrator Pruitt stop delaying action on the president's pledge to lift outdated, seasonal regulations on E15 during the summer," Talent and**

Santorum said. "Taking this action will help to expand growth opportunities for U.S. farmers, hold down surging prices at the fuel pump, and even reduce the cost of biofuel credits for refiners that refuse to blend biofuels. There's no reason to hold E15 hostage when we could be driving growth in the heartland."

Begin forwarded message:

From: "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
Date: June 27, 2018 at 5:41:10 PM EDT
To: "Bennett, Tate" <Bennett.Tate@epa.gov>
Cc: "Dewey, Amy" <Dewey.Amy@epa.gov>, "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
Subject: RFS Statements and Articles

Tate,

I included the links to the articles. I will continue to look.

Cathy

From Morning Ag Clips: **https://www.morningagclips.com/statements-released-on-epa-biofuel-plans/**

Statements released on EPA biofuel plans

U.S. Environmental Protection Agency has announced biofuel obligations for 2019

PUBLISHED ON JUNE 27, 2018

WASHINGTON — *Editor's note: The following statements from the National Farmers Union, American Soybean Association, and National Corn Growers Association concern the EPA's 2019 biofuel requirements, under the Renewable Fuel Standards program.*

Proposed Volume Obligations are Promising, but Not Enough
More Must Be Done to Address Lost Demand for Renewable Fuels

The U.S. Environmental Protection Agency (EPA) today proposed increasing the renewable volume obligations (RVOs) under the Renewable Fuel Standard (RFS) by 3 percent in 2019, from 19.29 billion gallons to 19.88 billion gallons. The proposal would maintain the current

15-million-gallon target for corn ethanol and increase cellulosic and advanced biofuel requirements by 100 million gallons and 600 million gallons, respectively.

Rob Larew, National Farmers Union (NFU) Senior Vice President of Public Policy and Communications, was encouraged by the volume increase but expressed concern about the fact that it does not address the misappropriation of "hardship waivers," which has reduced the volume of renewable fuels in the transportation sector by as much as 1.6 billion gallons.

Larew issued the following statement in response to the proposal:

"It is promising that the EPA is planning to increase the volume of American grown and produced fuels in our transportation sector. However, the proposal does not do enough to account for the demand destruction of over a billion gallons of renewable fuels. The EPA should cease granting these waivers to prevent additional harm to the RFS. The agency must also find ways to reallocate gallons lost to the waivers or account for those gallons in the finalized RVOs in order to make up for harm already done.

"Additionally, the administration should look for ways to implement higher level blends of ethanol, such as E30, which expand markets for family farmers, boost rural economies, improve air quality, and lower fuel prices for consumers."

EPA Increases Proposed RFS Volumes
Environmental Protection Agency to raise Renewable Fuel Standard levels in 2019-20

The American Soybean Association (ASA) is pleased with the proposed biodiesel and advanced biofuels volumes released today by the Environmental Protection Agency (EPA), which opens the door for the growth of future biodiesel volumes.

In the rule, EPA calls for biomass-based diesel (BBD) volumes within the Renewable Fuel Standard (RFS) of 2.4 billion gallons for 2020, a 300 million gallon increase over the 2019 levels.

ASA President John Heisdorffer, a soybean producer from Keota, Iowa, applauded EPA, saying, "This increase supports a valuable, growing market for soybean oil. We have an increased capacity on the domestic market to meet the demand for renewable fuels blended into the nation's fuel supply."

Yet, Heisdorffer pointed out that proposed future increases in BBD volumes could be negated by the unwarranted waivers of RFS volumes that EPA has recently granted some oil refiners.

"The waived volumes need to be reallocated to ensure the RFS remains whole and that proposed future increases are meaningful," Heisdorffer explained. "The biodiesel industry has the potential to support agriculture by creating jobs, diversifying fuel sources, and reducing America's dependence on foreign oil. We encourage the EPA to continue supporting growth by limiting waivers that water down the benefits of these increased levels."

NCGA Statement: EPA Proposed Biofuel Requirements

The following is a statement from North Dakota farmer Kevin Skunes, president of the National Corn Growers Association (NCGA), on EPA's Proposed Biofuel Requirements for 2019.

"For corn farmers, what's not included in EPA's proposed rule says more than what's included.

"It is encouraging that EPA is following Congressional intent and proposing some growth in the RFS volumes and continuing to propose an implied 15-billion-gallon volume for conventional ethanol. However, by continuing to allow retroactive exemptions to refineries, EPA will undercut the volumes in this rule, rendering the proposed blending levels meaningless. Furthermore, the proposed rule states that EPA will not consider comments on how small refinery exemptions are accounted for.

"EPA also had an opportunity to propose a remedy for the 1.6 billion gallons the agency has retroactively waived from the 2016 and 2017 volume requirements over the past year. NCGA believes that if EPA is going to grant retroactive waivers to cut volume requirements for certain refineries, then EPA must also reallocate those gallons to others, so the obligation to blend renewable fuels is not lost.

"Every gallon of renewable fuel blending waived by EPA reduces the clean air benefits of the RFS and costs consumers choice and money at the pump, particularly today when ethanol is considerably less expensive than gasoline. EPA is also missing an opportunity to propose the removal of the outdated regulatory barrier limiting year-round sales of ethanol blends greater than 10 percent, such as E15.

"America's farmers are experiencing their lowest net farm incomes since 2006, along with the increasing threat of a trade war. The EPA can provide more certainty to farmers by addressing the gallons already exempted, spelling out how future exemptions will be handled to ensure waived gallons are reallocated and moving forward with a stronger RFS that supports America's farmers and their rural communities."

About the National Corn Growers Association
Founded in 1957, the National Corn Growers Association represents

nearly 40,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 49 affiliated state organizations work together to create and increase opportunities for corn growers. For more information, visit www.ncga.com.

The Wallaces Farmer:
http://www.wallacesfarmer.com/energy/reaction-epas-proposed-new-rfs-quotas

Reaction to EPA's proposed new RFS quotas
Soybean growers applaud biodiesel quota, call for EPA to halt 'unwarranted waivers'.
Jun 26, 2018

The EPA today unveiled its biofuel targets for ethanol and biodiesel in 2019 and 2020.

The proposal increases renewable volume obligations (RVOs) under the Renewable Fuel Standard by 3% in 2019, from 19.29 billion gallons to 19.88 billion gallons. The proposal maintains the current 15-million-gallon target for corn ethanol and increases cellulosic and advanced biofuel requirements by 100 million gallons and 600 million gallons, respectively. "It is promising that the EPA is planning to increase the volume of American grown and produced fuels in our transportation sector," said National Farmers Union Senior Vice President of Public Policy and Communications Rob Larew. "However, the proposal does not do enough to account for the demand destruction of over a billion gallons of renewable fuels. The EPA should cease granting these waivers to prevent additional harm to the RFS. The agency must also find ways to reallocate gallons lost to the waivers or account for those gallons in the finalized RVOs in order to make up for harm already done.

"Additionally, the administration should look for ways to implement higher level blends of ethanol, such as E30, which expand markets for family farmers, boost rural economies, improve air quality, and lower fuel prices for consumers," Larew added.

The American Soybean Association is pleased with the proposed biodiesel and advanced biofuels volumes, saying it opens the door for the growth of biodiesel volumes.
EPA calls for biomass-based diesel (BBD) volumes within the Renewable Fuel Standard of 2.4 billion gallons for 2020, a 300 million gallon increase over the 2019 levels.
"This increase supports a valuable, growing market for soybean oil," said ASA President John Heisdorffer, a soybean producer from Keota, Iowa. "We have an increased capacity on the domestic market to meet the demand for renewable fuels blended into the nation's fuel supply."

Yet, Heisdorffer pointed out that proposed future increases in BBD volumes could be negated by the unwarranted waivers of RFS volumes that EPA has recently granted some oil refiners.

"The waived volumes need to be reallocated to ensure the RFS remains whole and that proposed future increases are meaningful," Heisdorffer said. "The biodiesel industry has the potential to support agriculture by creating jobs, diversifying fuel sources, and reducing America's dependence on foreign oil. We encourage the EPA to continue supporting growth by limiting waivers that water down the benefits of these increased levels."

Likewise, the Americans for Energy Security and Innovation (AESI) Co-Chairs Jim Talent and Rick Santorum urged the Environmental Protection Agency to put a stop to abusive waivers that have enriched well-connected refiners at the expense of rural workers and farmers.

"The RFS remains the single most successful energy policy working to reduce America's dependence on foreign oil, while delivering real economic and environmental benefits," Talent and Santorum said in a joint statement. "It creates competition at the pump that is not vulnerable to manipulation by the Organization of the Petroleum Exporting Countries (OPEC), and it has made America the world leader in biofuel production. Hundreds of thousands of rural jobs -- from manufacturing to farming – depend on the RFS, and we should be embracing opportunities to accelerate that growth in communities hit hardest by the ongoing farm crisis and rising trade barriers. Rural voters are counting on this administration to stand strong against attacks by a few well-connected refinery owners, and GOP leaders cannot afford to let them down."

The AESI also called on EPA Administrator Pruitt to put President Trump's vision for rural prosperity back on track by taking action on E15 regulations.

"Right now, it is vital that Administrator Pruitt stop delaying action on the president's pledge to lift outdated, seasonal regulations on E15 during the summer," Talent and Santorum said. "Taking this action will help to expand growth opportunities for U.S. farmers, hold down surging prices at the fuel pump, and even reduce the cost of biofuel credits for refiners that refuse to blend biofuels. There's no reason to hold E15 hostage when we could be driving growth in the heartland."

"For corn farmers, what's not included in EPA's proposed rule says more than what's included," said National Corn Growers Association President and North Dakota farmer Kevin Skunes. "It is encouraging that EPA is following Congressional intent and proposing some growth in the RFS volumes and continuing to propose an implied 15-billion-gallon volume for conventional ethanol. However, by continuing to allow retroactive exemptions to refineries, EPA will undercut the volumes in this rule, rendering the proposed blending

levels meaningless. Furthermore, the proposed rule states that EPA will not consider comments on how small refinery exemptions are accounted for."

Under the Renewable Fuel Standard, the proposed biofuel targets -- or Renewable Volume Obligations (RVOs) -- are now subject to a public comment period and will be finalized in late November.

Here's what others are saying:

"Proposed biofuel volumes are meaningless when the EPA continues to hand out waivers to the largest and most profitable companies in the world," said Kyle Gilley, Senior Vice President of External Affairs and Communications, POET. "The more-than 1.6 billion gallons that have already been waived this year equal a 4% drop in the corn grind nationally, devastating for farmers who have faced more than four years of declining farm income and poor crop prices. Administrator Pruitt and the Trump Administration must stand up for farmers, immediately reallocate those lost gallons and cease bailouts to the oil industry."

"As the state that leads the nation in renewable fuels production, Iowa farmers deserve honesty and transparency from the EPA on the Renewable Fuel Standard," said U.S. Sen. Jodi Ernst, R-Iowa. "The proposed uptick in the amount of renewable fuel that refiners blend into transportation fuel is encouraging, but does not make up for about 1.5 billion gallons lost by Administrator Pruitt's decision to hand out an unprecedented number of small refinery waivers."

"The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on," said Emily Skor, CEO, Growth Energy. "This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction."

"On its face, the EPA proposal is promising," said Brooke Coleman, executive director, Advanced Biofuels Business Council. "It reverses last year's roll back of cellulosic biofuels, and it opens growth opportunities for advanced producers who are establishing new revenue streams for rural America. But until there is some check on the EPA's abuse of waivers, regulatory uncertainty will continue to threaten investments in advanced biofuels."

Source: NFU, ASA, AESI, POET, NCGA, Office of Sen. Jodi Ernst, Growth Energy, Advanced Biofuels Business Council

KGLO AM 1300: http://www.kgloam.com/farm-groups-react-epas-2018-renewable-volume-obligations-announcement/

Audio News Report in the link.

<image001.png>: http://ethanolproducer.com/articles/15414/epa-releases-proposed-2019-rfs-rvos-fails-to-address-waivers

Quotes from: RFA, Growth Energy, The Advanced Biofuels Business Council, The American Coalition for Ethanol, The Advanced Biofuels Association, The Iowa Renewable Fuels Association, The Biomass Power Association, The Iowa Renewable Fuels Association, The Biotechnology Innovation Organization

EPA releases proposed 2019 RFS RVOs, fails to address waivers

By Erin Voegele | June 26, 2018

U.S. EPA

On June 26, the U.S. EPA released a proposed rule that aims to require 19.88 billion gallons of biofuels to be blended into the U.S. fuel supply in 2019, up from 19.29 billion gallons in 2018. The proposed volume allows for up to 15 billion gallons of corn ethanol.

The rulemaking includes proposed 2019 renewable volume obligations (RVOs) under the Renewable Fuel Standard, along with the 2020 RVO for biomass-based diesel.

Information released by the EPA shows the proposed 19.88 billion gallon RVO for 2019 includes 381 million gallons of cellulosic biofuel, 4.88 billion gallons of advanced biofuel and 2.1 billion gallons of biomass-based diesel. The 2019 RVO for biomass-based diesel was set last year. The proposed 2019 RVOs would allow for up to 15 billion gallons of conventional biofuel to meet the annual blending requirement, most of which is corn ethanol.

When compared to blending obligations finalized for this year, the rulemaking proposes to increase the RVO for cellulosic biofuel from the 288 million gallons in 2018 to 381 million gallons in 2019, an increase of 93 million gallons. The agency has proposed to increase the RVO for advanced biofuel from 4.29 billion gallons in 2018 to 4.88 billion gallons in 2019, an increase of 590 million gallons. The overall RVO for total biofuels would increase from 19.29 in 2018 to 19.88 in 2019 an increase of approximately 590 million gallons. Conventional biofuels, including corn ethanol, can be used to meet a statutory maximum of 15 billion gallons of the 2019 RVO.

The rulemaking also proposes to set the 2020 RVO for biomass-based diesel at 2.43 billion gallons, up 330 million gallons when compared to the 2019 and 2018 RVOs of 2.1 billion gallons.

On a percentage basis, the proposed rule would require total renewable fuel to comprise 10.88 percent of U.S. transportation fuel next year, including 2.67 percent advanced biofuel, 1.72 percent biomass-based diesel and 0.209 percent cellulosic biofuel.

A comment period on the EPA's proposal is set to open following publication of the proposed rule in the Federal Register. Comments can be filed online at www.Regulations.gov under Docket ID No. EPA-HQ-OAR-2018-0167. The comment period is set to close Aug. 17. The EPA also indicated it will scheduled a

public hearing on the proposed rule soon. A pre-publication version of the proposed rule can be downloaded from the agency's website.
Several representatives of the biofuels industry have spoken out in response to the EPA's proposed rulemaking, with most criticizing the proposal for failing to address demand destruction caused the by EPA's recent misuse of its hardship waiver authority.

Growth Energy stressed that the proposed 2019 RVOs can't undo damage caused by the EPA's misuse of hardship waivers. "The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on," said Emily Skor, CEO of Growth Energy. This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction." "The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on. This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction.

"The same holds true for advanced and cellulosic biofuels, which are rapidly delivering new economic opportunities for rural communities and driving America's leadership in clean energy," Skor continued. "The targets proposed today promise growth, but those investments can't move ahead unless the EPA makes it clear that goals set by Congress will be enforced."

The Renewable Fuels Association said the proposed 2019 RVOs have dealt another blow to America's farmers and ethanol producers. "It would seem a hollow and cynical exercise to praise or thank EPA Administrator Pruitt for appearing to follow the statute with this proposed RVO," said Bob Dinneen, president and CEO of the RFA. "While we acknowledge that the implied 15-billion-gallon requirement for conventional biofuels like corn ethanol should, in theory, send a positive signal to the market, it comes with the backdrop of 1.6 billion gallons of demand destructed by illegal waivers to small refineries and no commitment that EPA is changing its approach to granting these exemptions. Thus, the proposal means nothing until EPA reallocates those lost gallons and sets forth a more transparent and rational process that assures small refinery waivers are not abused or granted unnecessarily. Unfortunately, over the past few days, Administrator Pruitt buckled yet again to pressure from the oil industry and removed language from this proposal that would have indicated the agency's interest in addressing what has clearly become an abused process. That's not just wrong, it flies in the face of the president's commitment to farmers and consumers across the country who support the increased use of renewable fuels."

"This RVO proposal is a paean to missed opportunities for the sole purpose of benefiting the oil industry that continues to thwart the development of biofuels at every turn," Dinneen continued. "The

agency missed the opportunity to address the flawed and opaque small refinery waiver process. It failed to address the court-ordered remand of 500 million gallons in forfeited demand from the 2016 RVO. And it once again missed an opportunity to address the disparate treatment of E10 and E15 with regard to volatility regulation. EPA needs to stop tilting to the whims of the oil industry in implementing the nation's renewable fuel program, and work to create demand for ethanol, lowering prices at the pump for consumers and creating economic opportunities for farmers across the country."

The Advanced Biofuels Business Council said that regulatory uncertainty will continue until the EPA stops misusing waivers. "On its face, the EPA proposal is promising," said Brooke Coleman, executive director of the ABBC. "It reverses last year's roll back of cellulosic biofuels, and it opens growth opportunities for advanced producers who are establishing new revenue streams for rural America. But until there is some check on the EPA's abuse of waivers, regulatory uncertainty will continue to threaten investments in advanced biofuels.

"The EPA must demonstrate that targets will not be undercut by refinery handouts," Coleman continued. "At the same time, Administrator Pruitt must take concrete action on the president's pledge to open new markets for advanced biofuels by lifting seasonal regulations on E15.

"The RFS supports hundreds of thousands of manufacturing jobs, creates new market opportunities for America's farmers and innovators, and has attracted billions of dollars of investment in first-of-a-kind technologies in the advanced and cellulosic biofuels industry," Coleman said. "These fuels are poised to drive the next manufacturing wave across America, but promises won't get us there. We need action."

The American Coalition for Ethanol called the proposed rule a missed opportunity to reallocate waived biofuel volumes. "While EPA says it is proposing to maintain the 15-billion-gallon conventional blending target for 2019, in reality Administrator Pruitt's ongoing actions will reduce ethanol blending far below 15 billion gallons," said Brian Jennings, CEO of ACE. "This is a missed opportunity to reallocate the 1.5 billion gallons Administrator Pruitt has waived through Small Refinery Exemptions and to restore the 500 million gallon shortfall the D.C. Circuit Court ordered EPA to deal with following the Americans for Clean Energy et al v. EPA lawsuit.

"Administrator Pruitt continues to disregard President Trump's campaign promise that 'the EPA should ensure that biofuel blend levels match the statutory level set by Congress under the RFS.' The 2019 proposed RVOs reinforce our decision to challenge certain Small Refinery Exemptions in Court and to petition EPA to account for lost volumes of renewable fuel resulting from the unprecedented

number of retroactive Small Refinery Exemptions granted by the agency," Jennings said.

"The proposal to modestly increase cellulosic and advanced RVOs for 2019 is welcome but EPA's waivers and exemptions have collapsed RIN prices across-the-board discouraging investment in the production and use of cellulosic and advanced biofuels," he continued. "A strong rural economy depends upon growing the use of renewable fuels. The president needs to direct Administrator Pruitt to discard EPA's refiner win-at-all-costs mentality and carry out another of his promises to allow E15 and higher blends market access year-round.

The Advanced Biofuels Association praised the EPA for increasing the RVOs for advanced biofuel, cellulosic biofuel and biomass-based diesel, but expressed concern over the EPA's continued use of small refiner hardship waivers. "ABFA is pleased to see that EPA has continued to increase the overall RVO mandates for the RFS program and particularly for the advanced biofuel pool," said Michael McAdams, president of ABFA. "ABFA is proud to represent several members commercializing new technologies to produce increasing volumes of cellulosic fuels. Additional cellulosic facilities are scheduled to come on line in the near future, and we are pleased to see an RVO that will ensure a market for these new gallons.

"We are also pleased with the continued success of the biodiesel and renewable diesel sectors, as these fuels cumulatively provide the greatest greenhouse gas (GHG) emissions reductions under the RFS program at this time," McAdams said. "Three of our members are currently building new plants in the United States to produce the drop-in diesel fuels of the future."

"Despite these increases, we continue to be concerned by the rate at which EPA is granting small refiner exemptions under the RFS program," McAdams continued. "These exemptions have a net effect of reducing the volume of renewable fuels blended in the United States. ABFA will continue to fight this effort to undermine the RVO."

The National Biodiesel Board said that the proposed increase to biomass-based diesel and advanced biofuel RVOs sends a hopeful signal to the biodiesel industry, but cautioned that small refiner hardship waivers are having a negative impact on the industry. "We welcome the Administration's proposal to grow the biodiesel volumes, following two flatlined years. This is a positive signal for our industry and we're pleased the EPA has acknowledged our ability to produce higher volumes. We've consistently demonstrated that we can do much more," said Kurt Kovarik, vice president of federal affairs at NBB. "The fact remains, though, instability in the RFS program caused by the EPA has done significant damage that can only be rectified for biodiesel through consistent and predictable growth in volumes."

The Biomass Power Association criticized the EPA for failing to process RFS fuel pathways for biomass power. "Despite plainly qualifying as a cellulosic transportation fuel when paired with electric vehicles, EPA has so far failed to process the pathways for biomass power that are before the agency," said Bob Cleaves, CEO of the BPA.

"Beyond the clear qualifications of biomass power under the RFS, our industry provides innumerable benefits on local, regional and national levels," Cleaves said. "Our members create renewable power from the unusable parts of agricultural crops and low value wood fibers that are cleared from forests or left over after manufacturing higher value products. We employ Americans in rural areas, support the larger forest products supply chain, and generate tax revenue where it is most needed."

The Iowa Renewable Fuels Association also criticized the EPA for failing to correct its past waiver use. "This is a status quo proposal for ethanol and the status quo is bad," said Monte Shaw, executive director of the IRFA. "The ethanol number isn't worth the paper it's written on so long as Scott Pruitt is granting small refinery exemptions left and right—even beyond what the Department of Energy recommends. With Pruitt in charge of the EPA, the ethanol number in reality is more like 13.5 billion gallons, which is well below what President Trump promised and what it takes to grow demand. Rural America is already suffering from low commodity prices and tariff wars, and today's proposal is a missed opportunity to provide good news for consumers and farmers."

"We urge President Trump to direct the EPA to rein in out-of-control small refinery exemptions, to order the reallocation of previous exemptions, to address the 500 million gallons owed to conventional biofuels from the illegal 2016 RFS reduction, and to expedite new advanced biofuel pathway approvals," Shaw continued. "Rural America needs the RFS to work as intended, and it will if the EPA stops undermining the RFS at every turn."

The Biotechnology Innovation Organization said the EPA's decision to increase advanced and cellulosic biofuel targets is helpful, the organization criticized the agency for failing to reallocate displaced gallons caused by hardship waivers. "We welcome EPA's decision to raise the advanced and cellulosic biofuel volumes in its proposal, which will help propel the industry forward in 2019," said Brent Erickson, executive vice president of BIO's Industrial and Environmental Section. "However, the advanced biofuels industry is still suffering the effects of the agency's decision to arbitrarily limit growth for low carbon biofuels in 2018, by setting a backward looking RFS requirement. The 2019 volumes should be higher, to correct from last year and also spur growth for the coming year.

"EPA's decision to forgo reallocation of gallons displaced from small refinery waivers at the behest of the petroleum industry is

disappointing," Erickson said. "In order to ensure a favorable and supportive investment climate for advanced and cellulosic biofuel producers, EPA must reallocate the gallons from the small refinery waivers already issued and into the future.

"Finally, the Agency must do more to approve new advanced and cellulosic biofuel technologies and production facilities, such as those that use corn kernel fiber as a feedstock, to adequately account for the potential of new technologies as it sets the final 2019 volumes," Erickson continued. "A strong policy and regulatory environment is critical to supporting the type of innovation that will help strengthen the biobased economy, create good paying jobs and help revitalize rural economies across the country."

Catherine C. Milbourn
Senior Public Liaison Specialist
Office of the Administrator
U.S. EPA HQ
Washington, D.C.
202-564-7849 (office)
Ex. 6 (mobile)

Message

From: Braniff, Mimi P [mimi.braniff@delta.com]
Sent: 4/27/2018 1:55:38 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: Small Refiners Press Release re Hardship Waivers April 2018 Clean (003).docx
Attachments: Small Refiners Press Release re Hardship Waivers April 2018 Clean (003).docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Williams, Brendan" <Brendan.Williams@pbfenergy.com>
Date: April 26, 2018 at 6:54:55 PM EDT
To: Salo Zelermyer <Salo.Zelermyer@valero.com>, Chris Parinello <Chris.Parinello@valero.com>, Mimi P Braniff <mimi.braniff@delta.com>, "Barfield, Blake" <Blake.Barfield@HollyFrontier.com>, "Frank.Maisano@bracewelllaw.com" <Frank.Maisano@bracewelllaw.com>, "Segal, Scott" <Scott.Segal@bracewelllaw.com>, "Nathanson, Paul" <paul.nathanson@bracewell.com>, Patrick O'Connor <oconnor@cgcn.com>
Subject: [EXTERNAL] FW: Small Refiners Press Release re Hardship Waivers April 2018 Clean (003).docx

See attached. Let's help amplify!

From: Johnson Koch, LeAnn M. (Perkins Coie) [LeAnnJohnson@perkinscoie.com]
Sent: Thursday, April 26, 2018 6:40 PM
To: aadragna@politico.com; jeffrey.beattie@ihs.com; kbogardus@eenews.net; tcama@thehill.com; bdabbs@nationaljournal.com; mdaily@politico.com; coral.davenport@nytimes.com; jdlouhy1@bloomberg.net; mdaly@ap.org; jeremydillon@cqrollcall.com; timothy.gardner@thomsonreuters.com; igheorghiu@morningconsult.com; amy@axios.com; mhobson@eenews.net; mgreen@thehill.com; eholden@politico.com; rjervis@usatoday.com; chris.mooney@washpost.com; jludden@npr.org; anatter5@bloomberg.net; tim.puko@wsj.com; enawaguna@cq.com; ctraywick@bloomberg.net; Valerie.Volcovici@thomsonreuters.com; bruce.wallace@thomsonreuters.com; bwingfield3@bloomberg.net
Subject: Small Refiners Press Release re Hardship Waivers April 2018 Clean (003).docx

Attached is a press release from the small refiners coalition on small refinery hardship waivers under the Renewable Fuel Standard.

LeAnn Johnson Koch | Perkins Coie LLP
202.654.6209 (office)
202.253.8152 (mobile)

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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Message

From: Renshaw, Jarrett (Reuters) [jarrett.renshaw@thomsonreuters.com]
Sent: 7/23/2018 7:48:06 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Reuters

I am heading to DC tomorrow and wondering if you were around at all. Would like to say hello

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Wednesday, June 20, 2018 8:23 AM
To: Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>
Subject: Re: Reuters

Personal Phone / Ex. 6 I'm actually on the plane. Takes off in 8

Sent from my iPhone

On Jun 20, 2018, at 8:00 AM, Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com> wrote:

> What's your #?
>
> Get Outlook for iOS
>
> ---
>
> **From:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Sent:** Tuesday, June 19, 2018 11:30:14 PM
> **To:** Renshaw, Jarrett (Reuters)
> **Subject:** Re: Reuters
>
> Hey Jarrett,
>
> Apologies for the delayed response. Our server was experiencing problems all day and no one at epa was receiving any emails other than internal emails from an @epa.gov email address. As such, I'm just now getting to your below email.
>
> Your story as you suggest below is not accurate. This is all background.
> There is only one instance since Administrator Pruitt has made small refinery exemption decisions where we have disagreed with DOE. In that one instance Doe recommended a denial and we granted based on additional information the company provided that DOE did not take into account. In all other instances where petitions were granted, DOE had recommended a grant and we followed that recommendation by granting. Regarding the partial grant versus whole - DOE has express authority from Congress (laid out in the 2014 appropriations language) to suggest partial waivers. EPA was not given this same explicit authority and accordingly, has taken the approach (an approach established well

before Administrator Pruitt came on board) that we have the authority to either grant in full or deny in full.

I caveat that there may be one exception to this general approach but I have only heard this in passing from our technical team. I have asked for that explicit example (where epa granted a partial waiver) but to date, have not received the information. I can run this down tomorrow to confirm whether this has actually ever happened but it will take a while as I will be traveling and we are trying to get the RVOs out the door so all of our energy is focused on that.

Give me a call if you have any questions. I'm flying out early tomorrow so will be available before 8:30 am.

Best,
Mandy

Sent from my iPhone

On Jun 19, 2018, at 7:24 PM, Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com> wrote:

> Thanks for the comment and I just wanted to highlight one thing. Our story says that EPA has granted full small refinery exemptions to refineries even when the DOE recommended only partial exemptions. We report that it happened on numerous occasions and is a break from tradition. Administrator Pruitt said this only happened one time and we have three sources refuting that, saying it was more widespread.
>
> I just wanted to make sure it was clear what we are reporting. Our story is going out tomorrow.
>
> Jarrett Renshaw
> National Energy Markets Reporter
> Reuters
> jarrett.renshaw@thomsonreuters.com
> Office: (646) 223-6193
> Cell: (917) 482-9738
> Twitter: @jarrettrenshaw
> IM: jrenshaw_reuters08
>
> ---
>
> **From:** Block, Molly [mailto:block.molly@epa.gov]
> **Sent:** Monday, June 18, 2018 5:59 PM
> **To:** Renshaw, Jarrett (Reuters) <jarrett.renshaw@thomsonreuters.com>; Press <Press@epa.gov>
> **Cc:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Subject:** RE: Reuters
>
> Jarrett –
>
> Sorry for the delay, here you go:
>
> "EPA doesn't comment on pending litigation."

"Congress has directed EPA to administer the small refineries exemption program based on input from the U.S. Department of Energy. From the beginning of this administration, we have worked closely with our partners at DOE on this issue."

Off the record: There are multiple pending lawsuits challenging EPA's program and specific exemptions, so it is not appropriate to discuss the legal framework.

From: Renshaw, Jarrett (Reuters) [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Monday, June 18, 2018 4:19 PM
To: Press <Press@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Reuters

I wanted to circle back to see if a response was coming. Appreciate it.

Jarrett Renshaw
National Energy Markets Reporter
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Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Monday, June 18, 2018 9:23 AM
To: 'press@epa.gov' <press@epa.gov>
Subject: RE: Reuters

Also, one more thing: Mr. Pruitt said this last week: "Every exemption we've granted is in line with the Dept of Energy."

That is not accurate. How does Mr. Pruitt defend those remarks?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Renshaw, Jarrett (Reuters)
Sent: Monday, June 18, 2018 9:03 AM
To: 'press@epa.gov' <press@epa.gov>
Subject: Reuters

Hello, this is Jarrett Renshaw, an energy reporter at Reuters. We are writing a story regarding the EPA's handling of the small refinery waiver program under the U.S. Renewable Fuel Standard. The story could run as early as late afternoon today, but likely tomorrow morning.

Based on sources, we are reporting that the EPA has ignored recommendations from the Department of Energy to award partial waivers from the RFS. This is a break from tradition, where the EPA has largely taken the DOE's advice. We are citing court records where the EPA considers the DOE a primary factor in their decision making.

We are also reporting that Administrator Pruitt was the one who decided to expand the program beyond the DOE reccomendations, in part because of his efforts to help refiners who have asked for regulatory relief.

We are reporting that Andeavor was one of the companies who get the extra relief.

Why is the EPA breaking from tradition and ignoring the DOE.

How do you explain Mr. Pruitt's role in the decisions?

Any other comments.

Jarrett Renshaw
National Energy Markets Reporter
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jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 2/16/2018 1:40:28 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: RFS small refinery hardship update

Thanks.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Feb 15, 2018, at 8:38 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Bens update is below. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Date: February 7, 2018 at 3:35:28 PM EST
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>
Subject: RFS small refinery hardship update

Hi Mandy,

You asked for a status update on RFS small refinery hardship petitions. As of today, we have issued decisions on 16 petitions for 2016 small refinery exemptions, none yet for 2017.

There are four petitions for 2016 and 25 petitions for 2017 remaining in the evaluation process. We do not have DOE recommendations for any of those yet, although we understand that DOE has scored one of them and expects to send us that recommendation soon.

We received the 29 remaining petitions between July, 2017 and late January, 2018 and sent them to DOE as we deemed them complete. DOE understands that our goal is to get the decisions out by the end of this month so that refineries will know their status a full month in advance of the March 31, 2018 compliance deadline for the 2017 compliance year.

Please let us know if you need anything further. I'll keep you apprised as things move forward. Ben

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 6/27/2018 10:35:19 PM
To: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: RE: RFS Statements and Articles

Santorum?

From: Bennett, Tate
Sent: Wednesday, June 27, 2018 6:22 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Fwd: RFS Statements and Articles

Thought you all also might want to see the below general responses from ethanol/ commodity groups on RVO's yesterday. I also noticed Santorum's involvement on the Ag side, just to flag:

The AESI also called on EPA Administrator Pruitt to put President Trump's vision for rural prosperity back on track by taking action on E15 regulations.

"Right now, it is vital that Administrator Pruitt stop delaying action on the president's pledge to lift outdated, seasonal regulations on E15 during the summer," Talent and Santorum said. "Taking this action will help to expand growth opportunities for U.S. farmers, hold down surging prices at the fuel pump, and even reduce the cost of biofuel credits for refiners that refuse to blend biofuels. There's no reason to hold E15 hostage when we could be driving growth in the heartland."

Begin forwarded message:

From: "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
Date: June 27, 2018 at 5:41:10 PM EDT

To: "Bennett, Tate" <Bennett.Tate@epa.gov>
Cc: "Dewey, Amy" <Dewey.Amy@epa.gov>, "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
Subject: RFS Statements and Articles

Tate,

I included the links to the articles. I will continue to look.

Cathy

From Morning Ag Clips: https://www.morningagclips.com/statements-released-on-epa-biofuel-plans/

Statements released on EPA biofuel plans

U.S. Environmental Protection Agency has announced biofuel obligations for 2019

PUBLISHED ON JUNE 27, 2018

WASHINGTON — *Editor's note: The following statements from the National Farmers Union, American Soybean Association, and National Corn Growers Association concern the EPA's 2019 biofuel requirements, under the Renewable Fuel Standards program.*

Proposed Volume Obligations are Promising, but Not Enough
More Must Be Done to Address Lost Demand for Renewable Fuels

The U.S. Environmental Protection Agency (EPA) today proposed increasing the renewable volume obligations (RVOs) under the Renewable Fuel Standard (RFS) by 3 percent in 2019, from 19.29 billion gallons to 19.88 billion gallons. The proposal would maintain the current 15-million-gallon target for corn ethanol and increase cellulosic and advanced biofuel requirements by 100 million gallons and 600 million gallons, respectively.

Rob Larew, National Farmers Union (NFU) Senior Vice President of Public Policy and Communications, was encouraged by the volume increase but expressed concern about the fact that it does not address the misappropriation of "hardship waivers," which has reduced the volume of renewable fuels in the transportation sector by as much as 1.6 billion gallons.

Larew issued the following statement in response to the proposal:

"It is promising that the EPA is planning to increase the volume of American grown and produced fuels in our transportation sector. However, the proposal

does not do enough to account for the demand destruction of over a billion gallons of renewable fuels. The EPA should cease granting these waivers to prevent additional harm to the RFS. The agency must also find ways to reallocate gallons lost to the waivers or account for those gallons in the finalized RVOs in order to make up for harm already done.

"Additionally, the administration should look for ways to implement higher level blends of ethanol, such as E30, which expand markets for family farmers, boost rural economies, improve air quality, and lower fuel prices for consumers."

EPA Increases Proposed RFS Volumes
Environmental Protection Agency to raise Renewable Fuel Standard levels in 2019-20

The American Soybean Association (ASA) is pleased with the proposed biodiesel and advanced biofuels volumes released today by the Environmental Protection Agency (EPA), which opens the door for the growth of future biodiesel volumes.

In the rule, EPA calls for biomass-based diesel (BBD) volumes within the Renewable Fuel Standard (RFS) of 2.4 billion gallons for 2020, a 300 million gallon increase over the 2019 levels.

ASA President John Heisdorffer, a soybean producer from Keota, Iowa, applauded EPA, saying, "This increase supports a valuable, growing market for soybean oil. We have an increased capacity on the domestic market to meet the demand for renewable fuels blended into the nation's fuel supply."

Yet, Heisdorffer pointed out that proposed future increases in BBD volumes could be negated by the unwarranted waivers of RFS volumes that EPA has recently granted some oil refiners.

"The waived volumes need to be reallocated to ensure the RFS remains whole and that proposed future increases are meaningful," Heisdorffer explained. "The biodiesel industry has the potential to support agriculture by creating jobs, diversifying fuel sources, and reducing America's dependence on foreign oil. We encourage the EPA to continue supporting growth by limiting waivers that water down the benefits of these increased levels."

NCGA Statement: EPA Proposed Biofuel Requirements

The following is a statement from North Dakota farmer Kevin Skunes, president of the National Corn Growers Association (NCGA), on EPA's Proposed Biofuel Requirements for 2019.

"For corn farmers, what's not included in EPA's proposed rule says more than what's included.

"It is encouraging that EPA is following Congressional intent and proposing some growth in the RFS volumes and continuing to propose an implied 15-billion-gallon volume for conventional ethanol. However, by continuing to allow retroactive exemptions to refineries, EPA will undercut the volumes in this rule, rendering the proposed blending levels meaningless. Furthermore, the proposed rule states that EPA will not consider comments on how small refinery exemptions are accounted for.

"EPA also had an opportunity to propose a remedy for the 1.6 billion gallons the agency has retroactively waived from the 2016 and 2017 volume requirements over the past year. NCGA believes that if EPA is going to grant retroactive waivers to cut volume requirements for certain refineries, then EPA must also reallocate those gallons to others, so the obligation to blend renewable fuels is not lost.

"Every gallon of renewable fuel blending waived by EPA reduces the clean air benefits of the RFS and costs consumers choice and money at the pump, particularly today when ethanol is considerably less expensive than gasoline. EPA is also missing an opportunity to propose the removal of the outdated regulatory barrier limiting year-round sales of ethanol blends greater than 10 percent, such as E15.

"America's farmers are experiencing their lowest net farm incomes since 2006, along with the increasing threat of a trade war. The EPA can provide more certainty to farmers by addressing the gallons already exempted, spelling out how future exemptions will be handled to ensure waived gallons are reallocated and moving forward with a stronger RFS that supports America's farmers and their rural communities."

About the National Corn Growers Association
Founded in 1957, the National Corn Growers Association represents nearly 40,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 49 affiliated state organizations work together to create and increase opportunities for corn growers. For more information, visit www.ncga.com.

The Wallaces Farmer: http://www.wallacesfarmer.com/energy/reaction-epas-proposed-new-rfs-quotas

Reaction to EPA's proposed new RFS quotas
Soybean growers applaud biodiesel quota, call for EPA to halt 'unwarranted waivers'.
Jun 26, 2018

The EPA today unveiled its biofuel targets for ethanol and biodiesel in 2019 and 2020.

The proposal increases renewable volume obligations (RVOs) under the Renewable Fuel Standard by 3% in 2019, from 19.29 billion gallons to 19.88 billion gallons. The proposal maintains the current 15-million-gallon target for corn ethanol and increases cellulosic and advanced biofuel requirements by 100 million gallons and 600 million gallons, respectively.

"It is promising that the EPA is planning to increase the volume of American grown and produced fuels in our transportation sector," said National Farmers Union Senior Vice President of Public Policy and Communications Rob Larew. "However, the proposal does not do enough to account for the demand destruction of over a billion gallons of renewable fuels. The EPA should cease granting these waivers to prevent additional harm to the RFS. The agency must also find ways to reallocate gallons lost to the waivers or account for those gallons in the finalized RVOs in order to make up for harm already done.

"Additionally, the administration should look for ways to implement higher level blends of ethanol, such as E30, which expand markets for family farmers, boost rural economies, improve air quality, and lower fuel prices for consumers," Larew added.

The American Soybean Association is pleased with the proposed biodiesel and advanced biofuels volumes, saying it opens the door for the growth of biodiesel volumes.
EPA calls for biomass-based diesel (BBD) volumes within the Renewable Fuel Standard of 2.4 billion gallons for 2020, a 300 million gallon increase over the 2019 levels.
"This increase supports a valuable, growing market for soybean oil," said ASA President John Heisdorffer, a soybean producer from Keota, Iowa. "We have an increased capacity on the domestic market to meet the demand for renewable fuels blended into the nation's fuel supply."

Yet, Heisdorffer pointed out that proposed future increases in BBD volumes could be negated by the unwarranted waivers of RFS volumes that EPA has recently granted some oil refiners.

"The waived volumes need to be reallocated to ensure the RFS remains whole and that proposed future increases are meaningful," Heisdorffer said. "The biodiesel industry has the potential to support agriculture by creating jobs, diversifying fuel sources, and reducing America's dependence on foreign oil. We encourage the EPA to continue supporting growth by limiting waivers that water down the benefits of these increased levels."

Likewise, the Americans for Energy Security and Innovation (AESI) Co-Chairs Jim Talent and Rick Santorum urged the Environmental Protection Agency to put a stop to abusive waivers that have enriched well-connected refiners at the expense of rural workers and farmers.

"The RFS remains the single most successful energy policy working to reduce America's dependence on foreign oil, while delivering real economic and environmental benefits," Talent and Santorum said in a joint statement. "It creates competition at the pump that is not vulnerable to manipulation by the Organization of the Petroleum Exporting Countries (OPEC), and it has made America the world leader in biofuel production. Hundreds of thousands of rural jobs -- from manufacturing to farming – depend on the RFS, and we should be embracing opportunities to accelerate that growth in communities hit hardest by the ongoing farm crisis and rising trade barriers. Rural voters are counting on this administration to stand strong against attacks by a few well-connected refinery owners, and GOP leaders cannot afford to let them down."

The AESI also called on EPA Administrator Pruitt to put President Trump's vision for rural prosperity back on track by taking action on E15 regulations.

"Right now, it is vital that Administrator Pruitt stop delaying action on the president's pledge to lift outdated, seasonal regulations on E15 during the summer," Talent and Santorum said. "Taking this action will help to expand growth opportunities for U.S. farmers, hold down surging prices at the fuel pump, and even reduce the cost of biofuel credits for refiners that refuse to blend biofuels. There's no reason to hold E15 hostage when we could be driving growth in the heartland."

"For corn farmers, what's not included in EPA's proposed rule says more than what's included," said National Corn Growers Association President and North Dakota farmer Kevin Skunes. "It is encouraging that EPA is following Congressional intent and proposing some growth in the RFS volumes and continuing to propose an implied 15-billion-gallon volume for conventional ethanol. However, by continuing to allow retroactive exemptions to refineries, EPA will undercut the volumes in this rule, rendering the proposed blending levels meaningless. Furthermore, the proposed rule states that EPA will not consider comments on how small refinery exemptions are accounted for."

Under the Renewable Fuel Standard, the proposed biofuel targets -- or Renewable Volume Obligations (RVOs) -- are now subject to a public comment period and will be finalized in late November.

Here's what others are saying:

"Proposed biofuel volumes are meaningless when the EPA continues to hand out waivers to the largest and most profitable companies in the world," said Kyle Gilley, Senior Vice President of External Affairs and Communications, POET. "The more-than 1.6 billion gallons that have already been waived this year equal a 4% drop in the corn grind nationally, devastating for farmers who have faced more than four years of declining farm income and poor crop prices. Administrator Pruitt and the Trump Administration must stand up for farmers, immediately reallocate those lost gallons and cease bailouts to the oil industry."

"As the state that leads the nation in renewable fuels production, Iowa farmers deserve honesty and transparency from the EPA on the Renewable Fuel Standard," said U.S. Sen. Jodi Ernst, R-Iowa. "The proposed uptick in the amount of renewable fuel that refiners blend into transportation fuel is encouraging, but does not make up for about 1.5 billion gallons lost by Administrator Pruitt's decision to hand out an unprecedented number of small refinery waivers."

"The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on," said Emily Skor, CEO, Growth Energy. "This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction."

"On its face, the EPA proposal is promising," said Brooke Coleman, executive director, Advanced Biofuels Business Council. "It reverses last year's roll back of

cellulosic biofuels, and it opens growth opportunities for advanced producers who are establishing new revenue streams for rural America. But until there is some check on the EPA's abuse of waivers, regulatory uncertainty will continue to threaten investments in advanced biofuels."

Source: NFU, ASA, AESI, POET, NCGA, Office of Sen. Jodi Ernst, Growth Energy, Advanced Biofuels Business Council

KGLO AM 1300: http://www.kgloam.com/farm-groups-react-epas-2018-renewable-volume-obligations-announcement/

Audio News Report in the link.

Ethanol PRODUCER MAGAZINE: http://ethanolproducer.com/articles/15414/epa-releases-proposed-2019-rfs-rvos-fails-to-address-waivers

Quotes from: RFA, Growth Energy, The Advanced Biofuels Business Council, The American Coalition for Ethanol, The Advanced Biofuels Association, The Iowa Renewable Fuels Association, The Biomass Power Association, The Iowa Renewable Fuels Association, The Biotechnology Innovation Organization

EPA releases proposed 2019 RFS RVOs, fails to address waivers

By Erin Voegele | June 26, 2018

U.S. EPA

On June 26, the U.S. EPA released a proposed rule that aims to require 19.88 billion gallons of biofuels to be blended into the U.S. fuel supply in 2019, up from 19.29 billion gallons in 2018. The proposed volume allows for up to 15 billion gallons of corn ethanol.

The rulemaking includes proposed 2019 renewable volume obligations (RVOs) under the Renewable Fuel Standard, along with the 2020 RVO for biomass-based diesel.

Information released by the EPA shows the proposed 19.88 billion gallon RVO for 2019 includes 381 million gallons of cellulosic biofuel, 4.88 billion gallons of advanced biofuel and 2.1 billion gallons of biomass-based diesel. The 2019 RVO for biomass-based diesel was set last year. The proposed 2019 RVOs would allow for up to 15 billion gallons of conventional biofuel to meet the annual blending requirement, most of which is corn ethanol.

When compared to blending obligations finalized for this year, the rulemaking proposes to increase the RVO for cellulosic biofuel from the 288 million gallons in 2018 to 381 million gallons in 2019, an increase of 93 million gallons. The agency has proposed to increase the RVO for advanced biofuel from 4.29 billion gallons in 2018 to 4.88 billion gallons in 2019, an increase of 590 million gallons. The overall RVO for total biofuels would increase from 19.29 in 2018 to 19.88 in 2019 an increase of approximately 590 million gallons. Conventional biofuels, including corn ethanol, can be used to meet a statutory maximum of 15 billion gallons of the 2019 RVO.

The rulemaking also proposes to set the 2020 RVO for biomass-based diesel at 2.43 billion gallons, up 330 million gallons when compared to the 2019 and 2018 RVOs of 2.1 billion gallons.

On a percentage basis, the proposed rule would require total renewable fuel to comprise 10.88 percent of U.S. transportation fuel next year, including 2.67 percent advanced biofuel, 1.72 percent biomass-based diesel and 0.209 percent cellulosic biofuel.

A comment period on the EPA's proposal is set to open following publication of the proposed rule in the Federal Register. Comments can be filed online at www.Regulations.gov under Docket ID No. EPA-HQ-OAR-2018-0167. The comment period is set to close Aug. 17. The EPA also indicated it will scheduled a public hearing on the proposed rule soon. A pre-publication version of the proposed rule can be downloaded from the agency's website.
Several representatives of the biofuels industry have spoken out in response to the EPA's proposed rulemaking, with most criticizing the proposal for failing to address demand destruction caused the by EPA's recent misuse of its hardship waiver authority.

Growth Energy stressed that the proposed 2019 RVOs can't undo damage caused by the EPA's misuse of hardship waivers. "The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on," said Emily Skor, CEO of Growth Energy. This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction." "The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on. This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction.

"The same holds true for advanced and cellulosic biofuels, which are rapidly delivering new economic opportunities for rural communities and driving America's leadership in clean energy," Skor continued. "The targets proposed today promise growth, but those investments can't move ahead unless the EPA makes it clear that goals set by Congress will be enforced."

The Renewable Fuels Association said the proposed 2019 RVOs have dealt another blow to America's farmers and ethanol producers. "It would seem a hollow and cynical exercise to praise or thank EPA Administrator Pruitt for appearing to follow the statute with this proposed RVO," said Bob Dinneen, president and CEO of the RFA. "While we acknowledge that the implied 15-billion-gallon requirement for conventional biofuels like corn ethanol should, in theory, send a positive signal to the market, it comes with the backdrop of 1.6 billion gallons of demand destructed by illegal waivers to small refineries and no commitment that EPA is changing its approach to granting these exemptions. Thus, the proposal means nothing until EPA reallocates those lost gallons and sets forth a more transparent and rational process that assures small refinery waivers are not abused or granted unnecessarily. Unfortunately, over the past few days, Administrator Pruitt buckled yet again to pressure from the oil industry and removed language from this proposal that would have indicated the agency's interest in addressing what has clearly become an abused process. That's not just wrong, it flies in the face of the president's commitment to farmers and consumers across the country who support the increased use of renewable fuels."

"This RVO proposal is a paean to missed opportunities for the sole purpose of benefiting the oil industry that continues to thwart the development of biofuels at every turn," Dinneen continued. "The agency missed the opportunity to address the flawed and opaque small refinery waiver process. It failed to address the

court-ordered remand of 500 million gallons in forfeited demand from the 2016 RVO. And it once again missed an opportunity to address the disparate treatment of E10 and E15 with regard to volatility regulation. EPA needs to stop tilting to the whims of the oil industry in implementing the nation's renewable fuel program, and work to create demand for ethanol, lowering prices at the pump for consumers and creating economic opportunities for farmers across the country."

The Advanced Biofuels Business Council said that regulatory uncertainty will continue until the EPA stops misusing waivers. "On its face, the EPA proposal is promising," said Brooke Coleman, executive director of the ABBC. "It reverses last year's roll back of cellulosic biofuels, and it opens growth opportunities for advanced producers who are establishing new revenue streams for rural America. But until there is some check on the EPA's abuse of waivers, regulatory uncertainty will continue to threaten investments in advanced biofuels.

"The EPA must demonstrate that targets will not be undercut by refinery handouts," Coleman continued. "At the same time, Administrator Pruitt must take concrete action on the president's pledge to open new markets for advanced biofuels by lifting seasonal regulations on E15.

"The RFS supports hundreds of thousands of manufacturing jobs, creates new market opportunities for America's farmers and innovators, and has attracted billions of dollars of investment in first-of-a-kind technologies in the advanced and cellulosic biofuels industry," Coleman said. "These fuels are poised to drive the next manufacturing wave across America, but promises won't get us there. We need action."

The American Coalition for Ethanol called the proposed rule a missed opportunity to reallocate waived biofuel volumes. "While EPA says it is proposing to maintain the 15-billion-gallon conventional blending target for 2019, in reality Administrator Pruitt's ongoing actions will reduce ethanol blending far below 15 billion gallons," said Brian Jennings, CEO of ACE. "This is a missed opportunity to reallocate the 1.5 billion gallons Administrator Pruitt has waived through Small Refinery Exemptions and to restore the 500 million gallon shortfall the D.C. Circuit Court ordered EPA to deal with following the Americans for Clean Energy et al v. EPA lawsuit.

"Administrator Pruitt continues to disregard President Trump's campaign promise that 'the EPA should ensure that biofuel blend levels match the statutory level set by Congress under the RFS.' The 2019 proposed RVOs reinforce our decision to challenge certain Small Refinery Exemptions in Court and to petition EPA to account for lost volumes of renewable fuel resulting from the unprecedented number of retroactive Small Refinery Exemptions granted by the agency," Jennings said.

"The proposal to modestly increase cellulosic and advanced RVOs for 2019 is welcome but EPA's waivers and exemptions have collapsed RIN prices across-the-board discouraging investment in the production and use of cellulosic and advanced biofuels," he continued. "A strong rural economy depends upon growing the use of renewable fuels. The president needs to direct Administrator Pruitt to discard EPA's refiner win-at-all-costs mentality and carry out another of his promises to allow E15 and higher blends market access year-round.

The Advanced Biofuels Association praised the EPA for increasing the RVOs for advanced biofuel, cellulosic biofuel and biomass-based diesel, but expressed concern over the EPA's continued use of small refiner hardship waivers. "ABFA is pleased to see that EPA has continued to increase the overall RVO mandates for the RFS program and particularly for the advanced biofuel pool," said Michael McAdams, president of ABFA. "ABFA is proud to represent several members commercializing new technologies to produce increasing volumes of cellulosic fuels. Additional cellulosic facilities are scheduled to come on line in the near future, and we are pleased to see an RVO that will ensure a market for these new gallons.

"We are also pleased with the continued success of the biodiesel and renewable diesel sectors, as these fuels cumulatively provide the greatest greenhouse gas (GHG) emissions reductions under the RFS program at this time," McAdams said. "Three of our members are currently building new plants in the United States to produce the drop-in diesel fuels of the future."

"Despite these increases, we continue to be concerned by the rate at which EPA is granting small refiner exemptions under the RFS program," McAdams continued. "These exemptions have a net effect of reducing the volume of renewable fuels blended in the United States. ABFA will continue to fight this effort to undermine the RVO."

The National Biodiesel Board said that the proposed increase to biomass-based diesel and advanced biofuel RVOs sends a hopeful signal to the biodiesel industry, but cautioned that small refiner hardship waivers are having a negative impact on the industry. "We welcome the Administration's proposal to grow the biodiesel volumes, following two flatlined years. This is a positive signal for our industry and we're pleased the EPA has acknowledged our ability to produce higher volumes. We've consistently demonstrated that we can do much more," said Kurt Kovarik, vice president of federal affairs at NBB. "The fact remains, though, instability in the RFS program caused by the EPA has done significant damage that can only be rectified for biodiesel through consistent and predictable growth in volumes."

The Biomass Power Association criticized the EPA for failing to process RFS fuel pathways for biomass power. "Despite plainly qualifying as a cellulosic transportation fuel when paired with electric vehicles, EPA has so far failed to process the pathways for biomass power that are before the agency," said Bob Cleaves, CEO of the BPA.

"Beyond the clear qualifications of biomass power under the RFS, our industry provides innumerable benefits on local, regional and national levels," Cleaves said. "Our members create renewable power from the unusable parts of agricultural crops and low value wood fibers that are cleared from forests or left over after manufacturing higher value products. We employ Americans in rural areas, support the larger forest products supply chain, and generate tax revenue where it is most needed."

The Iowa Renewable Fuels Association also criticized the EPA for failing to correct its past waiver use. "This is a status quo proposal for ethanol and the status quo is bad," said Monte Shaw, executive director of the IRFA. "The ethanol

number isn't worth the paper it's written on so long as Scott Pruitt is granting small refinery exemptions left and right—even beyond what the Department of Energy recommends. With Pruitt in charge of the EPA, the ethanol number in reality is more like 13.5 billion gallons, which is well below what President Trump promised and what it takes to grow demand. Rural America is already suffering from low commodity prices and tariff wars, and today's proposal is a missed opportunity to provide good news for consumers and farmers."

"We urge President Trump to direct the EPA to rein in out-of-control small refinery exemptions, to order the reallocation of previous exemptions, to address the 500 million gallons owed to conventional biofuels from the illegal 2016 RFS reduction, and to expedite new advanced biofuel pathway approvals," Shaw continued. "Rural America needs the RFS to work as intended, and it will if the EPA stops undermining the RFS at every turn."

The Biotechnology Innovation Organization said the EPA's decision to increase advanced and cellulosic biofuel targets is helpful, the organization criticized the agency for failing to reallocate displaced gallons caused by hardship waivers. "We welcome EPA's decision to raise the advanced and cellulosic biofuel volumes in its proposal, which will help propel the industry forward in 2019," said Brent Erickson, executive vice president of BIO's Industrial and Environmental Section. "However, the advanced biofuels industry is still suffering the effects of the agency's decision to arbitrarily limit growth for low carbon biofuels in 2018, by setting a backward looking RFS requirement. The 2019 volumes should be higher, to correct from last year and also spur growth for the coming year.

"EPA's decision to forgo reallocation of gallons displaced from small refinery waivers at the behest of the petroleum industry is disappointing," Erickson said. "In order to ensure a favorable and supportive investment climate for advanced and cellulosic biofuel producers, EPA must reallocate the gallons from the small refinery waivers already issued and into the future.

"Finally, the Agency must do more to approve new advanced and cellulosic biofuel technologies and production facilities, such as those that use corn kernel fiber as a feedstock, to adequately account for the potential of new technologies as it sets the final 2019 volumes," Erickson continued. "A strong policy and regulatory environment is critical to supporting the type of innovation that will help strengthen the biobased economy, create good paying jobs and help revitalize rural economies across the country."

Catherine C. Milbourn
Senior Public Liaison Specialist
Office of the Administrator
U.S. EPA HQ
Washington, D.C.
202-564-7849 (office)
Ex. 6 mobile)

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 4/26/2018 10:11:16 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Fwd: RIN transparency language from RFS preamble
Attachments: 2019 RFS NPRM Deliberative Process / Ex. 5 docx; ATT00001.htm

Deliberative Process / Ex. 5

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Begin forwarded message:

From: "Sutton, Tia" <sutton.tia@epa.gov>
Date: April 26, 2018 at 4:59:51 PM EDT
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "Grundler, Christopher" <grundler.christopher@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Burch, Julia" <Burch.Julia@epa.gov>
Subject: Deliberative Process / Ex. 5 **from RFS preamble**

Bill and Mandy,

Deliberative Process / Ex. 5

Thanks,
Tia

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/3/2018 8:45:29 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: A few items for tomorrow's RFS meeting
Attachments: 2017 AFPM Cellulosic Biofuel Waiver Options - May 2018.docx; RFS Small Refinery Exemptions, active items 5.3.18.docx

Hi Bill, Mandy:

I've attached a document that summarizes our 'active items' concerning RFS small refinery exemptions. This document can serve as a checklist of potential items to highlight in your meeting with the Administrator.

I've also attached, just so it's all in one place, the 1-pager on the AFPM cellulosic waiver request.

The other two items where it would be helpful to have guidance, as discussed in our weekly meeting this morning, relate to the 2019 RVO proposal:

Deliberative Process / Ex. 5

Thanks
Ben

Message

From: Memmott, Justin (EPW) [Justin_Memmott@epw.senate.gov]
Sent: 4/11/2018 8:50:31 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: Letter to the Administrator
Attachments: 3-5-18 JB and SMC to EPA and DOE.pdf

From: Memmott, Justin (EPW)
Sent: Monday, March 5, 2018 1:02 PM
To: Lyons, Troy <lyons.troy@epa.gov>
Cc: Cone, Travis (Capito) <Travis_Cone@capito.senate.gov>; Mandy Gunasekara (gunasekara.amanda@epa.gov) <gunasekara.amanda@epa.gov>
Subject: Letter to the Administrator

Troy,

Attached is a letter from Chairman Barrasso and Chair Capito to Administrator Pruitt.

It is a response to recent letters that the Administrator has received on hardship relief for small refineries.

A hardcopy is in the mail.

Thanks.

Justin J. Memmott
Majority Senior Counsel
Senate Environment and Public Works Committee
(d) 202-224-6389

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RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

March 5, 2018

The Honorable E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

The Honorable Rick Perry
Secretary
Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Dear Administrator Pruitt and Secretary Perry:

We write to reaffirm our strong support for your leadership in providing, as Congress intended, relief to small refineries suffering hardship under the Renewable Fuel Standard (RFS). Hardship relief is critical to the commercial viability and survival of small refineries – and the thousands of jobs that they provide – in our home states and across the country. We are deeply troubled by the recent attacks on hardship relief for small refineries and what seem to be the efforts of some opponents to obtain confidential business information about these entities. We urge you, in the strongest terms, to ensure that your staff and contractors do not disclose to any outside parties the confidential and other sensitive information of small refineries that petition for hardship relief.

Under the RFS, a small refinery may petition the Environmental Protection Agency (EPA) for relief from its annual renewable fuel volume obligations (RVOs) based on "disproportionate economic hardship." When evaluating a petition, EPA consults with the Department of Energy (DOE), which uses detailed scoring metrics to determine whether a small refinery would suffer disproportionate economic hardship. Generally, a small refinery must experience a high cost of compliance relative to the industry average or an effect sufficient to cause a significant impairment of the refinery's viability. To show this, a small refinery must submit confidential and other sensitive information about its financial status, compliance status, and market position, the disclosure of which would compound the harm that the RFS already causes to the refinery.

In January, we were alarmed that *Reuters* reported the number of small refineries currently petitioning for hardship relief. While we understand that EPA and DOE consider the identity of these small refineries to be confidential business information, we are concerned that opponents may be trying to obtain this and other highly sensitive information through other means, such as federal securities laws, Freedom of Information Act requests, and contacts with government officials involved in this process. Many of these opponents compete with small refineries by, for example, selling refined products in the same market or renewable identification numbers to small refineries. If opponents obtain this information, they would be able to extract even greater profits from or at the expense of small refineries. EPA and DOE must not let that happen.

Under the RFS, EPA's responsibility is not to maximize the amount of corn ethanol used as transportation fuel. Nor is it to enhance the competitive position of large refiners and others who profit from the RFS. Rather, EPA's responsibility is to apply the law, which requires the

PRINTED ON RECYCLED PAPER

Administrator, in consultation with the Secretary, to provide relief to any small refinery that would suffer disproportionate economic hardship from the RFS. We ask you to continue to fulfill this responsibility and do so in a timely manner. We make this request regardless of whether EPA continues its long-standing practice – which we strongly support – of *not* allocating the annual RVOs of small refineries to other refineries when providing relief after setting the RVOs.

Thank you for your consideration and we look forward to your prompt response.

Sincerely,

John Barrasso, M.D.
Chairman

Shelley Moore Capito
Chair
U.S. Senate Subcommittee on
Clean Air and Nuclear Safety

Message

From: Braniff, Mimi P [mimi.braniff@delta.com]
Sent: 5/9/2018 4:20:23 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Export RIN comments from 2018 rulemaking process
Attachments: ATT00001.txt

Thanks! For the record...we agree that all exports should generate a RIN and the small refiner volumes should not apply retroactively. ☺

Mimi Braniff | [redacted] | Managing Director–Government Affairs
P: 202.243.3580 | 1212 New York Ave NW Ste 200 Washington, DC 20005

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Wednesday, May 09, 2018 12:18 PM
To: Braniff, Mimi P <mimi.braniff@delta.com>
Subject: [EXTERNAL] RE: Export RIN comments from 2018 rulemaking process

Thanks, Mimi. I'm still working through the specifics with USDA and will follow-up with you on timing once that is agreed to by all parties. Talk soon!
Mandy

From: Braniff, Mimi P [mailto:mimi.braniff@delta.com]
Sent: Wednesday, May 9, 2018 10:54 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Export RIN comments from 2018 rulemaking process

Hey Mandy- Thanks for your work on the RFS solution document. I wanted to share our comments we previously submitted to EPA on export RINs (below) as part of the 2018 rulemaking process. I think Valero has shared the CRA studies with you, but please let me know if you need them. Do you have a sense of timing on when you and USDA will report back to the WH? Is there anything else we can be helpful with?

Thanks! Mimi

IV. EPA SHOULD ALLOW RINS SEPARATED FROM EXPORTED RENEWABLE FUEL TO BE USED FOR RFS COMPLIANCE.

Under current rules, an exporter of renewable fuel must retire the RINs associated with such exported renewable fuel.[117] EPA should reconsider that rule and instead allow RINs associated with exported renewable fuel to be made available for compliance by obligated parties.

EPA has statutory authority to adopt this change. The statute gives EPA wide discretion to devise a credit program to facilitate compliance. Although the statute specifically directs EPA to provide for credits for "the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline" which contains renewable fuel,[118] the statute does not *limit* EPA to providing credits only for these parties. EPA is well within its authority to provide for the generation of an appropriate amount of credits by an entity that exports renewable fuel as well. Making this proposed change would promote the energy independence objectives of the RFS program. By allowing RINs to be used for compliance even if the associated renewable fuel is exported, EPA would provide additional financial incentives for biofuel producers to invest in expanded production facilities—thereby furthering the goal of energy independence—and

enhance RIN market liquidity. Moreover, the proposed change would also advance the statute's environmental goals of reducing greenhouse gas emissions. By promoting the production of additional renewable fuel for export, the program would reduce greenhouse gas emissions abroad by substituting renewable fuel for petroleum—reductions that Americans would benefit from no less than if they had occurred within our geographic boundaries.

[117] 40 C.F.R. § 80.1430.

[118] 42 U.S.C. § 7545(o)(5).

Mimi Braniff | [redacted] | Managing Director–Government Affairs
P: 202.243.3580 | 1212 New York Ave NW Ste 200 Washington, DC 20005

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 6/27/2018 10:22:08 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: Fwd: RFS Statements and Articles

Thought you all also might want to see the below general responses from ethanol/ commodity groups on RVO's yesterday. I also noticed Santorum's involvement on the Ag side, just to flag:

The AESI also called on EPA Administrator Pruitt to put President Trump's vision for rural prosperity back on track by taking action on E15 regulations.

"Right now, it is vital that Administrator Pruitt stop delaying action on the president's pledge to lift outdated, seasonal regulations on E15 during the summer," Talent and Santorum said. "Taking this action will help to expand growth opportunities for U.S. farmers, hold down surging prices at the fuel pump, and even reduce the cost of biofuel credits for refiners that refuse to blend biofuels. There's no reason to hold E15 hostage when we could be driving growth in the heartland."

Begin forwarded message:

> **From:** "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
> **Date:** June 27, 2018 at 5:41:10 PM EDT
> **To:** "Bennett, Tate" <Bennett.Tate@epa.gov>
> **Cc:** "Dewey, Amy" <Dewey.Amy@epa.gov>, "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
> **Subject: RFS Statements and Articles**
>
> Tate,
>
> I included the links to the articles. I will continue to look.
>
> Cathy

From Morning Ag Clips: https://www.morningagclips.com/statements-released-on-epa-biofuel-plans/

Statements released on EPA biofuel plans

U.S. Environmental Protection Agency has announced biofuel obligations for 2019

PUBLISHED ON JUNE 27, 2018

WASHINGTON — *Editor's note: The following statements from the National Farmers Union, American Soybean Association, and National Corn Growers Association concern the EPA's 2019 biofuel requirements, under the Renewable Fuel Standards program.*

Proposed Volume Obligations are Promising, but Not Enough
More Must Be Done to Address Lost Demand for Renewable Fuels

The U.S. Environmental Protection Agency (EPA) today proposed increasing the renewable volume obligations (RVOs) under the Renewable Fuel Standard (RFS) by 3 percent in 2019, from 19.29 billion gallons to 19.88 billion gallons. The proposal would maintain the current 15-million-gallon target for corn ethanol and increase cellulosic and advanced biofuel requirements by 100 million gallons and 600 million gallons, respectively.

Rob Larew, National Farmers Union (NFU) Senior Vice President of Public Policy and Communications, was encouraged by the volume increase but expressed concern about the fact that it does not address the misappropriation of "hardship waivers," which has reduced the volume of renewable fuels in the transportation sector by as much as 1.6 billion gallons.

Larew issued the following statement in response to the proposal:

"It is promising that the EPA is planning to increase the volume of American grown and produced fuels in our transportation sector. However, the proposal does not do enough to account for the demand destruction of over a billion gallons of renewable fuels. The EPA should cease granting these waivers to prevent additional harm to the RFS. The agency must also find ways to reallocate gallons lost to the waivers or account for those gallons in the finalized RVOs in order to make up for harm already done.

"Additionally, the administration should look for ways to implement higher level blends of ethanol, such as E30, which expand markets for family farmers, boost rural economies, improve air quality, and lower fuel prices for consumers."

EPA Increases Proposed RFS Volumes
Environmental Protection Agency to raise Renewable Fuel Standard levels in 2019-20

The American Soybean Association (ASA) is pleased with the proposed biodiesel and advanced biofuels volumes released today by the Environmental Protection Agency (EPA), which opens the door for the growth of future biodiesel volumes.

In the rule, EPA calls for biomass-based diesel (BBD) volumes within the Renewable Fuel Standard (RFS) of 2.4 billion gallons for 2020, a 300 million gallon increase over the 2019 levels.

ASA President John Heisdorffer, a soybean producer from Keota, Iowa, applauded EPA, saying, "This increase supports a valuable, growing market for soybean oil. We have an increased capacity on the domestic market to meet the demand for renewable fuels blended into the nation's fuel supply."

Yet, Heisdorffer pointed out that proposed future increases in BBD volumes could be negated by the unwarranted waivers of RFS volumes that EPA has recently granted some oil refiners.

"The waived volumes need to be reallocated to ensure the RFS remains whole and that proposed future increases are meaningful," Heisdorffer explained. "The biodiesel industry has the potential to support agriculture by creating jobs, diversifying fuel sources, and reducing America's dependence on foreign oil. We encourage the EPA to continue supporting growth by limiting waivers that water down the benefits of these increased levels."

NCGA Statement: EPA Proposed Biofuel Requirements

The following is a statement from North Dakota farmer Kevin Skunes, president of the National Corn Growers Association (NCGA), on EPA's Proposed Biofuel Requirements for 2019.

"For corn farmers, what's not included in EPA's proposed rule says more than what's included.

"It is encouraging that EPA is following Congressional intent and proposing some growth in the RFS volumes and continuing to propose an implied 15-billion-gallon volume for conventional ethanol. However, by continuing to allow retroactive exemptions to refineries, EPA will undercut the volumes in this rule, rendering the proposed blending levels meaningless. Furthermore, the proposed rule states that EPA will not consider comments on how small refinery exemptions are accounted for.

"EPA also had an opportunity to propose a remedy for the 1.6 billion gallons the agency has retroactively waived from the 2016 and 2017 volume requirements over the past year. NCGA believes that if EPA is going to grant retroactive waivers to cut volume requirements for certain refineries, then EPA must also

reallocate those gallons to others, so the obligation to blend renewable fuels is not lost.

"Every gallon of renewable fuel blending waived by EPA reduces the clean air benefits of the RFS and costs consumers choice and money at the pump, particularly today when ethanol is considerably less expensive than gasoline. EPA is also missing an opportunity to propose the removal of the outdated regulatory barrier limiting year-round sales of ethanol blends greater than 10 percent, such as E15.

"America's farmers are experiencing their lowest net farm incomes since 2006, along with the increasing threat of a trade war. The EPA can provide more certainty to farmers by addressing the gallons already exempted, spelling out how future exemptions will be handled to ensure waived gallons are reallocated and moving forward with a stronger RFS that supports America's farmers and their rural communities."

About the National Corn Growers Association
Founded in 1957, the National Corn Growers Association represents nearly 40,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 49 affiliated state organizations work together to create and increase opportunities for corn growers. For more information, visit www.ncga.com.

The Wallaces Farmer: http://www.wallacesfarmer.com/energy/reaction-epas-proposed-new-rfs-quotas

Reaction to EPA's proposed new RFS quotas
Soybean growers applaud biodiesel quota, call for EPA to halt 'unwarranted waivers'.
Jun 26, 2018

The EPA today unveiled its biofuel targets for ethanol and biodiesel in 2019 and 2020.

The proposal increases renewable volume obligations (RVOs) under the Renewable Fuel Standard by 3% in 2019, from 19.29 billion gallons to 19.88 billion gallons. The proposal maintains the current 15-million-gallon target for corn ethanol and increases cellulosic and advanced biofuel requirements by 100 million gallons and 600 million gallons, respectively.
"It is promising that the EPA is planning to increase the volume of American grown and produced fuels in our transportation sector," said National Farmers Union Senior Vice President of Public Policy and Communications Rob Larew. "However, the proposal does not do enough to account for the demand destruction of over a billion gallons of renewable fuels. The EPA should cease granting these waivers to prevent additional harm to the RFS. The agency must also find ways to reallocate gallons lost to the waivers or account for those gallons in the finalized RVOs in order to make up for harm already done.

"Additionally, the administration should look for ways to implement higher level blends of ethanol, such as E30, which expand markets for family farmers, boost rural economies, improve air quality, and lower fuel prices for consumers," Larew added.

The American Soybean Association is pleased with the proposed biodiesel and advanced biofuels volumes, saying it opens the door for the growth of biodiesel volumes.
EPA calls for biomass-based diesel (BBD) volumes within the Renewable Fuel Standard of 2.4 billion gallons for 2020, a 300 million gallon increase over the 2019 levels.
"This increase supports a valuable, growing market for soybean oil," said ASA President John Heisdorffer, a soybean producer from Keota, Iowa. "We have an increased capacity on the domestic market to meet the demand for renewable fuels blended into the nation's fuel supply."

Yet, Heisdorffer pointed out that proposed future increases in BBD volumes could be negated by the unwarranted waivers of RFS volumes that EPA has recently granted some oil refiners.

"The waived volumes need to be reallocated to ensure the RFS remains whole and that proposed future increases are meaningful," Heisdorffer said. "The biodiesel industry has the potential to support agriculture by creating jobs, diversifying fuel sources, and reducing America's dependence on foreign oil. We encourage the EPA to continue supporting growth by limiting waivers that water down the benefits of these increased levels."

Likewise, the Americans for Energy Security and Innovation (AESI) Co-Chairs Jim Talent and Rick Santorum urged the Environmental Protection Agency to put a stop to abusive waivers that have enriched well-connected refiners at the expense of rural workers and farmers.

"The RFS remains the single most successful energy policy working to reduce America's dependence on foreign oil, while delivering real economic and environmental benefits," Talent and Santorum said in a joint statement. "It creates competition at the pump that is not vulnerable to manipulation by the Organization of the Petroleum Exporting Countries (OPEC), and it has made America the world leader in biofuel production. Hundreds of thousands of rural jobs -- from manufacturing to farming – depend on the RFS, and we should be embracing opportunities to accelerate that growth in communities hit hardest by the ongoing farm crisis and rising trade barriers. Rural voters are counting on this administration to stand strong against attacks by a few well-connected refinery owners, and GOP leaders cannot afford to let them down."

The AESI also called on EPA Administrator Pruitt to put President Trump's vision for rural prosperity back on track by taking action on E15 regulations.

"Right now, it is vital that Administrator Pruitt stop delaying action on the president's pledge to lift outdated, seasonal regulations on E15 during the summer," Talent and Santorum said. "Taking this action will help to expand growth opportunities for U.S. farmers, hold down surging prices at the fuel pump, and even reduce the cost of biofuel credits for refiners that refuse to blend biofuels. There's no reason to hold E15 hostage when we could be driving growth in the heartland."

"For corn farmers, what's not included in EPA's proposed rule says more than what's included," said National Corn Growers Association President and North Dakota farmer Kevin Skunes. "It is encouraging that EPA is following Congressional intent and proposing some growth in the RFS volumes and continuing to propose an implied 15-billion-gallon volume for conventional ethanol. However, by continuing to allow retroactive exemptions to refineries, EPA will undercut the volumes in this rule, rendering the proposed blending levels meaningless. Furthermore, the proposed rule states that EPA will not consider comments on how small refinery exemptions are accounted for."

Under the Renewable Fuel Standard, the proposed biofuel targets -- or Renewable Volume Obligations (RVOs) -- are now subject to a public comment period and will be finalized in late November.

Here's what others are saying:

"Proposed biofuel volumes are meaningless when the EPA continues to hand out waivers to the largest and most profitable companies in the world," said Kyle Gilley, Senior Vice President of External Affairs and Communications, POET. "The more-than 1.6 billion gallons that have already been waived this year equal a 4% drop in the corn grind nationally, devastating for farmers who have faced more than four years of declining farm income and poor crop prices. Administrator Pruitt and the Trump Administration must stand up for farmers, immediately reallocate those lost gallons and cease bailouts to the oil industry."

"As the state that leads the nation in renewable fuels production, Iowa farmers deserve honesty and transparency from the EPA on the Renewable Fuel Standard," said U.S. Sen. Jodi Ernst, R-Iowa. "The proposed uptick in the amount of renewable fuel that refiners blend into transportation fuel is encouraging, but does not make up for about 1.5 billion gallons lost by Administrator Pruitt's decision to hand out an unprecedented number of small refinery waivers."

"The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on," said Emily Skor, CEO, Growth Energy. "This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction."

"On its face, the EPA proposal is promising," said Brooke Coleman, executive director, Advanced Biofuels Business Council. "It reverses last year's roll back of cellulosic biofuels, and it opens growth opportunities for advanced producers who are establishing new revenue streams for rural America. But until there is some check on the EPA's abuse of waivers, regulatory uncertainty will continue to threaten investments in advanced biofuels."

Source: NFU, ASA, AESI, POET, NCGA, Office of Sen. Jodi Ernst, Growth Energy, Advanced Biofuels Business Council

KGLO AM 1300: http://www.kgloam.com/farm-groups-react-epas-2018-renewable-volume-obligations-announcement/

Audio News Report in the link.

Ethanol PRODUCER MAGAZINE: http://ethanolproducer.com/articles/15414/epa-releases-proposed-2019-rfs-rvos-fails-to-address-waivers

Quotes from: RFA, Growth Energy, The Advanced Biofuels Business Council, The American Coalition for Ethanol, The Advanced Biofuels Association, The Iowa Renewable Fuels Association, The Biomass Power Association, The Iowa Renewable Fuels Association, The Biotechnology Innovation Organization

EPA releases proposed 2019 RFS RVOs, fails to address waivers

By Erin Voegele | June 26, 2018

U.S. EPA

On June 26, the U.S. EPA released a proposed rule that aims to require 19.88 billion gallons of biofuels to be blended into the U.S. fuel supply in 2019, up from 19.29 billion gallons in 2018. The proposed volume allows for up to 15 billion gallons of corn ethanol.

The rulemaking includes proposed 2019 renewable volume obligations (RVOs) under the Renewable Fuel Standard, along with the 2020 RVO for biomass-based diesel.

Information released by the EPA shows the proposed 19.88 billion gallon RVO for 2019 includes 381 million gallons of cellulosic biofuel, 4.88 billion gallons of advanced biofuel and 2.1 billion gallons of biomass-based diesel. The 2019 RVO for biomass-based diesel was set last year. The proposed 2019 RVOs would allow for up to 15 billion gallons of conventional biofuel to meet the annual blending requirement, most of which is corn ethanol.

When compared to blending obligations finalized for this year, the rulemaking proposes to increase the RVO for cellulosic biofuel from the 288 million gallons in 2018 to 381 million gallons in 2019, an increase of 93 million gallons. The agency has proposed to increase the RVO for advanced biofuel from 4.29 billion gallons in 2018 to 4.88 billion gallons in 2019, an increase of 590 million gallons. The overall RVO for total biofuels would increase from 19.29 in 2018 to 19.88 in 2019 an increase of approximately 590 million gallons. Conventional biofuels, including corn ethanol, can be used to meet a statutory maximum of 15 billion gallons of the 2019 RVO.

The rulemaking also proposes to set the 2020 RVO for biomass-based diesel at 2.43 billion gallons, up 330 million gallons when compared to the 2019 and 2018 RVOs of 2.1 billion gallons.

On a percentage basis, the proposed rule would require total renewable fuel to comprise 10.88 percent of U.S. transportation fuel next year, including 2.67 percent advanced biofuel, 1.72 percent biomass-based diesel and 0.209 percent cellulosic biofuel.

A comment period on the EPA's proposal is set to open following publication of the proposed rule in the Federal Register. Comments can be filed online at www.Regulations.gov under Docket ID No. EPA-HQ-OAR-2018-0167. The comment period is set to close Aug. 17. The EPA also indicated it will scheduled a public hearing on the proposed rule soon. A pre-publication version of the proposed rule can be downloaded from the agency's website.
Several representatives of the biofuels industry have spoken out in response to the EPA's proposed rulemaking, with most criticizing the proposal for failing to address demand destruction caused the by EPA's recent misuse of its hardship waiver authority.

Growth Energy stressed that the proposed 2019 RVOs can't undo damage caused by the EPA's misuse of hardship waivers. "The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on," said Emily Skor, CEO of Growth Energy. This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction." "The EPA proposed 15 billion gallons for conventional biofuels, but that still isn't a real number we can count on. This plan fails to ensure those gallons will, in fact, be blended. By neglecting to reallocate gallons lost to waivers, the EPA is doubling down on another year of an estimated 1.5 billion gallons in demand destruction.

"The same holds true for advanced and cellulosic biofuels, which are rapidly delivering new economic opportunities for rural communities and driving America's leadership in clean energy," Skor continued. "The targets proposed today promise growth, but those investments can't move ahead unless the EPA makes it clear that goals set by Congress will be enforced."

The Renewable Fuels Association said the proposed 2019 RVOs have dealt another blow to America's farmers and ethanol producers. "It would seem a hollow and cynical exercise to praise or thank EPA Administrator Pruitt for appearing to follow the statute with this proposed RVO," said Bob Dinneen, president and CEO of the RFA. "While we acknowledge that the implied 15-billion-gallon requirement for conventional biofuels like corn ethanol should, in theory, send a positive signal to the market, it comes with the backdrop of 1.6 billion gallons of demand destructed by illegal waivers to small refineries and no commitment that EPA is changing its approach to granting these exemptions. Thus, the proposal means nothing until EPA reallocates those lost gallons and sets forth a more transparent and rational process that assures small refinery waivers are not abused or granted unnecessarily. Unfortunately, over the past few days, Administrator Pruitt buckled yet again to pressure from the oil industry and removed language from this proposal that would have indicated the agency's interest in addressing what has clearly become an abused process. That's not just wrong, it flies in the face of the president's commitment to farmers and consumers across the country who support the increased use of renewable fuels."

"This RVO proposal is a paean to missed opportunities for the sole purpose of benefiting the oil industry that continues to thwart the development of biofuels at every turn," Dinneen continued. "The agency missed the opportunity to address the flawed and opaque small refinery waiver process. It failed to address the court-ordered remand of 500 million gallons in forfeited demand from the 2016 RVO. And it once again missed an opportunity to address the disparate treatment of E10 and E15 with regard to volatility regulation. EPA needs to stop tilting to the whims of the oil industry in implementing the nation's renewable fuel program, and work to create demand for ethanol, lowering prices at the pump for consumers and creating economic opportunities for farmers across the country."

The Advanced Biofuels Business Council said that regulatory uncertainty will continue until the EPA stops misusing waivers. "On its face, the EPA proposal is promising," said Brooke Coleman, executive director of the ABBC. "It reverses last year's roll back of cellulosic biofuels, and it opens growth opportunities for

advanced producers who are establishing new revenue streams for rural America. But until there is some check on the EPA's abuse of waivers, regulatory uncertainty will continue to threaten investments in advanced biofuels.

"The EPA must demonstrate that targets will not be undercut by refinery handouts," Coleman continued. "At the same time, Administrator Pruitt must take concrete action on the president's pledge to open new markets for advanced biofuels by lifting seasonal regulations on E15.

"The RFS supports hundreds of thousands of manufacturing jobs, creates new market opportunities for America's farmers and innovators, and has attracted billions of dollars of investment in first-of-a-kind technologies in the advanced and cellulosic biofuels industry," Coleman said. "These fuels are poised to drive the next manufacturing wave across America, but promises won't get us there. We need action."

The American Coalition for Ethanol called the proposed rule a missed opportunity to reallocate waived biofuel volumes. "While EPA says it is proposing to maintain the 15-billion-gallon conventional blending target for 2019, in reality Administrator Pruitt's ongoing actions will reduce ethanol blending far below 15 billion gallons," said Brian Jennings, CEO of ACE. "This is a missed opportunity to reallocate the 1.5 billion gallons Administrator Pruitt has waived through Small Refinery Exemptions and to restore the 500 million gallon shortfall the D.C. Circuit Court ordered EPA to deal with following the Americans for Clean Energy et al v. EPA lawsuit.

"Administrator Pruitt continues to disregard President Trump's campaign promise that 'the EPA should ensure that biofuel blend levels match the statutory level set by Congress under the RFS.' The 2019 proposed RVOs reinforce our decision to challenge certain Small Refinery Exemptions in Court and to petition EPA to account for lost volumes of renewable fuel resulting from the unprecedented number of retroactive Small Refinery Exemptions granted by the agency," Jennings said.

"The proposal to modestly increase cellulosic and advanced RVOs for 2019 is welcome but EPA's waivers and exemptions have collapsed RIN prices across-the-board discouraging investment in the production and use of cellulosic and advanced biofuels," he continued. "A strong rural economy depends upon growing the use of renewable fuels. The president needs to direct Administrator Pruitt to discard EPA's refiner win-at-all-costs mentality and carry out another of his promises to allow E15 and higher blends market access year-round.

The Advanced Biofuels Association praised the EPA for increasing the RVOs for advanced biofuel, cellulosic biofuel and biomass-based diesel, but expressed concern over the EPA's continued use of small refiner hardship waivers. "ABFA is pleased to see that EPA has continued to increase the overall RVO mandates for the RFS program and particularly for the advanced biofuel pool," said Michael McAdams, president of ABFA. "ABFA is proud to represent several members commercializing new technologies to produce increasing volumes of cellulosic fuels. Additional cellulosic facilities are scheduled to come on line in the near future, and we are pleased to see an RVO that will ensure a market for these new gallons.

"We are also pleased with the continued success of the biodiesel and renewable diesel sectors, as these fuels cumulatively provide the greatest greenhouse gas (GHG) emissions reductions under the RFS program at this time," McAdams said. "Three of our members are currently building new plants in the United States to produce the drop-in diesel fuels of the future."

"Despite these increases, we continue to be concerned by the rate at which EPA is granting small refiner exemptions under the RFS program," McAdams continued. "These exemptions have a net effect of reducing the volume of renewable fuels blended in the United States. ABFA will continue to fight this effort to undermine the RVO."

The National Biodiesel Board said that the proposed increase to biomass-based diesel and advanced biofuel RVOs sends a hopeful signal to the biodiesel industry, but cautioned that small refiner hardship waivers are having a negative impact on the industry. "We welcome the Administration's proposal to grow the biodiesel volumes, following two flatlined years. This is a positive signal for our industry and we're pleased the EPA has acknowledged our ability to produce higher volumes. We've consistently demonstrated that we can do much more," said Kurt Kovarik, vice president of federal affairs at NBB. "The fact remains, though, instability in the RFS program caused by the EPA has done significant damage that can only be rectified for biodiesel through consistent and predictable growth in volumes."

The Biomass Power Association criticized the EPA for failing to process RFS fuel pathways for biomass power. "Despite plainly qualifying as a cellulosic transportation fuel when paired with electric vehicles, EPA has so far failed to process the pathways for biomass power that are before the agency," said Bob Cleaves, CEO of the BPA.

"Beyond the clear qualifications of biomass power under the RFS, our industry provides innumerable benefits on local, regional and national levels," Cleaves said. "Our members create renewable power from the unusable parts of agricultural crops and low value wood fibers that are cleared from forests or left over after manufacturing higher value products. We employ Americans in rural areas, support the larger forest products supply chain, and generate tax revenue where it is most needed."

The Iowa Renewable Fuels Association also criticized the EPA for failing to correct its past waiver use. "This is a status quo proposal for ethanol and the status quo is bad," said Monte Shaw, executive director of the IRFA. "The ethanol number isn't worth the paper it's written on so long as Scott Pruitt is granting small refinery exemptions left and right—even beyond what the Department of Energy recommends. With Pruitt in charge of the EPA, the ethanol number in reality is more like 13.5 billion gallons, which is well below what President Trump promised and what it takes to grow demand. Rural America is already suffering from low commodity prices and tariff wars, and today's proposal is a missed opportunity to provide good news for consumers and farmers."

"We urge President Trump to direct the EPA to rein in out-of-control small refinery exemptions, to order the reallocation of previous exemptions, to address the 500 million gallons owed to conventional biofuels from the illegal 2016 RFS

reduction, and to expedite new advanced biofuel pathway approvals," Shaw continued. "Rural America needs the RFS to work as intended, and it will if the EPA stops undermining the RFS at every turn."

The Biotechnology Innovation Organization said the EPA's decision to increase advanced and cellulosic biofuel targets is helpful, the organization criticized the agency for failing to reallocate displaced gallons caused by hardship waivers. "We welcome EPA's decision to raise the advanced and cellulosic biofuel volumes in its proposal, which will help propel the industry forward in 2019," said Brent Erickson, executive vice president of BIO's Industrial and Environmental Section. "However, the advanced biofuels industry is still suffering the effects of the agency's decision to arbitrarily limit growth for low carbon biofuels in 2018, by setting a backward looking RFS requirement. The 2019 volumes should be higher, to correct from last year and also spur growth for the coming year.

"EPA's decision to forgo reallocation of gallons displaced from small refinery waivers at the behest of the petroleum industry is disappointing," Erickson said. "In order to ensure a favorable and supportive investment climate for advanced and cellulosic biofuel producers, EPA must reallocate the gallons from the small refinery waivers already issued and into the future.

"Finally, the Agency must do more to approve new advanced and cellulosic biofuel technologies and production facilities, such as those that use corn kernel fiber as a feedstock, to adequately account for the potential of new technologies as it sets the final 2019 volumes," Erickson continued. "A strong policy and regulatory environment is critical to supporting the type of innovation that will help strengthen the biobased economy, create good paying jobs and help revitalize rural economies across the country."

Catherine C. Milbourn
Senior Public Liaison Specialist
Office of the Administrator
U.S. EPA HQ
Washington, D.C.
202-564-7849 (office)
Ex. 6 (mobile)

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/9/2018 6:40:52 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: RFS follow-up
Attachments: RIN Prices 2013 to current.jpg

Hi Mandy—following up on your request:

Small refinery update

For 2017, we have received 29 petitions, and have granted 25 of them. We are still working on the remaining 4. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

RIN prices

I've attached a graphic going back to 2013. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you need anything further. – Ben

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 4/26/2018 12:38:58 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: Small Refinery Exemptions: Correcting the Record

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Grundler, Christopher
Sent: Wednesday, April 25, 2018 9:18 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Harlow, David <harlow.david@epa.gov>; Cook, Leila <cook.leila@epa.gov>
Subject: Fwd: Small Refinery Exemptions: Correcting the Record

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Date: April 25, 2018 at 6:29:53 PM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Cc: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Subject: Re: Small Refinery Exemptions: Correcting the Record

Hey Chris:

Deliberative Process / Ex. 5

Best,
Mandy

Sent from my iPhone

On Apr 25, 2018, at 5:01 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Bill,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 5/2/2018 3:49:47 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: RE:

Just want to confirm that you spoke with Rep. McKinley's office about this so I can close out follow up on our end.

Thanks!

-Aaron

From: Gunasekara, Mandy
Sent: Monday, April 30, 2018 5:07 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Fwd: RE:

So you have this too.

Sent from my iPhone

Begin forwarded message:

> **From:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Date:** April 30, 2018 at 3:14:20 PM EDT
> **To:** "Jackson, Ryan" <jackson.ryan@epa.gov>
> **Subject: RE:**
>
> Attached is info that should help. Let me know if you need any additional info or have questions.

Deliberative Process / Ex. 5

> **From:** Jackson, Ryan
> **Sent:** Friday, April 27, 2018 12:56 PM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Subject:**
>
> I don't know if you saw the exchange between Cong. McKinley and Pruitt at yesterday's hearing but he mentioned a WV refinery and its application for a small refiner exemption. He argued that they produce 23K/day under the 75K threshold. **Deliberative Process / Ex. 5**
>
> **Deliberative Process / Ex. 5**
>
> Ryan Jackson

Chief of Staff
U.S. Environmental Protection Agency
Personal Phone / Ex. 6

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/31/2018 4:22:24 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Question

The reg cite is 40 CFR 80.1441(e)(2)(iii) - in short it says a refinery must meet the definition of small refinery (<75,000 bpd) for the most recent full calendar year prior to seeking an extension and must be projected to meet the definition for the year(s) for which an exemption is sought.

It also says that exceeding the volume in a year for which relief is granted invalidates the exemption.

-----Original Message-----
From: Gunasekara, Mandy
Sent: Wednesday, May 30, 2018 8:32 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Question

Is it correct that when we consider small refinery petitions, we require 2 years of information? And do both of the preceding years have to fall below the 75K bpd threshold?

Sent from my iPhone

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/18/2018 1:51:37 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Budget Hearing Info - RINS/E15

From: Gunasekara, Mandy
Sent: Wednesday, April 18, 2018 9:01 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Budget Hearing Info - RINS/E15

Deliberative Process / Ex. 5

From: Ringel, Aaron
Sent: Tuesday, April 17, 2018 3:25 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Budget Hearing Info - RINS/E15

Hey Mandy, we are putting together the program office cheat sheets for the Administrator's budget hearing briefings and after reviewing everything from OAR think we need two more, specifically on everyone's favorite topics that are more than likely going to get brought up during the E&C hearing: RINS and E15/RVP year round waiver.

I've pasted what we have for the RFS Small Refinery Hardship Exemption topic below so you can have an idea of what we are looking for. If you or Alex could send along some info we can include it would be much appreciated! We are sitting down with Ryan tomorrow afternoon to go over our doc so it would be great if we could get something by tomorrow morning.

Thanks!
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

RFS Small Refinery Hardship Exemption

Deliberative Process / Ex. 5

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/3/2018 10:04:56 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: Small refinery hardship numbers
Attachments: Small refineries FOIA Politico v3.docx; ATT00001.htm

Bill:

This is a follow-up to your email regarding information we can share with press outlets on the small refinery decisions.

As mentioned, we are about to send out a response to a FOIA request on this topic (we aim to send this out tomorrow). I have attached that FOIA response, as it has been vetted by our team and OGC for any CBI concerns. From our perspective, you can share the information in this response (e.g., cut and paste the heart of the document, with the numbers). Doing so should largely address the reporters' inquiries.

Thanks,

Ben

Mr. Eric Wolff
Politico
1100 Wilson Blvd
Arlington VA 22209

Re: Freedom of Information Act Request EPA-HQ-2018-005823

Dear Mr. Wolff:

I am writing with regard to the above-referenced Freedom of Information Action (FOIA) request that was submitted to the U.S. Environmental Protection Agency ("EPA" or "Agency") on March 26, 2018, in which you requested information related to small refinery exemptions under the Renewable Fuel Standard program.

Following is aggregated information regarding decisions EPA has made under the small refinery hardship provisions of the RFS program in recent years:

- For the 2015 compliance year, we received 14 petitions from small refineries. We granted exemptions for 7 of those, with a total exempted volume of 290 million gallons of renewable volume obligations. We denied 6 petitions, and 1 was found to be ineligible.
- For the 2016 compliance year, we received 20 petitions from small refineries. We granted exemptions for 19 of those, with a total exempted volume of 790 million gallons of renewable volume obligations. We denied 1 petition.
- For the 2017 compliance year, we have received 29 petitions from small refineries. To date, we have granted exemptions for 25 of those, with a total exempted volume of 1.19 billion gallons of renewable volume obligations. We are still processing the remaining 4 petitions for hardship exemptions for the 2017 compliance year.

Please notify the EPA within thirty working days from receipt of this letter if you are still interested in proceeding with this FOIA request. You may contact Janet Cohen, on our staff, at 734-214- 4511, or by email at cohen.janet@epa.gov. Please reference request number EPA-HQ-2016-005823 in any correspondence. If you do not respond within the designated time, EPA will consider your request voluntarily withdrawn and will close the file. As a reminder, you are free to refile a similar request in the future.

Sincerely,

Benjamin Hengst, Associate Director
Office of Transportation and Air Quality

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/25/2018 9:52:56 PM
To: Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: help with hearing prep
Attachments: Air Summary RFS.docx

Holly,

Mandy and I discussed and we both agree the talking points you sent over are already broken down into the key points and topics. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mandy is likely on the metro right now, but said she would call you when she got off to discuss further. Attached are the one pagers just on the RFS issues – Small Refinery Hardship, RIN Transparency, RVP Waiver, and the Renewable Volume Obligations – with the order rearranged based on what I believe will be most discussed.

I will be at the office for about a half an hour or so more and of course bringing home my computer so please feel free to call if you need me. My work cell 202-578-5985.

From: Greaves, Holly
Sent: Wednesday, April 25, 2018 11:36 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: help with hearing prep

Hi Alex,

I just spoke to Clint. Would you be able to sift through the RFS info in the attached today and help me narrow it down to the few key points and issues that you expect the Administrator to be asked in the hearing? Ultimately, I am looking for the few topics and associated talking points he should have that I can share with him during a hearing to jog his memory (if needed).

Right now in the attached summary I see some overlap in the issues on page 10, 11, 13 and 14. These are the pages and topics for which it would be helpful to condense to pertinent one-pagers that I can pass him during the hearing.

Please give me a call at Personal Phone / Ex. 6 if you would like to discuss. The hearing is tomorrow, so by COB today would be great – I apologize for the tight timeline!

Holly W. Greaves
Chief Financial Officer
Office of the Chief Financial Officer
Environmental Protection Agency
(202) 564-1151

Message

From: Brooke, Francis J. EOP/WHO EOP / Ex. 6
Sent: 5/31/2018 3:35:33 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: SRE

Thanks, if you have any other pending actions like this that you are aware of would appreciate if you can flag them for me.

From: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Sent: Thursday, May 31, 2018 11:30 AM
To: Brooke, Francis J. EOP/WHO EOP / Ex. 6
Subject: RE: SRE

Yes – I was briefed on this last fall and then Bill received a refresher course when he came on board in November.

From: Brooke, Francis J. EOP/WHO EOP / Ex. 6
Sent: Thursday, May 31, 2018 11:29 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: SRE

Great, thanks. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

From: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Sent: Thursday, May 31, 2018 11:27 AM
To: Brooke, Francis J. EOP/WHO EOP / Ex. 6
Subject: SRE

Below is the latest version Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Johnson Koch, LeAnn M. (Perkins Coie) [LeAnnJohnson@perkinscoie.com]
Sent: 3/12/2018 9:40:51 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Small Refinery Hardship Under the Renewable Fuel Standard

Hi Mandy and Alex –

Just checking back on my question below – whether EPA will offer a "meet and confer" before denying hardship relief to a small refinery in 2017.

LeAnn

LeAnn Johnson Koch | **Perkins Coie LLP**
202.654.6209 (office)
202.253.8152 (mobile)

From: Johnson Koch, LeAnn M. (WDC)
Sent: Wednesday, February 21, 2018 9:14 PM
To: gunasekara.mandy@epa.gov; Alex Dominguez (dominguez.alexander@epa.gov) <dominguez.alexander@epa.gov>
Subject: FW: Small Refinery Hardship Under the Renewable Fuel Standard

Hi Mandy and Alex –

Can we meet with you to discuss the attached letter and the status of small refinery hardship decision making for the 2017 compliance year? As you can imagine, our clients are getting very nervous about the status of their petitions as the compliance deadline is approaching. One of our suggestions (attached) was to have an informal meet and confer if EPA intends to deny a petitioner's request. Is this something the agency will consider doing?

Thanks,
LeAnn

LeAnn Johnson Koch | **Perkins Coie LLP**
202.654.6209 (office)
202.253.8152 (mobile)

From: Johnson Koch, LeAnn M. (WDC)
Sent: Wednesday, February 21, 2018 7:20 PM
To: pruitt.scott@epa.gov; wehrum.william@epa.gov
Cc: gunasekara.mandy@epa.gov; Alex Dominguez (dominguez.alexander@epa.gov)
Subject: Small Refinery Hardship Under the Renewable Fuel Standard

Dear Administrator Pruitt and Assistant Administrator Wehrum:

Attached is a letter from the Small Refiners Coalition concerning small refinery hardship relief under the Renewable Fuel Standard, responding to letters from the Renewable Fuels Association and the American Petroleum Institute.

Thank you for your consideration of SRC's views.

LeAnn Johnson Koch, on behalf of the Small Refiners Coalition

LeAnn Johnson Koch | **Perkins Coie LLP**
202.654.6209 (office)
202.253.8152 (mobile)

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Message

From: Williams, Brendan [Brendan.Williams@pbfenergy.com]
Sent: 4/25/2018 6:27:20 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: EPA Data Shows Small Refiner Waivers Have Lowered 2016, 2017 RFS Blending Obligations by 1.6 Billion Gallons
Attachments: FAJC_RINs Ethanol Demand.pdf; Ethanol in Iowa Falls Short of Blend Wall_SFF.PDF

Importance: High

So this is the first of a few emails. RFA's report is on the bottom. My initial responses are immediately below. The blending report mentioned is attached, as is a piece from Smarter Fuel Future that speaks to Iowa specifically.

In relation to how RFA uses EIA data to calculate the blending rate, not only is it addressed on p. 6 of the first attachment (e.g. the weekly versus monthly issue), but note this quote from EIA from the last page of the second attachment:

"Notes: Fuel ethanol blended into motor gasoline, which is accounted for under motor gasoline, is shown separately in this table to display the use of renewable energy. Because of differences in data sources and estimation methods, the ratio of fuel ethanol consumption and motor gasoline consumption should not be interpreted as the average ethanol blend rate. · Totals may not equal sum of components due to independent rounding." (https://www.eia.gov/state/seds/data.php?incfile=/state/seds/sep_fuel/html/fuel_use_en.html)

I'll send another note with RFA's responses to the points below, which includes my responses to those.

From:
Sent: Tuesday, April 24, 2018 2:12 PM
To:
Subject: RE: EPA Data Shows Small Refiner Waivers Have Lowered 2016, 2017 RFS Blending Obligations by 1.6 Billion Gallons
Importance: High

Key Flaw:
The only reason the 2013-2015 gasoline and diesel consumption data matches the obligated volumes is because EPA set the standard for most of those year RETROACTIVELY in 2015. In other words, we had three years without an RVO and then EPA set a standard for 2014, 2015, and 2016 (and 2017 biodiesel, which is set two years in advance) at the END of 2015. In retroactively setting the RVO, EPA was able to expressly set the requirement with what had actually occurred, rather than setting it based on projections for the future. 2016 was the first year where it had been actually set in advance. This undermines the whole premise of the RFA piece.

Ethanol Did Pretty Well When there was NO RVO
Ethanol had extremely profitable years in 2014 and 2015, with robust AND increasing ethanol consumption, when EPA FAILED TO SET AN RVO. See my old blogs on the topic:

- http://blog.afpm.org/chicken-little-er-the-biofuel-industry-had-a-pretty-good-year/#.Wt9wBYjwZPY
- http://blog.afpm.org/chicken-little-part-ii/#.Wt9wJ4jwZPY

Once Again, Ethanol Consumption is Robust and there is NO Backsliding on Blending, even WITH falling RIN prices and the small refiner waivers.
Send our blending report. Ethanol consumption was up Q1 and also up more than projected for Q1 back in November, when RINs were 80-90 cents per gallon.

A Closing Note: Ethanol Blending is STILL OCURRING in Exempt Gasoline Pools

The fuel from small refiners exempted is STILL being blended with ethanol. Just because something is required, doesn't mean it is not being done. Ethanol is economic without a mandate. Several Scott Irwin blogs that the biofuel industry has been highlighting all confirm this, as does past experience (as noted in my OLD blogs). Additionally, as the blending report notes, small refiners DON'T CONTROL BLENDING: "Fuel from exempted refineries is still going to a marketer, which gains value by
blending ethanol, since it is economic in the absence of a RIN."

From: Rachel Gantz [mailto:rgantz@ethanolrfa.org]
Sent: Tuesday, April 24, 2018 1:26 PM
To: Maisano, Frank
Subject: EPA Data Shows Small Refiner Waivers Have Lowered 2016, 2017 RFS Blending Obligations by 1.6 Billion Gallons

FOR IMMEDIATE RELEASE
April 24, 2018

EPA Data Shows Small Refiner Waivers Have Lowered 2016, 2017 RFS Blending Obligations by 1.6 Billion Gallons

WASHINGTON — EPA's recent actions in exempting small refineries from their Renewable Fuel Standard blending obligations for 2016 and 2017 have effectively lowered the volumetric obligations by at least 1.6 billion gallons, according to an analysis of the agency's own monthly compliance data by the Renewable Fuels Association. The volume of lost blending obligations for these two years is 10 times the collective volume of lost volume from 2013-2015.

In recent weeks, it's been widely reported that EPA has exempted as many as 25-30 small refineries from their RFS blending obligations in 2017, and as many as 20 refineries from their 2016 obligations. Despite numerous requests from industry stakeholders, including RFA, and lawmakers for additional information, EPA has not disclosed the exact number of exemptions granted or the volume of required renewable fuel blending that was effectively erased.

However, recently updated data found in EPA's EMTS database provides some clarity on the volume of gasoline and diesel fuel that was exempted from blending requirements in 2016 and 2017. "The EPA data strongly imply that small refiner exemptions have resulted in effectively lowering the 2017 required volume of renewable fuels by 1.11 billion gallons, or 6%. The data also show that small refiner exemptions also effectively reduced the 2016 RFS requirement by 523 million gallons," according to the analysis.

Based on EPA's EMTS database, the actual annual consumption of gasoline and diesel fuel in 2013-2015 was very close to the volume of gasoline and diesel fuel obligated for RFS compliance, as reported by obligated parties. "This means RFS blending obligations applied to virtually every gallon of gasoline and diesel fuel produced and consumed in the United States," the analysis explained. "However, something clearly changed in 2016 and 2017. The EPA data show large discrepancies between actual gasoline and diesel consumption and the volumes obligated for renewable fuel blending as reported by obligated parties. The difference was 5.2 billion gallons in 2016, virtually doubling to 10.3 billion gallons in 2017. The only reasonable explanation for these large discrepancies between actual gasoline/diesel consumption and the volume of gasoline/diesel obligated for renewable fuel blending is the surge in small refiner exemption approvals," the analysis found.

"This analysis, based by EPA's own data, confirms our concerns and sheds light on the scope and magnitude of Administrator Pruitt's campaign to undermine the RFS," said RFA President and CEO Bob Dinneen. "While EPA refuses to publicly confirm the details surrounding the numerous small refiner waivers it has issued, this data speaks for itself, showing the demand destruction that has resulted from Administrator Pruitt's secret small refiner bailouts. Combined with the PES bankruptcy settlement and EPA's

failure to enforce the 2016 RVO as remanded by the courts, Administrator Pruitt's actions have erased demand for more than 2 billion RINs. These moves are hurting America's biofuel producers, farmers, and ultimately consumers, and they stand in direct opposition to President Trump's commitment to protect the RFS."

To view the RFA analysis, click here.

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About the Renewable Fuels Association
The Renewable Fuels Association 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. RFA's members are working to help America become cleaner, safer, more energy independent and economically secure. For more information, visit EthanolRFA.org.

Contact:
Rachel Gantz
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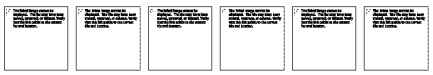

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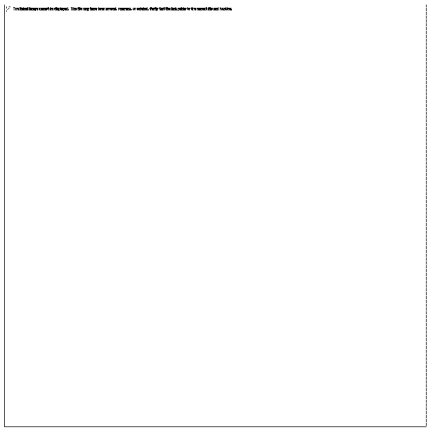

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Message

From: Johnson Koch, LeAnn M. (Perkins Coie) [LeAnnJohnson@perkinscoie.com]
Sent: 2/22/2018 2:14:26 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: Small Refinery Hardship Under the Renewable Fuel Standard
Attachments: 2.21.18 Coalition Letter to Pruitt, Wehrum.pdf; Small Refiners Coalition RFS Small Refinery Hardship - 9.13.2017.pdf

Hi Mandy and Alex –

Can we meet with you to discuss the attached letter and the status of small refinery hardship decision making for the 2017 compliance year? As you can imagine, our clients are getting very nervous about the status of their petitions as the compliance deadline is approaching. One of our suggestions (attached) was to have an informal meet and confer if EPA intends to deny a petitioner's request. Is this something the agency will consider doing?

Thanks,
LeAnn

LeAnn Johnson Koch | **Perkins Coie LLP**
202.654.6209 (office)
202.253.8152 (mobile)

From: Johnson Koch, LeAnn M. (WDC)
Sent: Wednesday, February 21, 2018 7:20 PM
To: pruitt.scott@epa.gov; wehrum.william@epa.gov
Cc: gunasekara.mandy@epa.gov; Alex Dominguez (dominguez.alexander@epa.gov)
Subject: Small Refinery Hardship Under the Renewable Fuel Standard

Dear Administrator Pruitt and Assistant Administrator Wehrum:

Attached is a letter from the Small Refiners Coalition concerning small refinery hardship relief under the Renewable Fuel Standard, responding to letters from the Renewable Fuels Association and the American Petroleum Institute.

Thank you for your consideration of SRC's views.

LeAnn Johnson Koch, on behalf of the Small Refiners Coalition

LeAnn Johnson Koch | **Perkins Coie LLP**
202.654.6209 (office)
202.253.8152 (mobile)

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Renewable Fuel Standard
Small Refinery Hardship Program
Suggestions for Streamlining the Petition Process

I. General Changes to the Hardship Petition Process

1. Streamline the Petition Process

The petition process is burdensome for petitioning small refineries, EPA and DOE. To ease the burden on all parties, the small refiners suggest that EPA and DOE streamline the petition process by withdrawing the agency's December 6, 2016 memorandum requiring small refinery petitioners to submit voluminous amounts of financial and other data in favor of the streamlined process that DOE previously used.[1] Small Refineries should be required to complete and submit the DOE survey form in accordance with its definitions and instructions, the RFS compliance costs spreadsheet, and a petition containing information not covered by the DOE survey or RFS cost spreadsheet.

2. Score all of the DOE Metrics

In 2011, DOE determined that it did not then have adequate data to score three of the metrics described in the DOE Small Refinery Exemption Study ("DOE Study"). The metrics for local market acceptance of renewable fuels (metric 1.c.) and renewable fuel blending (% of production) (metric 2.b.), were to be applied "in the future when other renewable fuels [became] commercially available."[2] E85, biodiesel, and advanced biofuels are all commercially available, enabling DOE to score these metrics. The metric measuring whether RINs are a net revenue or cost was not scored in 2011 "due to a lack of consistency among [petitioners]."[3] Since 2013, petitioners have been required to submit RFS compliance cost spreadsheets with their petitions, which has given EPA consistent data among petitioners for purposes of evaluating whether RINs are a net revenue or cost.

Therefore, the reasons for not scoring these metrics in 2011 are no longer valid and they should be scored going forward. If DOE thinks the data necessary to evaluate these metrics is not available or reliable, the metrics should not be scored at all.

3. Use Objective Criteria

To ensure consistent and fair application of the hardship standard to all small refineries, and to streamline the petition process, EPA should use objective criteria when applying the DOE metrics. Using objective criteria will give small refineries certainty of their RFS obligations which will allow them to make important operational decisions. *See* Section II for a discussion of the DOE metrics.

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[1] U.S. EPA, FINANCIAL AND OTHER INFORMATION TO BE SUBMITTED WITH 2016 RFS SMALL REFINERY HARDSHIP EXEMPTION REQUESTS (Dec. 6, 2016), available at: https://www.epa.gov/sites/production/files/2016-12/documents/rfs-small-refinery-2016-12-06.pdf.
[2] DOE Study at 33.
[3] DOE Study at 35.

4. Do Not Adopt Scoring Under the DOE Addendum

In March of 2014, DOE issued an addendum to the DOE Study, making hardship relief more difficult to secure. The DOE addendum is inconsistent with Congressional intent that small refineries not bear a disproportionate regulatory burden and should not be applied. For the reasons described above, EPA should reject DOE's scoring based on the 2014 addendum to the DOE Study; "any impact on efficiency gains" (metric 3.a.) and "any individual special event" (metric 3.b.) warrant a score of "10."

5. Use of Independent Contractors

To the extent that DOE and EPA rely on contractors to evaluate small refinery hardship petitions, the agencies should rely only on contractors that are neutral, independent parties that do not have an interest in the outcome of the petition. DOE and EPA should also instruct any contractors that they rely on to evaluate small refinery hardship petitions consistent with the DOE Study and the additional information provided in this document. This will help ensure that the agencies receive and are able to impartially and accurately assess all small refinery hardship petitions.

6. Issue Timely Decisions

The regulations require EPA to act on small refinery hardship petitions within 90 days. This deadline will be easier to achieve if the petition process is streamlined and the agency applies objective criteria, which will also reduce the burden in preparing lengthy decision documents. Simplifying the process will also enable small refineries to submit their petitions earlier in the year. The complexity of the process and volume of data required to be submitted with the petition results in petitions being submitted later in the compliance year.

7. Give Petitioners An Opportunity to Meet Prior to the Denial of a Petition

Final decision documents are not always accurate, leading to costly appeals. Prior to denying a hardship petition, EPA should offer the petitioner an informal opportunity to meet to discuss the basis for the intent to deny.

II. DOE Scoring Metrics

1. Disproportionate Structural Impact Metrics

a. *Metric 1.a. Access to Capital/Credit (DOE Survey Form Lines 3.15 – 3.17)*

The DOE survey form, lines 3.15 to 3.17, ask for the small refinery's credit rating and debt to equity ratio, which matches scoring metric 1.a. DOE/EPA should rely on this objective criteria to score metric 1.a., and not require the production of loan covenants, financial statements, and other financial information to do a more expansive analysis of the company's access to capital. This will streamline the petition process and assure consistent application among petitioners.

Score	Description
0	Good access (BB- or above credit rating)
5	Moderate access (rating in Bs)
10	Poor access (C rating or 50% D/E)

b. *1.b. Other Business Lines Besides Refining and Marketing*

DOE's metric 1.b. is intended to measure whether small refineries have other business lines *besides refining and marketing*. DOE has scored refineries that produce refined petroleum products other than transportation fuels as having "other business lines," while at the same time including non-transportation fuels in the measure of "net refining margins" (metric 2.a.). This approach is internally inconsistent because "refining" cannot mean two different things in two metrics using the same term.

The DOE survey form instructions state that all definitions are to be construed as "consistent with" the Energy Information Administration's ("EIA's") Form EI-810, "Monthly Refinery Report"; EIA-815, "Monthly Bulk Terminal and Blender Report"; and EI-28, "Financial Reporting System"; and other forms as appropriate. Each of the sources consistently treats refining as the production of all refined petroleum products including lubricants and asphalt. EIA defines "Refinery" and "Petroleum Products" as:

> ***Refinery.*** An installation that manufactures finished **petroleum products** from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, and oxygenates.
>
> ***Petroleum Products.*** Petroleum products are obtained from the processing of crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. Petroleum products include unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products.[4]

[4] *Petroleum & Other Liquids, Definitions, Sources and Explanatory Notes*, U.S. Energy Information Administration, https://www.eia.gov/dnav/pet/TblDefs/pet_cons_psup_tbldef2.asp (last visited Aug. 22, 2017) (emphasis added).

EIA also defines "Refining" as:

> After crude oil is removed from the ground, it is sent to a refinery where different parts of the crude oil are separated into useable petroleum products. These petroleum products include gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt.[5]

EPA's definition of refining is the same as EIA's, producing a range of petroleum products including non-transportation fuels.[6]

Treating the production of lubricants, asphalt, and other non-transportation fuels as "other business lines" also is inconsistent with the purpose of this metric as described in the DOE Study, which was to evaluate whether a refinery has "other lines of business" that are less correlated with refining. The example used by DOE was upstream exploration and development. The DOE Study was trying to assess the degree to which these separate, non-refining operations would make a small refinery less vulnerable to the volatility in "refining margins," not whether a refinery produced products other than transportation fuels.[7]

If DOE treats refined petroleum products other than transportation fuel as "other business lines," then it should exclude everything but transportation fuels from net "refining" margins in metric 2.a. because refining cannot mean two different things in two metrics using the same term.

Score	Description
0	Other lines
10	No other lines

c. *1.c. Local Market Acceptance of Renewable Fuels*

In scoring whether there is "local market acceptance of renewable fuels," DOE only considers E10, and not E85 and biodiesel, although the metric contemplates one score that captures market acceptance of all three "products" and requires a score of "10" if any product (singular) is not accepted.

The DOE Study indicated that there was no scoring for E85 and biodiesel due to a "lack of data." The EIA publishes detailed data each year on the volume of E85 used and the number of vehicles capable of accommodating it. DOE maintains an "alternative fuels data center" that tracks the number and location of all E85 fueling stations across the United States, and EPA's 2014-2016 final RFS rule acknowledged that a number of market constraints, including that "blenders and distributors [will need to see] sustained profit opportunities before they are willing to invest in new infrastructure to increase their capacity to blend and distribute renewable fuels." 80 Fed. Reg. 77,420, 77,459 (Dec. 14, 2015). In addition, small refinery hardship petitioners

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[5] *Oil: Crude and Petroleum Products Explained*, U.S. ENERGY INFORMATION ADMINISTRATION, https://www.eia.gov/energyexplained/print.cfm?page=oil_home (last visited Aug. 11, 2017).
[6] *Types of Refined Petroleum Products*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://www.epa.gov/emergency-response/types-refined-petroleum-products (last visited Sept. 7, 2017).
[7] DOE Study at 34.

describe constraints in their local markets on the sale of E85 and large retail chain owners admit that they are "fuel agnostic" and unwilling to offer fuels that their customers are not inclined to buy.[8] Finally, a report for Growth Energy, a trade association representing the ethanol industry, acknowledges the market constraint on E85 and concludes that greater E85 penetration will not occur until RINs trade at $2-3/RIN at which point "blenders [will] face stronger incentives to reduce E85 prices (i.e., reduce their margins) in order to drive needed volumes."[9] All of these data points indicate that there is voluminous data about local market resistance to E85 use to enable DOE to score this metric.

In addition, DOE should be scoring local market resistance to biodiesel blending. Small refineries disproportionately produce diesel; diesel is blended at lower rates than gasoline; and fewer RINs are generated from blending biodiesel. Therefore, not scoring local market acceptance of biodiesel skews the scoring against granting small refinery hardship. There are very significant obstacles to biodiesel blending, some of which are specific to small refineries. For example, a small refinery will not be able to sell blended biodiesel in a market where the large integrated refiner has chosen not to do so. Large integrated refiners pick and choose in which markets they blend based on geography (warmer climates), proximity to biodiesel production, transportation costs, etc. A small refinery will not be able to sell blended biodiesel where the largest market player, with its lower overall cost structure, chooses not to do so. This is why state biodiesel blending mandates help small refineries compete against larger, vertically-integrated refiners (unless their customer base is exempt from the mandate). However, many states do not have biodiesel blending mandates.

In addition, large truck stop chains and convenience stores like Kwik Trip, Love's (Musket), and Pilot have displaced small refineries' ability to blend biodiesel. Due to the grossly inflated value of the RIN, large truck stop chains and convenience stores that are not obligated parties under the RFS program refuse to buy blended biodiesel from small refineries or cap the amount of blended biodiesel that they will accept in order to capture the RIN value themselves. Small refineries that have made investments to add biodiesel blending have seen their investments displaced by large truck stop chains and convenience stores.

Biodiesel is not accepted in all markets and is not amenable for use in all markets. EIA and DOE track biodiesel volumes and retail outlets where it is sold. EPA evaluated market constraints on biodiesel blending in its 2014-2016 rulemaking, and small refinery hardship petitioners describe in their petitions the local market acceptance of biodiesel and market constraints on more biodiesel blending in their markets. Therefore, DOE has ample data with which to determine whether there are market constraints on biodiesel blending to enable DOE to score this metric.

A score of "0" for this metric only reflects local market acceptance of E10, but the metric was intended to score the local market acceptance of all three products – E10, E85, and biodiesel. If DOE does not think the data is available or reliable to evaluate all three products,

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[8] Letter from David Masuret and Matthew Durand, Cumberland Farms, Inc. to Gina McCarthy, Administrator, EPA (Nov. 2, 2016) (EPA Docket ID No. EPA-HQ-OAR-2016-0544-0055).

[9] MARC CHUPKA, J. MICHAEL HAGERTY, NICHOLAS POWERS & SARAH GERMAIN, THE BRATTLE GROUP, PEEKING OVER THE BLENDWALL: AN ANALYSIS OF THE PROPOSED 2017 RENEWABLE VOLUME OBLIGATIONS at 15 (July 11, 2016).

then it should not score this metric at all. Scoring the metric based solely on E10 acceptance is inaccurate because the metric was intended to measure local market of all three renewable fuels, and ignoring E85 and biodiesel hides the small refinery hardship caused by overwhelming evidence that there is substantial local market resistance to E85 and biodiesel that uniquely harms small refineries.

	Score	Description
c. Local market acceptance of Renewables	0 10	Products accepted Product not accepted
i. E10	0 5 10	High acceptance Low acceptance No acceptance
ii. E85	Not scored because of small E85 volumes	
iii. Biodiesel	Not available	

d. *1.d. Percentage of Diesel Production (DOE Survey Form Line 4.12, 4.13)*

Evaluation of this metric should be based on industry average diesel production and not the 2011 industry average of 32%. The DOE scoring metric description (below) uses "Industry Average" rather than 32%, indicating its intent that the current industry average, and not the average in 2011, should be applied. In 2015, 2016, and 2017, the industry average diesel production as reported by EPA in the annual RFS rulemakings was much lower than the 2011 average – 29%, 30%, and 28% – respectively. EPA should use the industry average in the most recent compliance year for purposes of scoring this metric.

Score	Description
0	D/(G+D) < Industry Avg.
5	D/(G+D) > Ind. Avg. < 40%
10	D/(G+D) > 40%

e. *1.e. Subject to Exceptional State Regulations (DOE Survey Form Line 4.16)*

DOE has been too narrow in construing what constitutes an exceptional state regulation. For example, state biofuel blending mandates generally help small refineries because they force large integrated refiners, that ordinarily pick and choose in which markets they blend based on favorable market conditions, to blend in all markets with state mandates. Small refineries cannot sell blended fuel when competing with large integrated refiners offering unblended fuel. However, when the small refinery's customers are exempt from the state biofuel blending mandate, state biofuel mandates have just the opposite effect – the state biodiesel mandate benefits others, but not the small refinery. In this situation, the small refinery should receive a score of "5," some barriers for compliance, per the chart below.

DOE's description of this metric indicates that it is trying to identify state laws that create obstacles to blending for the individual refinery, forcing the small refinery to buy RINs or generate RINs but give away the RIN value in order to achieve compliance. Therefore, in scoring this metric, DOE/EPA should be more expansive in considering whether the state law creates obstacles to blending for the small refinery.

Score	Description
0	Not subject
5	Some barriers for compliance
10	Subject to exceptional state regulations

f. *2.a. Relative Refining Margin Measure (DOE Survey Form Line 3.7)*

EPA has instructed small refineries to exclude taxes, depreciation, and finance charges (interest) from their net refining margin calculation. This contradicts the definition in DOE's survey instructions, which states:

> **Net Refinery Margin (dollars per barrel) (3.7) Report** the difference between the gross refining margin and the costs of producing and selling the petroleum products (e.g., refining energy costs and selling costs). The net margin measures before-tax cash earnings from the production and sale of refined products. The net margin excludes peripheral activities such as non-petroleum product sales at convenience stores.[10]

Small refineries' net refining margins should be based on the DOE survey instructions. "Before-tax cash earnings" takes into account the company's finance charges (interest), but EPA has instructed refiners to exclude interest.

In calculating the industry average net refining margins against which small refinery margins are compared for purposes of scoring this metric, DOE is required to factor in the RIN revenues from integrated refiners' affiliated marketing arms, which is where their windfall RIN revenues are reflected. According to the DOE survey instructions, the net refining margin includes "the production <u>and sale</u> of refined products" and only excludes "non-petroleum product sales at convenience stores," indicating that the net refining margin carries all the way to retail, which is consistent with the DOE's evaluation of "of other business lines besides refining **and marketing**."

Therefore, if a large integrated refinery has an affiliated retail chain/marketing arm, its net refining margin must include the margins from its retail operations to capture its windfall RIN revenues. By way of example, to avoid the extreme competitive disadvantage for refineries that do not own retail, Marathon bought the Speedway retail chain. Marathon reported that "synergies across the network" contributed to its exceptional performance and record earnings in 2016:

> Speedway continued its exceptional performance in the quarter and set multiple records for the full-year 2016 while maintaining tight control on expenses. Speedway surpassed segment all-time highs in income from operations, light product gallons sold, merchandise sales, and merchandise gross margin on a percentage and absolute dollar basis. Speedway continues to exceed our expectations by driving marketing-

[10] U.S. DEPT. OF ENERGY, RFS2 SMALL REFINERY SURVEY 2010, INSTRUCTIONS (May 2010), available at: *https://www.reginfo.gov/public/do/DownloadDocument?objectID=17799501.*

enhancement opportunities and continuing to realize acquisition synergies across the network.[11]

Windfall profits from selling RINs are reflected in the marketing arms of large integrated refining companies and, according to DOE's survey instructions, must be captured in calculating the net refining margin for the industry.

Each year DOE determines the industry-wide net refining margin, but it's not clear how they do so. EPA notes that "DOE calculates three-year average industry refining gross and net margins…based on public data." It is not clear, however, how that calculation is done and the information that the agency relies on in performing the calculation is not made public to small refinery petitioners. In particular, it is not clear that profits from marketing or "synergies across the network" have been included or that the production and sale of all types of refined petroleum products have been accounted for. Therefore, there should be greater transparency in how the net refining margin is calculated.

Net refining margins should be reported on the DOE survey (line 3.7) consistent with the definitions in the DOE survey instructions, and the industry-wide refining margins against which small refineries are compared should include affiliated marketing businesses and the production and sale of all types of refined petroleum products.

Score	Description
0	Above the 3-year industry average
5	Positive, and below 3-year industry average
10	Negative

g. *2.b. Renewable Fuel Blending (% of production) (RFS Compliance Cost Spreadsheet)*

The DOE Study explains that the degree to which a small refinery can blend its production with renewable fuel is a large component of assessing small refinery hardship; yet, this metric has never been scored for biodiesel and other advanced biofuel blending. All small refineries that petition for hardship relief submit the RFS compliance costs spreadsheet that includes the amount of renewable fuel blending in each of these categories. The RFS compliance cost spreadsheet was developed by DOE/EPA in 2013, and all hardship petitioners are required to submit it with their petition in order for their petition to be deemed complete. Therefore, DOE has had the data it needs to score this metric since at least 2013 and, by not scoring this metric, has underestimated the harm to small refineries.

Like metric 1.c., DOE scoring metric 2.b. is based on ethanol blending alone. Ethanol is the fuel that is most readily accepted for blending. Scoring this metric as a "0," without accounting for the lack of blending in the other fuels categories underestimates small refinery hardship. This is particularly true because small refineries disproportionately produce diesel. If

[11] *Marathon Petroleum Corporation Reports Fourth-Quarter and Full-Year 2016 Results*, MARATHON PETROLEUM CORP., http://ir.marathonpetroleum.com/phoenix.zhtml?c=246631&p=irol-newsArticle&ID=2241160 (last visited Aug. 22, 2017) (internal quotations omitted).

DOE does not score the other categories of renewable fuel blending, it should not score this metric at all.

Score	Description
Ethanol blending	
0	75%+
5	25-74%
10	<25%
Biodiesel blending (not used)	
0	1.1% of diesel production
10	<1.1%
Other Advanced Biofuel blending (not used)	
0	Some blending
10	No blending

h. *2.c. In A Niche Market*

The DOE Study rationale for characterizing a small refinery as a "niche" refinery based on its production of specialty products is that specialty products have higher refining margins. Because DOE requires that refineries include all refined petroleum products in their calculation of "net refining margins," any higher margins from specialty product sales are already reflected (counted against) small refineries in metric 2.a. In addition, DOE treats specialty products as "other business lines" in metric 1.b., stacking the deck against small refineries that produce specialty products.

In addition, small refineries suspect that the industry average net refining margins calculated by DOE do not include specialty products, resulting in a lower industry average net refining margin, even though small refineries that produce specialty products are compared against the industry average refining margins and receive a score of "0" for this metrics.

Therefore, DOE should exclude "specialty products" from "net refining margins" (metric 2.a.) or, if they are included in net refining margins, refineries should not be characterized as "niche" under metric 2.c., or as having "other business lines" under 1.b., to be internally consistent and avoid stacking the deck.

Score	Description
0	Niche
5	Moderate niche impact
10	No niche

i. *2.d. RINs Net Revenue Or Cost (RFS Compliance Cost Spreadsheet)*

The DOE Study explains that complying with RFS can be a net cost to refineries that purchase RINs to comply and can generate revenue for refineries that comply by blending. DOE explained that it did not score this metric in the 2011 study "due to lack of consistency among survey participants." As described above, in 2013, DOE/EPA developed the "RFS Compliance

Cost" spreadsheet, which provides consistent data from petitioners on RFS compliance costs. As a result, DOE has the data necessary to score this metric and this metric should be scored.

EPA should make one change to its instructions for completing the RFS Compliance Cost Spreadsheet to accurately capture small refinery compliance costs. As the Coalition has explained to EPA, it has become an increasingly common practice for distributors to buy blended fuel from small refineries only if the small refinery agrees to disgorge a significant portion of the RIN value (i.e., the opposite of RIN cost pass-though). In other words, due to their lack of market power, small refineries that blend renewable fuel are forced to give away RIN value to capture the sale. Small refineries also are forced to discount the sales price of their fuels to compete with RIN-long refiners that use their excess RIN sales to discount the sales prices of the petroleum fuels they sell and undercut their small refinery competitors.

EPA should make clear in its instructions that small refineries should include these RIN stealing discounts in the RFS Compliance Cost Spreadsheet. The small refineries have provided EPA with contracts showing, for example, that the price for blended fuel is the spot price less 70-90% of the RIN value, depending on the customer. This is now a common practice in the industry and uniquely harms refineries that do not own retail and are forced to sell their products to distributors. The RFS Compliance Cost spreadsheet needs to capture the hardship to small blending refineries that cannot retain the RIN value and are effectively buying RINs even though they generate RINs through blending.

Further, DOE and EPA should recognize that small refineries are not able to pass-through or "recover" their RFS costs in the sales price of the fuels they produce. As explained in the DOE Study:

> The degree to which the costs burdening small refineries will be passed through to the market depends on many factors, including the market power and the relative cost level of a small refiner relative to other market participants.

DOE Study at 22-23. Because small refineries have very limited market power and have costs proportionally higher than their market competitors, small refineries are not able to pass through their RFS costs. The "RIN stealing" described above is further evidence of small refineries' inability to pass through their RFS costs.

Score	Description
0	revenue > cost
10	revenue < cost

2. <u>Viability Metrics</u>

The viability metrics measure "the ability of the refiner [] to remain competitive and profitable." A small refinery cannot remain competitive when it bears a disproportionate

regulatory burden and competes with multi-national super majors with full integration and economies of scale.[12]

Appendix B-5 to the DOE Study explains the extreme, permanent, competitive advantage large integrated oil companies enjoy over small refineries in a high-priced RIN market. While DOE predicted that small refineries would be harmed significantly by high RIN prices when the blendwall was reached, it did not anticipate that RINs would trade at ten times their intrinsic value:

> RIN prices should rise to reflect the most expensive blending opportunity taken. As the RFS mandate increases, obligated parties will demand more RINs, adding upward price pressure. As the mandate increases, increasing the supply of RINs becomes difficult or nearly impossible. In anticipation of the blend wall, obligated parties may stockpile RINs through discretionary blending in anticipation of a shortage of blending opportunities. Those parties that are short, i.e. cannot generate enough RINs through their own facilities to meet their RVO, will need to purchase RINs and could suffer significant economic hardship.[13]

The DOE Study concluded that when the blendwall was reached, RIN prices would reflect the most expensive blending opportunity. The fact that they are trading at ten times their intrinsic value means that the harm to small refineries is more acute than DOE ever anticipated.

The extreme competitive disadvantage for small refineries caused by the current rule structure is aptly described in Appendix B-5, but several market shifts have occurred that DOE did not predict. First, DOE did not predict that RINs would trade at ten times the cost of blending. Second, the DOE Study also did not predict RIN value stealing – downstream distributors/retailers forcing small refineries to disgorge RIN value to secure the sale because they lack market power to retain the full value of the RIN. Third, DOE did not predict that even if small refineries were able to make investments in renewable fuel blending to avoid the high cost of RINs, those investments could be displaced by unobligated blenders (e.g., Kwik Trip setting up a competing blending operations to displace the small refiners blending operation). Finally, DOE did not predict the market manipulation and fraud in the RIN market that has caused wild volatility, higher prices, and fraud costing taxpayers over a billion dollars.

The harm to small refineries became acute in 2013 when RIN prices increased by 5000%, which is when DOE adopted the addendum to the DOE Study, raising the bar for securing hardship relief. The addendum should be abandoned to avoid greater harm to small refineries.

a. *3.a. Compliance Costs Eliminates Efficiency Gains (impairment)*

The DOE Study recognized that small refineries could suffer a disproportionate economic hardship under the RFS program if buying RINs is more expensive than RINs that can be generated through blending.[14] The harm is both the cost of RINs and the competitive advantage high RIN values bestow on large integrated refiners that achieve compliance through blending

[12] DOE Study at 23.
[13] DOE Study at 17-18.
[14] DOE Study at 2.

and generate and sell excess RINs. As RIN prices have increased from 2-3 cents per RIN in 2010 to close to nearly $1.00 per RIN today, the competitive distortion in favor of large integrated refiners has become extreme.

In numerous decision documents, EPA acknowledged that it was denying hardship relief to small refineries notwithstanding its conclusion that doing so would prevent the refinery from making investments to improve efficiency, reliability, and safety:

> The cost of RFS compliance, either through purchasing and blending renewable fuels, or purchasing RINs, or a combination of both, may reduce funds available to pay for other potential projects to improve the efficiency, reliability, and safety of a refinery, but that fact does not establish entitlement to an exemption.

As the 10th Circuit just concluded in *Sinclair*, Congress did not intend for the RFS to prevent small refineries from investing in efficiency, reliability, and safety projects in order to pay for RINs.[15]

As DOE predicted, high RIN prices are causing a disproportionate economic impact on small refineries. This disproportionate economic impact, by its very nature, is reducing small refineries' profitability relative to their large integrated refining competitors that generate excess RINs through blending, and the reduction in relative profitability is impairing the small refineries' ability to invest in future efficiency improvements. As DOE noted, significant constraints on efficiency improvements eventually will leave small refineries at risk, which is all that is required to demonstrate an impact on efficiency gains.

In the past, EPA has denied small refinery hardship petitions, stating in decision documents that small refineries must shoulder their share of the RFS compliance burden.

> EPA has considered the language in the recent explanatory statement for the 2016 Consolidated Appropriations Act which states: 'The Secretary [of DOE] is reminded that the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program.' Thus, in 2012, the statutory presumption was that in 2013 and future years, [refinery] would shoulder its share of responsibility for the compliance burden borne by obligated parties under the RFS program, unless it could show 'disproportionate economic hardship.'

Small refineries do not mind shouldering their share of any compliance burden, but that is not what is happening under the RFS. The RIN market is no longer a compliance market; it has become a market that is highly susceptible to manipulation, speculation, and fraud. Vertically-integrated refineries that avoid the RIN market or benefit from it because they have excess RINs or are sophisticated enough to have a RIN trading desk and buy and sell RINs for profit at the expense of small refineries. Small refineries that are paying ten times the intrinsic value of a RIN to a RIN-long integrated oil company, an exempt (non-refining) blender like Murphy USA

[15] *Sinclair Wyoming Refining, et al. v. EPA*, Case No. 16-9532 (10th Cir. 2017).

or Kwik Trip, or multi-national commodity trader with links to Russia, are shouldering more than their share of the compliance burden.

As DOE predicted, small refineries owned by large integrated oil companies are not suffering from the same competitive distortion because they have access to RINs from their affiliated marketing arms, but all other small refineries, blending and non-blending, are harmed by the current market conditions and should receive a score of "10."

Score	Description
0	No impact on efficiency
5	Moderate impact on efficiency
10	Impact on efficiency

b. *3.b. Individual Special Events*

The DOE Study recognizes that certain events can have a temporary negative impact on a refinery's ability to comply with the RFS. In the past, EPA and DOE have taken an unreasonably narrow view of what qualifies as an "individual special event." EPA and DOE should find that pipeline shutdowns, extended refinery turnarounds, unplanned outages, and key unit shutdowns that have a temporary negative impact on a refinery's ability to comply with the RFS should be considered "individual special events."

Score	Description
0	No special events
5	Moderate event
10	Special event impacting viability

c. *3.c. Compliance Costs Likely To Lead to Shutdown*

The DOE Study recognized that some refineries have a unique vulnerability, such as a weak competitive position, and any significant additional burden could cause bankruptcy or closure. This metric measures whether a small refinery may face compliance costs that would significantly impact the operation of the facility, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure. Over the past several years, small refineries have shut down and others have been acquired. In addition, to consider bankruptcy or closure, DOE/EPA should consider the necessity of the sale of the asset because the small refinery can no longer afford to operate it.

A refinery does not need to be on the verge of shutdown to receive a "10" on this metric.

Score	Description
0	Not likely to shut down
10	Likely to shut down

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 5/21/2018 7:24:53 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: RE: RFS Small Refinery Waivers

Thanks! Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Monday, May 21, 2018 3:20 PM
To: Block, Molly <block.molly@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: RFS Small Refinery Waivers

Deliberative Process / Ex. 5

From: Block, Molly
Sent: Monday, May 21, 2018 3:18 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RFS Small Refinery Waivers

S&P Global is checking in on the numbers again. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

This is our most recent response: "The criteria used to grant waivers has not changed since previous administrations. EPA follows a long-standing, objectively determined process where the Agency uses a Department of Energy analysis to inform decisions about refiner exemptions/waivers, for refineries that are below the statutory threshold. EPA decisions on waivers are based on refinery-specific information that is subject to confidential business information protections. We continue to work through petitions received for 2017 and will provide updated information, as soon as complete." **Jahan Wilcox, EPA spokesperson**

Additional background (not for attribution):

- As requests for waivers are based on CBI, EPA cannot share company-specific information.
- Any refinery that produces 75,000 barrels or less per day on an annualized basis can apply for the Small Refinery Hardship exemption. As of 4/24/18: 24 approvals, 1 denial and 4 pending – total applicants are 29. There are 38 plants who could qualify for exemptions in the U.S.
- In 2016, EPA received 20 petitions and granted 19 based on DOE's recommendation.
- When first established, the program automatically exempted refineries based solely on their output, which resulted in 59 small refineries being exempted from 2007 to 2010. Post-2010, qualifying refineries seeking a small refinery hardship exemption submit financial information to EPA. EPA then shares this information with

DOE and DOE uses a scoring matrix to quantify structural, economic and refinery-specific factors that may contribute to "disproportionate economic hardship."

- During the Obama Administration, there was often disagreement by EPA with DOE's recommendation. Since the start of this administration, EPA has worked to better coordinate with DOE to ensure cross-administration consistency.
- On August 15, 2017, EPA received an adverse decision from the Tenth Circuit Court of Appeals, which found the agency's viability analysis employed by the previous administration to be inconsistent with congress's intent of the hardship exemption and outside its statutory authority (Sinclair Wyoming Refining Company v. EPA). Specifically, the court found EPA's requirement that refineries demonstrate an "existential threat" to their long-term viability as the standard for demonstrating "disproportionate economic hardship" inconsistent with EPA's statutory authority and vacated a previously denied hardship exemption and remanded Sinclair's hardship petitions back to EPA for further consideration.

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 4/24/2018 5:41:22 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE:

Hey Mandy:

Small refineries represent ~10% of total US gasoline and diesel production. Thus far for 2017 (25 exemptions), we've exempted ~6% of total US gasoline and diesel production.

Ben

-----Original Message-----
From: Gunasekara, Mandy
Sent: Tuesday, April 24, 2018 12:12 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject:

What percent of total US refining capacity do small refineries represent? Of that, how much have we granted small refinery hardship exemptions (in terms of total refining capacity)?

Sent from my iPhone

[illegible]

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

April 4, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

We are writing to you about hardship exemptions for small refineries under the Renewable Fuel Standard (RFS). We are troubled with your predecessor's rejection of the Secretary of Energy's recommendations in favor of hardship exemption petitions. Congress directed the Administrator of the Environmental Protection Agency (EPA) to consult with the Secretary on these petitions. As you review petitions for hardship exemptions from the 2016 Renewable Fuel Volume Obligations (RVOs), we ask that you give meaningful consideration to the Secretary's views.

Under the Clean Air Act, a small refinery may petition the Administrator for an exemption from its annual RVOs under the RFS on the basis of "disproportionate economic hardship." When evaluating a petition, Congress directed the Administrator to consult with the Secretary of Energy. Historically, the Secretary used a two-part test to determine whether a small refinery experiences disproportionate economic hardship. Specifically, a small refinery had to experience: "a high cost of compliance relative to the industry average disproportionate impacts and an effect sufficient to cause a significant impairment of the refinery operations viability."

In 2015, Congress included report language to accompany the "Consolidated Appropriations Act, 2016." This language instructed the Secretary to recommend to the Administrator that EPA grant a 50 percent exemption to small refineries experiencing *either* a high cost of compliance relative to the industry average disproportionate impacts *or* an effect sufficient to cause a significant impairment of the refinery operations viability. Since its adoption, the Secretary has recommended that the Administrator grant petitions for a 50 percent exemption for a number of small refineries. However, we understand that Administrator McCarthy rejected these petitions.

During your confirmation hearing, you stated that "[i]t is not the job of the Administrator…to do anything other than administer the [RFS] program according to the intent of Congress." You rightly emphasized the importance of process, the rule of law, and listening to others. We request that you – in contrast to your predecessor – acknowledge the direction that Congress gave the Secretary with respect to petitions for hardship exemptions and give meaningful consideration to the Secretary's recommendations. This should apply to the 2016 RVOs as well as future RVOs.

Thank you for your consideration and we look forward to your response.

Sincerely,

John Barrasso

John Barrasso, M.D.
Chairman
U.S. Senate Committee on
Environment and Public Works

Shelley Moore Capito

Shelley Moore Capito
Chair
U.S. Senate Subcommittee on
Clean Air and Nuclear Safety

Enclosure

EPA 18-2031

provided for BER. The agreement provides $75,000,000 for the fourth year of the second five-year term of the three BioEnergy Research Centers. The Department is urged to give priority to optimizing the operation of BER user facilities.

Fusion Energy Sciences.—The agreement continues the new budget structure for fusion energy sciences and provides funding accordingly.

The agreement provides $214,755,000 for burning plasma science foundations; $41,021,000 for burning plasma science long pulse; and $67,224,000 for discovery plasma science, including $2,750,000 for high energy density science and discovery plasma science opportunities at NDCX-II in support of the mission of Fusion Energy Sciences.

The agreement provides not less than $71,000,000 for the National Spherical Torus Experiment, not less than $80,000,000 for DIII-D, and not less than $18,000,000 for Alcator C-Mod.

The agreement includes funding for the in-kind contributions and related support activities of ITER. In addition to the reporting language included in the bill, the Department shall provide to the Committees on Appropriations of both Houses of Congress not later than February 15, 2016, and again on August 15, 2016, a report on the status of the ITER project and the implementation of the Director General's Action Plan, including new budget projections, project schedule, cost overruns, delays, organizational structure changes, manufacturing deliveries, assembly, and installation.

High Energy Physics.—The agreement provides $26,000,000 for the Long Baseline Neutrino Facility (LBNF) project construction line. The agreement provides no funding for LBNF within Other Project Costs. It is expected that increased funding for LBNF will come from other Fermi National Laboratory funding within the High Energy Physics account. Within available funds, $10,300,000 is provided for DESI, $19,500,000 is provided for LUX ZEPLIN, and $40,800,000 is provided for the Large Synoptic Survey Telescope Camera. The agreement provides no further funding direction within the High Energy Physics account.

Nuclear Physics.—Within available funds, the Department is encouraged to fund optimal operations for the Relativistic Heavy Ion Collider at Brookhaven National Laboratory. The agreement provides $100,000,000 for the Facility for Rare Isotope Beams. No further direction is provided for the Nuclear Physics account.

Workforce Development for Teachers and Scientists.—The agreement does not include previous Senate direction for the Computational Sciences Graduate Fellowship program.

ADVANCED RESEARCH PROJECTS AGENCY—ENERGY

The agreement provides $291,000,000 for the Advanced Research Projects Agency—Energy.

TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

The agreement provides $42,000,000 for administrative expenses for the Title 17 Innovative Technology Loan Guarantee Program. This amount is offset by estimated revenues of $25,000,000, resulting in a net appropriation of $17,000,000.

The Department is directed to continue to provide to the Committees on Appropriations of both Houses of Congress quarterly reports on the status of the Cape Wind conditional commitment, including an update on ongoing litigation and the risks this litigation poses to the success of the project.

ADVANCED TECHNOLOGY VEHICLES MANUFACTURING LOAN PROGRAM

The agreement provides $6,000,000 for the Advanced Technology Vehicles Manufacturing Loan Program.

DEPARTMENTAL ADMINISTRATION

The agreement provides $130,971,000 for Departmental Administration.

Small Refinery Exemption.—Under section 211(o)(9)(B) of the Clean Air Act, a small refinery may petition the Environmental Protection Agency (EPA) Administrator for an exemption from the Renewable Fuel Standard (RFS) on the basis that the refinery experiences a disproportionate economic hardship under the RFS. When evaluating a petition, the Administrator consults with the Secretary of Energy to determine whether disproportionate economic hardship exists. According to the Department's March 2011 Small Refinery Exemption Study, disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average disproportionate impacts and an effect sufficient to cause a significant impairment of the refinery operations viability.

If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner. The Secretary is also directed to seek small refinery comment before making changes to its scoring metrics for small refinery petitions for RFS waivers and to notify the Committees on Appropriations of both Houses of Congress prior to making any final changes to scoring metrics.

The conference report accompanying the Energy and Water Development and Related Agencies Appropriations Act, 2010, addressed similar issues and directed the Secretary to redo an earlier study done to evaluate whether the RFS program imposes a disproportionate economic hardship on small refineries. In calling for the Secretary to redo the study, the conference report cited the lack of small refinery input into the earlier study, concerns about regional RFS compliance cost disparities, small refinery dependence on the purchase of renewable fuel credits (RINs), and increasing RIN costs. Since then, the dramatic rise in RIN prices has amplified RFS compliance and competitive disparities, especially where unique regional factors exist, including high diesel demand, no export access, and limited biodiesel infrastructure and production. In response to recent petitions, the Secretary determined that the RFS program would impose a disproportionate economic and structural impact on several small refineries. Despite this determination, the Secretary did not recommend, and EPA did not provide, any RFS relief because it determined the refineries were profitable enough to afford the cost of RFS compliance without substantially impacting their viability. The Secretary is reminded that the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program. Small refinery profitability does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority, in consultation with the Secretary, to reduce or eliminate this burden.

OFFICE OF THE INSPECTOR GENERAL

The agreement provides $46,424,000 for the Office of the Inspector General.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

The agreement provides $12,536,512,000 for the National Nuclear Security Administration (NNSA). In lieu of direction in the Senate report, the agreement includes language addressing the Consolidated Emergency Operations Center, which will contain the Energy Resilience and Operations Center, in an earlier section.

Budget Structure Changes.—The agreement provides funding for Weapons Activities consistent with the budget structure in the House report. The NNSA is specifically prohibited from requesting any further changes to the budget structure provided in this Act unless the NNSA has obtained agreement in advance from the Committees on Appropriations of both Houses of Congress.

Laboratory Directed Research and Development.—In light of the report of the Commission to Review the Effectiveness of the National Energy Laboratories, the Secretary is directed to provide a report on the impact of burdening Laboratory Directed Research and Development and provide recommendations on legislative changes to address the Commission's findings.

WEAPONS ACTIVITIES

The agreement provides $8,846,948,000 for Weapons Activities.

Life Extension Programs and Major Alterations.—The NNSA is directed to clearly account for all costs of any major multi-year stockpile refurbishment activity with a total cost greater than $1,000,000,000 and shall ensure a formal and comprehensive acquisition management plan is in place to manage such efforts. All reporting and other requirements required by the Committees on Appropriations of both Houses of Congress for "Life Extension Programs" shall also apply to any major multi-year stockpile refurbishment activity with a total cost greater than $1,000,000,000.

Stockpile Production.—The NNSA is directed to conduct an assessment of the feasibility and costs of work leveling strategies that would reduce the impact of performing simultaneous major refurbishments in the 2020 to 2025 timeframe and to provide a report on its findings to the Committees on Appropriations of both Houses of Congress not later than 120 days after the enactment of this Act. The report shall include a description of costs to accelerate dismantlements prior to 2020 and to extend production of the W88 Alt 370 by two years.

W80-4 Life Extension Program.—Not later than September 15, 2016, the NNSA shall provide to the Committees on Appropriations of both Houses of Congress a report on the independent analysis of the alternatives selected by the NNSA for the W80-4 Life Extension Program as directed in the House report.

Strategic Materials.—The agreement provides $250,040,000 for Strategic Materials Sustainment to consolidate funding for activities needed to manage the NNSA's inventory of strategic materials, as directed in the House report. This amount includes funding for planning and other activities the NNSA determines are necessary to support the sustainment of strategic materials. The agreement does not include restrictions in the Senate report regarding Domestic Uranium Enrichment.

Advanced Radiography.—The agreement provides $48,700,000. The agreement does not include restrictions in the House report on the use of funds for new radiography capabilities at Ula. The NNSA is directed to provide an estimate of the cost to develop new radiography capabilities at Ula and detail the costs of any Major Items of Equipment in its budget request.

Inertial Confinement Fusion and High Yield.—The agreement provides $511,050,000. Within this amount, $329,000,000 shall be for the National Ignition Facility, $68,000,000 shall be for OMEGA, and $7,000,000 shall be for the Naval Research Laboratory.

ED_002308_00107275-00003

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 5/18/2018 6:24:31 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Doc1
Attachments: Doc1.docx

Attached

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 12/4/2017 10:37:57 PM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: Small Refinery Hardship Scoring -- DOE Metrics -- Follow-Up Meeting Week of December 4

Emily – looping you in for awareness. Although I defer to Mandy if she actually wants something set up on this before January.

From: Johnson Koch, LeAnn M. (Perkins Coie) [mailto:LeAnnJohnson@perkinscoie.com]
Sent: Monday, December 4, 2017 2:12 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Doug.matheney@hq.doe.gov; kyle.yunaska@hq.doe.gov; mark.maddox@doe.gov
Cc: Susan Butler (sbutler@capitolresourcesllc.com) <sbutler@capitolresourcesllc.com>; Lyman, John (Perkins Coie) <JLyman@perkinscoie.com>
Subject: RE: Small Refinery Hardship Scoring -- DOE Metrics -- Follow-Up Meeting Week of December 4

All –

Just checking in to see if we can schedule our follow-up to our October 27 meeting to discuss scoring of small refineries under the 2011 DOE study scoring metrics. We will make ourselves available whenever it is convenient for the agencies. Would later this week or early next week work?

Thanks,
LeAnn

LeAnn Johnson Koch | **Perkins Coie LLP**
202.654.6209 (office)
202.253.8152 (mobile)

From: Johnson Koch, LeAnn M. (WDC)
Sent: Wednesday, November 15, 2017 6:51 PM
To: 'gunasekara.mandy@epa.gov'; Alex Dominguez (dominguez.alexander@epa.gov); 'Doug.matheney@hq.doe.gov'; 'kyle.yunaska@hq.doe.gov'; 'mark.maddox@hq.doe.gov'
Cc: Susan Butler (sbutler@capitolresourcesllc.com); Lyman, John (WDC)
Subject: Small Refinery Hardship Scoring -- DOE Metrics -- Follow-Up Meeting Week of December 4

All -

Thank you for meeting with us on October 27 to discuss DOE's scoring of small refinery hardship petitions under the Renewable Fuel Standard pursuant to the metrics in DOE's 2011 study. During our meeting, you indicated that you would need a little time to review our meeting materials, digest the information from the meeting, and then schedule a follow-up meeting. I wanted to check in with you about scheduling the follow-up meeting. We will make ourselves available whenever it is convenient for you. Because next week is Thanksgiving, I was wondering if we could schedule a meeting for the week of December 4th?

For your convenience, I'm attaching a copy of some of the materials we provided at the meeting: (1) the document we prepared on DOE scoring of the metrics in 2016 and prior years; (2) the metrics, excerpted

from the 2011 study; (3) Appendix B-5 to the DOE study, which describes the competitive distortion in favor of large integrated oil companies and the harm to small refineries from high RIN-prices; and (4) an example (redacted) contract showing that small refiners are not recovering their RIN costs in higher prices paid for their transportation fuel, as stated in the Burkholder paper (the contracts show that small refiners are forced to discount their fuel and give away RIN value, even though they need the RINs for compliance). Please let us know if there is other information that would be helpful to see in advance of the meeting.

Thank you for your consideration. We look forward to further discussing these issues with you.

LeAnn

LeAnn Johnson Koch | **Perkins Coie LLP**
202.654.6209 (office)
202.253.8152 (mobile)

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 3/5/2018 8:12:57 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: QFRs
Attachments: 2018.02.15 - EPW -- All Pruitt QFRs 01.30.2018 - PROGRAM OFFICES NOTED cw +ad.docx

Importance: High

See attached QFRs with incorporated edits. Also note Josh's note below.

From: Lewis, Josh
Sent: Wednesday, February 28, 2018 2:23 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: FW: PLEASE FLAG in QFRs -- Q2 (Exceptional Events)
Importance: High

Region 8 let us know they have a series of meetings this week with Wyoming DEQ officials and may have substantive updates to the answer to Barrasso Q2 on Monday, March 5. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Dickerson, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D0440D9F06994021827E0D0119126799-DICKERSON,]
Sent: 3/5/2018 8:04:04 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Scheduling Request: American Petroleum Institute Downstream Executives 6 March

Thank you, Aaron. Will do.

Our Executives would like to discuss the Renewable Fuel Standard (RFS). Specifically, they intend to bring up Small Refinery Exemptions, the Reid Vapor Pressure (RVP) waiver for E15, and the RFS Reset.

Looking forward to seeing you tomorrow. Will

Will Hupman
Director – Federal Relations | American Petroleum Institute
desk: 202-682-8396 | cell: 202-615-7192 | hupmanw@api.org

From: Jackson, Ryan
Sent: Monday, March 5, 2018 2:27 PM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Re: Scheduling Request: American Petroleum Institute Downstream Executives 6 March

Aaron can you see if they can also provide a list of topics of interest to them.

Ryan Jackson
Chief of Staff
U.S. EPA
202-564-6999

On Mar 5, 2018, at 1:56 PM, Dickerson, Aaron <dickerson.aaron@epa.gov> wrote:

> Here is the list of attendees for the 4:00pm meeting tomorrow with API Executives.
>
> **From:** Will Hupman [mailto:HupmanW@api.org]
> **Sent:** Monday, March 5, 2018 8:44 AM
> **To:** Dickerson, Aaron <dickerson.aaron@epa.gov>

Cc: Frank Macchiarola <MacchiarolaF@api.org>
Subject: RE: Scheduling Request: American Petroleum Institute Downstream Executives 6 March

Hi Aaron – I hope you had a great weekend. I wanted to circle back with a list of attendees for tomorrow's 4 pm meeting with Ryan Jackson. Could you share with me any other special instructions upon arrival? Please let me know if we can provide anything else in the interim. Thank you! Will

Attendees
Don Templin – Marathon Petroleum
Jake Menefee – Marathon Petroleum
Michael Birsic – Marathon Petroleum
Dave Brownell -- ExxonMobil
Dan Easley – ExxonMobil
Robert Nolan – ExxonMobil
Jennifer Linker – ExxonMobil
Cristina Moreno-Earle -- ExxonMobil
Dale Walsh – Chevron
Renee Jones – Chevron
Bill Koetzle -- Chevron
Frank Macchiarola – American Petroleum Institute
John Wagner – American Petroleum Institute
Will Hupman – American Petroleum Institute

Will Hupman
Director - Federal Relations | American Petroleum Institute
desk: 202-682-8396 | cell: 202-615-7192 | hupmanw@api.org

Message

From: Lubetsky, Jonathan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E125D09A658E48119789CCAE5712B4A5-JLUBETSK]
Sent: 1/23/2018 8:44:56 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
Subject: Follow-up on HEC QFRs: Two QFRs for draft response
Attachments: 12.7.17 QFRs_Pruitt - PROGRAM OFFICES NOTED.DOCX

Mandy,

In further reviewing the set of QFRs from the Administrator's HEC hearing, we identified two QFRs assigned to OAR by OCIR that we need your input on (below). As we discussed, OCIR would like our responses by Friday. Staff are drafting responses to the other QFRs (attached).

Thank you for your help,
Jonathan

Pallone
OAR 49. Who is on the Ozone Compliance Task Force, and what is its roll in implementing the 2015 Ozone standard? Please provide the Committee with a list of participants, schedule, meetings, materials, and communications.

OAR 52.You recently stated that you intend to move forward imminently with a so-called "red team" exercise in which you will convene rival panels of scientists to debate climate science, just weeks after the Administration's Global Change Research Program released a "Climate Science Special Report" confirming that human activities are "the dominant cause" of observed climate change, and that climate change is already having adverse impacts around the country. This report was authored by scientists from multiple Federal agencies, national laboratories, universities, and the private sector, and went through six stages of external review including review by the National Academies of Sciences, Engineering, and Medicine and an open public comment period.

Please explain why the "red team" exercise a good use of scarce Agency resources in light of the extraordinary research and review that the Administration invested in the CSSR?

Message

From: Hughes, Krista (Perkins Coie) [KHughes@perkinscoie.com]
Sent: 5/2/2017 2:42:16 PM
To: Washington, Valerie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d031c02ce3a416dad0d421ee998d5a3-VWASHING]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Johnson Koch, LeAnn M. (Perkins Coie) [LeAnnJohnson@perkinscoie.com]
Subject: RE: Request for Meeting with Admin. Pruitt

Hi Valerie,

I'm following up on the voicemail I left you a few minutes ago and the emails below. Could you please let me know what time the meeting with the Small Refiners Coalition is scheduled for on May 11th? Several members of the Coalition will be flying into D.C. for the meeting and need to arrange their travel plans. Please feel free to give me a call if that's easier for you.

Thank you,
Krista

Krista Hughes | Perkins Coie LLP
ASSOCIATE
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.6309
F. +1.202.654.9959
E. KHughes@perkinscoie.com

From: Hughes, Krista (WDC)
Sent: Tuesday, April 25, 2017 11:58 AM
To: 'Washington, Valerie'
Cc: 'Gunasekara, Mandy'; Johnson Koch, LeAnn M. (WDC)
Subject: RE: Request for Meeting with Admin. Pruitt

Hi Valerie,

I just wanted to confirm that we are scheduled to meet with Mandy and her staff on the morning of Thursday, May 11th. The Coalition members will need to start arranging travel to D.C. so I just wanted to make sure we are confirmed for that date/general time.

Thank you,
Krista

Krista Hughes | Perkins Coie LLP
ASSOCIATE
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.6309
F. +1.202.654.9959
E. KHughes@perkinscoie.com

From: Hughes, Krista (WDC)
Sent: Saturday, April 22, 2017 7:57 AM
To: 'Gunasekara, Mandy'; Washington, Valerie
Cc: Johnson Koch, LeAnn M. (WDC)
Subject: RE: Request for Meeting with Admin. Pruitt

Hi Mandy and Valerie,

We expect to have between 6 and 8 people from our group attend the meeting in person in D.C. Other members of the Coalition may want to participate remotely, so if you could set up a telephone conference line in the room, that would be great.

Thank you,
Krista

Krista Hughes | Perkins Coie LLP
ASSOCIATE
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.6309
F. +1.202.654.9959
E. KHughes@perkinscoie.com

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Friday, April 21, 2017 7:28 PM
To: Hughes, Krista (WDC); Washington, Valerie
Cc: Johnson Koch, LeAnn M. (WDC)
Subject: Re: Request for Meeting with Admin. Pruitt

Hi Krista,
I'm connecting you with Valerie Washington who can help with the logistics. How many folks would (or do you estimate) attend from your end?

Valerie, can you please find a time the morning of May 11th to meet with the Small Refiners Coalition to discuss RFS. Also a location that can accommodate the group.

Thanks,
Mandy

Sent from my iPhone

On Apr 21, 2017, at 4:36 PM, Hughes, Krista (Perkins Coie) <KHughes@perkinscoie.com> wrote:

> Great. What time on Thursday would work for you and your team? We can be available anytime Thursday morning.
>
> **Krista Hughes | Perkins Coie LLP**
> ASSOCIATE
> 700 Thirteenth Street, N.W. Suite 600
> Washington, DC 20005-3960
> D. +1.202.654.6309
> F. +1.202.654.9959
> E. KHughes@perkinscoie.com
>
> ---
>
> **From:** Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
> **Sent:** Friday, April 21, 2017 4:33 PM
> **To:** Hughes, Krista (WDC)
> **Cc:** Johnson Koch, LeAnn M. (WDC)
> **Subject:** RE: Request for Meeting with Admin. Pruitt
>
> Yes – that day and time would work great.
>
> ---
>
> **From:** Hughes, Krista (Perkins Coie) [mailto:KHughes@perkinscoie.com]
> **Sent:** Friday, April 21, 2017 1:07 PM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Cc:** Johnson Koch, LeAnn M. (Perkins Coie) <LeAnnJohnson@perkinscoie.com>
> **Subject:** RE: Request for Meeting with Admin. Pruitt

Hi Mandy,

Several members of the Small Refiners Coalition are available for a meeting on the morning of Thursday, May 11th. Does that day and time work for you?

Thank you,
Krista

Krista Hughes | Perkins Coie LLP
ASSOCIATE
700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.6309
F. +1.202.654.9989
E. KHughes@perkinscoie.com

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Thursday, April 20, 2017 3:11 PM
To: Hughes, Krista (WDC)
Cc: Johnson Koch, LeAnn M. (WDC)
Subject: RE: Request for Meeting with Admin. Pruitt

Yes- May 8th! Thank you

From: Hughes, Krista (Perkins Coie) [mailto:KHughes@perkinscoie.com]
Sent: Thursday, April 20, 2017 2:00 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Johnson Koch, LeAnn M. (Perkins Coie) <LeAnnJohnson@perkinscoie.com>
Subject: RE: Request for Meeting with Admin. Pruitt

Thank you very much, Mandy. I assume you mean the week of May 8th, not March 8th. I will check with the Coalition members to confirm their availability and will get back to you soon.

Krista Hughes | Perkins Coie LLP
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700 Thirteenth Street, N.W. Suite 600
Washington, DC 20005-3960
D. +1.202.654.6309
F. +1.202.654.9989
E. KHughes@perkinscoie.com

From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Wednesday, April 19, 2017 7:15 PM
To: Hughes, Krista (WDC)
Cc: Johnson Koch, LeAnn M. (WDC)
Subject: Request for Meeting with Admin. Pruitt

Hi Krista,

The Administrator's scheduler forwarded me your meeting request to take on his behalf. I'm his Senior Policy Adviser for the Office of Air and Radiation and accordingly am the point person for all issues related to the RFS. I'm familiar with the Small Refiners Coalition and would be happy to discuss the RFS program with your members. I'm flexible the week of March 8th. Please let me know if any of those days would work for your members.

Thank you for the outreach and I look forward to hearing from you soon.

Best,
Mandy

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Message

From: Susan Butler [sbutler@capitolresourcesllc.com]
Sent: 6/12/2017 5:20:24 PM
To: Mandy McGrevey Gunasekara [redacted]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: small refinery hardship
Attachments: 2016OmnibusAppropriations.pdf

Hi! Do you have a few minutes we could talk about small refinery hardship? I want to be sure changes we request in FY18 approps are what is needed going forward per our conversation. We meet with DOE this Friday and then have Ergon on the Hill the week after.

I think we should request the following changes to the energy and water language: (previously passed language attached)

1) Take out the "50% " waiver language
2) Require the scoring of the structural metrics DOE currently does not score (local market acceptance of E85 and biodiesel, biodiesel and other advanced biofuels blending and the net revenue or cost of RINS)
3) Clarify that the refining margins metric reflects transportation fuels only

I just want to be sure I'm not missing something from your perspective. Thanks so much, Susan

---

From: Susan Butler
Sent: Tuesday, June 6, 2017 5:19 PM
To: gunasekara.mandy@epa.gov
Subject: small refinery hardship

Hi! I have thought about you so much with the Paris decision – I'm sure you have been in the middle of it!

You were incredibly gracious to meet with both our small refinery coalition and Ergon. Your insight was so helpful. As we approach the FY 18 bill on the hill, I would very much appreciate your input.

Please let me know if you have time for me to come by for another quick meeting focused just on that, coffee, a quick lunch, a call or a more specific email exchange -- and I'll follow up accordingly!

Henry Barbour, LeAnn Johnson Koch (Ergon attorney) and I are meeting with DOE 6/16 – Brian McCormick and Tristan Abbey. I want to discuss the metrics DOE *doesn't* score with them as well as understand Ergon's score on "other business lines besides refining and marketing." (they were scored as having other business lines which the refinery doesn't.)

Any chance you'll be at MS on the Mall? We will be. Hope all is going well - I know you are juggling!! Best, Susan

Susan Butler
Capitol Resources LLC
915 Prince Street
Alexandria, VA 22314
(703)739-5860 (office)
(703)298-2826 (cell)

Xerox

DIVISION D—ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

The following statement to the House of Representatives and the Senate is submitted in explanation of the agreed upon Act making appropriations for energy and water development for the fiscal year ending September 30, 2016, and for other purposes.

The language and allocations set forth in House Report 114–91 and Senate Report 114–54 carry the same emphasis as the language included in this explanatory statement and should be complied with unless specifically addressed to the contrary herein. Report language included by the House that is not changed by the report of the Senate or this explanatory statement and Senate report language that is not changed by this explanatory language is approved. This explanatory statement, while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein. In cases where the House or the Senate has directed the submission of a report, such report is to be submitted to the Committees on Appropriations of both Houses of Congress. House or Senate reporting requirements with deadlines prior to or within 15 days of the enactment of this Act shall be submitted no later than 60 days after the enactment of this Act. All other reporting deadlines not changed by this explanatory statement are to be met.

Funds for the individual programs and activities within the accounts in this Act are displayed in the detailed table at the end of the explanatory statement for this Act. Funding levels that are not displayed in the detailed table are identified in this explanatory statement.

In fiscal year 2016, for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177), the following information provides the definition of the term "program, project, or activity" for departments and agencies under the jurisdiction of the Energy and Water Development Appropriations Act. The term "program, project, or activity" shall include the most specific level of budget items identified in the Energy and Water Development Appropriations Act, 2016 and the explanatory statement accompanying the Act.

National Ocean Policy.—The agreement does not include section 505 of the House bill regarding the National Ocean Policy. No specific funding was provided in fiscal year 2015 and none was requested by any agencies funded in this Act in fiscal year 2016 to implement the National Ocean Policy. Consequently, no specific funds for National Ocean Policy activities are included for any agency funded in this Act.

TITLE 17 INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

The agreement provides $42,000,000 for administrative expenses for the Title 17 Innovative Technology Loan Guarantee Program. This amount is offset by estimated revenues of $25,000,000, resulting in a net appropriation of $17,000,000.

The Department is directed to continue to provide to the Committees on Appropriations of both Houses of Congress quarterly reports on the status of the Cape Wind conditional commitment, including an update on ongoing litigation and the risks this litigation poses to the success of the project.

ADVANCED TECHNOLOGY VEHICLES MANUFACTURING LOAN PROGRAM

The agreement provides $6,000,000 for the Advanced Technology Vehicles Manufacturing Loan Program.

DEPARTMENTAL ADMINISTRATION

The agreement provides $130,971,000 for Departmental Administration.

Small Refinery Exemption.—Under section 211(o)(9)(B) of the Clean Air Act, a small refinery may petition the Environmental Protection Agency (EPA) Administrator for an exemption from the Renewable Fuel Standard (RFS) on the basis that the refinery experiences a disproportionate economic hardship under the RFS. When evaluating a petition, the Administrator consults with the Secretary of Energy to determine whether disproportionate economic hardship exists. According to the Department's March 2011 Small Refinery Exemption Study, disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average disproportionate impacts and an effect sufficient to cause a significant impairment of the refinery operations viability.

If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner. The Secretary is also directed to seek small refinery comment before making changes to its scoring metrics for small refinery petitions for RFS waivers and to notify the Committees on Appropriations of both Houses of Congress prior to making any final changes to scoring metrics.

The conference report accompanying the Energy and Water Development and Related Agencies Appropriations Act, 2010, addressed similar issues and directed the Secretary to redo an earlier study done to evaluate whether the RFS program imposes a disproportionate economic hardship on small refineries. In calling for the Secretary to redo the study, the conference report cited the lack of small refinery input into the earlier study, concerns about regional RFS compliance cost disparities, small refinery dependence on the purchase of renewable fuel credits (RINs), and increasing RIN costs. Since then, the dramatic rise in RIN prices has amplified RFS compliance and competitive disparities, especially where unique regional factors exist, including high diesel demand, no export access, and limited biodiesel infrastructure and

production. In response to recent petitions, the Secretary determined that the RFS program would impose a disproportionate economic and structural impact on several small refineries. Despite this determination, the Secretary did not recommend, and EPA did not provide, any RFS relief because it determined the refineries were profitable enough to afford the cost of RFS compliance without substantially impacting their viability. The Secretary is reminded that the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program. Small refinery profitability does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority, in consultation with the Secretary, to reduce or eliminate this burden.

OFFICE OF THE INSPECTOR GENERAL

The agreement provides $46,424,000 for the Office of the Inspector General.

ATOMIC ENERGY DEFENSE ACTIVITIES
NATIONAL NUCLEAR SECURITY ADMINISTRATION

The agreement provides $12,526,512,000 for the National Nuclear Security Administration (NNSA). In lieu of direction in the Senate report, the agreement includes language addressing the Consolidated Emergency Operations Center, which will contain the Energy Resilience and Operations Center, in an earlier section.

Budget Structure Changes.—The agreement provides funding for Weapons Activities consistent with the budget structure in the House report. The NNSA is specifically prohibited from requesting any further changes to the budget structure provided in this Act unless the NNSA has obtained agreement in advance from the Committees on Appropriations of both Houses of Congress.

Laboratory Directed Research and Development.—In light of the report of the Commission to Review the Effectiveness of the National Energy Laboratories, the Secretary is directed to provide a report on the impact of burdening Laboratory Directed Research and Development and provide recommendations on legislative changes to address the Commission's findings.

WEAPONS ACTIVITIES

The agreement provides $8,846,948,000 for Weapons Activities.

Life Extension Programs and Major Alterations.—The NNSA is directed to clearly account for all costs of any major multi-year stockpile refurbishment activity with a total cost greater than $1,000,000,000 and shall ensure a formal and comprehensive acquisition management plan is in place to manage such efforts. All reporting and other requirements required by the Committees on Appropriations of both Houses of Congress for "Life Extension Programs" shall also apply to any major multi-year stockpile refurbishment activity with a total cost greater than $1,000,000,000.

Message

From: Susan Butler [sbutler@capitolresourcesllc.com]
Sent: 7/18/2017 3:00:13 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: small refinery hardship
Attachments: houseFY18e&wreportlanguage.pdf

I accidentally hit send before finishing my previous email. Attached please find the FY18 House E&W report language (modified from last year.) The Senate will mark up E&W this week.

Our small refinery coalition would like to meet with you re: hardship. Please let me know some good windows for you and we will get a meeting scheduled.

Many thanks, Susan

From: Susan Butler
Sent: Tuesday, July 18, 2017 10:54 AM
To: gunasekara.mandy@epa.gov; Alexander Dominguez (dominguez.alexander@epa.gov) <dominguez.alexander@epa.gov>
Subject: small refinery hardship

Mandy, it was good to talk to you yesterday.

Susan Butler
Capitol Resources LLC
915 Prince Street
Alexandria, VA 22314
(703)739-5860 (office)
(703)298-2826 (cell)

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 8/21/2017 2:15:37 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Budget Impact Statements

Got it.

From: Gunasekara, Mandy
Sent: Monday, August 21, 2017 10:15 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Budget Impact Statements

Thank you. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Hengst, Benjamin
Sent: Monday, August 21, 2017 9:46 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Budget Impact Statements

I don't recall reviewing this specific language, but it would have come out of both my office (OTAQ) plus the group that has responsibility to put such documents together (I think it's OCFO).

Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Monday, August 21, 2017 9:24 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Budget Impact Statements

Are you familiar with the below? Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mandy M. Gunasekara
Senior Policy Advisor for Office of Air and Radiation
Office of the Administrator
US Environmental Protection Agency

Message

From: Memmott, Justin (EPW) [Justin_Memmott@epw.senate.gov]
Sent: 8/15/2017 8:47:24 PM
To: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: FW: Barrasso Applauds Court's Decision on Hardship Waivers for Small Refineries Under Biofuel Mandate

Mandy, Brittany, and Tate,

I hope you are all well and getting some downtime this month.

I wanted to be sure you saw the following statement from the Chairman on today's Tenth Circuit decision.

Thanks.

Justin

From: Danylak, Mike (EPW)
Sent: Tuesday, August 15, 2017 4:35 PM
To: Danylak, Mike (EPW) <Mike_Danylak@epw.senate.gov>
Subject: Barrasso Applauds Court's Decision on Hardship Waivers for Small Refineries Under Biofuel Mandate

For Immediate Release:
August 15, 2017

Contact: Mike Danylak ~202.224.1049
Mike_Danylak@EPW.Senate.Gov

Barrasso Applauds Court's Decision on Hardship Waivers for Small Refineries Under Biofuel Mandate

WASHINGTON, D.C. — Today, U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), released the following statement on the decision of the U.S. Court of Appeals for the Tenth Circuit to reject the Obama administration's denial of hardship waivers under the Renewable Fuel Standard (RFS) to Sinclair Oil's two refineries in Wyoming.

"The Obama administration's EPA exceeded its authority when it ignored the Department of Energy's recommendations and denied small refineries hardship waivers under the Renewable Fuel Standard," **said Barrasso**. "I'm glad the Court has recognized this and given EPA an opportunity to follow the law."

Under the RFS, a small refinery may petition the Environmental Protection Agency (EPA) Administrator for a hardship waiver on the basis of "disproportionate economic hardship." Despite the Department of Energy's

recommendation that EPA grant Sinclair a partial waiver for 2014 and 2015, the EPA denied Sinclair's petitions.

Background Information:

The EPW Committee has jurisdiction over the RFS.

On April 4, 2017, Barrasso and Sen. Shelley Moore Capito (R-WV), chair of the Subcommittee on Clean Air and Nuclear Safety, sent a letter to EPA Administrator Scott Pruitt concerning hardship waivers for small refineries under the RFS.

In 2015, Barrasso helped secure report language in the Consolidated Appropriations Act for FY 2016, which instructed the Secretary of Energy to recommend to EPA that it grant a 50 percent waiver to small refineries experiencing either a high cost of compliance relative to the industry average or an effect sufficient to cause a significant impairment of the refinery operations viability.

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Average vs. Marginal Ethanol RINs:

The impact on refiner margins of a rapid rise in RINs prices can be illustrated by discussing the economics of three refiners in different circumstances relative to the RFS. In the illustration, Company A blends all its production with ethanol, so it does not have to purchase ethanol RINs. Company B does not do any blending and must purchase RINs to meet all of its RVO. Company C has excess RINs to sell into the market. Company C could be a blender that does not have an RVO, i.e. a gasoline marketer, or it could be a refiner who blends in excess of its RVO.

	Average Values (over 11 months)			Marginal Values (December)		
Values in Cents per Gallon	Company A Blends to meet RVO	Company B Buys RINs to meet RVO	Company C has RINs to sell	Company A Blends to meet RVO	Company B Buys RINs to meet RVO	Company C has RINs to sell
Gasoline Price	200.00	200.00	200.00	200.00	200.00	200.00
Ethanol Price	190.00	n/a	190.00	190.00	n/a	190.00
Price Difference	10.00	n/a	10.00	10.00	n/a	10.00
Fuel margin/gallon of E10	1.00	n/a	1.00	1.00	n/a	1.00
VEETC (cpg of E10)	4.50	n/a	4.50	4.50	n/a	4.50
RINs Price (cpg of ethanol)	n/a	1.50	1.50	n/a	15.00	15.00
RINs Price (cpg of E10)	n/a	0.15	0.15	n/a	1.50	1.50
Blender Margin (cpg of E10)	5.50	n/a	5.65	5.50	n/a	7.00
Total Cost (cpg of E10)	194.50	200.15	194.35	194.50	201.50	193.00
Advantage vs. B (cpg of E10)	5.65		5.80	7.00		8.50

In the above example, the companies experience an average price for gasoline, ethanol and RINs for eleven months of a year. In the last month, December, RINs prices increase by ten times, from 1.5 cpg to 15 cpg. The average RIN price is 1.5 cpg and the marginal RIN price is 15 cpg.

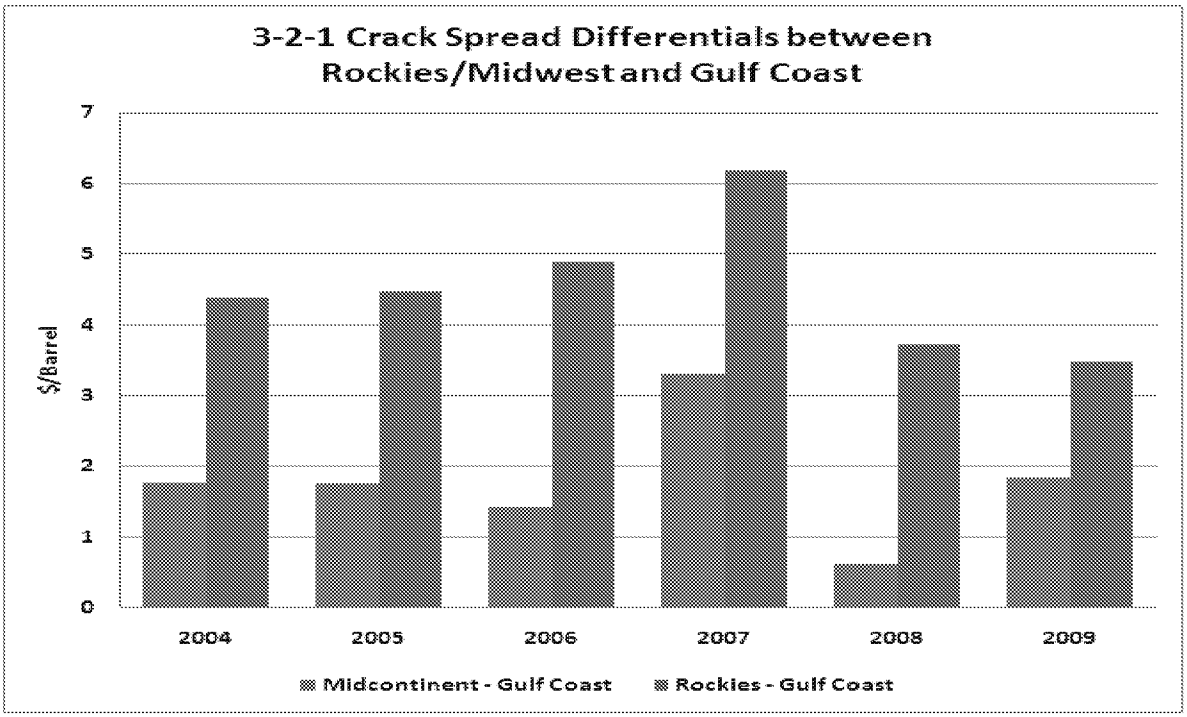
The companies value their gasoline at 200 cents per gallon and ethanol at 190 cpg. Companies A & C have a fuel margin on a gallon of E10 of 1 cpg, (10 cpg gasoline price – ethanol price times 10%.) They reduce their excise tax obligation with the VEETC by 4.5 cpg of E10.

Company A does not have to buy any ethanol RINs, so its "Blender Margin" is the fuel margin of 1 cpg + the tax credit of 4.5 cpg or 5.5 cpg. This reduces the cost of its product to 194.5 cpg. Company B does not blend and has to buy RINs. Its total cost is 200.15 cpg. Company C blends ethanol, reduces its taxes and sells a RIN. This reduces its cost to 193.00 cpg.

On average, Company A has a cost advantage over Company B of 5.65 cpg and Company C has an advantage over Company B of 5.8 cpg.

In the final month, when RINs prices go to 15 cpg, Company A's advantage vs. Company B grows to 7.00 cpg and Company C's advantage grows to 8.50 cpg. Assuming a net refining margin of 5 cpg, high RIN prices could significantly impair the profitability of non-blending small refineries.

Figure 10. Crack Spread Differentials



Source Data: EIA.

Independent U.S. refiners are highly focused on maintaining sufficient capitalization because they operate in a capital intensive business with continuous expenditures and volatile refining margins. Sufficient capitalization allows them to purchase crude oil and other feedstocks on competitive terms, to remain in regulatory compliance and to survive periodic downturns in their refining business.

Independent refiners typically operate under a variety of debt covenants, including debt to equity ratios and other restrictions. Independents may have limited access to public or private debt depending on the number, size, complexity and location of refineries they own and the degree to which they are integrated in their refined product transportation, storage and retail marketing systems.

Assessing Disproportionate Economic Hardship

A scoring matrix was designed to evaluate the full impact of disproportionate economic hardship on small refiners and used to assess the individual degree of potential impairment. The matrix is comprised of two major sections described individually below: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS2 program on the viability of the firm. Each of the eight individual disproportionate structural and economic metrics is weighted equally to derive the disproportionate impact index. The index is then scaled from 0 to 5, with 5 indicating conditions likely to lead to disproportionate economic hardship. Similarly, the three metrics for the viability

index are then equally weighted and scaled to the same range. The lines shaded gray have not been used in this analysis, but should be maintained as part of the matrix for use in the future when other renewable fuels become commercially available.

Disproportionate Impacts Index Analysis

Disproportionate impacts consist of Disproportionate Structural and Disproportionate Economic measures, which are described below. Table 10 shows the Disproportionate Structural Impacts metrics.

Table 10. Disproportionate Structural Impact Metrics

1	**Disproportionate Structural Impact Metrics**		
	a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)
	b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines
	c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted
		i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance
		ii E85	Not scored because of small E85 volumes
		iii Biodiesel	Not available
	d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%
	e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations
2	**Disproportionate Economic Impact Metrics**		
	a	Relative refining margin measure	0 = Above 3 year industry average 5 = positive, and below 3 year industry average 10= Negative, 3 average,
	b	Renewable fuel blending (% of production)	
		i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%
		ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%
		iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending
	c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche
	d	RINs net revenue or cost	0 = revenue > cost, 10 = revenue < cost
	Subtotal		

1a. Access to capital/credit. Restrictions on capital may significantly limit the compliance options for firms. If new blending facilities are needed, borrowing would likely be necessary. High borrowing costs would have a disproportionate impact on the ability of less credit-worthy firms to comply with RFS2. In the worst case, loan covenants may prevent firms from taking cost-effective measures for compliance. Even if the firm would be purchasing RINs, additional working capital may be needed to effectively manage the RIN purchases. Access to capital was provided by the survey respondents and publically available data. In the absence of credit ratings, other financial information provided by the respondent (such as debt/equity ratios) were used to determine an individual refinery score. Those companies with poor access to capital were scored a 10 as demonstrated by a credit rating of C or below were scored a 10, below BB- were scored a 5, and those companies above a BB- were scored a 0.

1b. Other business lines besides refining and marketing. Refining margins tend to have considerable volatility. Additional lines of business, in particular upstream operations such as exploration and development that are less correlated with refining, would tend to smooth the firm's cash flows, and improve its ability to borrow money at closer to the investment grade rates. Those refineries without additional lines of business score a 10.

1c. Local market acceptance of Renewable Fuels. Local conditions may inhibit blending as a compliance strategy for meeting RVOs. Blending category can be separated as follows: low ethanol blends (E10), biodiesel and E85. There was no scoring for E85 and biodiesel due to a lack of data.

i. Ethanol blending (E10). Not every state has switched completely to E10. Some locations, due to either logistical obstacles or consumer behavior, still sell clear (unblended) gasoline. Refiners who reside in states with less than 75 percent E10 blending receive a 5; those with less than 25 percent blending receive a 10. Given the current state of ethanol blending, no state which participants in the program would cause a refiner to receive the higher score.

ii. E85. Reserved for later evaluation

iii. Biodiesel. Reserved for later evaluation

1d. Percentage of Diesel Production. While ethanol blending at 10 percent is already common, biodiesel is normally blended at 5 percent or less due to a lack of market acceptance. Therefore, refineries that disproportionately favor diesel production over gasoline inherently have a more difficult compliance pathway, as the percentage of renewable fuel available to blend into diesel is much lower than the 10 percent of ethanol that can be blended into gasoline. Refineries that have greater than the industry average of approximately 32 percent diesel production receive a score of 5; those at 40 percent diesel or above have a score of 10.

1e. Subject to exceptional state regulations. Certain states such as Tennessee and North Carolina require refiners to sell unblended fuel. Refiners are required to purchase RINs to meet their obligations even though they have no blending opportunities with this fuel. Also, under certain unusual circumstances, the interplay between the State regulations (such as the California

Low Carbon Fuel Standard) and the Federal RFS may increase compliance costs. Those refiners subject to exceptional regulations receive a 10.

2a. **Relative refining margin measure**. Refining margins differ from refiner to refiner for many reasons. In order to eliminate market volatility, a three year average was calculated for each small refinery. Refineries with a negative net average margin were scored a 10; those below the industry average were scored a 5.

2b. **Renewable fuel blending (% of production).** The degree to which a small refiner can actively blend refinery production with renewable fuels is a large component of economic impairment. Generally, for ethanol, (and biodiesel and other advanced biofuels) the lower the proportion of renewable fuel blending the greater the impairment.

i. Ethanol. Those refineries with between 25 and 75 percent of their gasoline at E10 were scored a 5; those with less than 25 percent were scored a 10.

ii. Biodiesel. Reserved for later evaluation.

iii. Advanced Biofuels. Reserved for later evaluation.

2c. **In a niche market.** The rationale for utilizing the classification of "niche" refinery is necessary to determine if it has access to specific geographical markets with limited alternative finished product supply or access to distressed crude oil supply, thus creating higher than industry refining margins for the niche refiner. Other refineries classified as "niche" are those that produce a specialty slate of products (lube oils, greases, asphalt, etc.) in addition to gasoline and diesel. The sale of these types of products will also result in higher than industry refining margins. Landlocked refiners whose immediate market does not have access to a refined product pipeline are scored a 0 as are or those whose primary products are not transportation fuels. Landlocked refiners with direct access to single pipeline are scored a 5. Refiners with access to more than one pipeline are scored a 10.

2d. **RINs net revenue or cost**. This criterion was not utilized in the current assessment due to lack of consistency among the survey participants. However, depending upon the business model of the small refiner, complying with their RVO can either be a net cost if they purchase all of their RINs or can generate revenue should they be able to actively trade RINs in the open marketplace. Firms that have a small refiner exemption and generate revenue by blending renewable fuels and selling RINs are not experiencing hardship related to the RFS. The windfall profit may be utilized to offset other margin related impairments. From the DOE small refiner survey, many (but not all) the respondents blended ethanol in 2009. These firms separated RINs and either sold them into the market or held them for future use. Indeed, one publically traded firm reported $4 million of revenue from RINs sales in 2009.[33]

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[33] Frontier Annual Report 2009

Viability Index Analysis

Refiner viability refers to the ability of the refiners to remain competitive and profitable. That requires sufficient profits to make investments in the refinery to remain competitive. In general, small independent refiners generally lack the revenue streams generated by crude oil production and national product marketing to counteract the historic volatility in cash flows from the refining industry. Therefore, under some circumstances, a small refinery may face compliance costs that would significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure. These impacts are evaluated in the viability metric shown in Table 11.

Table 11. Viability Metrics

3	Viability Metrics	
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 10 = impact on efficiency
b	Individual special events	0 = no special event, 10 = special event impacting viability
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down
	Subtotal	

3a. Compliance cost eliminates efficiency gains (impairment). This metric evaluates whether the totality of factors, including both survey results and public information would reduce the profitability of the firm enough to impair future efficiency improvements. While this would not lead to immediate shutdown, given the increasingly competitive refining market, significant constraints on efficiency improvements would eventually leave many small refineries at risk. Refineries that receive a extension of their exemption and do some blending, could sell RINs to improve their ability to position themselves to economically comply with RFS2 (through capital expenditures for blending or increasing capital for a RIN purchase program), thus reducing the impact of their future RFS2 compliance. Thus refineries that currently score high in this category and receive an extension will likely see a reduction in the scoring of this category in the future.

3b. Individual special events. Refinery specific events (such as a shutdown due to an accident, and subsequent loss of revenue) in the recent past that have a temporary negative impact on the ability of the refinery to comply with the RFS.

3c. Compliance costs likely to lead to shutdown. Some refineries have a unique vulnerability such as a weak competitive position and any significant additional burden could cause bankruptcy or closure. This metric covers those refineries indicating that compliance may lead to such an outcome.

Recommendation for Exemption Extension

Utilizing the individual scoring metrics and the previously described index analysis, Figure 11 shows the disproportionate impacts and viability indices for each of the eighteen refineries that submitted sufficient data to be evaluated[34]. A recommendation of disproportionate impact was determined if both indices were greater than 1. This requires a score equivalent to at least four of the eight metrics for disproportionate impact at the moderate level (5), and a positive value for at least one of the three metrics for the viability index. Thirteen of the eighteen refineries scored a 1 or higher in both indices, thus qualifying for a recommendation for extension of their RFS1 exemption.

Figure 11. Refinery Rankings by PADD

[Redacted]

XII. Findings and Conclusion

EPAct 2005, through the establishment of the RFS1 program, mandated a minimum renewable fuel content of gasoline, while exempting certain small refineries from compliance from 2007 through 2010. EPAct 2005 also required DOE to conduct a study for the Administrator of the EPA assessing whether the RFS would impose a "disproportionate economic hardship" on the statutorily defined small refineries. On February 24, 2009, DOE transmitted its study with recommendations to EPA.

In October 2009, Congress directed DOE to seek input from small refineries and revisit the issue of disproportionate economic hardship for small refineries. A survey of local market and financial data from currently exempt small refineries revealed individual differences between refineries that allowed the identification of disproportionate economic hardship among the respondents.

Eighteen refineries responded to the survey and fell within the scope of the study, and it is recommended that thirteen of them should receive an extension of their RFS1 exemption. The refineries recommended were geographically diverse: **[Redacted]**. The refineries recommended for the exemption are:

[Redacted]

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[34] The scoring for individual refineries is presented in Appendix H.

[redacted]

PRODUCT AGREEMENT
Contract No. [redacted]

Buyer:		**Seller:**	
[redacted]		[redacted]	
Attn:	[redacted]	**Attn:**	[redacted]
Phone:	[redacted]	**Phone:**	[redacted]
Fax:	[redacted]	**Fax:**	[redacted]
Email:	[redacted]	**Email:**	[redacted]

DURATION: April 1, 2017 to March 31, 2018 and month to month unless cancelled by either party with a 30 day written notice after the initial term.

MODE/LOCATION: Truck Transport – [redacted] and [redacted] Terminal

PRODUCT(S): Regular E10 and Premium E10 blends, #2 Ultra Low Sulfur Diesel (ULSD) Clear

VOLUME: Gasoline E10 Blends – Minimum of 500 bbls and a maximum of 800 bbls per day lifted on a ratable basis. Additional volumes must be mutually agreed upon.

ULSD – Minimum of 1,000 bbls and a maximum of 1,600 bbls per month lifted on a ratable basis throughout the month. Additional volumes must be mutually agreed upon.

PRICING:

[redacted] – [redacted] **Terminal formula:**

Regular E10 – lower of:

1. (Previous day Platts Gulf Coast Pipeline mean (87 CBOB-PGCM, symbol AARQU00) plus 3.50 CPG X 90%) Plus (Previous day Chicago Ethanol Platts, symbol AALRI00, mean plus 28 CPG X 10 %) minus (Previous day Platts Current year Ethanol RIN (RINCY02) mean X .05). Day of lift.

   OR

2. The current day gross low unbranded rack posting for 87E10 at the [redacted] terminal as reported by OPIS minus 0.50 CPG. Day of lift.

Premium E-10 – lower of:

1. (Previous day Platts Gulf Coast Pipeline Mean (93 Premium-PGCM, symbol PGAJB00) plus 3.50 CPG X 90%) Plus (Previous day Chicago Ethanol Platts, symbol AALRI00, mean plus 28 CPG X 10 %) minus (Previous day Platts Current year Ethanol RIN (RINCY02) mean X .05). Day of Lift.

   OR

2. The current gross low unbranded rack posting for 93E10 at the [redacted] terminal as reported by OPIS minus 0.50 CPG. Day of lift.

Ultra-Low Sulfur Diesel:

1. [redacted] OPIS Gross Low unbranded posted rack plus 1.0 CPG. If [redacted] is the OPIS Gross low rack poster for the day, the 1.0 CPG will not be added. Day of lift.

[redacted] **Refinery formula:**

Regular E10 – lower of:

1. (Previous day Platts Gulf Coast Pipeline mean (87 CBOB-PGCM symbol AARQU00) plus 2.50 CPG X 90%) Plus the (Previous day Chicago Ethanol Platts, symbol AALRI00, mean plus 28 CPG X 10 %) minus (Previous day Platts Current year Ethanol RIN (RINCY02) mean X .05). Day of lift.

   OR

2. The current day gross low unbranded rack posting for 87E10 at the [redacted] terminal as reported by OPIS minus 1.50 CPG. Day of lift.

Premium E-10 – lower of:

1. (Previous day Platts Gulf Coast Pipeline Mean (93 Premium-PGCM symbol PGAJB00) plus 2.50 CPG X 90%) Plus the (Previous day Chicago Ethanol Platts symbol AALRI00, mean plus 28 CPG X 10 %) minus (Previous day Platts Current year Ethanol RIN (RINCY02) mean X .05) Day of Lift.

   OR

2. The current gross low unbranded rack posting for 93E10 at the [redacted] terminal as reported by OPIS minus 1.5 CPG. Day of lift.

Ultra-Low Sulfur Diesel:

2. [redacted] OPIS Gross Low unbranded posted rack plus 1.0 CPG. If [redacted] is the OPIS Gross low rack poster for the day, the 1.0 CPG will not be added. Day of lift.

Weekend pricing: Friday's OPIS and Platts close prices will be in effect for Saturday, Sunday, and Monday.
Holiday pricing: Any holiday that falls throughout the week, pricing for the prior day will carry through.
Pricing based: Midnight to Midnight
PLATTS File: Close of Business (5pm EST)
OPIS File: Close of Business (5pm EST)

PAYMENT TERMS: Net 10 by Electronic Funds Transfer (EFT) from day of lift.

The payment terms are Seller's standard payment terms for this market. If standard payment terms change, the updated payment terms will become a part of this Agreement.

OTHER: The parties agree that Seller's Terms and Conditions of Sale located at http://www.[redacted] are considered to be part of this Agreement and are incorporated herein by reference. This Product Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations, proposals, inquiries, commitments and agreements, whether written or oral with respect to the subject matter hereof, except for any credit agreement entered into between Buyer and Seller, which shall remain in effect. In the event of a conflict between the Product Agreement and the Terms and Conditions of Sale, this Product Agreement shall control in all cases.

NOTICES: All notices hereunder shall be in writing and shall be deemed given when delivered in person or sent by facsimile transmission, or if mailed, on the third business day after being mailed.

PLEASE SEND NOTICES TO: All written notices required under this Agreement shall be in writing and addressed to the parties at the addresses set forth above, unless a party notifies the other, in writing, of another address to which notices are to be sent. All notices shall be deemed delivered when (i) personally delivered (ii) upon delivery confirmation if sent by registered or certified mail, postage prepaid, return receipt requested; or (iii) upon delivery confirmation if sent by a nationally recognized courier service.

This confirmation shall be deemed conclusive, absent manifest error, unless objected to in writing within 48 hours. Any terms in your confirmation, if any, which are inconsistent with or additional to the terms set forth in this confirmation are hereby rejected. Please send your confirmation to the noted address or email address to the seller noted at the top of this agreement.

Buyer: _____	**Seller:** [redacted] _____
Signed: _____	**Negotiated By:** _____ [redacted]
Name: _____	**Signed By:** _____ [redacted]
Date: _____	**Date:** _____

Renewable Fuel Standard
Small Refinery Hardship Program
Suggestions for Streamlining the Petition Process

I. General Changes to the Hardship Petition Process

1. Streamline the Petition Process

The petition process is burdensome for petitioning small refineries, EPA and DOE. To ease the burden on all parties, the small refiners suggest that EPA and DOE streamline the petition process by withdrawing the agency's December 6, 2016 memorandum requiring small refinery petitioners to submit voluminous amounts of financial and other data in favor of the streamlined process that DOE previously used.[1] Small Refineries should be required to complete and submit the DOE survey form in accordance with its definitions and instructions, the RFS compliance costs spreadsheet, and a petition containing information not covered by the DOE survey or RFS cost spreadsheet.

2. Score all of the DOE Metrics

In 2011, DOE determined that it did not then have adequate data to score three of the metrics described in the DOE Small Refinery Exemption Study ("DOE Study"). The metrics for local market acceptance of renewable fuels (metric 1.c.) and renewable fuel blending (% of production) (metric 2.b.), were to be applied "in the future when other renewable fuels [became] commercially available."[2] E85, biodiesel, and advanced biofuels are all commercially available, enabling DOE to score these metrics. The metric measuring whether RINs are a net revenue or cost was not scored in 2011 "due to a lack of consistency among [petitioners]."[3] Since 2013, petitioners have been required to submit RFS compliance cost spreadsheets with their petitions, which has given EPA consistent data among petitioners for purposes of evaluating whether RINs are a net revenue or cost.

Therefore, the reasons for not scoring these metrics in 2011 are no longer valid and they should be scored going forward. If DOE thinks the data necessary to evaluate these metrics is not available or reliable, the metrics should not be scored at all.

3. Use Objective Criteria

To ensure consistent and fair application of the hardship standard to all small refineries, and to streamline the petition process, EPA should use objective criteria when applying the DOE metrics. Using objective criteria will give small refineries certainty of their RFS obligations which will allow them to make important operational decisions. *See* Section II for a discussion of the DOE metrics.

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[1] U.S. EPA, FINANCIAL AND OTHER INFORMATION TO BE SUBMITTED WITH 2016 RFS SMALL REFINERY HARDSHIP EXEMPTION REQUESTS (Dec. 6, 2016), available at: https://www.epa.gov/sites/production/files/2016-12/documents/rfs-small-refinery-2016-12-06.pdf.
[2] DOE Study at 33.
[3] DOE Study at 35.

4. Do Not Adopt Scoring Under the DOE Addendum

In March of 2014, DOE issued an addendum to the DOE Study, making hardship relief more difficult to secure. The DOE addendum is inconsistent with Congressional intent that small refineries not bear a disproportionate regulatory burden and should not be applied. For the reasons described above, EPA should reject DOE's scoring based on the 2014 addendum to the DOE Study; "any impact on efficiency gains" (metric 3.a.) and "any individual special event" (metric 3.b.) warrant a score of "10."

5. Use of Independent Contractors

To the extent that DOE and EPA rely on contractors to evaluate small refinery hardship petitions, the agencies should rely only on contractors that are neutral, independent parties that do not have an interest in the outcome of the petition. DOE and EPA should also instruct any contractors that they rely on to evaluate small refinery hardship petitions consistent with the DOE Study and the additional information provided in this document. This will help ensure that the agencies receive and are able to impartially and accurately assess all small refinery hardship petitions.

6. Issue Timely Decisions

The regulations require EPA to act on small refinery hardship petitions within 90 days. This deadline will be easier to achieve if the petition process is streamlined and the agency applies objective criteria, which will also reduce the burden in preparing lengthy decision documents. Simplifying the process will also enable small refineries to submit their petitions earlier in the year. The complexity of the process and volume of data required to be submitted with the petition results in petitions being submitted later in the compliance year.

7. Give Petitioners An Opportunity to Meet Prior to the Denial of a Petition

Final decision documents are not always accurate, leading to costly appeals. Prior to denying a hardship petition, EPA should offer the petitioner an informal opportunity to meet to discuss the basis for the intent to deny.

II. DOE Scoring Metrics

1. Disproportionate Structural Impact Metrics

a. *Metric 1.a. Access to Capital/Credit (DOE Survey Form Lines 3.15 – 3.17)*

The DOE survey form, lines 3.15 to 3.17, ask for the small refinery's credit rating and debt to equity ratio, which matches scoring metric 1.a. DOE/EPA should rely on this objective criteria to score metric 1.a., and not require the production of loan covenants, financial statements, and other financial information to do a more expansive analysis of the company's access to capital. This will streamline the petition process and assure consistent application among petitioners.

Score	Description
0	Good access (BB- or above credit rating)
5	Moderate access (rating in Bs)
10	Poor access (C rating or 50% D/E)

b. *1.b. Other Business Lines Besides Refining and Marketing*

DOE's metric 1.b. is intended to measure whether small refineries have other business lines *besides refining and marketing*. DOE has scored refineries that produce refined petroleum products other than transportation fuels as having "other business lines," while at the same time including non-transportation fuels in the measure of "net refining margins" (metric 2.a.). This approach is internally inconsistent because "refining" cannot mean two different things in two metrics using the same term.

The DOE survey form instructions state that all definitions are to be construed as "consistent with" the Energy Information Administration's ("EIA's") Form EI-810, "Monthly Refinery Report"; EIA-815, "Monthly Bulk Terminal and Blender Report"; and EI-28, "Financial Reporting System"; and other forms as appropriate. Each of the sources consistently treats refining as the production of all refined petroleum products including lubricants and asphalt. EIA defines "Refinery" and "Petroleum Products" as:

> ***Refinery.*** An installation that manufactures finished **petroleum products** from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, and oxygenates.
>
> ***Petroleum Products.*** Petroleum products are obtained from the processing of crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. Petroleum products include unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products.[4]

[4] *Petroleum & Other Liquids, Definitions, Sources and Explanatory Notes*, U.S. Energy Information Administration, https://www.eia.gov/dnav/pet/TblDefs/pet_cons_psup_tbldef2.asp (last visited Aug. 22, 2017) (emphasis added).

EIA also defines "Refining" as:

> After crude oil is removed from the ground, it is sent to a refinery where different parts of the crude oil are separated into useable petroleum products. These petroleum products include gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt.[5]

EPA's definition of refining is the same as EIA's, producing a range of petroleum products including non-transportation fuels.[6]

Treating the production of lubricants, asphalt, and other non-transportation fuels as "other business lines" also is inconsistent with the purpose of this metric as described in the DOE Study, which was to evaluate whether a refinery has "other lines of business" that are less correlated with refining. The example used by DOE was upstream exploration and development. The DOE Study was trying to assess the degree to which these separate, non-refining operations would make a small refinery less vulnerable to the volatility in "refining margins," not whether a refinery produced products other than transportation fuels.[7]

If DOE treats refined petroleum products other than transportation fuel as "other business lines," then it should exclude everything but transportation fuels from net "refining" margins in metric 2.a. because refining cannot mean two different things in two metrics using the same term.

Score	Description
0	Other lines
10	No other lines

c. *1.c. Local Market Acceptance of Renewable Fuels*

In scoring whether there is "local market acceptance of renewable fuels," DOE only considers E10, and not E85 and biodiesel, although the metric contemplates one score that captures market acceptance of all three "products" and requires a score of "10" if any product (singular) is not accepted.

The DOE Study indicated that there was no scoring for E85 and biodiesel due to a "lack of data." The EIA publishes detailed data each year on the volume of E85 used and the number of vehicles capable of accommodating it. DOE maintains an "alternative fuels data center" that tracks the number and location of all E85 fueling stations across the United States, and EPA's 2014-2016 final RFS rule acknowledged that a number of market constraints, including that "blenders and distributors [will need to see] sustained profit opportunities before they are willing to invest in new infrastructure to increase their capacity to blend and distribute renewable fuels." 80 Fed. Reg. 77,420, 77,459 (Dec. 14, 2015). In addition, small refinery hardship petitioners

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[5] *Oil: Crude and Petroleum Products Explained*, U.S. ENERGY INFORMATION ADMINISTRATION, https://www.eia.gov/energyexplained/print.cfm?page=oil_home (last visited Aug. 11, 2017).
[6] *Types of Refined Petroleum Products*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://www.epa.gov/emergency-response/types-refined-petroleum-products (last visited Sept. 7, 2017).
[7] DOE Study at 34.

describe constraints in their local markets on the sale of E85 and large retail chain owners admit that they are "fuel agnostic" and unwilling to offer fuels that their customers are not inclined to buy.[8] Finally, a report for Growth Energy, a trade association representing the ethanol industry, acknowledges the market constraint on E85 and concludes that greater E85 penetration will not occur until RINs trade at $2-3/RIN at which point "blenders [will] face stronger incentives to reduce E85 prices (i.e., reduce their margins) in order to drive needed volumes."[9] All of these data points indicate that there is voluminous data about local market resistance to E85 use to enable DOE to score this metric.

In addition, DOE should be scoring local market resistance to biodiesel blending. Small refineries disproportionately produce diesel; diesel is blended at lower rates than gasoline; and fewer RINs are generated from blending biodiesel. Therefore, not scoring local market acceptance of biodiesel skews the scoring against granting small refinery hardship. There are very significant obstacles to biodiesel blending, some of which are specific to small refineries. For example, a small refinery will not be able to sell blended biodiesel in a market where the large integrated refiner has chosen not to do so. Large integrated refiners pick and choose in which markets they blend based on geography (warmer climates), proximity to biodiesel production, transportation costs, etc. A small refinery will not be able to sell blended biodiesel where the largest market player, with its lower overall cost structure, chooses not to do so. This is why state biodiesel blending mandates help small refineries compete against larger, vertically-integrated refiners (unless their customer base is exempt from the mandate). However, many states do not have biodiesel blending mandates.

In addition, large truck stop chains and convenience stores like Kwik Trip, Love's (Musket), and Pilot have displaced small refineries' ability to blend biodiesel. Due to the grossly inflated value of the RIN, large truck stop chains and convenience stores that are not obligated parties under the RFS program refuse to buy blended biodiesel from small refineries or cap the amount of blended biodiesel that they will accept in order to capture the RIN value themselves. Small refineries that have made investments to add biodiesel blending have seen their investments displaced by large truck stop chains and convenience stores.

Biodiesel is not accepted in all markets and is not amenable for use in all markets. EIA and DOE track biodiesel volumes and retail outlets where it is sold. EPA evaluated market constraints on biodiesel blending in its 2014-2016 rulemaking, and small refinery hardship petitioners describe in their petitions the local market acceptance of biodiesel and market constraints on more biodiesel blending in their markets. Therefore, DOE has ample data with which to determine whether there are market constraints on biodiesel blending to enable DOE to score this metric.

A score of "0" for this metric only reflects local market acceptance of E10, but the metric was intended to score the local market acceptance of all three products – E10, E85, and biodiesel. If DOE does not think the data is available or reliable to evaluate all three products,

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[8] Letter from David Masuret and Matthew Durand, Cumberland Farms, Inc. to Gina McCarthy, Administrator, EPA (Nov. 2, 2016) (EPA Docket ID No. EPA-HQ-OAR-2016-0544-0055).

[9] MARC CHUPKA, J. MICHAEL HAGERTY, NICHOLAS POWERS & SARAH GERMAIN, THE BRATTLE GROUP, PEEKING OVER THE BLENDWALL: AN ANALYSIS OF THE PROPOSED 2017 RENEWABLE VOLUME OBLIGATIONS at 15 (July 11, 2016).

then it should not score this metric at all. Scoring the metric based solely on E10 acceptance is inaccurate because the metric was intended to measure local market of all three renewable fuels, and ignoring E85 and biodiesel hides the small refinery hardship caused by overwhelming evidence that there is substantial local market resistance to E85 and biodiesel that uniquely harms small refineries.

	Score	Description
c. Local market acceptance of Renewables	0 10	Products accepted Product not accepted
i. E10	0 5 10	High acceptance Low acceptance No acceptance
ii. E85	Not scored because of small E85 volumes	
iii. Biodiesel	Not available	

d. *1.d. Percentage of Diesel Production (DOE Survey Form Line 4.12, 4.13)*

Evaluation of this metric should be based on industry average diesel production and not the 2011 industry average of 32%. The DOE scoring metric description (below) uses "Industry Average" rather than 32%, indicating its intent that the current industry average, and not the average in 2011, should be applied. In 2015, 2016, and 2017, the industry average diesel production as reported by EPA in the annual RFS rulemakings was much lower than the 2011 average – 29%, 30%, and 28% – respectively. EPA should use the industry average in the most recent compliance year for purposes of scoring this metric.

Score	Description
0	D/(G+D) < Industry Avg.
5	D/(G+D) > Ind. Avg. < 40%
10	D/(G+D) > 40%

e. *1.e. Subject to Exceptional State Regulations (DOE Survey Form Line 4.16)*

DOE has been too narrow in construing what constitutes an exceptional state regulation. For example, state biofuel blending mandates generally help small refineries because they force large integrated refiners, that ordinarily pick and choose in which markets they blend based on favorable market conditions, to blend in all markets with state mandates. Small refineries cannot sell blended fuel when competing with large integrated refiners offering unblended fuel. However, when the small refinery's customers are exempt from the state biofuel blending mandate, state biofuel mandates have just the opposite effect – the state biodiesel mandate benefits others, but not the small refinery. In this situation, the small refinery should receive a score of "5," some barriers for compliance, per the chart below.

DOE's description of this metric indicates that it is trying to identify state laws that create obstacles to blending for the individual refinery, forcing the small refinery to buy RINs or generate RINs but give away the RIN value in order to achieve compliance. Therefore, in scoring this metric, DOE/EPA should be more expansive in considering whether the state law creates obstacles to blending for the small refinery.

Score	Description
0	Not subject
5	Some barriers for compliance
10	Subject to exceptional state regulations

f. *2.a. Relative Refining Margin Measure (DOE Survey Form Line 3.7)*

EPA has instructed small refineries to exclude taxes, depreciation, and finance charges (interest) from their net refining margin calculation. This contradicts the definition in DOE's survey instructions, which states:

> **Net Refinery Margin (dollars per barrel) (3.7) Report** the difference between the gross refining margin and the costs of producing and selling the petroleum products (e.g., refining energy costs and selling costs). The net margin measures before-tax cash earnings from the production and sale of refined products. The net margin excludes peripheral activities such as non-petroleum product sales at convenience stores.[10]

Small refineries' net refining margins should be based on the DOE survey instructions. "Before-tax cash earnings" takes into account the company's finance charges (interest), but EPA has instructed refiners to exclude interest.

In calculating the industry average net refining margins against which small refinery margins are compared for purposes of scoring this metric, DOE is required to factor in the RIN revenues from integrated refiners' affiliated marketing arms, which is where their windfall RIN revenues are reflected. According to the DOE survey instructions, the net refining margin includes "the production <u>and sale</u> of refined products" and only excludes "non-petroleum product sales at convenience stores," indicating that the net refining margin carries all the way to retail, which is consistent with the DOE's evaluation of "of other business lines besides refining **and marketing**."

Therefore, if a large integrated refinery has an affiliated retail chain/marketing arm, its net refining margin must include the margins from its retail operations to capture its windfall RIN revenues. By way of example, to avoid the extreme competitive disadvantage for refineries that do not own retail, Marathon bought the Speedway retail chain. Marathon reported that "synergies across the network" contributed to its exceptional performance and record earnings in 2016:

> Speedway continued its exceptional performance in the quarter and set multiple records for the full-year 2016 while maintaining tight control on expenses. Speedway surpassed segment all-time highs in income from operations, light product gallons sold, merchandise sales, and merchandise gross margin on a percentage and absolute dollar basis. Speedway continues to exceed our expectations by driving marketing-

[10] U.S. DEPT. OF ENERGY, RFS2 SMALL REFINERY SURVEY 2010, INSTRUCTIONS (May 2010), available at: *https://www.reginfo.gov/public/do/DownloadDocument?objectID=17799501.*

enhancement opportunities and continuing to realize acquisition synergies across the network.[11]

Windfall profits from selling RINs are reflected in the marketing arms of large integrated refining companies and, according to DOE's survey instructions, must be captured in calculating the net refining margin for the industry.

Each year DOE determines the industry-wide net refining margin, but it's not clear how they do so. EPA notes that "DOE calculates three-year average industry refining gross and net margins…based on public data." It is not clear, however, how that calculation is done and the information that the agency relies on in performing the calculation is not made public to small refinery petitioners. In particular, it is not clear that profits from marketing or "synergies across the network" have been included or that the production and sale of all types of refined petroleum products have been accounted for. Therefore, there should be greater transparency in how the net refining margin is calculated.

Net refining margins should be reported on the DOE survey (line 3.7) consistent with the definitions in the DOE survey instructions, and the industry-wide refining margins against which small refineries are compared should include affiliated marketing businesses and the production and sale of all types of refined petroleum products.

Score	Description
0	Above the 3-year industry average
5	Positive, and below 3-year industry average
10	Negative

g. *2.b. Renewable Fuel Blending (% of production) (RFS Compliance Cost Spreadsheet)*

The DOE Study explains that the degree to which a small refinery can blend its production with renewable fuel is a large component of assessing small refinery hardship; yet, this metric has never been scored for biodiesel and other advanced biofuel blending. All small refineries that petition for hardship relief submit the RFS compliance costs spreadsheet that includes the amount of renewable fuel blending in each of these categories. The RFS compliance cost spreadsheet was developed by DOE/EPA in 2013, and all hardship petitioners are required to submit it with their petition in order for their petition to be deemed complete. Therefore, DOE has had the data it needs to score this metric since at least 2013 and, by not scoring this metric, has underestimated the harm to small refineries.

Like metric 1.c., DOE scoring metric 2.b. is based on ethanol blending alone. Ethanol is the fuel that is most readily accepted for blending. Scoring this metric as a "0," without accounting for the lack of blending in the other fuels categories underestimates small refinery hardship. This is particularly true because small refineries disproportionately produce diesel. If

[11] *Marathon Petroleum Corporation Reports Fourth-Quarter and Full-Year 2016 Results*, MARATHON PETROLEUM CORP., http://ir.marathonpetroleum.com/phoenix.zhtml?c=246631&p=irol-newsArticle&ID=2241160 (last visited Aug. 22, 2017) (internal quotations omitted).

DOE does not score the other categories of renewable fuel blending, it should not score this metric at all.

Score	Description
Ethanol blending	
0	75%+
5	25-74%
10	<25%
Biodiesel blending (not used)	
0	1.1% of diesel production
10	<1.1%
Other Advanced Biofuel blending (not used)	
0	Some blending
10	No blending

h. *2.c. In A Niche Market*

The DOE Study rationale for characterizing a small refinery as a "niche" refinery based on its production of specialty products is that specialty products have higher refining margins. Because DOE requires that refineries include all refined petroleum products in their calculation of "net refining margins," any higher margins from specialty product sales are already reflected (counted against) small refineries in metric 2.a. In addition, DOE treats specialty products as "other business lines" in metric 1.b., stacking the deck against small refineries that produce specialty products.

In addition, small refineries suspect that the industry average net refining margins calculated by DOE do not include specialty products, resulting in a lower industry average net refining margin, even though small refineries that produce specialty products are compared against the industry average refining margins and receive a score of "0" for this metrics.

Therefore, DOE should exclude "specialty products" from "net refining margins" (metric 2.a.) or, if they are included in net refining margins, refineries should not be characterized as "niche" under metric 2.c., or as having "other business lines" under 1.b., to be internally consistent and avoid stacking the deck.

Score	Description
0	Niche
5	Moderate niche impact
10	No niche

i. *2.d. RINs Net Revenue Or Cost (RFS Compliance Cost Spreadsheet)*

The DOE Study explains that complying with RFS can be a net cost to refineries that purchase RINs to comply and can generate revenue for refineries that comply by blending. DOE explained that it did not score this metric in the 2011 study "due to lack of consistency among survey participants." As described above, in 2013, DOE/EPA developed the "RFS Compliance

Cost" spreadsheet, which provides consistent data from petitioners on RFS compliance costs. As a result, DOE has the data necessary to score this metric and this metric should be scored.

EPA should make one change to its instructions for completing the RFS Compliance Cost Spreadsheet to accurately capture small refinery compliance costs. As the Coalition has explained to EPA, it has become an increasingly common practice for distributors to buy blended fuel from small refineries only if the small refinery agrees to disgorge a significant portion of the RIN value (i.e., the opposite of RIN cost pass-though). In other words, due to their lack of market power, small refineries that blend renewable fuel are forced to give away RIN value to capture the sale. Small refineries also are forced to discount the sales price of their fuels to compete with RIN-long refiners that use their excess RIN sales to discount the sales prices of the petroleum fuels they sell and undercut their small refinery competitors.

EPA should make clear in its instructions that small refineries should include these RIN stealing discounts in the RFS Compliance Cost Spreadsheet. The small refineries have provided EPA with contracts showing, for example, that the price for blended fuel is the spot price less 70-90% of the RIN value, depending on the customer. This is now a common practice in the industry and uniquely harms refineries that do not own retail and are forced to sell their products to distributors. The RFS Compliance Cost spreadsheet needs to capture the hardship to small blending refineries that cannot retain the RIN value and are effectively buying RINs even though they generate RINs through blending.

Further, DOE and EPA should recognize that small refineries are not able to pass-through or "recover" their RFS costs in the sales price of the fuels they produce. As explained in the DOE Study:

> The degree to which the costs burdening small refineries will be passed through to the market depends on many factors, including the market power and the relative cost level of a small refiner relative to other market participants.

DOE Study at 22-23. Because small refineries have very limited market power and have costs proportionally higher than their market competitors, small refineries are not able to pass through their RFS costs. The "RIN stealing" described above is further evidence of small refineries' inability to pass through their RFS costs.

Score	Description
0	revenue > cost
10	revenue < cost

2. Viability Metrics

The viability metrics measure "the ability of the refiner [] to remain competitive and profitable." A small refinery cannot remain competitive when it bears a disproportionate

regulatory burden and competes with multi-national super majors with full integration and economies of scale.[12]

Appendix B-5 to the DOE Study explains the extreme, permanent, competitive advantage large integrated oil companies enjoy over small refineries in a high-priced RIN market. While DOE predicted that small refineries would be harmed significantly by high RIN prices when the blendwall was reached, it did not anticipate that RINs would trade at ten times their intrinsic value:

> RIN prices should rise to reflect the most expensive blending opportunity taken. As the RFS mandate increases, obligated parties will demand more RINs, adding upward price pressure. As the mandate increases, increasing the supply of RINs becomes difficult or nearly impossible. In anticipation of the blend wall, obligated parties may stockpile RINs through discretionary blending in anticipation of a shortage of blending opportunities. Those parties that are short, i.e. cannot generate enough RINs through their own facilities to meet their RVO, will need to purchase RINs and could suffer significant economic hardship.[13]

The DOE Study concluded that when the blendwall was reached, RIN prices would reflect the most expensive blending opportunity. The fact that they are trading at ten times their intrinsic value means that the harm to small refineries is more acute than DOE ever anticipated.

The extreme competitive disadvantage for small refineries caused by the current rule structure is aptly described in Appendix B-5, but several market shifts have occurred that DOE did not predict. First, DOE did not predict that RINs would trade at ten times the cost of blending. Second, the DOE Study also did not predict RIN value stealing – downstream distributors/retailers forcing small refineries to disgorge RIN value to secure the sale because they lack market power to retain the full value of the RIN. Third, DOE did not predict that even if small refineries were able to make investments in renewable fuel blending to avoid the high cost of RINs, those investments could be displaced by unobligated blenders (e.g., Kwik Trip setting up a competing blending operations to displace the small refiners blending operation). Finally, DOE did not predict the market manipulation and fraud in the RIN market that has caused wild volatility, higher prices, and fraud costing taxpayers over a billion dollars.

The harm to small refineries became acute in 2013 when RIN prices increased by 5000%, which is when DOE adopted the addendum to the DOE Study, raising the bar for securing hardship relief. The addendum should be abandoned to avoid greater harm to small refineries.

a. *3.a. Compliance Costs Eliminates Efficiency Gains (impairment)*

The DOE Study recognized that small refineries could suffer a disproportionate economic hardship under the RFS program if buying RINs is more expensive than RINs that can be generated through blending.[14] The harm is both the cost of RINs and the competitive advantage high RIN values bestow on large integrated refiners that achieve compliance through blending

[12] DOE Study at 23.
[13] DOE Study at 17-18.
[14] DOE Study at 2.

and generate and sell excess RINs. As RIN prices have increased from 2-3 cents per RIN in 2010 to close to nearly $1.00 per RIN today, the competitive distortion in favor of large integrated refiners has become extreme.

In numerous decision documents, EPA acknowledged that it was denying hardship relief to small refineries notwithstanding its conclusion that doing so would prevent the refinery from making investments to improve efficiency, reliability, and safety:

> The cost of RFS compliance, either through purchasing and blending renewable fuels, or purchasing RINs, or a combination of both, may reduce funds available to pay for other potential projects to improve the efficiency, reliability, and safety of a refinery, but that fact does not establish entitlement to an exemption.

As the 10th Circuit just concluded in *Sinclair*, Congress did not intend for the RFS to prevent small refineries from investing in efficiency, reliability, and safety projects in order to pay for RINs.[15]

As DOE predicted, high RIN prices are causing a disproportionate economic impact on small refineries. This disproportionate economic impact, by its very nature, is reducing small refineries' profitability relative to their large integrated refining competitors that generate excess RINs through blending, and the reduction in relative profitability is impairing the small refineries' ability to invest in future efficiency improvements. As DOE noted, significant constraints on efficiency improvements eventually will leave small refineries at risk, which is all that is required to demonstrate an impact on efficiency gains.

In the past, EPA has denied small refinery hardship petitions, stating in decision documents that small refineries must shoulder their share of the RFS compliance burden.

> EPA has considered the language in the recent explanatory statement for the 2016 Consolidated Appropriations Act which states: 'The Secretary [of DOE] is reminded that the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program.' Thus, in 2012, the statutory presumption was that in 2013 and future years, [refinery] would shoulder its share of responsibility for the compliance burden borne by obligated parties under the RFS program, unless it could show 'disproportionate economic hardship.'

Small refineries do not mind shouldering their share of any compliance burden, but that is not what is happening under the RFS. The RIN market is no longer a compliance market; it has become a market that is highly susceptible to manipulation, speculation, and fraud. Vertically-integrated refineries that avoid the RIN market or benefit from it because they have excess RINs or are sophisticated enough to have a RIN trading desk and buy and sell RINs for profit at the expense of small refineries. Small refineries that are paying ten times the intrinsic value of a RIN to a RIN-long integrated oil company, an exempt (non-refining) blender like Murphy USA

[15] *Sinclair Wyoming Refining, et al. v. EPA*, Case No. 16-9532 (10th Cir. 2017).

or Kwik Trip, or multi-national commodity trader with links to Russia, are shouldering more than their share of the compliance burden.

As DOE predicted, small refineries owned by large integrated oil companies are not suffering from the same competitive distortion because they have access to RINs from their affiliated marketing arms, but all other small refineries, blending and non-blending, are harmed by the current market conditions and should receive a score of "10."

Score	Description
0	No impact on efficiency
5	Moderate impact on efficiency
10	Impact on efficiency

b. *3.b. Individual Special Events*

The DOE Study recognizes that certain events can have a temporary negative impact on a refinery's ability to comply with the RFS. In the past, EPA and DOE have taken an unreasonably narrow view of what qualifies as an "individual special event." EPA and DOE should find that pipeline shutdowns, extended refinery turnarounds, unplanned outages, and key unit shutdowns that have a temporary negative impact on a refinery's ability to comply with the RFS should be considered "individual special events."

Score	Description
0	No special events
5	Moderate event
10	Special event impacting viability

c. *3.c. Compliance Costs Likely To Lead to Shutdown*

The DOE Study recognized that some refineries have a unique vulnerability, such as a weak competitive position, and any significant additional burden could cause bankruptcy or closure. This metric measures whether a small refinery may face compliance costs that would significantly impact the operation of the facility, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure. Over the past several years, small refineries have shut down and others have been acquired. In addition, to consider bankruptcy or closure, DOE/EPA should consider the necessity of the sale of the asset because the small refinery can no longer afford to operate it.

A refinery does not need to be on the verge of shutdown to receive a "10" on this metric.

Score	Description
0	Not likely to shut down
10	Likely to shut down

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/4/2017 2:51:48 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: RFS small refinery hardship petition update

Hi Mandy-- Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 hanks, Ben

From: Gunasekara, Mandy
Sent: Tuesday, May 02, 2017 11:07 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Re: RFS small refinery hardship petition update

Thank you for update. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On May 2, 2017, at 9:14 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

> Hi Mandy--
>
> First: let me apologize for the length of this note, but there's a bit of detail worth conveying to you on this topic.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 12/19/2018 11:23:17 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Re: Report: Exxon Mobil gets economic hardship RFS waiver

Not this particular request. The language they used had previously been approved for a different but similar request.

Deliberative Process / Ex. 5

Sent from my iPhone

On Dec 19, 2018, at 11:46 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Did OPA ask OAR?

From: Konkus, John
Sent: Wednesday, December 19, 2018 2:45 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: Re: Report: Exxon Mobil gets economic hardship RFS waiver

This is what we sent them when they asked about it...

Hey Eric, we can't confirm or deny any potential waivers. See our statement below on your second question.

"Congress defined small refineries by one factor: the level of a particular refinery's output. The statutory definition does not include consideration of any affiliated parent company or the parent company's financial standing. This was a decision Congress made when drafting the renewable fuel standard and EPA implements the small refinery exemption program consistent with that explicit direction. "– **EPA spokesman, Michael Abboud**

On Dec 19, 2018, at 2:28 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

So...

From: POLITICO Pro [mailto:politicoemail@politicopro.com]
Sent: Wednesday, December 19, 2018 2:24 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Report: Exxon Mobil gets economic hardship RFS waiver

By Eric Wolff

12/19/2018 02:21 PM EDT

Oil giant Exxon Mobil received an economic hardship waiver from the EPA exempting one of its refineries from compliance with the Renewable Fuel Standard, Reuters reported today, citing three unnamed sources.

The waiver was given to Exxon's Billings, Mont. refinery which has a processing capacity of 60,000 barrels of crude a day, well below EPA's "small refinery" threshold of 75,000 barrels a day. Exxon reported $6.24 billion in profits in the third quarter.

EPA's use of economic hardship waivers has generated controversy for the last two years, as it has used the waivers to reduce the mandate by more than 1 billion gallons.

Exxon declined to comment for the story.

EPA declined to confirm the report, but said its statutory process for determining whether a waiver is warranted "does not include consideration of any affiliated parent company or the parent company's financial standing."

EPA's website says it has granted 29 exemptions for the 2017 compliance year, and that it has seven more pending as well as 15 petitions for the 2018 year. The agency has not denied any petitions since 2015.

To view online:
https://subscriber.politicopro.com/agriculture/whiteboard/2018/12/report-exxon-mobil-gets-economic-hardship-rfs-waiver-2390023

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Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 9/27/2018 9:20:55 PM
To: Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: NBB Meeting Memo
Attachments: National Biodiesel Board Oct 1 2018.docx

Hi Aaron,
Please see attached for the Monday NBB meeting.

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/31/2018 10:24:33 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: SRE Response
Attachments: Grassley Rewrite_DRAFT 2018 07 30.docx

Attached is the latest draft with requested edits. Please read through. Harlow - **Deliberative Process / Ex. 5**

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/13/2018 3:19:56 AM
To: Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: RE: ABFA litigation - draft motion to dismiss for your review
Attachments: ABFA v EPA - motion to dismiss - draft - clean - 071218.doc

Deliberative Process; ACP / Ex. 5

I'm around tomorrow if we need to discuss anything else. Please send around the final, amended version before being sent to DOJ. If necessary, I can make myself available tomorrow to chat with DOJ if they have any concerns.

Thanks all.

Mandy

From: Srinivasan, Gautam
Sent: Thursday, July 12, 2018 9:28 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: Fwd: ABFA litigation - draft motion to dismiss for your review

Mandy- The brief is attached. The relevant sections should be highlighted.

++++++++++++
202-564-5647 (o)
202-695-6287 (c)

Begin forwarded message:

From: "Stahle, Susan" <Stahle.Susan@epa.gov>
Date: July 12, 2018 at 1:19:59 PM EDT
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
Cc: "Harlow, David" <harlow.david@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Subject: ABFA litigation - draft motion to dismiss for your review

Hi Bill –

Attached is a clean version of the draft motion to dismiss in the ABFA litigation we discussed today. This version incorporates OGC edits (including those from Justin).

Deliberative Process; ACP / Ex. 5

Again, Deliberative Process; ACP / Ex. 5 so we hope to get whatever comments you might be able to provide by COB today, if possible.

Thanks,

Sue

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/12/2018 11:04:17 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: Re: ABFA litigation - draft motion to dismiss for your review

David- thank you for looping me in. Can someone send me the latest version? I'll be making edits. I'm also happy to discuss with DOJ tomorrow if it proves necessary/helpful.

Sent from my iPhone

On Jul 12, 2018, at 5:10 PM, Harlow, David <harlow.david@epa.gov> wrote:

Susan,

I thank you for your response and explanation.

Deliberative Process; ACP / Ex. 5

Deliberative Process; ACP / Ex. 5 Thanks.

Deliberative Process; ACP / Ex. 5

David S. Harlow
Senior Counsel

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Stahle, Susan
Sent: Thursday, July 12, 2018 3:45 PM
To: Harlow, David <harlow.david@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: ABFA litigation - draft motion to dismiss for your review

Hi David –

Thank you for your thoughts below.

Deliberative Process; ACP; AWP / Ex. 5

Thanks,

Sue

From: Harlow, David
Sent: Thursday, July 12, 2018 3:09 PM
To: Stahle, Susan <Stahle.Susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: ABFA litigation - draft motion to dismiss for your review

Susan,

Deliberative Process; ACP / Ex. 5

Deliberative Process; ACP / Ex. 5

<image001.png>

Deliberative Process; ACP / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Stahle, Susan
Sent: Thursday, July 12, 2018 1:20 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: ABFA litigation - draft motion to dismiss for your review

Hi Bill –

Attached is a clean version of the draft motion to dismiss in the ABFA litigation we discussed today. This version incorporates OGC edits (including those from Justin).

Deliberative Process; ACP / Ex. 5

Again, Deliberative Process; ACP / Ex. 5, so we hope to get whatever comments you might be able to provide by COB today, if possible.

Thanks,

Sue

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/9/2018 1:38:49 PM
To: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]; Kundinger, Kelly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3c9a5d16e2244079e222f342bf9992f-Kundinger,]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]
Subject: RE: RFS talkers for Iowa Monday
Attachments: RFS Memo_AW Iowa State Fair_August 2018_ Draft (V1).docx

See attached RFS talkers. Let me know if there is anything else I should add.

From: Bennett, Tate
Sent: Monday, August 6, 2018 4:10 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Kundinger, Kelly <kundinger.kelly@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>
Subject: RE: RFS talkers for Iowa Monday

Sorry to bring bad news, but is there any chance **we can get this by COB Wednesday?** Hopefully it's not too much of an inconvenience. Thank you!
Tate

-----Original Message-----
From: Bennett, Tate
Sent: Monday, August 6, 2018 11:09 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Kundinger, Kelly <kundinger.kelly@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Hewitt, James <hewitt.james@epa.gov>
Subject: RFS talkers for Iowa Monday

OAR- Do you all think you can provide a one-pager for his trip on Monday by Thursday COB?

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/25/2018 9:07:33 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]
CC: Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]
Subject: RE: OAR Fact Sheets
Attachments: RFS SRE.docx

Attached is the RFS SRE. Clint/Alex will follow-up with the remaining once edits are complete.

From: Gunasekara, Mandy
Sent: Wednesday, July 25, 2018 4:35 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Cc: Frye, Tony (Robert) <frye.robert@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: RE: OAR Fact Sheets

Second batch attached.
I'm working on small refinery exemptions and then that is it from me. Alex, can you send them the ones Clint was working on as well (CSAPR/NAAQS/Oil and Gas NSPS/BRICK)

From: Dominguez, Alexander
Sent: Wednesday, July 25, 2018 2:49 PM
To: Palich, Christian <palich.christian@epa.gov>
Cc: Frye, Tony (Robert) <frye.robert@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: OAR Fact Sheets

Attached is the first batch

From: Gunasekara, Mandy
Sent: Wednesday, July 25, 2018 2:42 PM
To: Palich, Christian <palich.christian@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: Re: OAR Fact Sheets

No worries- we just sent a first batch over. Alex can you send them to Christian as well.

I'll look to have the rest complete by 4.

Sent from my iPhone

On Jul 25, 2018, at 2:40 PM, Palich, Christian <palich.christian@epa.gov> wrote:

> Hi Mandy and Alex,

Any sense on when we will have the completed OAR fact sheets? We are starting to put the binder together now for AW, and since this is the first briefing tomorrow we just want to ensure he can review OAR pages tonight. Thanks! Sorry to be a pest.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional & Intergovernmental Affairs
U.S Environmental Protection Agency
O: 202.564.4944
C: Ex. 6
E: Palich.Christian@epa.gov

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/19/2018 4:03:54 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: QFRs
Attachments: SAC QFRs Final for review_mmg edits.docx

Attached is the version with my edits. There is one remaining question to be answered regarding risks associated with PM below certain levels. Clint, I'm leaving that one to you. Feel free to adjust others as needed.

From: Gunasekara, Mandy
Sent: Thursday, July 19, 2018 9:53 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Subject: RE: QFRs

Can you send around the latest version of the QFRs please?

From: Dominguez, Alexander
Sent: Tuesday, July 17, 2018 8:42 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Fwd: QFRs

I verbally told Mandy but I figured you'd both like to see. I didn't apologize.

Sent from my iPhone

Begin forwarded message:

> **From:** "Hanson, Paige (Catherine)" <hanson.catherine@epa.gov>
> **Date:** July 17, 2018 at 3:52:12 PM EDT
> **To:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>
> **Subject: QFRs**
>
> I just left you a message, but then I was thinking and you're probably really busy and voicemails are slow. So in short: we really need the QFRs.
>
> OAR is the only shop we're waiting on at this point and it's holding everyone else's responses up. I know there's a ton going on, but even if y'all could clear two today, two tomorrow, etc. it'd be helpful. I'm also happy to come up with one of our budget directors and help draft if y'all are stuck on one or two. Just let us know how to help. My understanding is they're currently with Bill.
>
> Thanks! And now you can just delete my voicemail. :)

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/10/2018 7:27:13 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Attachments: qfrs-mmg.docx

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/25/2018 9:06:37 PM
To: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: RE: For review: Administrator EPW Hearing One-Pagers
Attachments: RFS SRE.docx

Here is the RFS SRE.

From: Lewis, Josh
Sent: Wednesday, July 25, 2018 4:39 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: For review: Administrator EPW Hearing One-Pagers

Ok thanks. Clint, I know you were planning to look at some of the same as Mandy's along w/ the following 5 so I'll hold on printing/sending to OCIR until I get your edits (or an email saying you won't have edits on some)

CSAPR, NAAQS general attainment, NAAQS setting and designating, Oil and Gas (OOOOa), Brick MACT

From: Gunasekara, Mandy
Sent: Wednesday, July 25, 2018 4:33 PM
To: Woods, Clint <woods.clint@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: For review: Administrator EPW Hearing One-Pagers

I'm finishing up small refinery exemption one now. That shold be it from my end.

From: Woods, Clint
Sent: Wednesday, July 25, 2018 2:48 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: For review: Administrator EPW Hearing One-Pagers

And I've got minor edits on the following forthcoming: CSAPR; NAAQS attainment; NAAQS general; and oil and gas NSPS

From: Gunasekara, Mandy
Sent: Wednesday, July 25, 2018 2:10 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: Re: For review: Administrator EPW Hearing One-Pagers

Yes- perfect. I'll follow up with final sign off on others later.

Sent from my iPhone

On Jul 25, 2018, at 1:52 PM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:

> Thanks. I'm going to forward to Jonathan/Jesse to send along to OCIR as a first batch...w/ the rest to come later today
>
> **From:** Gunasekara, Mandy
> **Sent:** Wednesday, July 25, 2018 11:03 AM
> **To:** Lewis, Josh <Lewis.Josh@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>
> **Cc:** Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
> **Subject:** RE: For review: Administrator EPW Hearing One-Pagers
>
> Attached are my edits to Harlow's. The only one I have not yet completed from the initial batch Harlow sent is the CAFÉ/GHG rule. I'll send later today.
>
> **From:** Lewis, Josh
> **Sent:** Wednesday, July 25, 2018 9:15 AM
> **To:** Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>
> **Cc:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
> **Subject:** RE: For review: Administrator EPW Hearing One-Pagers
>
> Yes, that would be great. Though I don't know what Alex/Mandy may have already done on some of those. These have not gone to OCIR yet. Mandy/Alex: let us know if you plan to send them to Christian/Troy directly, or if you would prefer that Jonathan send to the OCIR air team.
>
> **From:** Woods, Clint
> **Sent:** Wednesday, July 25, 2018 8:50 AM
> **To:** Harlow, David <harlow.david@epa.gov>
> **Cc:** Lewis, Josh <Lewis.Josh@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
> **Subject:** Re: For review: Administrator EPW Hearing One-Pagers
>
> Thanks, David & Josh - If still timely, I'm happy to check 12 - 16; 18 - 19 for red flags today.
>
> On Jul 24, 2018, at 1:44 PM, Harlow, David <harlow.david@epa.gov> wrote:

Three more RLSOs, *very* lightly edited.

Deliberative Process / Ex. 5

So, let's review the bidding:

There were 21 briefing papers in total – 16 in the first batch Josh sent around, and then five more that we got in earlier today.

With the three RLSOs attached to this email, I have now sent back a total of 11:

1. OIAI
2. Small remote incinerators in AK
3. Diesel generators in AK
4. Uranium ISR
5. Trailers
6. Montreal Protocol/Kigali/SNAP
7. MATS
8. Aircraft endangerment finding

These eight were previously sent by eight separate emails. To these, add the three attached above:

9. DERA
10. California waiver
11. CAFÉ

There are six additional briefing papers that I have reviewed, but which didn't need to be revised at all (at least, I didn't think they needed to be). Thus, you won't be getting them at all. Those are:

12. CPP
13. CSAPR
14. NAAQS general attainment

15. NAAQS setting and designating
16. Oil and Gas (OOOOa)
17. NSR general

Of these, 12 through 16 were attached to Josh's first email from yesterday. The NSR one was attached to Josh's second email from earlier today.

That just leaves four, which I haven't reviewed and which prefer to leave to others to do:

18. Brick MACT
19. Gliders
20. RFS
21. Small refinery exemptions

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Lewis, Josh
Sent: Tuesday, July 24, 2018 11:05 AM
To: Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: For review: Administrator EPW Hearing One-Pagers

Thank you David. I'm about an hour behind on emails but will flip through all of these shortly and then will pass them along in the process. And right after this email I'll be sending the last 5 of them for review.

Josh

From: Harlow, David
Sent: Tuesday, July 24, 2018 10:59 AM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Gunasekara, Mandy

<Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: For review: Administrator EPW Hearing One-Pagers

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Lewis, Josh
Sent: Monday, July 23, 2018 4:35 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Mroz, Jessica <mroz.jessica@epa.gov>
Subject: For review: Administrator EPW Hearing One-Pagers

See attached for 16 one-pagers that are ready for review. Five more - NSR, California Waiver, RFS, Glider Kits, and Small Refineries – are in the works and may be ready before the end of the day.

OCIR has asked for these by 12pm tomorrow. If we haven't concluded our review of them by 12 (which likely will be the case), I propose they go to OCIR and we do a concurrent review.

Briefings for Andrew are also in the works.

Josh

<dshRLSOOAR- DERA.docx>

<dshRLSOOAR- CA Waiver.docx>

<dshRLSOOAR- CAFE+GHG.docx>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/10/2018 6:10:37 PM
To: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Re: Small Refinery Waivers (Hill request)

Thank you

Sent from my iPhone

On Jul 10, 2018, at 2:01 PM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:

> Got it, thanks. I'll follow up w/ Steve
>
> **From:** Gunasekara, Mandy
> **Sent:** Tuesday, July 10, 2018 1:46 PM
> **To:** Lewis, Josh <Lewis.Josh@epa.gov>
> **Cc:** Dominguez, Alexander <dominguez.alexander@epa.gov>
> **Subject:** Re: Small Refinery Waivers (Hill request)
>
> **Deliberative Process / Ex. 5**
>
> Just send an email.
>
> Sent from my iPhone
>
> On Jul 10, 2018, at 12:22 PM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:
>
> > Sorry for the delay in getting you the email below. Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Do you have a preference as to whether this gets conveyed by email or would one of you rather talk w/ Melissa?
> >
> > **From:** LaRue, Steven
> > **Sent:** Thursday, July 05, 2018 9:47 AM
> > **To:** Lewis, Josh <Lewis.Josh@epa.gov>
> > **Cc:** Walters, Margaret <Walters.Margaret@epa.gov>; Wolfe, Michael <Wolfe.Michael@epa.gov>
> > **Subject:** FW: Small Refinery Waivers (Hill request)
> >
> > Hi Josh,

Ed passed along a message from Melissa Zimmerman (SAC minority staff) with regard to small refinery waiver decisions indicated in FY 2017 report language (see highlighted below). I seem to recall this question coming up a few months ago prior to FY 2019 markup. Are you or Mandy able to close the loop with Ed?

Thanks very much, and please let us know if you have any questions or would like to set up a call.

Steve

From: Walsh, Ed
Sent: Tuesday, July 3, 2018 5:40 PM
To: LaRue, Steven <LaRue.Steven@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>; Wolfe, Michael <Wolfe.Michael@epa.gov>; Walters, Margaret <Walters.Margaret@epa.gov>
Subject: Fwd: Small Refinery Waivers

Got this from Melissa tonight. Can we talk about it after the holiday.

Thanks

Ed

Begin forwarded message:

> **From:** "Zimmerman, Melissa (Appropriations)" <Melissa_Zimmerman@appro.senate.gov>
> **Date:** July 3, 2018 at 4:15:36 PM EDT
> **To:** "Walsh, Ed" <Walsh.Ed@epa.gov>
> **Subject: Small Refinery Waivers**
>
> Hi Ed,
> I'm checking in about the required reporting below from the FY17 Senate Report. I don't recall ever receiving any reports on such waivers. Did I miss something? Could you check for me?
>
> Thanks!
> Melissa
>
> *Small Refinery Relief*- Congress directed the Agency, in consultation with the Department of Energy [DOE], to grant hardship relief to small refineries if compliance with the Renewable Fuel Standard [RFS] would impose a disproportionate economic hardship. In response to several recent petitions, the Agency determined that compliance with the RFS would have a disproportionate economic impact on a small refinery, but denied hardship relief because the small refinery remained profitable notwithstanding the disproportionate economic impact. This is inconsistent with congressional intent because the statute does not contemplate that a small refinery would only be able to obtain an exemption by showing that the RFS program threatens its viability. Congress explicitly authorized the Agency to grant small refinery hardship relief to ensure that small refineries remain both competitive and profitable. In the intensely competitive transportation fuels market,

small entities cannot remain competitive and profitable if they face disproportionate structural or economic metrics such as limitations on access to capital, lack of other business lines, disproportionate production of diesel fuel, or other site specific factors identified in DOE's original 2011 Small Refinery Exemption Study prepared for Congress.

When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.

Melissa Zimmerman
Clerk, Subcommittee on the Legislative Branch
Professional Staff, Subcommittee on Interior & Environment
Committee on Appropriations
United States Senate
(202) 224-9722

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/1/2018 12:53:55 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: RFS letter
Attachments: Grassley Rewrite_DRAFT 2018 07 30 (002).docx

Can you please do one last read? I added in the highlighted portion per a suggestion from Orlin.

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/15/2018 1:15:30 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: One More
Attachments: Midwest Swing RFS Announcements_2018 06 15.docx

I know this is an early draft, but take a look. I'll explain more later, but SP wants to issue this (or something like it) today.

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/15/2018 1:14:38 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RFS DRAFT Items
Attachments: Midwest Swing RFS Announcements_2018 06 15.docx

Please review attached and let me know your thoughts. I had a couple conversation with SP that I need to bring you up to speed on as well.

I think we call this an "administrative announcement" or something like that.

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/14/2018 11:36:23 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: Re: Question on reallocation

Good by me

Sent from my iPhone

On Jun 14, 2018, at 6:28 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Attorney Client - Deliberative Process / Ex. 5

From: Block, Molly
Sent: Thursday, June 14, 2018 6:25 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>
Subject: RE: Question on reallocation

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, June 14, 2018 6:20 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Block, Molly <block.molly@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>
Subject: RE: Question on reallocation

Attorney Client - Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Thursday, June 14, 2018 5:10 PM
To: Block, Molly <block.molly@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>;

Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Question on reallocation

Deliberative Process / Ex. 5

From: Block, Molly
Sent: Thursday, June 14, 2018 2:15 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>
Subject: RE: Question on reallocation

Adding Mike.

From: Block, Molly
Sent: Thursday, June 14, 2018 1:31 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>
Subject: Fwd: Question on reallocation

See below. Let me know how we want to respond. Thanks!

Molly

Sent from my iPhone

Begin forwarded message:

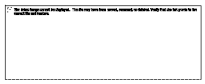
From: "Macy, Daniel" <dmacy@opisnet.com>
Date: June 14, 2018 at 1:29:05 PM EDT
To: "Block, Molly" <block.molly@epa.gov>
Subject: Question on reallocation

Hi Molly,

Yesterday after the South Dakota meeting with Administrator Pruitt, a participant, Keith Alverson, tweeted: "Finished hearing from @EPAScottPruitt a bit ago in South Dakota. He told us that EPA has no plans to reallocate the 1.7 billion RINs cut from the [Renewable Fuel Standard] RFS over the past 2 years."

I talked to Mr. Alverson on the phone and he elaborated that Administrator Pruitt said the reason for this position is that EPA concluded based on consultation with White House counsel, that the agency does not have the legal authority to reallocate volume obligations based on RFS hardship waivers given in the past.

Can you confirm that both the tweet and the follow-up statement accurately portray current EPA policy/stance?
Thank you very much.
Best regards,
Dan



Dan Macy
Markets Editor, Renewables
2099 Gaither Road, 5th Floor
Rockville, Maryland 20850
Cell: +1 202 420 1193
dmacy@opisnet.com

<image001.jpg><image002.jpg><image003.jpg><image002.jpg><image004.jpg><image002.jpg><image005.jpg>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/14/2018 9:24:32 PM
To: Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]
CC: Hanson, Paige (Catherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=95adc1b2ac3b40ab9dc591801d594df8-Hanson, Cat]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Confirming QFR Response
Attachments: CAL-015-018.docx; OMBedits for PT61118 - OCFO Recommendations (002).docx_ mmg.docx

See attached. Sorry for lateness, again. I made some edits/response to comments in the first doc. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Greaves, Holly
Sent: Wednesday, June 13, 2018 2:01 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Hanson, Paige (Catherine) <hanson.catherine@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Confirming QFR Response

Thank you Mandy. I will let OMB know that tomorrow morning they can expect a response.

From: Gunasekara, Mandy
Sent: Wednesday, June 13, 2018 1:09 PM
To: Greaves, Holly <greaves.holly@epa.gov>
Cc: Hanson, Paige (Catherine) <hanson.catherine@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Re: Confirming QFR Response

I will have edits but have not had the chance to open this on my computer (so not seem the comment bubbles or redlines). These responses are important. I'm on road and not going to get to this until tomorrow (when back in the office). Can you ask OmB to give us time to tomorrow morning to respond?

There is a small chance I'll have time at the airport this evening but I think the schedule is pretty tight. I'll keep y'all posted

Sent from my iPhone

On Jun 13, 2018, at 11:58 AM, Greaves, Holly <greaves.holly@epa.gov> wrote:

> Just to second what Paige said- OMB has asked us to edit our response. They have a suggested edit for each of these responses. Can you please let us know how the response can be re-tooled to respond to their edit, if you agree with it?
>
> Thanks,
> Holly
>
> **From:** Hanson, Paige (Catherine)
> **Sent:** Tuesday, June 12, 2018 6:39 PM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Cc:** Dominguez, Alexander <dominguez.alexander@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>
> **Subject:** RE: Confirming QFR Response

In addition to the questions below, we also wanted to confirm these additional responses look okay with you, especially since others have edited them.

I'm also attaching the original document so you don't have to print from two emails.

Responses in question: Calvert Q15, Kaptur Q3, Kaptur Q5, Kilmer Q1, Kilmer Q4

If at all possible to get these by 10:00am tomorrow, that'd be great.

From: Hanson, Paige (Catherine)
Sent: Tuesday, June 12, 2018 4:36 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Confirming QFR Response

Mandy,

Please find attached a question for the record from House Approps that we understand Bill cleared last month, however, they've since been reviewed (and possibly edited) by OCIR and OGC. Before sending to OMB, we want to confirm this is still an acceptable response.

Thanks, as always, for the help,
Paige

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/14/2018 8:28:48 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Ethanol Exports and the RFS/95 RON Octane
Attachments: Export RINs.pdf; ATT00001.htm; 95RON volume scenarios.pdf; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: Geoff Cooper <GCooper@ethanolrfa.org>
Date: June 13, 2018 at 4:53:44 PM EDT
To: "Gunasekara.mandy@Epa.gov" <Gunasekara.mandy@Epa.gov>
Subject: Ethanol Exports and the RFS/95 RON Octane

Hi Mandy,

I've heard from a few farmers who were in today's meeting in South Dakota and they said the Administrator asked for further detail or explanation on our industry's position that allowing RINs on ethanol exports would lead to reduced domestic ethanol consumption, reduced production, lower RIN prices, and lower corn demand. Please find attached a simple one-page schematic outlining why allowing RINs on exported volumes would lead to lower domestic demand.

I'm also attaching (for future reference) some analysis we did on the 95 RON concept and what that might mean for ethanol demand, as I understand that issue came up during the discussions both today in Reliance and yesterday in Garnett, KS.

Thank you and I hope the trip is going well. We truly do appreciate the Administrator's efforts to meet with the farmers, ranchers, and biofuel producers who are impacted daily by EPA decisions.

Best regards,

Geoff

Geoff Cooper
Executive Vice President
Renewable Fuels Association
16024 Manchester Rd. Suite 200
Ellisville, MO 63011
O: 636.594.2284
C: 636.399.4928

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Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/9/2018 9:04:51 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Re: MEDIA INQUIRY: Renewable Fuel Standard

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 9, 2018, at 3:29 PM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Monday, July 9, 2018 3:28 PM
To: Block, Molly <block.molly@epa.gov>
Subject: RE: Renewable Fuel Standard

OK. Can EPA clarify the current number of approved 2017 waivers and applications?

Thank you,

Elliott

From: Block, Molly <block.molly@epa.gov>
Sent: Monday, July 9, 2018 2:26 PM
To: Elliott Blackburn <elliott.blackburn@argusmedia.com>; Press <Press@epa.gov>
Subject: RE: Renewable Fuel Standard

Notice: external email – please use caution.

Elliott –

These issues are part of ongoing discussions with the White House, USDA, and DOE.

Best,
Molly

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Monday, July 9, 2018 12:29 PM
To: Press <Press@epa.gov>
Subject: Renewable Fuel Standard

Good afternoon,

Will EPA accept comment on the use and allocation of small refinery hardship waivers in a separate rulemaking, or in any venue outside of the RVO?

What is the current number of approved small refinery exemptions for the 2017 compliance year?

What is the EPA's current view of redistributing waived obligations to other obligated parties? Has anything changed?

Thank you,

Elliott

Elliott Blackburn
Downstream Reporter

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Direct: +1 713 429 6350
Email: elliott.blackburn@argusmedia.com
ICE: eblackburn
Skype ID: elliott.blackburn@argusmedia.com
Signal: (806) 319-5575

<image001.gif>
www.argusmedia.com

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Argus Media Inc., 2929 Allen Parkway, Suite 700, Houston, Texas 77019, USA
<image002.gif>

STAY CONNECTED: <image003.png> <image004.png> <image005.png> <image006.png>

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Argus Media Limited, Lacon House, 84 Theobald's Road, London WC1X 8NL Registered in England and Wales, Company Registration No: 1642534 VAT Registration No: GB 229 7149 41

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/9/2018 6:07:27 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Re: Media Inquiry: Renewable Fuel Standard

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 9, 2018, at 12:46 PM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Monday, July 9, 2018 12:43 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: Media Inquiry: Renewable Fuel Standard

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 9, 2018, at 12:31 PM, Block, Molly <block.molly@epa.gov> wrote:

RFS is back... please see inquiry below

Begin forwarded message:
Resent-From: <Press@epa.gov>
From: Elliott Blackburn <elliott.blackburn@argusmedia.com>
Date: July 9, 2018 at 12:29:03 PM EDT
To: Press <Press@epa.gov>
Subject: Renewable Fuel Standard

Good afternoon,

Will EPA accept comment on the use and allocation of small refinery hardship waivers in a separate rulemaking, or in any venue outside of the RVO?

What is the current number of approved small refinery exemptions for the 2017 compliance year?

What is the EPA's current view of redistributing waived obligations to other obligated parties? Has anything changed?

Thank you,

Elliott

Elliott Blackburn
Downstream Reporter

www.argusmedia.com
Direct: +1 713 429 6350
Email: elliott.blackburn@argusmedia.com
ICE: eblackburn
Skype ID: elliott.blackburn@argusmedia.com
Signal: (806) 319-5575

<image001.gif>
www.argusmedia.com

Tel: +1 713 968 0000 | Fax. +1 713 622 2991 |
Argus Media Inc., 2929 Allen Parkway, Suite 700, Houston, Texas 77019, USA
<image002.gif>

STAY CONNECTED: <image003.png> <image004.png> <image005.png> <image006.pr

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Argus Media Limited has moved offices. Please note our new address below.

Argus Media Limited, Lacon House, 84 Theobald's Road, London WC1X 8NL Registered in England and Wales, Company Registration No: 1642534 VAT Registration No: GB 229 7149 41

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/26/2018 10:39:11 AM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: 2019 RFS NPRM Roll Out Plan_DRAFT.docx
Attachments: 2019 RFS NPRM Roll Out Plan_DRAFT.docx; ATT00001.txt

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/30/2018 3:44:48 PM
To: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: QFR
Attachments: House IE FY 2019 EPA QFRs - OAR Questions - OAQPS+OTAQ Responses_mmg edits.docx

Attached are QFRs with my edits and one question about information not bolded that comes after some of our responses to Rep. Calvert questions. I assume they are additional points from Calvert (and not EPA), but I'd like that clarified. Also, please cross check to ensure this version has Clint's edits as well. Thanks

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/17/2018 2:51:20 AM
To: Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]
CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: RFS Public Hearing Heads Up
Attachments: 2019 RFS Roll-out.docx

FYI – This Wednesday (7/18), EPA will host the public hearing for the 2019 RVO proposal in Michigan. I imagine we will get some questions from the press and maybe the hill. Based on the most recent update from our OTAQ staff, we have 60 speakers lined up, including Gov. Reynolds. As a refresh, I've attached the roll-out plan we used in June when we published the proposed RVOs. This is a good source of general information.

Deliberative Process / Ex. 5

Let me know if y'all have questions or need anything else.
Best,
Mandy

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/25/2018 10:37:01 PM
To: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]
Subject: FW: RVO Announcement
Attachments: RFS 2019 Press Statement_DRAFT.docx; 2019 RFS NPRM Roll Out Plan_DRAFT.docx

---

From: Gunasekara, Mandy
Sent: Monday, June 25, 2018 6:35 PM
To: Lyons, Troy <lyons.troy@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: RVO Announcement

Team OCIR:
Attached are DRAFT materials. NOTE official roll-out is set for **2 pm** (the roll-out doc says differently). This may change.

Please do not distribute the attached as they will likely change - OPA is just now taking a look and not yet signed off. We will follow-up with a doc you can send to key folks with an embargo stamp tomorrow morning. Alex is point for that as I'll be traveling.

Happy almost RVO day and have a good night!
Mandy

From: Lyons, Troy
Sent: Monday, June 25, 2018 5:33 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>
Subject: RVO Announcement

Bill, Mandy---are you all still on track for releasing the RVO's tomorrow? Any heads up you can give so we can make notifications would be greatly appreciated.

Many thanks,

Troy

Troy M. Lyons
Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency
Personal Phone / Ex. 6

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/7/2018 8:37:59 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Attachments: Small Refinery Status_2018 05 07.docx

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/4/2018 8:21:13 PM
To: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]
CC: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
Subject: Re: Sources: RFS deal includes reallocating refinery waiver volumes

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 4, 2018, at 4:12 PM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

Deliberative Process / Ex. 5

Ethanol producers say EPA has been undermining President Donald Trump's commitment to require blending of 15 billion gallons of ethanol by giving compliance waivers to small refineries. The new plan, which would affect mandates for blending ethanol in 2019 and biodiesel in 2020, would reassign the volumes that small refiners would have had to blend to their larger competitors. Oil producers and refiners would likely unite to oppose the move.

From: Daniell, Kelsi
Sent: Monday, June 4, 2018 4:09 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Subject: Fwd: Sources: RFS deal includes reallocating refinery waiver volumes

Sent from my iPhone

Begin forwarded message:

From: "POLITICO Pro" <politicoemail@politicopro.com>
Date: June 4, 2018 at 4:08:07 PM EDT
To: <daniell.kelsi@epa.gov>
Subject: Sources: RFS deal includes reallocating refinery waiver volumes
Reply-To: "POLITICO subscriptions" <reply-fe9613757766057575-1161766_HTML-848943095-1376319-0@politicoemail.com>

By Eric Wolff

06/04/2018 04:05 PM EDT

A White House plan to revise the Renewable Fuel Standard will include reallocating the volumes from small refiners to larger refiners, according to two industry sources.

The agreement, the result of weeks of discussions between EPA and USDA, is also expected to include expanding sales of 15 percent ethanol gasoline along with allowing ethanol exports to receive compliance credits. However, the elements of the proposal are fluid, and could change before its release as early as today, though Senate and industry sources tell POLITICO that it could be released Tuesday.

Ethanol producers say EPA has been undermining President Donald Trump's commitment to require blending of 15 billion gallons of ethanol by giving compliance waivers to small refineries. The new plan, which would affect mandates for blending ethanol in 2019 and biodiesel in 2020, would reassign the volumes that small refiners would have had to blend to their larger competitors. Oil producers and refiners would likely unite to oppose the move.

A separate biofuels source said the reallocation was not included in the annual volume proposals sent for review to the Office of Management and Budget last month. However, the rule could be changed either by OMB or by EPA before it is officially proposed.

USDA and EPA referred POLITICO queries to the White House, which did not respond to a request for comment.

To view online:
https://subscriber.politicopro.com/agriculture/whiteboard/2018/06/sources-rfs-deal-includes-reallocating-refinery-waiver-volumes-1338867

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Yes, very | Somewhat | Neutral | Not really | Not at all

You received this POLITICO Pro content because your customized settings include: Agriculture: EPA; Agriculture: Biofuels and Ethanol; Agriculture: Energy; Energy: EPA. To change your alert settings, please go to https://subscriber.politicopro.com/settings

POLITICOPRO

This email was sent to daniell.kelsi@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/23/2018 10:32:48 PM
To: Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: OAR Talking Points for Adm Wheeler (re: NHTSA)
Attachments: LD NPRM Talking Points for Adm Wheeler July 23 2018.docx; ATT00001.htm

Hey Michael- re-upping so at the top of your inbox. Attached are TPs for the DOT call. Let us know if you need anything else.

Sent from my iPhone

Begin forwarded message:

> **From:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>
> **Date:** July 23, 2018 at 2:14:49 PM EDT
> **To:** "Molina, Michael" <molina.michael@epa.gov>
> **Cc:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Subject: OAR Talking Points for Adm Wheeler (re: NHTSA)**
>
> Michael,
>
> Attached are Bill and Mandy's talking points for Administrator Wheeler regarding OAR concerns with NHTSA technical/cost analysis and RIA.
>
> Thank you,
> Alex
>
> **Alex Dominguez**
> Policy Analyst to the Principal Deputy
> Office of Air and Radiation
> U.S. Environmental Protection Agency
> D: 202-564-3164
> M: Personal Phone / Ex. 6

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/4/2018 3:53:09 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RFS DEAL 2018_DRAFT OVERVIEW.docx
Attachments: RFS DEAL 2018_DRAFT OVERVIEW.docx; ATT00001.txt

This is some general info provided to OPA for background. The latter section has some additional info on exports.

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/1/2018 1:28:46 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
CC: Ford, Hayley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4748a9029cf74453a20ee8ac9527830c-Ford, Hayle]
Subject: SRE Information
Attachments: Sinclair Overview.docx

See attached per our discussion. Let me know if this should be sent elsewhere. Thanks!

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/30/2018 6:17:37 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
Subject: Re: Reuters: Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources, 4/30/18

The criteria for determining "disproportionate economic harm" has not changed. The agency better coordinates with DOE and does not duplicate their objectively determined analysis. That alongside increased applications from small refineries has resulted in an increase in grants.

Sent from my iPhone

On Apr 30, 2018, at 1:01 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Anything to add here?

From: Richard.Valdmanis@thomsonreuters.com [mailto:Richard.Valdmanis@thomsonreuters.com]
Sent: Monday, April 30, 2018 11:57 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: RE: Reuters: Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources, 4/30/18

Liz, one other thing. In your statement Saturday, you say the criteria have not changed from past administrations. We know CVR was denied the waiver under Obama -- what has changed?

Can you confirm or deny that the EPA leadership has expanded the definition of "financial hardship" to allow more small refineries to receive the waivers than in the past?

From: Valdmanis, Richard J. (Reuters)
Sent: Monday, April 30, 2018 11:54 AM
To: 'Bowman, Liz'
Subject: FW: Reuters: Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources, 4/30/18

Liz, It wasn't Jarrett, it was me. I emailed you repeatedly and called the EPA media line (no one was picking up and the voicemail box was full!).
Anyway, I see that you sent me an email on Saturday, many thanks for that. My apologies for not seeing it. The story was edited by 11pm Friday. Anyway, we will update the story now. Is there anything further you'd like to add for the update, beyond what you send Saturday?

From: Renshaw, Jarrett (Reuters)
Sent: Monday, April 30, 2018 11:18 AM
To: Valdmanis, Richard J. (Reuters)
Subject: FW: Reuters: Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources, 4/30/18

FYI

Jarrett Renshaw

National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: Ex. 6
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Bowman, Liz [mailto:Bowman.Liz@epa.gov]
Sent: Monday, April 30, 2018 11:15 AM
To: Renshaw, Jarrett (Reuters)
Subject: FW: Reuters: Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources, 4/30/18

Repeated requests? I didn't get one voicemail from you, nor do I see any missed emails. That is completely unfair. I also sent you a statement, which you didn't include in here.

From: Hassell, Emily
Sent: Monday, April 30, 2018 11:11 AM
To: AO OPA Individual News Clips <AO_OPA_Ind_News_Clips@epa.gov>
Subject: Reuters: Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources, 4/30/18

Reuters
https://www.reuters.com/article/us-usa-biofuels-epa-icahn-exclusive/exclusive-u-s-epa-grants-biofuels-waiver-to-billionaire-icahns-oil-refinery-sources-idUSKBN1I10YB?feedType=RSS&feedName=topNews&utm_medium=Social&utm_source=twitter
Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources
By Jarrett Renshaw and Chris Prentice, 4/30/18, 7:03 AM

NEW YORK (Reuters) - The U.S. Environmental Protection Agency has granted a financial hardship waiver to an oil refinery owned by billionaire Carl Icahn, a former adviser to President Donald Trump, exempting the Oklahoma facility from requirements under a federal biofuels law, according to two industry sources briefed on the matter.

The waiver enables Icahn's CVR Energy Inc to avoid tens of millions of dollars in costs related to the U.S. Renewable Fuel Standard (RFS) program. The regulation is meant to cut air pollution, reduce petroleum imports and support corn farmers by requiring refiners to mix billions of gallons of biofuels into the nation's gasoline and diesel each year.

The Small Refiners Coalition, which represents companies that operate small refining facilities, has defended the EPA's waiver program, saying the EPA is required by law to help small refineries struggling with the RFS and that the exemptions are crucial to their financial well-being.

But the exemption for CVR's Wynnewood, Oklahoma, plant prompted fresh criticism from the powerful corn lobby, which already has accused Trump's EPA of over-using the hardship waiver program in a way that hurts demand for ethanol.

"This one's going to be hard for (Scott) Pruitt to explain," Brooke Coleman, head of the Advanced Biofuels Business Council industry group, said in an email on Friday, referring to the EPA administrator.

CVR spokeswoman Brandee Stephens declined to comment regarding the waiver. EPA spokeswoman Liz Bowman did not respond to repeated requests by telephone and email for comment. Efforts to reach Icahn and his attorney for comment were not successful.

An early supporter of Trump's 2016 presidential run and a key supporter on Wall Street, Icahn had met with Pruitt when Pruitt was being vetted in late 2016 for the EPA administrator job, according to news reports at the time.

Icahn stepped down from his position as special regulatory adviser to the Republican president last August after lawmakers cited potential ethical problems in his dual role as an adviser and an investor.

Currently, Icahn is under investigation by the U.S. Department of Justice for his role in influencing biofuels policy while serving as Trump's adviser. Some U.S. lawmakers have expressed concern that Icahn may have used his presidential access to benefit his investments, a charge Icahn has rejected.

CVR acknowledged the Justice Department probe in an earnings statement on Friday, but noted that "the U.S. Attorney's office has not made any claims or allegations against CVR Refining or Mr. Icahn." The Justice Department did not respond to a request for comment on Friday, and has a policy of not discussing ongoing investigations.

To prove RFS compliance, refiners must earn or purchase tradable blending credits - awarded by the government for each blended gallon of fuel - and hand them in to the EPA yearly.

The EPA has the authority to exempt small refineries of under 75,000 barrels per day from the requirement under the hardship waiver program if they can prove that compliance would cause them "disproportionate financial hardship."

With the exemption, CVR would not have to turn over the credits related to the Wynnewood facility for 2017, according to the two sources, who spoke on condition of anonymity.

The waiver was granted in recent months but the sources did not say precisely when.

The refinery had been denied the exemptions by Democratic former President Barack Obama's administration, federal filings showed.

The Trump administration has fielded a surge of applications from small refiners for the hardship exemptions, driven by a 2017 federal appeals court ruling that the EPA had been using too narrow a definition of "financial hardship" in its waiver assessments under Obama.

The Trump administration has also expressed an eagerness to help refiners cope with the RFS, and hosted a series of meetings at the White House to discuss possible solutions, further encouraging applications.

The EPA has said it granted around two dozen waivers for 2017 but has declined to name the recipients, deeming it confidential business information. Under Obama, the EPA granted about eight waivers annually.

The waivers have the potential to save companies tens of millions of dollars, by allowing them to avoid blending or paying for credits on the open market, and by permitting them to sell any credits they have on hand to others.

CVR this week reported a $23 million profit in the biofuels credit market in the first quarter of 2018 due to what it called a lower RFS obligation, an unusual return for a refiner that has no biofuel blending facilities.

The company also said it expects its cost of complying with the RFS requirements to fall to $80 million for the entirety of 2018 from a previous estimate of $200 million, and from roughly $249 million in 2017.

CEO David Lamp said in a conference call with analysts on Thursday that he would not discuss whether the improved numbers were derived from an EPA waiver.

“CVR Energy has had a long history of keeping RFS compliance strategy confidential,” Lamp said.

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/10/2018 6:15:40 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Re: FYI -- Perdue: Export RINs linked to small refinery waiver clawback

Thank you. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Sent from my iPhone

On May 10, 2018, at 11:41 AM, Daniell, Kelsi <daniell.kelsi@epa.gov> wrote:

From: POLITICO Pro [mailto:politicoemail@politicopro.com]
Sent: Thursday, May 10, 2018 11:39 AM
To: Daniell, Kelsi <daniell.kelsi@epa.gov>
Subject: Perdue: Export RINs linked to small refinery waiver clawback

By Eric Wolff and Blake Paterson

05/10/2018 11:37 AM EDT

Whether EPA allows exported ethanol to earn biofuel credits is linked to how the agency reallocates the ethanol blending obligations it allowed small refiners to drop, Agriculture Secretary Sonny Perdue told reporters today.

Tuesday's White House meeting did not finalize a decision on whether the EPA should alter its rules to allow ethanol exports to earn biofuel credits, called Renewable Identification Numbers. Oil refiners have sought that change as a way to increase the supply of RINs and lower their compliance costs.

But Iowa Sen. Chuck Grassley also wants EPA Administrator Scott Pruitt to reassign volumes it allowed dozens of small refiners to forgo blending when it gave them economic hardship

waivers. Perdue and Pruitt were charged by the White House with coming up with a deal on the two issues.

"At the end, there was some consideration of attaching RINs to the export. And we are fine with that as long as the previous waivers that took us down below 14 billion gallons be reallocated in the future [volumes rule] to back up that, to keep up to the statutory standard of 15 billion gallons," Perdue said.

He also reaffirmed that Trump wants EPA to allow expanded sales of 15 percent ethanol fuel.

"We think E15 will grow the market, and we believe the export can grow, which will again make our corn farmers have more demand for which we are delighted," he said.

To view online:
https://subscriber.politicopro.com/agriculture/whiteboard/2018/05/perdue-export-rins-linked-to-small-refinery-waiver-clawback-1194615

Was this Pro content helpful? Tell us what you think in one click.

Yes, very | Somewhat | Neutral | Not really | Not at all

You received this POLITICO Pro content because your customized settings include: Agriculture: Scott Pruitt; Agriculture: EPA; Agriculture: Biofuels and Ethanol; Agriculture: Energy; Energy: Scott Pruitt; Key phrase: scott pruitt. To change your alert settings, please go to https://subscriber.politicopro.com/settings

POLITICOPRO

This email was sent to daniell.kelsi@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/15/2018 5:03:35 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: EDIT Midwest Swing RFS Announcements_2018 06 15 v3.DOCX
Attachments: EDIT Midwest Swing RFS Announcements_2018 06 15 v3.DOCX; ATT00001.txt

Attached is the DRAFT announcement Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/15/2018 2:00:53 AM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: RFS RVO TPs
Attachments: RFS TPs_May 2018 Hearing_draft_MMG edits.docx

One tiny change in attached. Otherwise, very good. Thank you.

From: Dominguez, Alexander
Sent: Monday, May 14, 2018 9:53 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: RFS RVO TPs

See attached for updated talkers on various RFS topics. These could all be expanded on but I tried to keep it concise and to language you've previously approved.

Deliberative Process / Ex. 5

From: Hanson, Paige (Catherine)
Sent: Friday, May 11, 2018 11:08 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RFS RVO TPs

Alex,

Happy Friday! I heard from Mandy y'all are sending something up to OMB today. In light of that, are these still appropriate talking points for the Administrator in his hearing next week?

Thanks,
Paige

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/3/2018 8:03:04 PM
To: Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: RFS
Attachments: RFS DEAL 2018_DRAFT OVERVIEW.docx

Chris and John,
Attached is info that can help prepare for SP's press related to tomorrow's announcement. Deliberative Process / Ex. 5 Deliberative Process / Ex. 5. Give me a call if you need any clarification: Personal Phone / Ex. 6 Personal Phone / Ex. 6

Best,
Mandy

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/24/2018 4:04:12 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: RE: FOR REVIEW: Small refinery waivers

Two suggested changes below. Otherwise this is good and consistent with this morning's discussion.

From: Daniell, Kelsi
Sent: Tuesday, April 24, 2018 11:57 AM
To: Block, Molly <block.molly@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: FOR REVIEW: Small refinery waivers

Looping in Mandy. **Deliberative Process / Ex. 5**

From: Block, Molly
Sent: Tuesday, April 24, 2018 11:49 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
Subject: FOR REVIEW: Small refinery waivers

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Daguillard, Robert
Sent: Tuesday, April 24, 2018 11:46 AM
To: Press <Press@epa.gov>
Subject: FW: Small refinery waivers

Third Floor, OK to check numbers with the program?

Also, will you handle her second question, the one referencing the Administrator? Or should I also run by the program?

Cheers, R.

Robert Daguillard
Office of Media Relations
U.S. Environmental Protection Agency
Washington, DC
+1 (202) 564-6618 (O)
Personal Phone / Ex. 6

From: Gordon, Meghan [mailto:meghan.gordon@spglobal.com]
Sent: Tuesday, April 24, 2018 11:45 AM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>; Press <Press@epa.gov>
Subject: Small refinery waivers

Hi Robert and press team,

How many 2017 small refinery waivers has EPA granted? Checking for any updates to the previous figures of 25 granted out of 29 petitions received.

Ahead of Administrator Pruitt's testimony later this week, can you share why the agency considers these waivers as important and justified under the RFS? Just looking for some more color for a curtain raiser.

Many thanks,
Meghan

Meghan Gordon
S&P Global Platts
Ex. 6 office
cell

The information contained in this message is intended only for the recipient, and may be a confidential attorney-client communication or may otherwise be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, please be aware that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to the message and deleting it from your computer. S&P Global Inc. reserves the right, subject to applicable local law, to monitor, review and process the content of any electronic message or information sent to or from S&P Global Inc. e-mail addresses without informing the sender or recipient of the message. By sending electronic message or information to S&P Global Inc. e-mail addresses you, as the sender, are consenting to S&P Global Inc. processing any of your personal data therein.

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/12/2018 10:57:46 PM
To: Memmott, Justin (EPW) [Justin_Memmott@epw.senate.gov]
Subject: Re: Chairman Barrasso on Hardship Relief for Small Refineries under the Renewable Fuel Standard

Fantastic statement- great work. Thank you.

Sent from my iPhone

On Apr 12, 2018, at 6:07 PM, Memmott, Justin (EPW) <Justin_Memmott@epw.senate.gov> wrote:

I wanted to make sure you saw this statement and the March 5th letter linked below.

Thanks.

From: Danylak, Mike (EPW)
Sent: Thursday, April 12, 2018 6:02 PM
To: Danylak, Mike (EPW) <Mike_Danylak@epw.senate.gov>
Subject: Chairman Barrasso on Hardship Relief for Small Refineries under the Renewable Fuel Standard

<image001.jpg>

For Immediate Release:
April 12, 2018

Contact: Mike Danylak ~202.224.1049
Mike_Danylak@EPW.Senate.Gov

Chairman Barrasso on Hardship Relief for Small Refineries under the Renewable Fuel Standard

WASHINGTON, D.C. — Today, U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), released the following statement on the necessity of the Environmental Protection Agency (EPA) granting hardship relief for small refineries.

"The law requires EPA to grant relief to small refineries suffering disproportionate economic hardship from the Renewable Fuel Standard," **said Barrasso**. "EPA, working with the Energy Department, must conduct a detailed, objective analysis based on confidential business information. They must look at each small refinery on an individual basis whether or not it is part of a larger company. During the Obama administration, EPA didn't follow the law and the courts rebuked the agency.

"I applaud Administrator Pruitt and Secretary Perry for recognizing the burdens of this program. They know that we can't allow it to hurt our nation's small refineries."

Background Information:

On March 5, 2018, Barrasso and Sen. Shelley Moore Capito (R-WV) sent a letter to Administrator Pruitt and Energy Sec. Rick Perry emphasizing the importance of granting hardship relief for America's small refineries. The letter also reminded the Administrator and the Secretary that small refineries submit confidential business and other highly sensitive information that the agencies and their contractors must protect from all outside parties.

###

http://epw.senate.gov
Twitter | YouTube

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/12/2018 4:35:56 PM
To: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]

Subject: Accepted: RFS Small Refinery Update
Location: WJC-N 5400 + Video with AA + Dial: Conference phone and code / Ex. 6

Start: 4/20/2018 2:00:00 PM
End: 4/20/2018 3:00:00 PM

Recurrence: (none)

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/10/2018 5:51:53 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Small Refinery Tps.docx
Attachments: Small Refinery Tps.docx; ATT00001.txt

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/10/2018 5:50:42 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
CC: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: Can y'all help?

These decisions are based on refinery specific information that is all subject to confidential business information protections. As such, we cannot share company specific info but we can share aggregate numbers, which we will. In the meantime I have some talking points on this I drafted up for OCIR that should help . Just I'll forward.

Sent from my iPhone

> On Apr 10, 2018, at 1:32 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:
>
> Any points on explaining the big company/small refiner distinction would be great. I would track it down myself but it's kind of crazy right now...From Reuters:
>
> We have it from a good source that EPA provided CVR Energy a small refinery waiver from the RFS for 2017. You were kind enough to help us out with the detail that EPA had approved around 25 such waivers as of last week. Can you confirm/deny that CVR is among them – either on record, on background, or off record?
>
> - Husky Energy has confirmed they applied for a waiver for 2018. They are a pretty large Canadian company – big presence in Canada but small in the US. Can you describe the EPA's approach to handling such cases? Does it look only at the particular refinery, or does it look at the company as a whole?
>
>
> Sent from my iPhone

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/11/2018 9:16:05 PM
To: Memmott, Justin (EPW) [Justin_Memmott@epw.senate.gov]
Subject: Re: Letter to the Administrator

Thank you!

Sent from my iPhone

On Apr 11, 2018, at 4:50 PM, Memmott, Justin (EPW) <Justin_Memmott@epw.senate.gov> wrote:

From: Memmott, Justin (EPW)
Sent: Monday, March 5, 2018 1:02 PM
To: Lyons, Troy <lyons.troy@epa.gov>
Cc: Cone, Travis (Capito) <Travis_Cone@capito.senate.gov>; Mandy Gunasekara (gunasekara.amanda@epa.gov) <gunasekara.amanda@epa.gov>
Subject: Letter to the Administrator

Troy,

Attached is a letter from Chairman Barrasso and Chair Capito to Administrator Pruitt.

It is a response to recent letters that the Administrator has received on hardship relief for small refineries.

A hardcopy is in the mail.

Thanks.

Justin J. Memmott
Majority Senior Counsel
Senate Environment and Public Works Committee
(d) 202-224-6389

<3-5-18 JB and SMC to EPA and DOE.pdf>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/30/2018 9:07:15 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: Fwd: RE:
Attachments: EWV TPs for McKinley.docx; ATT00001.htm

So you have this too.

Sent from my iPhone

Begin forwarded message:

From: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Date: April 30, 2018 at 3:14:20 PM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: RE:

Attached is info that should help. Let me know if you need any additional info or have questions.

Deliberative Process / Ex. 5

From: Jackson, Ryan
Sent: Friday, April 27, 2018 12:56 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject:

I don't know if you saw the exchange between Cong. McKinley and Pruitt at yesterday's hearing but he mentioned a WV refinery and its application for a small refiner exemption. He argued that they produce 23K/day under the 75K threshold. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency

Ex. 6

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/6/2018 9:56:57 PM
To: Birsic, Michael J. [mjbirsic@marathonpetroleum.com]
CC: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Rakosnik, Delaney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=274573739a9f446883072599086ededd-Rakosnik, D]
Subject: Re: RFS Meeting

Mike- great to hear from you. I'm looping in the scheduling team to see if we can make it work. We will follow up.
Best,
Mandy

Sent from my iPhone

On Jun 6, 2018, at 5:05 PM, Birsic, Michael J. <mjbirsic@marathonpetroleum.com> wrote:

> Mandy,
>
> I hope you are doing well. I wanted to see if you and Mr. Wehrum had an opportunity on Wednesday, June 13 to meet with Dave Whikehart and the Marathon government affairs office on the RFS. We wanted to discuss with you RINs, the RVOs and the potential impact of redistributing RINs from the small refinery exemptions. I just learned that Dave is available almost all day Wednesday, so please let us know if there would be a time that day that works for you and Mr. Wehrum.
>
> Thank you in advanced for your consideration and we hope to speak with you both next week.
>
> Mike
>
> Michael Birsic
> Marathon Petroleum Corporation
> 1201 F Street, NW, Suite 625
> Washington, DC 20004
> Direct: 202-442-2459
> Cell: 202-213-2548
> Fax: 202-442-2492
> mjbirsic@marathonpetroleum.com

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/1/2018 5:24:58 PM
To: Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]
CC: Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Re: RFS SRE 1 pager

We just wrapped up with USDA- **Deliberative Process / Ex. 5**

Sent from my iPhone

On Jun 1, 2018, at 12:45 PM, Frye, Tony (Robert) <frye.robert@epa.gov> wrote:

> Roger, I'll get the remainder lined up for this afternoon. Thanks
>
> Tony
>
> On Jun 1, 2018, at 12:42 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> > Hi All:
> >
> > We talked to Marc and sent him the attached one-pager. I also sent it to USDA and we have a call with them (Ray Starling and Dep Sec Censky) at 12:45. I'll call later to provide updates on those fronts.
> >
> > **To ensure you have the correct version of the 1-pager (there were some earlier ones) before sending it out to anyone, please make sure the timestamp in red at the top says <u>12 PM</u>.**
> >
> > OCIR: This can also be used for outreach to the Hill. Bill and I will make ourselves available to talk to any of the Members and/or staff. Tony, I know you are reaching out to Sen. Ernst. We need to set up a call/discussion with Sen. Grassley and then I'd throw in Sens. Fischer and Rounds.

Press, use the attached to help inform. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks All! Call Personal Phone / Ex. 6 if you need anything. I'll be offline during the USDA call but am otherwise available.
Best,
Mandy

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

<Sinclair Overview.docx>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/31/2018 6:04:55 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Re: Small refinery exemptions

Nothing has changed. Id suggest the below.

Deliberative Process / Ex. 5

Sent from my iPhone

On May 31, 2018, at 1:48 PM, Block, Molly <block.molly@epa.gov> wrote:

See below. **Deliberative Process / Ex. 5**

FYI – here's the May 11 response we sent him:

Elliott –

On background: The Agency only exempts RINs (or reinstates RINs if after the compliance deadline) from the same year as the requesting petition. So petitions submitted for 2016 that are granted get 2016 RINS; petitions submitted and granted for 2017 RINs get 2017 RINs.

There is one exception to this, but it pertains to an adverse court decision (Sinclair v. EPA) where the court found that the Agency denied a waiver when it should have been granted. By the time the case was settled the RINs at issue were no longer of value. To avoid a "justice delayed, justice denied" outcome; the Agency reinstated RINs of value in response to the court's direction in that case.

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Thursday, May 31, 2018 1:46 PM
To: Block, Molly <block.molly@epa.gov>; Press <Press@epa.gov>
Subject: RE: Small refinery exemptions

Molly —

- When did this change following your 11 May statement on behalf of the agency, which said that there "is one exception" — Sinclair v EPA — to Agency policy reinstating only RINs from the same year as the requesting petition? Or is that what you mean in this latest response?

-
- Does the reconsideration of "some prior denials" include applications by refineries not a party to Sinclair v EPA?

- How many?
- What vintage RIN has EPA reinstated to avoid the "justice delayed, justice denied" outcome: 2016, 2017 or 2018?

-
- Does EPA continue to accept new applications for any previous compliance year?

- Which years?

I can be reached at this email or at (713) 429-6350.

From: Block, Molly <block.molly@epa.gov>
Sent: Thursday, May 31, 2018 12:34 PM
To: Elliott Blackburn <elliott.blackburn@argusmedia.com>; Press <Press@epa.gov>
Subject: RE: Small refinery exemptions

Notice: **external email -- please use caution.**

Elliott –

Here's our statement:

"EPAs actions are narrow in scope and consistent with direction from the 10th Circuit. The Agency has been revisiting some prior denials in light of a recent court opinion holding that EPA had been applying the hardship exemption for small refineries too narrowly. Last summer, the Tenth Circuit found that EPA cannot make an exemption conditional on a refinery showing that its continued survival was at risk. EPA will continue to administer this statute attentive to all policy considerations, fulfilling the duty Congress has given the Agency in light of orders and opinions from the courts." – EPA Spokesperson

---

From: Elliott Blackburn [mailto:elliott.blackburn@argusmedia.com]
Sent: Thursday, May 31, 2018 1:28 PM
To: Press <Press@epa.gov>
Subject: FW: Small refinery exemptions

In what sense is EPA "revisiting" previous small refinery waiver decisions? What is the criteria for such reconsideration?

And:

- What vintage of RINs did EPA issue to "avoid a justice delayed, justice denied outcome" from the Sinclair v EPA decision?
- How many refiners not originally a party to Sinclair v EPA received RINs for years beyond current expiration? Or: Is this exception available exclusively to parties of Sinclair v EPA?
- Does EPA continue to accept small refinery waiver applications for the 2017 compliance year?

Elliott Blackburn
Downstream Reporter

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Direct: +1 713 429 6350
Email: elliott.blackburn@argusmedia.com
ICE: eblackburn
Skype ID: elliott.blackburn@argusmedia.com
Signal: (806) 319-5575

<image001.gif>
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Argus Media Inc., 2929 Allen Parkway, Suite 700, Houston, Texas 77019, USA
<image002.gif>

STAY CONNECTED: <image003.png><image004.png><image005.png><image006.png>

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Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/11/2018 5:00:21 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
CC: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]
Subject: RE: biofuels

Deliberative Process / Ex. 5

From: Block, Molly
Sent: Friday, May 11, 2018 1:00 PM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>
Subject: RE: biofuels

Deliberative Process / Ex. 5

From: Wilcox, Jahan
Sent: Friday, May 11, 2018 12:58 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>
Subject: RE: biofuels

From: Wilcox, Jahan
Sent: Friday, May 11, 2018 12:58 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: FW: biofuels

Do we insert our desk statement here or ignore?

From: Richard.Valdmanis@thomsonreuters.com [mailto:Richard.Valdmanis@thomsonreuters.com]
Sent: Friday, May 11, 2018 12:57 PM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: biofuels

Jahan – we are reporting from sources briefed on the matter that the WH is soon to formally propose changes to the RFS including:

- Temporary RVP waiver allowing sales of E15 in summer
- Counting ethanol exports toward annual biofuels volumes, without boosting the overall mandated volumes
- Scaling back use of small refinery waivers and ensuring big refiners make up for the obligated volumes waived

I'd be grateful if you could comment, confirm/deny.
Thank you
Rich

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/19/2018 11:30:48 AM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: Re: Budget Hearing Info - RINS/E15

Aaron, below are TPs on RINS and RVP. I'll call you later this morning to explain the purpose of the pass through.

Sent from my iPhone

On Apr 18, 2018, at 9:51 AM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

From: Gunasekara, Mandy
Sent: Wednesday, April 18, 2018 9:01 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Budget Hearing Info - RINS/E15

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Ringel, Aaron
Sent: Tuesday, April 17, 2018 3:25 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Budget Hearing Info - RINS/E15

Hey Mandy, we are putting together the program office cheat sheets for the Administrator's budget hearing briefings and after reviewing everything from OAR think we need two more, specifically on everyone's favorite topics that are more than likely going to get brought up during the E&C hearing: RINS and E15/RVP year round waiver.

I've pasted what we have for the RFS Small Refinery Hardship Exemption topic below so you can have an idea of what we are looking for. If you or Alex could send along some info we can include it would be much appreciated! We are sitting down with Ryan tomorrow afternoon to go over our doc so it would be great if we could get something by tomorrow morning.

Thanks!
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

RFS Small Refinery Hardship Exemption

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 11/28/2018 2:18:00 PM
To: Geoffrey Moody [GMoody@afpm.org]
Subject: Re: Reuters SRE report

Yes- will do. In short, it's not accurate. We will be issuing a clarifying statement

Sent from my iPhone

On Nov 28, 2018, at 9:17 AM, Geoffrey Moody <GMoody@afpm.org> wrote:

> Hey Mandy! Any chance you can give me a call re this Reuters story?
> https://www.reuters.com/article/us-usa-biofuels-waivers-exclusive-idUSKCN1NX1D9

Geoff Moody
Vice President
Government Relations

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202.280.0430 mobile

gmoody@afpm.org
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Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/5/2018 10:21:00 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: Re: FINAL: Administrator Pruitt Issues Statement on President Trump's Win-Win RFS Deal

These are good, but note everything is on hold until further direction from the WH

Sent from my iPhone

On Jun 5, 2018, at 6:07 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Attorney Client - Deliberative Process / Ex. 5

Attorney Client - Deliberative Process / Ex. 5

<image001.png>

From: Gunasekara, Mandy
Sent: Tuesday, June 5, 2018 5:19 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Konkus, John <konkus.john@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: Re: FINAL: Administrator Pruitt Issues Statement on President Trump's Win-Win RFS Deal

OGC should- looping in Justin.

Sent from my iPhone

On Jun 5, 2018, at 4:29 PM, Block, Molly <block.molly@epa.gov> wrote:

> Ready to go after WH announcement. Just want to double check that we're good to blast this out. Does OGC/David Harlow need to do a once over?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

<image001.png>

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Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 2/8/2018 3:51:53 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
Subject: Re: RFS small refinery hardship update

Thank you for the update

Sent from my iPhone

On Feb 7, 2018, at 3:35 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/25/2018 10:30:58 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
Subject: Fwd: Small Refinery Exemptions: Correcting the Record

FYI

Sent from my iPhone

Begin forwarded message:

From: Gunasekara.Mandy@epa.gov
Date: April 25, 2018 at 6:26:32 PM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Cc: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Subject: Re: Small Refinery Exemptions: Correcting the Record

Hey Chris:

Deliberative Process / Ex. 5

Best,
Mandy

Sent from my iPhone

On Apr 25, 2018, at 5:01 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Bill,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/1/2018 4:15:03 PM
To: Brooke, Francis J. EOP/WHO EOP / Ex. 6
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: 1 pager
Attachments: Sinclair Overview.docx

See attached. We are working to set up a call/discussion with Ray at USDA. I have not been able to connect – can you send me his contact info?

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 11/27/2018 7:52:54 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
CC: Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: Re: Sources: EPA to require 19.88 billion gallons of biofuel in nation's fuel system

Whatever - their sources are out of date

Sent from my iPhone

On Nov 27, 2018, at 2:38 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Told him his numbers we're incorrect. He didn't see the need to report that....

From: POLITICO Pro <politicoemail@politicopro.com>
Sent: Tuesday, November 27, 2018 2:33 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Sources: EPA to require 19.88 billion gallons of biofuel in nation's fuel system

By Eric Wolff

11/27/2018 02:31 PM EDT

EPA will require 19.88 billion gallons of biofuel be blended into the nation's fuel system under its 2019 Renewable Fuel Standard expected on Friday, industry sources told POLITICO.

The volumes will be closely in line with the agency's June proposal, which included a requirement for 15 billion gallons of conventional corn ethanol and a modest increase in cellulosic ethanol volumes.

The final rule will increase the 2020 requirement for biodiesel, which is set a year in advance, adding 330 million more gallons to the 2.1 billion gallons required this year and in 2019. The final volumes were first reported by Bloomberg.

The agency also will not reallocate volumes lost to small refinery exemptions, the sources said. Ethanol producers had hoped EPA would reassign those gallons, but the agency did not even take comment on the idea in its proposal.

"If true, EPA's decision not to include projected small refiner exemptions in the 2019 RVO means one of two things: either the agency does not expect to give out any exemptions at all from 2019 requirements, or EPA will continue the subversive practice of granting exemptions after the RVO is finalized — effectively reducing the RFS and undermining Congressional intent," Geoff Cooper, CEO of the Renewable Fuels Association, an ethanol trade group, said in a statement.

The final rule is also expected to trigger the law's "reset" provisions, under which EPA gets to rewrite the congressional schedule of volume requirements. That rule is expected early next year.

To view online:
https://subscriber.politicopro.com/energy/whiteboard/2018/11/sources-epa-to-require-1988-billion-gallons-of-biofuel-in-nations-fuel-system-2248374

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This email was sent to abboud.michael@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

<image001.jpg>

<image001.jpg>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/17/2018 9:49:04 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: Re: Congressman Pete Sessions Outreach

Thank you

Sent from my iPhone

On Apr 17, 2018, at 5:30 PM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

See attached.

Sent from my iPhone

Begin forwarded message:

From: "Ethington, Ryan" <Ryan.Ethington@mail.house.gov>
Date: April 17, 2018 at 5:23:46 PM EDT
To: "Ringel, Aaron" <ringel.aaron@epa.gov>
Cc: "Durst, Jacob" <Jacob.Durst@mail.house.gov>
Subject: RE: Congressman Pete Sessions Outreach

Please see attached for a follow up letter from the Congressman. Thank you

Best
Ryan

Ryan Ethington
Legislative Director | Congressman Pete Sessions (TX-32)
2233 Rayburn House Office Building | Washington, D.C. 20515-4332
P: 202.225.2231

From: Ringel, Aaron [mailto:ringel.aaron@epa.gov]
Sent: Friday, April 13, 2018 1:59 PM
To: Ethington, Ryan <Ryan.Ethington@mail.house.gov>
Subject: Re: Congressman Pete Sessions Outreach

Let me know when you have a second for a quick call.

Sent from my iPhone

On Apr 13, 2018, at 1:13 PM, Ethington, Ryan <Ryan.Ethington@mail.house.gov> wrote:

Hello,

Congressman Sessions asked that I reach out regarding small refiner hardship petitions. It is his hope that the EPA will continue to follow congressional direction and provide these important exemptions from the RFS program for small refiners.

Please do not hesitate to reach out if we can provide anything else on this issue.

Best
Ryan

Ryan Ethington
Legislative Director | Congressman Pete Sessions (TX-32)
2233 Rayburn House Office Building | Washington, D.C. 20515-4332
P: 202.225.2231

<Congressman Sessions Letter to Pruitt 4.17.18.pdf>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 2/6/2018 8:07:21 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re: CRS request: small refinery exemptions

Thanks Ben

Sent from my iPhone

On Feb 6, 2018, at 7:08 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Deliberative Process / Ex. 5

The incoming CRS request is below.

Thanks
Ben

From: Sutton, Tia
Sent: Monday, February 05, 2018 12:42 PM
To: Haman, Patricia <Haman.Patricia@epa.gov>; Thundiyil, Karen <Thundiyil.Karen@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>
Subject: RE: CRS request: small refinery exemptions

Pat and Karen,
We received a few inquiries following this Reuters article, and sent the draft statement below to OPA to use in responding. We let OPA make the call on whether or not to respond – and we have now confirmed that OPA only responded to inquiries so far with "No comment," but wanted to make sure that you had the statement as well. We will defer to OCIR on whether or not to send the statement to Kelsi in response to her inquiry.

Ben – looping you here for awareness, please forward to others as you see fit.

Thanks,
Tia

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Haman, Patricia
Sent: Monday, February 05, 2018 11:09 AM
To: Sutton, Tia <sutton.tia@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>
Cc: Thundiyil, Karen <Thundiyil.Karen@epa.gov>
Subject: FW: CRS request: small refinery exemptions

Good Morning, Kelsi from CRS sent the note below a few minutes ago. Please let me know how you would like me to respond.

Thank you. Pat

Patricia E. Haman
Office of Congressional Affairs
U.S. EPA
202-564-2806

Hi Pat,

I hope your 2018 is off to a great start.

I am working on a request for congressional staff and would appreciate a response to the three questions below by COB today.

- <!--[if !supportLists]--><!--[endif]-->Does EPA disclose the number of RFS small refinery petitions under consideration to the general public?
- <!--[if !supportLists]--><!--[endif]-->Has EPA disclosed this information in previous years to the general public?
- <!--[if !supportLists]--><!--[endif]-->What is the EPA protocol for disclosing such information?

A Reuters article, *Exclusive: U.S. small refiners make surge of biofuel waiver requests – sources*, reports that "Sources familiar with the matter said the EPA was currently reviewing 27 waiver applications from small refineries, covering multiple years."

Please contact me if you have any questions about this request.

Thanks,
Kelsi

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/17/2018 3:27:35 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: Senators Request EPA Cease Issuing RFS 'Hardship' Waivers, Disclose Information to Congress

Edits below.

Sent from my iPhone

On Apr 17, 2018, at 11:10 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Does this work for you all?

Deliberative Process / Ex. 5

From: jarrett.renshaw@thomsonreuters.com [mailto:jarrett.renshaw@thomsonreuters.com]
Sent: Tuesday, April 17, 2018 10:59 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: FW: Senators Request EPA Cease Issuing RFS 'Hardship' Waivers, Disclose Information to Congress

Looking for a comment on this?

Jarrett Renshaw
National Energy Markets Reporter
Reuters
jarrett.renshaw@thomsonreuters.com
Office: (646) 223-6193
Cell: (917) 482-9738
Twitter: @jarrettrenshaw
IM: jrenshaw_reuters08

From: Grassley Press [mailto:Grassley_Press@grassley.senate.gov]
Sent: Tuesday, April 17, 2018 10:14 AM
To: Grassley Press
Subject: Senators Request EPA Cease Issuing RFS 'Hardship' Waivers, Disclose Information to Congress

For Immediate Release
Tuesday, April 17, 2018

Bipartisan Group of Senators Request EPA Cease Issuing RFS 'Hardship' Waivers and Disclose Information to Congress

WASHINGTON – Sen. Chuck Grassley (R-Iowa) and Sen. Amy Klobuchar (D-Minn.) led a bipartisan group of 13 senators in writing to EPA Administrator Scott Pruitt requesting the agency cease issuing so-called "hardship" waivers exempting obligated parties from the Renewable Fuel Standard, provide topline information about the waivers already issued, disclose whether or not the agency redistributed the waived volume obligations among the non-exempted obligated parties and outline the agency's plan to make the waiver process more transparent.

Grassley and Klobuchar were joined by Sens. Joni Ernst (R-Iowa), Debbie Stabenow (R-Mich.), Deb Fischer (R-Neb.), Dick Durbin (D-Ill.), John Thune (R-S.D.), Tina Smith (D-Minn.), Roy Blunt (R-Mo.), Claire McCaskill (D-Mo.), Tammy Duckworth (D-Ill.), Heidi Heitkamp (D-N.D.) and Joe Donnelly (D-Ind.).

"We are writing to you regarding the actions the Environmental Protection Agency (EPA) has taken to undermine commitments President Trump made on the Renewable Fuel Standard (RFS) to our constituents," the senators wrote. "Recent reports indicate dozens of small refiner waivers have been secretly granted to large, multibillion-dollar companies under the guise of the small refinery hardship exemption provision in section 211(o)(9) of the Clean Air Act. This is extremely concerning to us."

In their letter, the senators cited the confirmation hearing testimony of Pruitt, in which he stated, "Any steps that the EPA Administrator takes need to be done in such a way as to further the objectives of Congress in that statute, not undermine the objectives of Congress in that statute." The senators also noted Pruitt's October 2017 letter, in which he stated, "I reiterate my commitment to you and your constituents to act consistent with the text and spirit of the RFS. I take seriously my responsibility to do so in an open and transparent manner that advances the full potential of this program…"

News reports indicate that EPA has already issued 25 "hardship" waivers to large, multibillion-dollar refining companies making billions of dollars in profits since 2016. The senators state that such action would "represent a clear violation of your commitments and clearly undermine the President's long-standing support of the RFS."

The senators requested that EPA:

- Cease issuing any refinery waivers under the RFS;
- Provide a full list of the refiners that have received a refinery waiver in 2016, 2017 or 2018;
- Provide a detailed report to Congress describing EPA's justification for providing the waivers and if the volumes were redistributed to other obligated parties; and
- Describe EPA's commitment and plan to consider future small refinery waivers only during the annual RVO rulemaking process and commitment to provide full notice and opportunity for comment on any future small refinery waiver requests.

The full text of the senators' letter can be found here or below.

April 12, 2018

The Honorable Scott Pruitt
Administrator

Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

We are writing to you regarding the actions the Environmental Protection Agency (EPA) has taken to undermine commitments President Trump made on the Renewable Fuel Standard (RFS) to our constituents. Recent reports indicate dozens of small refiner waivers have been secretly granted to large, multi-billion-dollar companies under the guise of the small refinery hardship exemption provision in section 211(o)(9) of the Clean Air Act. This is extremely concerning to us.

During your confirmation hearing for the post of Administrator of the EPA, you said, *"Any steps that the EPA Administrator takes need to be done in such a way as to further the objectives of Congress in that statute, not undermine the objectives of Congress in that statute."* You also wrote to a number of Senators in October 2017 and said, *"I reiterate my commitment to you and your constituents to act consistent with the text and spirit of the RFS. I take seriously my responsibility to do so in an open and transparent manner that advances the full potential of this program..."*

According to recent reports, the EPA has already issued 25 "disproportionate hardship" waivers to large, multi-billion-dollar refining companies reporting billions of dollars of profits since 2016. Such action would represent a clear violation of your commitments and clearly undermine the President's long-standing support of the RFS.

These waivers fall well outside the bounds of the letter or spirit of this provision in the law, which sought to provide flexibility for the smallest of U.S. refiners, and only in cases of genuine hardship. Worse, EPA's actions are already hurting biofuel producers and farmers across the United States at a time when farm income is at the lowest levels since 2006 and retaliatory trade measures from China threaten to deepen the crisis.

In 2015, 37 Senators wrote to the EPA requesting that the agency issue a strong Renewable Volume Obligation (RVO), citing the RFS's success in driving economic development, strengthening agriculture markets, and creating hundreds of thousands of clean energy jobs in rural communities. Early reports indicate that the small refinery waivers you have granted could effectively cut biofuel demand by 1.5 billion gallons, thus effectively lowering President Trump's commitment to seeing 15 billion gallons of ethanol blended to 13.5 billion. Additionally, once these select refiners are no longer responsible for complying with these 2016 requirements, they are able to sell excess Renewable Identification Numbers (RINs) back into the market, increasing supply and lowering the price.

This further reduces incentives for blending, slashing demand for biofuels and feedstocks, and hurting farmers and biofuels companies. These waivers could cripple the market for years to come, holding back homegrown biofuels while creating a windfall profits for large oil refiners -- the exact opposite of this administration's promise to voters.
Perhaps most concerning, these lucrative waivers have reportedly been issued behind closed doors, outside of the public process, while the EPA has simultaneously been working with refineries to pressure President Trump to sign off on a RIN cap that would wreak further havoc on the RFS.

We request that you take the following actions immediately:

- Cease issuing any refinery waivers under the RFS;
- Provide a full list of the refiners that have received a refinery waiver in 2016, 2017 or 2018, including the name, location, refining capacity, date waiver was issued, and number of gallons waived;
- Provide a detailed report to Congress within two weeks of receipt of this letter that describes your justification for providing each of these waivers. Specifically, please include whether the volumes were redistributed to other obligated parties. If the volumes were not redistributed, please explain why they were not and the reason EPA decided to undercut the RVOs against the President's commitment;
- Respond in writing describing your commitment and plan to consider future small refinery waivers only during the annual RVO rulemaking process and commitment to provide full notice and opportunity for comment on any future small refinery waiver requests.

We appreciate your timely response to these matters.

Sincerely,

Charles E. Grassley
Amy Klobuchar
Joni K. Ernst
Debbie Stabenow
Deb Fischer
Richard J. Durbin
John Thune
Tina Smith
Roy Blunt
Claire McCaskill
Tammy Duckworth
Heidi Heitkamp
Joe Donnelly

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 11/26/2018 6:42:09 PM
To: Eby, Natasha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d5c14481f6874e3aa434b3b01a4a2a7d-Eby, Natash]; Humphreys, Hayly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4f4a7b4aeaf143bf806b0dd5b7884324-Humphreys,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Briefing for Administrator on reset rule 11-27-18 final.pptx
Attachments: Briefing for Administrator on reset rule 11-27-18 final.pptx; ATT00001.txt

Attached is the briefing material for tomorrows discussion on the RFS Reset.

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 5/8/2018 12:58:30 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Backgrounder for 5-8-18.docx
Attachments: Backgrounder for 5-8-18.docx; ATT00001.txt

RFS info from Tia that SP requested.

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 3/23/2018 6:41:35 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Fwd: Small Refinery Exemptions

FYI- just because I think it's interesting.

Sent from my iPhone

Begin forwarded message:

From: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Date: March 23, 2018 at 2:40:59 PM EDT
To: "Traylor, Patrick" <traylor.patrick@epa.gov>
Cc: Clint Woods <cwoods@csg.org>, "Baptist, Erik" <Baptist.Erik@epa.gov>
Subject: Re: Small Refinery Exemptions

Deliberative Process / Ex. 5

Who in OECA is involved in this?

Sent from my iPhone

On Mar 23, 2018, at 2:18 PM, Traylor, Patrick <traylor.patrick@epa.gov> wrote:

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 11/13/2017 2:31:09 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: 10_5_17 small refinery discussion FINAL.PPTX
Attachments: 10_5_17 small refinery discussion FINAL.PPTX; ATT00001.txt

See slide 14 for refineries.

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 11/10/2017 4:37:33 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: Ergon West Virginia small refinery litigation

From: Gunasekara, Mandy
Sent: Friday, November 10, 2017 10:39 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Baptist, Erik <baptist.erik@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Subject: RE: Ergon West Virginia small refinery litigation

Hey David,
Thank you for this update. **Attorney Client - Deliberative Process / Ex. 5**

Attorney Client - Deliberative Process / Ex. 5

Best,
Mandy

From: Orlin, David
Sent: Monday, October 23, 2017 10:01 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Baptist, Erik <baptist.erik@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Subject: Ergon West Virginia small refinery litigation

Mandy,

Attorney Client - Deliberative Process / Ex. 5

Attorney Client - Deliberative Process / Ex. 5

Let me know if you'd like discuss further.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 10/18/2017 7:00:48 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: Follow-up on small refinery report language

FYI

From: Gunasekara, Mandy
Sent: Wednesday, October 18, 2017 3:00 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Follow-up on small refinery report language

Looping in Erik – Erik, please let me know if you concur with the below. If not, we can talk further.

Deliberative Process / Ex. 5

From: Hengst, Benjamin
Sent: Thursday, October 12, 2017 3:41 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Follow-up on small refinery report language

Mandy,

We spoke briefly this morning about the small refinery hardship report language:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks
Ben

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/24/2017 8:23:57 PM
To: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]
Subject: RE: First Draft
Attachments: Philadelphia Energy Solutions Memorandum (July 24 2017) (002).docx

See attached.

From: Traylor, Patrick
Sent: Monday, July 24, 2017 4:14 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: First Draft

ETA?

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Traylor, Patrick
Sent: Monday, July 24, 2017 3:24 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: First Draft

See attached. I have time this afternoon to synthesize your piece with mine.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 1/25/2018 3:03:44 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]
Subject: Fwd: RFA letter on small refinery exemption
Attachments: EPAsmallrefinerletterjanuary24.pdf; ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

From: Rachel Gantz <rgantz@ethanolrfa.org>
Date: January 24, 2018 at 1:41:05 PM EST
To: "Pruitt.scott@Epa.gov" <Pruitt.scott@Epa.gov>
Cc: "Argyropoulos, Paul" <Argyropoulos.Paul@epa.gov>, "wehrum.bill@epa.gov" <wehrum.bill@epa.gov>, "jackson.ryan@epa.gov" <jackson.ryan@epa.gov>, "gunasekara.mandy@epa.gov" <gunasekara.mandy@epa.gov>
Subject: RFA letter on small refinery exemption

Administrator Pruitt,

On behalf of Renewable Fuels Association President and CEO Bob Dinneen, I would like to submit the attached letter on EPA's small refinery exemption under the RFS.

Thank you.

Rachel Gantz
Communications Director
Renewable Fuels Association
425 3rd St., SW, Suite 1150
Washington, D.C. 20024
Ex. 6 direct)
rgantz@ethanolrfa.org
Twitter: racheldgantz

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/24/2017 7:04:31 PM
To: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]

Subject: Accepted: Small Refineries (re: RFS hardship exemption)
Location: 1200 Pennsylvania Avenue, NW (North) - Room 1332 WJCN

Start: 8/15/2017 2:00:00 PM
End: 8/15/2017 3:00:00 PM

Recurrence: (none)

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 11/1/2018 2:15:15 PM
To: Aaron.L.Szabo EOP / Ex. 6
Subject: Draft rule
Attachments: Draft reset rule for AA review 10-26-18.docx; ATT00001.txt

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/21/2017 7:11:14 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]
Subject: RE: RFS Budget Implications
Attachments: Budget Implications Response_Renewable Fuel Standard.docx

Ok great and thank you for the quick turnaround.
Holly, see attached a clean version of the final RFS statement. Please let me know if you need anything else.
Best,
Mandy

From: Hengst, Benjamin
Sent: Monday, August 21, 2017 3:00 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: RE: RFS Budget Implications

Hi Mandy. OAR and OGC have reviewed. We have no edits/comments on the revised document. Thanks—Ben

---

From: Gunasekara, Mandy
Sent: Monday, August 21, 2017 11:12 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RFS Budget Implications

Hi Ben,

I've attached a revised budget implication statement for the RFS portion. Can you have your team review for accuracy? Please let me know if you (or they) have any questions/concerns/or justifiable additions. Please send the final version to Holly so it can be included in the package sent over to the hill, which is slated for later today.

Best,
Mandy

Mandy M. Gunasekara
Senior Policy Advisor for Office of Air and Radiation
Office of the Administrator
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/18/2017 6:54:40 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Attachments: EPA RFS Options_WH paper.desktop.docx

Mandy M. Gunasekara
Senior Policy Advisor for Office of Air and Radiation
Office of the Administrator
US Environmental Protection Agency

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 12/1/2017 12:52:13 PM
To: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]

Subject: Accepted: RFS Small Refinery Hardship Program
Location: WJC-N 5400 + Conference phone and code / Ex. 6

Start: 12/1/2017 4:30:00 PM
End: 12/1/2017 5:15:00 PM

Recurrence: (none)

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 10/19/2018 9:37:12 PM
To: Administrator / Ex. 6
Subject: Follow Up
Attachments: Condensate One Pager_7.17.18.docx

Attached is the one-pager following up to our conversation on the small refinery exemption program. I'll have a hard copy for you Monday.

Have a great weekend,
Mandy

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/31/2017 10:49:10 PM
To: Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RFS Info for NEC Meeting
Attachments: EPA RFS Options_principal mtg DRAFT.docx; Letter to EPA 6-23-17r.pdf

Attached are the primary documents for tomorrow's meeting. Let me know if you have any questions. I have a binder the Admin, which we can go over tomorrow during the prep.

Mandy M. Gunasekara
Senior Policy Advisor for Office of Air and Radiation
Office of the Administrator
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/15/2017 7:01:43 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: RE: Court says EPA overstepped in denying small refiners RFS exemption

☺ can't wait!!

From: Jackson, Ryan
Sent: Tuesday, August 15, 2017 3:01 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Re: Court says EPA overstepped in denying small refiners RFS exemption

I love that you're here and you're doing an incredible job. You just have too many things to shoulder. Help is on the way. Whew.

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

On Aug 15, 2017, at 2:59 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Jackson, Ryan
Sent: Tuesday, August 15, 2017 2:55 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Re: Court says EPA overstepped in denying small refiners RFS exemption

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

On Aug 15, 2017, at 2:52 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Nice – another ding to previous admin and is consistent with our perspective

---

From: Jackson, Ryan
Sent: Tuesday, August 15, 2017 2:50 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: Court says EPA overstepped in denying small refiners RFS exemption

Wowey

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

Begin forwarded message:

From: "POLITICO Pro Energy Whiteboard" <politicoemail@politicopro.com>
Date: August 15, 2017 at 2:14:58 PM EDT
To: <jackson.ryan@epa.gov>
Subject: Court says EPA overstepped in denying small refiners RFS exemption
Reply-To: "POLITICO subscriptions" <reply-fe8c127977640c7870-980857_HTML-786581600-1376319-0@politicoemail.com>

By Alex Guillén

08/15/2017 02:09 PM EDT

The Obama administration in 2016 wrongly forced two small refineries in Wyoming to comply with the Renewable Fuel Standard, a federal court ruled today.

The Sinclair Oil-owned facilities had requested exemptions from the RFS, citing language in the law that allows EPA to spare small refiners from the program's biofuel blending requirements if they would experience "disproportionate economic hardship." While DOE recommended granting them a 50 percent waiver, EPA in October 2016 said both facilities were profitable enough to bear the RFS's costs and thus would have to comply fully with the program.

However, a split panel from the 10th Circuit Court of Appeals today said EPA overstepped its authority by concluding that the exemption could only be granted if complying with the RFS presented a long-term, "existential threat" to the refineries' survival.

EPA "chose a definition of economic hardship plainly at odds with Congress's statutory command," concluded the two majority judges, Timothy Tymkovich, a George W. Bush appointee, and Nancy Moritz, an Obama appointee. They sent the matter back to EPA for further action.

In a dissent, Carlos Lucero, a Clinton appointee, said he believed EPA had relied on "a more nuanced analysis" than the majority said which may have been permissible.

The decision comes just weeks after the D.C. Circuit ruled in a separate case that the Obama EPA had misappropriated a broader waiver authority under the RFS to require using less corn ethanol in 2016 than Congress required.

WHAT'S NEXT: EPA must review the refineries' petitions in light of the ruling. The agency could find further reasons for denying the petitions or it may grant Sinclair the sought-after exemptions.

To view online: https://www.politicopro.com/energy/whiteboard/2017/08/court-says-epa-overstepped-in-denying-small-refiners-rfs-exemption-091820

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Yes, very | Somewhat | Neutral | Not really | Not a

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POLITICOPRO

This email was sent to jackson.ryan@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/17/2017 7:53:16 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: FOR REVIEW: Bloomberg (Meenal Vamburkar) RFS Exemptions - DEADLINE 8/17

If all they want it the latest date then the below is the most up to date information – EPA evaluated 12 for the 2016 standard.

From: Abboud, Michael
Sent: Thursday, August 17, 2017 10:32 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: FW: FOR REVIEW: Bloomberg (Meenal Vamburkar) RFS Exemptions - DEADLINE 8/17

Mandy and Brittany-

Is there anything more we want to say about this?

From: Daguillard, Robert
Sent: Thursday, August 17, 2017 10:11 AM
To: Press <Press@epa.gov>
Subject: FOR REVIEW: Bloomberg (Meenal Vamburkar) RFS Exemptions - DEADLINE 8/17

BACKGROUND

The program says the following is the most recent information available – Meenal Vamburkar – Bloomberg – mvamburkar@bloomberg.net

RESPONSE

In the recent proposal titled "Renewable Fuel Standard Program: Standards for 2018 and Biomass Based Diesel Volume for 2019" we noted on page 34244 that " EPA successfully implemented these [hardship petitions] provisions by evaluating petitions for exemption from 12 small refineries for the 2016 RFS standards."

From: Meenal Vamburkar (BLOOMBERG/ NEWSROOM:) [mailto:mvamburkar@bloomberg.net]
Sent: Wednesday, August 16, 2017 1:29 PM
To: Press <Press@epa.gov>
Cc: StClair, Christie <StClair.Christie@epa.gov>
Subject: RFS Exemptions

Hi Christie,

Meenal Vamburkar here at Bloomberg News. Hope you're well.

I'm looking at the RFS exemption program, and see the EPA has numbers from a few years ago about how many refineries applied and were granted the exemption. Are you able to provide updated

numbers for this?

Thanks,
Meenal

Meenal Vamburkar
Energy reporter, Bloomberg News
O: 212-617-0051
C: 732-910-0353
@meenal_v
mvamburkar@bloomberg.net

<< Energy Americas (oil market, refiners & pipelines) Cell: 732-910-0353 >>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 10/17/2018 9:51:35 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Thank You!
Attachments: NBB Letter to EPA_SREs_Oct2018.pdf; ATT00001.htm

FYI: see attached.

Sent from my iPhone

Begin forwarded message:

From: Kurt Kovarik <kkovarik@biodiesel.org>
Date: October 17, 2018 at 3:24:39 PM EDT
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Subject: Thank You!

Hi Mandy,

I just wanted to thank you again for your time this morning. I really do appreciate your constructive engagement on issues that are critically important to the biodiesel industry.

Additionally, I completely failed to mention that we are sending over the attached letter to EPA regarding the demonstrated demand destruction in biodiesel as a result of the small refiner exemptions. Nothing you haven't heard before, just providing more data as to the harm that has happened to our industry as a result.

Please let me know if you have any questions.

Thank you, again.

Best regards,

Kurt

Kurt Kovarik
Vice President of Federal Affairs
National Biodiesel Board
Office: (202) 737-8801
www.nbb.org | *www.biodiesel.org*
Biodiesel, America's Advanced Biofuel

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/31/2017 9:40:02 PM
To: DeMocker, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d331cfe11ecc4729ae582d379c2ad18b-JDemocke]
Subject: Re: Ergon West Virginia -- small refinery litigation

Thank you

Sent from my iPhone

On Aug 31, 2017, at 5:37 PM, DeMocker, Jim <DeMocker.Jim@epa.gov> wrote:

> Just touching base to let you know Byron and his team have this request and are working on a status report…
>
> **From:** Gunasekara, Mandy
> **Sent:** Thursday, August 31, 2017 4:43 PM
> **To:** Hengst, Benjamin <Hengst.Benjamin@epa.gov>
> **Cc:** cookleila Personal Email / Ex. 6 Bunker, Byron <bunker.byron@epa.gov>; DeMocker, Jim <DeMocker.Jim@epa.gov>
> **Subject:** RE: Ergon West Virginia -- small refinery litigation
>
> Can you give me a status update on this?
>
> **From:** Hengst, Benjamin
> **Sent:** Monday, August 14, 2017 2:44 PM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Cc:** cookleila Personal Email / Ex. 6 Bunker, Byron <bunker.byron@epa.gov>; DeMocker, Jim <DeMocker.Jim@epa.gov>
> **Subject:** Ergon West Virginia -- small refinery litigation
>
> Hi Mandy – last Thursday we briefly brought the topic of Ergon WV up with you. Ergon WV was the one refinery for which the Administrator denied the application for relief; they subsequently sued us.
>
> You asked that we send you a quick note to summarize our plan, and that note is below. Please let us know if you want to discuss this any further. We have our weekly fuels meeting with you on Thursday and can discuss then if needed.
>
> Thanks—Ben
>
> ***

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/28/2017 9:34:25 PM
To: Catanzaro, Michael J. EOP/WHO EOP / Ex. 6
Subject: RFS Paper
Attachments: EPA RFS Options_WH paper.desktop.docx

This day got away from me. Attached is my original memo. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mandy M. Gunasekara
Senior Policy Advisor for Office of Air and Radiation
Office of the Administrator
US Environmental Protection Agency

Message

Sent: 12/19/2018 7:40:45 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Follow up

Hi Mandy—

We hope to spend 5 minutes on this at the fuels weekly tomorrow (are you in this week?). But here's the quick story:

Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Tuesday, December 18, 2018 10:56 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: FW: Follow up

Hey Ben,
Can you tell me the latest on the below, which I assume is an SRE request? Have we received the petition referenced? What year is it? Has it been submitted to DOE? If so, where is it in the process.

From: Jackson, Ryan
Sent: Tuesday, December 18, 2018 10:15 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: Follow up

I meant to bring this up with you. Can we connect on what this means when you have an opportunity today?

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

Begin forwarded message:

From: John Blount <john.blount@ervinhillstrategy.com>
Date: December 18, 2018 at 10:07:29 AM EST
To: "Ryan Jackson" <jackson.ryan@epa.gov>
Subject: Follow up

I am writing to thank you for the meeting with Robert Finnegan of Tethys. Just checking in to see where EPA is on their marketing petition for exemption from the RFS obligation as discussed.

Thank you

John

John Blount
SVP, Global Government Affairs
Ervin | Hill Strategy
410 First Street, SE
Suite 300
Washington, D.C. 20003
Ex. 6 cell

Message

From: Hengst.Benjamin@epa.gov [Hengst.Benjamin@epa.gov]
Sent: 12/19/2018 10:38:36 PM
To: Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]
Subject: Fwd: Follow up

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Date: December 19, 2018 at 5:38:15 PM EST
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "Dominguez, Alexander" <dominguez.alexander@epa.gov>
Subject: Re: Follow up

Ok. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Enjoy the mountain! Ben

On Dec 19, 2018, at 2:46 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Thank you for this. I will not be there tomorrow and it's unlikely I'll call in (I'll be on the mountains in Tahoe). The below is good for now and I'll pass it along to

Deliberative Process / Ex. 5

Sent from my iPhone

On Dec 19, 2018, at 11:42 AM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Hi Mandy—

We hope to spend 5 minutes on this at the fuels weekly tomorrow (are you in this week?). But here's the quick story:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,
Ben

From: Gunasekara, Mandy
Sent: Tuesday, December 18, 2018 10:56 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: FW: Follow up

Hey Ben,
Can you tell me the latest on the below, which I assume is an SRE request? Have we received the petition referenced? What year is it? Has it been submitted to DOE? If so, where is it in the process.

From: Jackson, Ryan
Sent: Tuesday, December 18, 2018 10:15 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: Follow up

I meant to bring this up with you. Can we connect on what this means when you have an opportunity today?

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6

Begin forwarded message:

> **From:** John Blount
> <john.blount@ervinhillstrategy.com>
> **Date:** December 18, 2018 at 10:07:29 AM EST
> **To:** "Ryan Jackson" <Jackson.ryan@epa.gov>
> **Subject: Follow up**

I am writing to thank you for the meeting with Robert Finnegan of Tethys. Just checking in to see where EPA is on their marketing petition for exemption from the RFS obligation as discussed.

Thank you

John

John Blount
SVP, Global Government Affairs
Ervin | Hill Strategy
410 First Street, SE
Suite 300
Washington, D.C. 20003
Ex. 6 cell

Appointment

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/15/2018 1:10:06 PM

Subject: SRE FOIAs

Start: 5/15/2018 6:00:00 PM
End: 5/15/2018 7:00:00 PM
Show Time As: Busy

Message

Sent: 10/24/2018 9:00:42 PM
To: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]
CC: Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]
Subject: RE: check in on ABFA small refinery record-related disclosures

David and

From: Orlin, David
Sent: Wednesday, October 24, 2018 4:32 PM
To: Bunker, Byron <bunker.byron@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Cc: Stahle, Susan <Stahle.Susan@epa.gov>
Subject: check in on ABFA small refinery record-related disclosures

Deliberative Process; ACP / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Message

From: David Fialkov [dfialkov@natso.com]
Sent: 10/23/2018 10:45:33 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Rigamonti, Eva [erigamonti@steptoe.com]
Subject: Re: Meeting

Sorry Ben but turns out we can't do November 1st or 2nd. My mistake

On Tue, Oct 23, 2018 at 6:25 PM David Fialkov <dfialkov@natso.com> wrote:

We'd want to talk about RVOs, SREs, E15, Transparency nonsense, reset. Is that everything?

The 8th doesn't work for us we're in California at an industry event. Below is what works for us (sooner the better but we know you're all very busy).

October 25 and 26, Nov 1 (1-4pm only), 2 (before 11 or after 2), 9, 12, 13 all day.

Looking forward,

Dave

On Tue, Oct 23, 2018 at 4:14 PM Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Yes, of course. Eva (copied) and I have been playing phone tag.

What would you want to talk about? Everything? I ask so I know whom to invite. How's November 8 looking, maybe 1-2 or 3-4?

From: David Fialkov [mailto:dfialkov@natso.com]
Sent: Monday, October 22, 2018 10:50 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Meeting

Can Eva and I come in and meet with you and your team at some point in next couple of weeks?

--

David H. Fialkov

Vice President, Government Relations

Legislative and Regulatory Counsel

NATSO, Representing America's Travel Centers and Truckstops

dfialkov@natso.com

(703) 739 - 8501

--
David H. Fialkov
Vice President, Government Relations
Legislative and Regulatory Counsel
NATSO, Representing America's Travel Centers and Truckstops
dfialkov@natso.com
(703) 739 - 8501

--
David H. Fialkov
Vice President, Government Relations
Legislative and Regulatory Counsel
NATSO, Representing America's Travel Centers and Truckstops
dfialkov@natso.com
(703) 739 - 8501

Appointment

From: Burkholder, Dallas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=667EF175292D4784997E454A9985B3B3-BURKHOLDER, DALLAS]
Sent: 10/18/2018 7:31:42 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]

Subject: Accepted: SRE update--yes I know it's late notice
Location: Chris G's offices in DC and AA

Start: 10/18/2018 8:35:00 PM
End: 10/18/2018 9:00:00 PM
Show Time As: Busy

Message

From: Argus Alerts [noreply@argusalerts.com]
Sent: 10/19/2018 9:05:35 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Argus: US RINs: RINs fall as EPA accepts more SRE applications

Argus direct

argus
argusmedia.com

US RINs: RINs fall as EPA accepts more SRE applications

19 Oct 2018 17:05 (-04:00 GMT)

Houston, 19 October (Argus) — RIN prices were mostly lower Friday amid renewed concern over the EPA's acceptance of applications for small refinery exemptions.

The Argus Renewable Volume Obligation (RVO) fell 0.08¢/USG, or 4.2pc, to 1.85¢/USG.

The current year ethanol D6 RINs fell 0.75¢/RIN to 10¢/RIN, while 2018 credits traded at 9.75¢/RIN for small volumes. The 2019 vintage year D6 RINs were traded between 13.5¢/RIN and 14.5¢/RIN.

The current year biomass-based D4 RINs fell more than a half cent as the credits exchanged hands between 32.25¢/RIN and 33¢/RIN, while small volume traded at 32¢/RIN. The B18/A18 spread was valued at +2.5¢/RIN.

The 2018 vintage year cellulosic biofuel D3 RINs were traded at 196¢/USG, up a half cent on the day.

Send comments to feedback@argusmedia.com

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Appointment

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 10/18/2018 8:03:07 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]

Subject: Meeting Forward Notification: SRE update--yes I know it's late notice
Location: Chris G's offices in DC and AA

Start: 10/18/2018 8:35:00 PM
End: 10/18/2018 9:00:00 PM

Recurrence: (none)

Your meeting was forwarded

Nelson, Karen has forwarded your meeting request to additional recipients.

Meeting

SRE update--yes I know it's late notice

Meeting Time

Thursday, October 18, 2018 4:35 PM-5:00 PM.

Recipients

Boylan, Thomas

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Appointment

From: Stahle, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B25318C6014D4FB985288E15143C8596-SSTAHLE]
Sent: 10/18/2018 7:57:47 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]

Subject: Accepted: SRE update--yes I know it's late notice
Location: Chris G's offices in DC and AA

Start: 10/18/2018 8:35:00 PM
End: 10/18/2018 9:00:00 PM
Show Time As: Busy

Message

From: farmdoc Project [farmdocdaily@illinois.edu]
Sent: 12/14/2018 1:06:35 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: farmdoc daily Update: December 14, 2018

More on Small Refinery Exemptions and Ethanol Demand Destruction

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UPDATE | December 14, 2018

Latest Article

More on Small Refinery Exemptions and Ethanol Demand Destruction

December 13, 2018

The impact of small refinery exemptions (SREs) under the RFS continues to be a highly controversial subject. While there is no doubt that SREs have opened a backdoor mechanism for the EPA to reduce the statutory and obligated RFS volumes,...

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farmdoc/University of Illinois
Department of Agricultural and Consumer Economics - 406 Mumford Hall
1301 W Gregory Dr
Urbana, Il 61801

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Message

Sent: 10/16/2018 6:57:17 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE:

Friday WH mtg on E15 legal issues
—sub sim data

Tuesday RVO mtg

-gave overview of #s. then got into SRE stuff. Deliberative Process / Ex. 5

- SRE focus to meeting.

Deliberative Process / Ex. 5

Whales. Swim deeper. Bro-ey guys.

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 8/21/2013 2:54:30 PM
To: Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Korotney, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7b00e16e09654b94bc6146550ca87936-Korotney, David]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: FW: Compiled 2014 NPRM for your review
Attachments: Compiled 2014 standards NPRM for DD review 8-20-13.docx

Is this something we are sending to Joel, too? He's covering for Janet this week and asked about its status yesterday. I know there was some discussion of the review chain but I wasn't sure what the next step should be.

From: Korotney, David
Sent: Tuesday, August 20, 2013 12:53 PM
To: Simon, Karl
Cc: Machiele, Paul; Argyropoulos, Paul; Lie, Sharyn; Weihrauch, John; Hengst, Benjamin
Subject: Compiled 2014 NPRM for your review

Per your request.

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 7/29/2013 12:39:40 PM
To: Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]; Korotney, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7b00e16e09654b94bc6146550ca87936-Korotney, David]
CC: Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]
Subject: FW: 2013 package update, including edits to forward-looking statement
Attachments: RFS 2013 jm 7-28-13.docx

I forgot whether this was forwarded around or not last night. I'll send what I responded with. Just FYI.

From: Grundler, Christopher
Sent: Sunday, July 28, 2013 9:05 PM
To: Argyropoulos, Paul; Hengst, Benjamin
Subject: Fw: 2013 package update, including edits to forward-looking statement

Pls see Janet's questions and let me know how you think I should reply. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

C

From: Janet McCabe Personal Address / Ex. 6
Sent: Sunday, July 28, 2013 8:40:26 PM
To: McCabe, Janet
Cc: Beauvais, Joel; Grundler, Christopher
Subject: RE: 2013 package update, including edits to forward-looking statement

I read through most of the rule, up through the 2014 language anyway, and it was quite an education. I corrected a couple of what seemed to be clear typos—they show up in red on my computer—and highlighted a sentence on p. 42 that likewise has some typos in it, but I wasn't sure how to fix.

Deliberative Process / Ex. 5

(sorry for all the questions—it's generally not helpful to put multiple questions in a single email. You get the idea, though, and we can discuss tomorrow. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Also, I read the letter to refiners, and didn't have any immediate reactions to it. I'll look it over again, though.

Thanks, guys.

--Janet

PS—sending from home email cause remote not working.

From: McCabe, Janet [mailto:McCabe.Janet@epa.gov]
Sent: Saturday, July 27, 2013 10:35 PM
To: Janet McCabe
Subject: Fw: 2013 package update, including edits to forward-looking statement

---

From: Beauvais, Joel
Sent: Friday, July 26, 2013 3:31:49 PM
To: McCabe, Janet
Cc: Grundler, Christopher
Subject: FW: 2013 package update, including edits to forward-looking statement

Janet – Forwarding along OTAQ's proposed passback on 2014-fwd-looking language. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Joel

From: Hengst, Benjamin
Sent: Friday, July 26, 2013 3:09 PM
To: Beauvais, Joel
Cc: Grundler, Christopher; Argyropoulos, Paul; Stewart, Lori
Subject: 2013 package update, including edits to forward-looking statement

Joel:

Per Janet's request we have prepared the next round of edits on the forward-looking statement. See page 66 of the attachment. A few key notes:

1. OMB had a number of suggested edits in their passback, and we continue to get more. The attached document reflects our responses **only** to the forward looking statement. We will be preparing our next full-passback early next week. There are a few issues in the text to nail down outside of the forward-looking statement.

2. I have included some bubble comments on our edits by way of explanation – hopefully they will help. I've also included strike-outs (as opposed to just deleting) to make clear what text from OMB we are suggesting to delete.

I would have copied this into another document, but you lose some of the tracked changes, etc.
Thanks,
Ben

***

E. Volume Requirements for 2014

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 7/30/2013 5:38:53 PM
To: Korotney, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7b00e16e09654b94bc6146550ca87936-Korotney, David]
CC: Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]
Subject: Forward looking statement (FLS) for next passback
Attachments: EO12866_Review_EPA_RFS_Rule_Interagency Comments - 7_26_2013 edits to FLS only.docx

Dave:

The attached document includes edits to the FLS that should go in the next passback. This version reflects a few minor edits from Hannon, and has also gotten an OK from Joel and Janet.

Please focus just on the 2 paragraphs on p 69 – you can ignore the remainder of the doc.

It's a bit messy, so I did a few things to highlight our changes. First, I inserted a few bubble comments explaining why we made the rejections/changes we did. Second, I used the strikeout text to make it clear what we were rejecting. Third, I highlighted in grey new additions.

Let me know if you have questions.

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 8/22/2013 8:58:32 PM
To: Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: FW: Compiled 2014 standards NPRM for OMB
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 NPRM FRN_20130822.docx

fyi

From: Korotney, David
Sent: Thursday, August 22, 2013 3:15 PM
To: Argyropoulos, Paul; Machiele, Paul; Simon, Karl; Hengst, Benjamin; Burkholder, Dallas; Lie, Sharyn; Hannon, John; Dubois, Roland
Subject: Compiled 2014 standards NPRM for OMB

This compiled version incorporates all comments I received thus far, but excludes the discussion of the volume scenarios. All numbers and graphs have been updated to represent the most recent runs.

It has been formatted for submission to OMB.

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 8/26/2013 3:55:45 PM
To: Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]
CC: Hannon, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25c873d522e94729b8d70106c88cbadf-JHANNON]; Korotney, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7b00e16e09654b94bc6146550ca87936-Korotney, David]
Subject: My edits
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 NPRM FRN_20130822 +jcb8-25 -PA +BH.docx

I've got a few edits in reaction to Joel interspersed throughout (I made this on top of Paul's edits). There aren't that many.

Deliberative Process / Ex. 5

Paul/Dallas – let me know if we need to discuss further.
****

Deliberative Process / Ex. 5

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 8/26/2013 5:05:36 PM
To: Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]
Subject: FW: New document with Janet's comments on RFS (attached)
Attachments: RFS 2014 jb jm 8-26.docx

Importance: High

From: Atkinson, Emily
Sent: Monday, August 26, 2013 1:04 PM
To: Hengst, Benjamin
Cc: Beauvais, Joel; Simon, Karl; Stewart, Lori; Hannon, John; McCabe, Janet
Subject: New document with Janet's comments on RFS (attached)
Importance: High

From: Atkinson, Emily
Sent: Monday, August 26, 2013 12:27 PM
To: Hengst, Benjamin
Cc: Beauvais, Joel; Simon, Karl; Stewart, Lori; Hannon, John; McCabe, Janet
Subject: Janet's comments on RFS

Ben,

Thanks for alerting us to the missing comments . . . . Janet and I are looking for the version that has her comments and will send it on as soon as we find it.

Sorry about the confusion . . .

Emily

Emily Atkinson
Staff Assistant
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406B, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 8/2/2013 10:54:29 PM
To: Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]
Subject: FW: EO 12866 Comments - EPA RFS 2013 Volume Standards (2060-AR43)
Attachments: EO12866_Review_EPA_RFS_Rule_Interagency Summary - 8_1_2013.docx; EO12866_Review_EPA_RFS_Rule_Interagency Comments - 8_1_2013.xlsx; Sec I - Exec Sum-cb.docx; Regs-cb.docx; Sec IV - Percent standards-cb.docx

From: Brunner, Christine
Sent: Friday, August 02, 2013 3:43 PM
To: Korotney, David; Argyropoulos, Paul; Machiele, Paul; Ghanta, Venu; Hengst, Benjamin
Subject: FW: EO 12866 Comments - EPA RFS 2013 Volume Standards (2060-AR43)

Attached are the EO12866 comment files from OMB/DOE(?), revised sections I (see Table I.B.3-2) and IV (see Tables IV.B.3-1 and 3-2) of the preamble, and the reg text (just the renewable standard).

Deliberative Process / Ex. 5

From: Korotney, David
Sent: Friday, August 02, 2013 12:04 PM
To: Brunner, Christine
Subject: FW: EO 12866 Comments - EPA RFS 2013 Volume Standards (2060-AR43)

From: Ghanta, Venu
Sent: Friday, August 02, 2013 9:35 AM
To: Korotney, David

Cc: Argyropoulos, Paul; Hengst, Benjamin; Machiele, Paul
Subject: FW: EO 12866 Comments - EPA RFS 2013 Volume Standards (2060-AR43)

Dave-

Deliberative Process / Ex. 5

More comments to come...

-Venu

QFR's for Gina McCarthy Confirmation Hearing

Table of Contents

MATS: 2
CARBON TAX: 9
GHGs 10
NAAQS: 23
Ozone NAAQS 34
PM NAAQS 46
Sulfur NAAQS 51
RFS: 53
E15: 60
PM: 71
NSPS: 76
Sue and Settle Practices: 86
Economic Cost of Regulations 94
CBA: 98
Automobile Mandates: 100
Automobile Fuel Economy 101
Energy Reliability: 103
Natural Gas v. Coal 103
CCS: 105
Tier 3: 108
316(b) 112
Employment and EPA regulations 116
O & G Issues 119
LNG: 122
SSM Policy 123
Regional Haze 125
BACT Standards 131
Data Quality 133
NHSM Rule: 133
Boiler MACT 133
Power plant Regulations 134

Coal Power Plant Closings 135
International Issues 140
Risk Management: 141
CCR: 141
CSAPR: 143
Endangerment: 146
Energy Star 147
Federal-State Relationship 148
Health Concerns: 151
Keystone XL 155
LCFS: 155
Lead Issues 156
ECA: 158
Native Issues 159
Cap and Trade: 161
SIP's: State Implementation Plans 161
Brick Industry MACT's 170
RadNet 171

MATS:

Can you make a clear, unambiguous public statement that clarifies that efforts to comply with the utility MACT do not and will not make a facility subject to the new source performance standard for greenhouse gases?

Given that EPA's proposed carbon pollution standard does not cover modified sources and that new source performance standards generally exempt pollution control projects from being considered modifications, adding pollution control technology to a coal-fired power plant to comply with MATS would not subject that plant to a new source performance standard for greenhouse gases.

Will the agency publish guidance on this issue that makes this clear?

Guidance on this issue is not necessary because the proposed carbon pollution standard does not apply to existing sources.

At a hearing recently, Congressman Barton asked you how many people presented to American hospitals last year with mercury poisoning. What is the answer to that question?

EPA staff has informed me that mercury poisoning is not a reportable condition in the United States, and therefore, accurate statistics on the number of people presenting in clinical settings with mercury poisoning are not readily available. The 2011 Annual Report of the American Association of Poison Control Centers' National Poison Data System documented about 1,700 single exposures to mercury or

compounds containing mercury. Most people in the United States are exposed to mercury when they eat fish and shellfish that are contaminated with methylmercury, an organic compound that can be formed when mercury is released to the environment. Most mercury exposures tend to be manifested in subtle, yet very serious, health effects such as neuro-cognitive deficits. For fetuses, infants, and children in the U.S., the primary concern of methylmercury exposure is impaired neurological development. Methylmercury exposure in the womb, which can result from a mother's consumption of fish and shellfish that contain methylmercury, can adversely affect a baby's growing brain and nervous system. Impacts on cognitive thinking, memory, attention, language, and fine motor and visual spatial skills have been seen in children exposed to methylmercury in the womb. Human biological monitoring by the Centers for Disease Control and Prevention and other health organizations shows that most people have blood mercury levels below a level associated with possible health effects. However, these studies also consistently confirm that approximately 5% of childbearing-aged women have methylmercury levels in their blood at levels of potential concern.

In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the proposed utility MACT rule (later finalized as the Mercury and Air Toxics Standards or "MATS"), the agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS rule, for example, the agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the agency adopted several of these suggestions, resulting, according to the Regulatory Impact Analysis for the final standards, in $1.3 billion in annual cost-savings relative to the proposed standards. With regard to section 111, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

Does EPA's benefit estimates for the utility MACT rule, which you estimate will cost up to $10 billion, rely on the same two studies (Pope 2002 and Laden 2006) and the same secret databases (American Cancer Society and Harvard Six City data) that we have requested and EPA has failed to release?

The PM2.5 benefits analysis for the Mercury and Air Toxics Standards relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals,

acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

EPA's website says that mercury "can travel thousands of miles in the atmosphere before it is eventually deposited back to the earth in rainfall or in dry gaseous forms." If this is true, wouldn't rising consumption of coal in countries like China and India (whose regulatory regimes are less stringent than our own) offset any domestic mercury reductions connected to the MATS rule? In fact, if more US manufacturing moves to these countries, which have less stringent emission controls than the US, wouldn't a possible result of MATS be an increase in global mercury emissions?

A substantial portion of the mercury that is deposited in the U.S. comes from U.S. sources, especially near the source. For example, based on EPA's air quality modeling for the Mercury and Air Toxics Standard, U.S. EGUs contributed up to 30 percent of total mercury deposition in some U.S. watersheds in 2005. To reduce atmospheric transport of mercury globally, EPA together with the State Department is participating in United Nations efforts to encourage all countries to reduce their mercury emissions. Those efforts include negotiations toward an international agreement and partnerships for training and information on strategies for reducing mercury emissions.

During consideration of the MATS rule both Commissioners at FERC and outside electricity experts raised concerns about the potential for forced retirement of generating facilities causing costly reliability problems. EPA even admitted that localized reliability problems could result from the rule. Given that the construction and use of generating facilities is time and capital-intensive, at what point do you think that cumulative regulatory burdens on the electricity sector may create reliability problems?

EPA takes electric reliability concerns very seriously. EPA determined that many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. EPA and DOE analyzed the resource adequacy impacts of the MATS rule prior to its finalization and determined that the rule would not adversely affect resource adequacy in any region of the country. Additionally, since finalizing MATS, EPA has continued to work with FERC, DOE, state regulators, and the regional transmission organizations and other planning authorities to help ensure early planning and prompt action to assess and mitigate any potential reliability issues associated with implementation of EPA rules. Those efforts have confirmed EPA's analysis that utilities and grid planners have significant tools to address reliability challenges within the timeframes set forth in the Clean Air Act. EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. To the extent any localized reliability challenges emerge, there are adequate tools to address them. For example, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue.

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard. EPA has stated that it does not intend to issue a standard for modified units. What will the Agency do if sued by environmental groups on this issue? Is it possible that such a lawsuit might result in the application of the new

standard to all facilities that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?
I believe that the approach we proposed to take with respect to modified sources is sound. Beyond that I believe that it would be neither appropriate nor useful for me to speculate on potential litigation and possible judicial decisions that at this point are entirely hypothetical.

Inhofe 37(a). Would such a move force EPA to apply this standard to all plants that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?
EPA's proposed carbon pollution standard does not apply to modified sources. If EPA were to set a standard for modified sources, technologies installed by sources to comply with MATS are currently exempted under EPA regulations from triggering any such modified source standard.
Barrasso 16. As Assistant Administrator for EPA's OAR, you have had direct responsibility for promulgating the Mercury and Air Toxics Standards (MATS) for power plants. On March 20th 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that "only a modest amount of generating capacity" -- 4,700 megawatts (MW) -- will become uneconomic to operate under MATS. This rule will cause 35,000 MW to retire, according to the Institute for Energy Research, and 42,000 MW to retire, according to Barclays.
Do you stand by your testimony that "only a modest amount" of coal-fired generating capacity will be forced to retire by EPA regulations? Or would you reconsider your testimony in light of more recent analyses and already announced retirements that show EPA's projections to be off by as much as 800 percent?
A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figuresxxviii. External analysts, including GAOxxix, CRSxxx, the Bipartisan Policy Centerxxxi, and Analysis Groupxxxii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.
Barrasso 17. On March 20th, 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that MATS would have a "very small" impact on electricity rates, yet they have soared by 23 percent in the Mid-Atlantic region and 183 percent in the northern Ohio region from the 2014/2015 Delivery Year to the 2015/2016 Delivery Year. According to PJM Interconnection, this is due to "an unprecedented amount of planned generation retirements (more than 14,000 MW) driven largely by environmental regulations, which drove prices higher than last year's auction."
Do you stand by your testimony that MATS will have a "very small" impact on electricity rates? Or would you reconsider your testimony in light of market evidence that electricity rates have increased by up to 183 percent in response to EPA regulations?
The cited percent increases are capacity prices, which are only a small component of the retail electricity prices paid by consumers. Regionally, PJM's auction prices were middle-of-the-road prices compared to

other years. EPA's MATS analysis, which accounts for these capacity prices, found that electricity rates are projected to stay well within normal historical fluctuations and result in relatively small changes in the average retail price of electricity, keeping electricity prices below 1990 levels.

Barasso 18. The EPA stated in the Federal Register on February 16th, 2012 that the "great majority" of benefits from MATS will come from reductions in particulate matter, not mercury or air toxics. "The benefits of controlling mercury and air toxics comprise less than one ten-thousandths of the total benefits reported for the mercury and air toxics rule," according to George Washington University Research Professor Susan Dudley's testimony on April 17th of last year before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety. She stated "Ninety-nine percent of the benefits attributed to the MATS rule were derived by assigning high dollar values to reductions in emissions of fine particles (PM2.5), which are not the focus of this regulation and which are regulated elsewhere." You and other EPA officials decided to refer to this rule in the Federal Register on February 16th, 2012 as "in short as the Mercury and Air Toxics Standards (MATS)." But this rule really targets particulate matter emissions, not mercury and air toxics. Why did your team decide to label this rule as something it is not?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule targets mercury and other air toxics, but the control technologies installed to reduce them also yield significant reductions in particulate matter.

Barasso 19. You and other EPA officials have repeatedly ignored congressional requests to make publicly-available the taxpayer-financed databases used to conduct the cost-benefit analysis for MATS. Do you believe Congress, stakeholders, and the American people can adequately review EPA's cost-benefit analysis for MATS and other rules without access to the actual data upon which it rests?

While not legally relevant for setting maximum achievable control technology (MACT) standards under the Clean Air Act, the EPA did assess the costs and benefits of MATS, as we do for all major MACT standards, to improve public understanding of the impacts of MATS. Our economic analysis of MATS was conducted in compliance with relevant Executive Orders and guidance on economic analysis from the Office of Management and Budget (OMB), and was reviewed by OMB before we publicly released it. It followed standard, peer-reviewed methodologies and provided consistent information about anticipated benefits and costs, ensuring the public would have access to an effective and reliable comparison of benefits and costs. EPA relies on published peer-reviewed scientific studies for regulatory decisions.

Barrasso 30. Please explain why you decided to ignore your responsibilities as a federal trustee to the Navajo Nation during the development of the Utility MACT rule, when your offices had prior knowledge of the Navajo Nation's concerns about EPA regulatory impacts to Four Corners Power Plant and Navajo Generating Station; and when your offices had collaborated with the Navajo Nation in proposing and promulgating the Clean Air Mercury Rule? Since 2010, EPA has proposed new regulations that impact coal fired power plants, yet there has been very little communication between EPA and Navajo Nation about the Navajo Nation's desire to continue the use of coal for generating electricity and other purposes. Further EPA may be developing greenhouse gas and carbon dioxide

regulations without consulting or understanding what impact this may have on Indian Country and tribes that rely on natural resources to fuel their economies.

EPA has held a number of meetings, conversations, and consultations with the Navajo and other Tribes in the region regarding both MATS and BART. Many of these meetings have been face-to-face meetings in Arizona. For example, in January 2012, I went to the Navajo Generating Station and also met with the Navajo Nation. Additionally, the Deputy Assistant Administrator Janet McCabe held at least 5 different meetings with Tribes, including the Navajo Nation, between mid-September and early-November 2011. EPA also held national conference calls and webinars for Tribes on MATS, given that MATS is a national rule and many Tribes have an interest in it. EPA intends to continue to work with the Navajo and all other Tribes to meet federal trust obligations and provide opportunities for consultation on issues that are of interest to individual Tribes and groups of Tribes.

Sessions 17. You oversaw development of "Utility MACT," also referred to as the Mercury and Air Toxics Standards (MATS). Testifying before Congress, you stated that the MATS rule would lead to the loss of only a "modest amount of generating capacity." However, according to the Institute for Energy Research, the MATS rule will result in at least 35,000 MW closing and Barclay's estimates that 42,000 MW will close because of MATS. Your own estimates fall significantly short of those estimates.

a. Do you agree that the United States is losing some of its coal-fired generating capacity as a result of recent EPA regulations?

A number of factors may influence an owner/operator's independent business decision to retire a plant. Environmental rules are only a part of the equation. External analysts, including GAOxxxiii, CRSxxxiv, the Bipartisan Policy Centerxxxv, and Analysis Groupxxxvi,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

b. Why were EPA's estimates for the impact on the electricity generating sector so much different than those identified by Barclay's and the Institute for Energy Research?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figuresxxxvii. As noted above, external analysts, including GAOxxxviii, CRSxxxix, the Bipartisan Policy Centerxl, and Analysis Groupxli, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Sessions 18. In the Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway....EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. ... Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final

rules, while still achieving the fundamentally important environmental and public healthbenefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings....The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking."

a. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the Mercury and Air Toxics Standards (MATS) NPRM, the Agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS, for example, the Agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the Agency adopted several of these suggestions, which according to the Regulatory Impact Analysis for the final standards, resulted in $1.3 billion in annual cost-savings relative to the proposed standards.

EPA is still in the process of reviewing comments submitted in response to the carbon pollution standard for new power plants proposed under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

b. Can you give a timeframe at which time this process will begin?

Please see the response to provided to question (a), above.

Sessions 19. I have been advised that, as a general matter, market-based approaches to reducing emissions of traditional air pollutants have proven to be more cost-effective than command-and-control approaches.

a. Do you agree?

As a general matter, market-based approaches provide flexibility to sources in determining how best to comply with an environmental program. This flexibility gives sources the opportunity to comply in the most cost-effective manner. Market-based approaches reward efficiency, innovation, and early action and provide environmental accountability without inhibiting economic growth.

CARBON TAX:

The IMF recently released a study that equated a lack of a carbon tax with a subsidy for fossil fuels. Do you think that is correct? Do you favor a carbon tax, imputed or direct?

I am not familiar with the IMF study to which your question refers so I am not in a position to comment on the study. It should be noted that the Administration has not proposed a carbon tax, nor is it planning to do so. In addition, I would note that as Administrator of the Environmental Protection Agency this specific issue would not be in my purview.

What do you think the social cost of a ton of carbon is?

The social cost of carbon (SCC) is an estimate of the net present value of the flow of monetized damages from an incremental increase in carbon dioxide emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. The Interagency Working Group on the Social Cost of Carbon reported central estimates in 2020 of 6.8 to 41.7 dollars per metric ton in 2007 dollars, depending upon the discount rate, and up to 80.7 for extreme damages.

As you know, the EPA led an interagency study a few years back to examine the social cost of carbon. They examined a range of numbers, none of which were particularly justifiably. They also used one discount rate to assess costs and one to assess benefits, which is, I believe, contrary to OMB practice and guidance. Will you initiate such a study again? Will you open the study to notice and comment?

EPA participated in the Interagency Working Group on the Social Cost of Carbon led by the Council of Economic Advisors and the Office of Management and Budget. The technical support document from interagency working group set a "goal of revisiting the SCC values within two years or at such time as substantially updated models become available..."

Do you or will you support a carbon tax? More specifically, what is your sentiment with respect to the Boxer-Sanders bill?

Response: The Administration has not proposed a carbon tax, nor is it planning to do so. The President has repeatedly called on Congress to act to address the growing threat posed by climate change. In the State of the Union, the President made clear that while he still expects Congress to act on this vital issue, but if Congress will not take action on this important issue he will continue to build on the progress underway by his Administration to confront this threat.

Can you comment on Australia's experience with a carbon tax?

Response: I am not familiar with the details of Australia's carbon tax.

GHGs

What is the right target for United States emissions of greenhouse gases? How many tons a years should we be emitting to minimize our exposure to harmful global warming?

In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels. Over the longer term, the science indicates that the U.S. and other major emitting countries will need to reduce emissions further to mitigate the most severe impacts of climate change.

Alternatively, what concentration of greenhouse gases in the atmosphere is harmful to human health?

EPA addressed the public health consequences of greenhouse gases in the atmosphere in the 2009 Endangerment Finding, where EPA found that elevated concentrations of the well-mixed greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of the current and future generations. Greenhouse gases impact human health by altering the climate. In the recent D.C. Circuit Court decision (*Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012)) regarding the 2009 Endangerment Finding, the Court found that "EPA had before it substantial record evidence that anthropogenic emissions of greenhouse gases "very likely" caused warming of the climate over the last several decades. EPA further had evidence of current and future effects of this warming on public health and welfare. Relying again upon substantial scientific

evidence, EPA determined that anthropogenically induced climate change threatens both public health and public welfare." The Court upheld EPA's approach of relying "on a substantial record of empirical data and scientific evidence, making many specific and often quantitative findings regarding the impacts of greenhouse gases on climate change and the effects of climate change on public health and welfare" in order to make its determination of endangerment.

Where are the most cost-effective reductions of greenhouse gases likely to be?

EPA analysis has shown that there are numerous cost-effective reduction opportunities across the economy. As indicated in my testimony before the Committee, EPA's regulations addressing greenhouse gas emissions from light- and heavy-duty vehicles are projected to achieve dramatic reductions in greenhouse gas emissions while at the same time substantially reducing oil consumption and saving consumers billions of dollars at the pump. EPA economy-wide and electric power sector models show that electric power supply and use represents the largest source of emissions abatement potential. Additionally, the EPA report, Global Mitigation of Non-CO2 Greenhouse Gases (EPA 430-R-06-005, 2006) demonstrates that non-CO2 greenhouse gas mitigation can play an important role in climate strategies, and that methane mitigation from the energy, waste, and agriculture sectors can provide a substantial quantity of cost effective reduction opportunities. Finally, energy efficiency also offers a low cost energy resource with the potential to reduce greenhouse gas emissions across the economy. For example, consumers, home owners, building owners and operators, and industrial partners have saved more than 1.8 billion metric tons carbon dioxide equivalent over the past twenty years of the ENERGY STAR program.

Can you give me any assessment of the additional mortality (deaths) or morbidity associated with the emissions of greenhouse gases? I know that EPA is always very precise about the mortality and morbidity associated with ozone and particulate matter and even mercury. Does it have the same sort of analytical rigor with respect to greenhouse gases?

EPA is committed to providing scientific and analytic rigor with regard to any of the agency's greenhouse gas and climate change analyses. The peer-reviewed scientific assessments are clear that human health is at risk due to greenhouse gas-induced climate change , including through worsened air quality, increases in temperatures, changes in extreme weather events, increases in food and water borne pathogens, and changes in aeroallergens. Increases in ambient ozone are expected to occur over broad areas of the country, and they are expected to increase serious adverse health effects in large population areas that are and may continue to be in nonattainment. There are existing individual studies that quantify mortality and other health effects due to climate change, but this is an emerging field and we expect our tools will continue to improve.

If greenhouse gases are air pollutants, and if they endanger public health, and if they come from numerous large, area, and minor sources, why has the agency not chosen to regulate them under the NAAQS program? If we believe GHGs are deleterious to public health, isn't the appropriate response to promulgate a standard above which humans are at risk?

Greenhouse gases are air pollutants under the CAA but they are different from other air pollutants in many important ways, and thus the application of the NAAQS approach to greenhouse gases would be challenging. EPA therefore is pursuing and exploring other common-sense approaches to using the CAA to address greenhouse gas emissions.

Has the agency done any legal analysis of the challenge of regulating greenhouse gases from powerplants under 111(d)? Can you share it with me?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

In a reversal of precedence and established practice, EPA in the GHG Tailoring Rule, between proposed and final and without opportunity for public comment, treated biomass the same as fossil fuels rather than recognizing that biomass actually recycles carbon and does not increase carbon in the atmosphere. A partial recognition of this mistake was the 3-year deferral by the Agency of the regulation of biomass under the Tailoring Rule to review the science and policy. While an EPA convened Clean Air Act Science Advisory Board Panel submitted recommendations, these suggested remedies are complex, difficult to implement, and again unnecessary. So as to not miss the end of the deferral period in June of 2014 and inadvertently keep a flawed policy change in place, a final policy consistent with the science that encourages biomass as an energy source and accounts for the natural recycling of the biomass carbon is necessary. Can you imagine a scenario whereby EPA would not recognize the well-established science supporting the carbon neutrality of biomass combusted for energy by forest products manufacturers and others? As EPA Administrator, will you work with me and all affected industries to ensure that renewable biomass remains a carbon neutral fuel, and as such, receives favorable treatment in the permitting program?

The purpose of the 3-year deferral is to give EPA time to conduct a detailed examination of the science associated with biogenic CO2 emissions and to consider the technical issues that the agency must resolve in order to account for biogenic CO2 emissions in ways that are scientifically sound and also manageable in practice. In September 2011, EPA submitted its draft "Accounting Framework for Biogenic CO2 Emissions from Stationary Sources" to the Science Advisory Board (SAB) for peer review. EPA is considering the September 2012 SAB Peer Review Report now, and will determine the most technically sound approach for treatment of biogenic CO2 in a regulatory context as the agency reviews the report and its recommendations.

If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your source.

To respond to your precise question would require more specific information about the current or potential future regulations to be considered. The common sense regulations to address greenhouse gases that EPA has undertaken under this administration will achieve significant emission reductions.

The light-duty vehicle emissions and fuel economy standards that EPA and NHTSA have established for model years 2012-2025, for example, are expected to result in reductions of over 6 billion metric tons carbon dioxide equivalent over the lifetime of these vehicles. Further actions, from both the United States and all of the major emitting countries, will be necessary to achieve the reductions that science indicates are necessary to address climate change.

In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the proposed utility MACT rule (later finalized as the Mercury and Air Toxics Standards or "MATS"), the agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS rule, for example, the agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the agency adopted several of these suggestions, resulting, according to the Regulatory Impact Analysis for the final standards, in $1.3 billion in annual cost-savings relative to the proposed standards. With regard to section 111, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint

stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

How do U.S. greenhouse gas emissions compare to other countries on an apples-to-apples basis, such as the ratio of emissions to GDP? What is an acceptable amount of greenhouse gas emissions annually for the United States?

The U.S. and other countries report total greenhouse gas emissions annually the United Nations Framework Convention on Climate Change using common methodologiesxiv. In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels.

You previously co-authored a paper which stated that "the location of CO2 emission reductions is irrelevant in reducing global emissions of this pollutant". Do you still agree with this assessment? If so, where do you think the most cost-effective emission reductions can be made in the world?

CO2 and other greenhouse gases, once emitted, can remain in the atmosphere for decades to centuries, meaning that their concentrations become well-mixed throughout the global atmosphere regardless of emissions origin, and their effects on climate are long lasting. This means that the impact of GHG emissions reductions on GHG concentrations is not dependent on the location of the emissions reductions. Cost-effective emissions reductions opportunities exist throughout the world. For example, the EPA report Global Mitigation of Non-CO2 Greenhouse Gases (EPA 430-R-06-005, 2006) finds that major emitting regions of the world, including China, the United States, the EU, India, and Brazil offer large potential mitigation opportunities from the energy, waste, and agriculture sectors. Energy efficiency improvements, for example in buildings and the transportation sector, also have the potential to yield substantial cost-effective emission reductions in major emitting countries.

The two states where you worked and developed environmental regulations for the electric power sector have the most expensive power in the Nation. I understand that during your tenure in these states that you pursued the adoption of the first ever plant-by-plant CO2 limits and the first ever CO2 cap-and-trade program. Do you think these policies contributed to the very high cost of power in these States? Can you please outline the specific environmental and health benefits realized in these States that have resulted solely from reducing CO2 emissions as a result of these programs? As EPA Administrator do you intend to pursue similar programs on a national scale?

Although I am proud of the work that I did on climate policies at the state level, I have now been with EPA for nearly four years and at this point am best positioned to discuss my work at the federal level. With regard to the power sector, last year EPA proposed carbon pollution standards for new power plants. The Agency currently is working to review the nearly 2 million comments received on that proposal.

After addressing greenhouse gas emissions in the motor vehicle and utility sector, do you have a plan for addressing GHG emissions in the rest of the economy? You have said EPA plans to focus on the

biggest emitters first. Have you prioritized which industries you intend to address after motor vehicles and the power sector?

The agency is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. Although EPA is evaluating GHG emissions information from a limited number of source categories, the agency has not determined that it is appropriate to regulate GHG emissions from other industrial sectors with the exception of the Agency previous acknowledgment that it is appropriate to issue regulations for refinery greenhouse gas emissions. But as stated in the answer to a related question, the agency has no current plan for issuing refinery greenhouse gas regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and it does not have a timetable or plan for issuing GHG regulations of this sector.

EPA has been petitioned to regulate GHG emissions from animal feeding operations. Can you assure us that EPA won't regulate GHG emissions from any agricultural facilities during the second term?

Currently EPA has no plans with respect to regulating greenhouse gas emissions from animal feeding operations or any other agricultural facility.

EPA has been petitioned to regulate GHG emissions from coal mines. What are your plans with respect to such a petition?

On April 5, EPA informed the US District Court for the District of Columbia that it would be acting on a petition to regulate greenhouse gases from coal mines and in that motion, EPA stated that it plans to deny the Plaintiffs' petition for rulemaking.

EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?

Although EPA has not taken any final action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

EPA's own data in relation to various carbon reduction plans continuously indicates reducing GHG emissions domestically will have no impact on worldwide emissions. In fact, US emissions are now below 2005 levels and have been flat or declining for nearly 12 years now. This has all occurred without cap-and-trade and, until the last few years, any other GHG regulations. In light of these facts, why do you feel the Agency still needs to move forward with its GHG regulations under the Clean Air Act?

The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), held that greenhouse gases "fit well within the CAA's [Clean Air Act's] capacious definition of air pollutant." As a result of this decision, EPA has certain legal obligations to address greenhouse gases under the Act. Further, although U.S. greenhouse gas emissions currently are below 2005 levels, the science indicates that the U.S. and other major emitting countries must achieve much more substantial reductions in emissions to mitigate harmful climate change. As I stated in my testimony, I strongly believe that we can and must take common sense steps – such as the light- and heavy-duty vehicle emission standards issued under this Administration – that can reduce emissions while maintaining economic growth and prosperity.

In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be "leaders" in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007,

ranging from the GHG requirements in the RFS, to EPA's GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to "follow our lead" in reducing GHG emissions?

My understanding is that a number of major developing countries have taken significant actions to reduce greenhouse gas emissions in recent years. Although I don't have sufficient information to respond to your question as to the relationship between those actions and specific actions taken by the United States, I believe U.S. leadership in reducing carbon pollution does help to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

The EPA's greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America's energy mix. The consequences are higher energy prices for families and a contraction of our nation's economic growth for no noticeable impact on the earth's temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address the most severe impacts of climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Under EPA's Mandatory Reporting Rule for GHG Emissions, EPA has developed a timeframe for categories of GHG emitters to report GHG emissions data. Some companies are currently working on submitting 2012 GHG emission data to EPA and others are on a deferred schedule. EPA issued a memorandum dated December 17, 2012 (attached) which concluded that because some of the data required to be reported may already be in the public arena and therefore EPA would not accord it Confidential Business Information (CBI) protection. As you might expect, some view this conclusion as premature, and one that should be made at on a case by case basis during the data collection period. In particular, certain industries for which GHG data reporting is currently deferred are very concerned that sensitive business information and trade secrets will not be adequately protected by EPA once their data must be reported. Do you agree that certain sensitive information and trade secrets reported under the greenhouse gas reporting rule should be treated as CBI and protected? Will EPA reconsider the approach announced in its December 17, 2012 memorandum? How does EPA intend to use all of the GHG data being collected under the rule?

Data submitted under the GHG Reporting Program (GHGRP) that has been determined to be confidential business information should be protected under the provisions of 40 CFR part 2, Subpart B. In response to comments raised by stakeholders, EPA deferred reporting of certain data elements for 3-5 years in order to provide time for the agency to evaluate confidentiality concerns (76 FR 53057, August 2011). When EPA deferred reporting for those data elements, the agency said it would conduct a

sensitivity analysis of the data and the 2012 memo sets forth the results of our analysis for the data elements deferred until 2013. EPA has not received any specific stakeholder feedback or additional information that would warrant reconsideration of that analysis. EPA plans to propose a rulemaking for notice and comment related to the inputs whose reporting deadline was deferred until 2015. The GHGRP was mandated by Congress in the FY2008 Consolidated Appropriations Act and the data will inform policy decisions.

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?

EPA is not currently developing any existing source GHG regulations for power plants. Accordingly, the Office of Air and Radiation has not prepared draft regulations. The office's current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b).

Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.

Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.

I am aware that in connection with the Clean Air Mercury Rule, issued under the prior Administration, EPA took the position that section 111(d) obligations could be met through a cap-and-trade program.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

There is currently a project under review by EPA in Arecibo, Puerto Rico that is experiencing a lengthy delay in obtaining a permit under the Clean Air Act. I understand that this state-of-the-art waste to energy facility meets your Agency's most stringent air emissions standards and will help to alleviate Puerto Rico's landfill emissions problem that has created so many health challenges for that island's population. The delay in permitting this facility is even stranger considering your Agency permitted a nearly identical facility in Baltimore in August 2010. That permit process, from application to final order, took only 15 months. In the present case, the permit process has extended well over 2 years and we still have not seen action. Can you explain this situation?

Response: I understand that there has been wide public interest in the proposed permit for the Energy Answers waste to energy facility. Since first proposing the permit in May 2012, the EPA held six public hearings in Arecibo, Puerto Rico. The agency extended its public comment period and ultimately reviewed over 3,000 public comments on the proposed permit. The EPA is carefully considering all comments and is preparing detailed responses to the comments.

Ms. McCarthy, your Agency is well past its statutory deadline for issuing the permit. Your delay is preventing the island of Puerto Rico from reducing greenhouse gas emissions by over 1 million tons per year, as well as creating green technology jobs for that struggling economy. Please give me a date certain when I can expect to see that permit signed.

Response: As noted above, it is my understanding that the EPA has not completed the review of public comments received on the proposed permit for the for the Energy Answers waste to energy facility. The agency is making every effort to ensure a thorough and comprehensive review prior to taking final action on the air permit.

36. Inhofe 36. Does EPA intend to propose and adopt a standard to regulate greenhouse gases from existing power plants? If so, when, and what role will states play in promulgating rules related to this new regulation?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches. In addition, as a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." **EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard.**

37. Inhofe 37. EPA has stated that it did not have the information to issue a standard for modified units – under your leadership, will EPA work to establish GHG rules for modified units?

EPA's proposed carbon pollution standard does not apply to modified sources. In the proposal, the agency stated that, at that time, EPA did not have enough information, to set a standard for modified sources.

a. Inhofe 37(a). Would such a move force EPA to apply this standard to all plants that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?

EPA's proposed carbon pollution standard does not apply to modified sources. If EPA were to set a standard for modified sources, technologies installed by sources to comply with MATS are currently exempted under EPA regulations from triggering any such modified source standard.

b. Inhofe 37(b). Why did EPA only grant sources with a PSD permit one year to commence construction? If those sources already had permits that would prevent any more emissions than is already allowable, why did EPA force them to comply with a one year limitation?

In EPA's proposal (published in the Federal Register on April 13, 2012), EPA did not propose to apply the NSPS requirements for greenhouse gases to new coal-fired power plants that were on the verge of commencing construction, as indicated by the fact that they already had a PSD permit and would commence construction within one year of the proposal. For sources that were not on the verge of construction, EPA proposed to apply the NSPS requirements because, according to the proposal, it was reasonable to expect those sources to build in the proposed greenhouse gas emission limits. EPA received many comments on this proposal and is reviewing them closely to determine the appropriate action to take.

46. Inhofe 46. During the Administration's first term, EPA promulgated its endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector. What other areas of the economy can we expect GHG regulations in the second term? (Oil and gas, refineries, cement kilns, other industrial facilities) Do you have a plan for addressing GHG emissions in the rest of the economy?

EPA is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. While the agency is evaluating GHG emissions information from a limited number of source categories, EPA has not determined that it is appropriate to regulate GHG emissions from the oil and gas sector, or from other industrial sectors. EPA has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but as stated in the answer to a related question, the Agency has no current plan for issuing such regulations. The agency also has previously said that it had insufficient data to regulate Portland cement facilities, and we do not have a timetable or plan for issuing GHG regulations of this sector.

47. Inhofe 47. Do you plan on issuing a GHG NSPS rule for refineries or oil and gas delivery systems? If so, when?

EPA has not made a determination that it is appropriate to regulate GHG emissions from oil and gas delivery systems. While the Agency acknowledged that it is appropriate to regulate greenhouse gas

emissions from refineries, we do not have a current plan or timetable for regulating carbon pollution from refiners.

48. Inhofe 48. EPA has been petitioned to establish NAAQS for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs? Do you agree with such a proposed approach?

Although EPA has not taken any action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

20. As Administrator, would you advocate for requiring the federal government and/or other parties to consider, under NEPA or any other environmental law, greenhouse gas emissions produced outside the United States by any good exported from the United States? If yes, can you please explain the rationale behind that position and how you believe it would impact the American economy?

Response: I believe that the NEPA process allows for the consideration of a number of factors as part of its process and that these factors can vary based on the parameters of a particular project. If confirmed, I commit that EPA will continue to use its ability to comment as part of the NEPA process in accordance with the law.

Sessions 23. Do you believe Congress intended to give EPA the authority to regulate emissions of CO2 as a "pollutant" when it enacted the Clean Air Act?

Congress in the Clean Air Act defined "air pollutant" as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. 7602(g). The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 528-29 (2007), held that "greenhouse gases fit well within the CAA's capacious definition of air pollutant," as established by Congress.

Sessions 24. I am told that China is the world's largest producer of CO2, and that CO2 levels have been steadily declining in the United States in recent years. EPA Administrator Lisa Jackson testified at a July 7, 2009 Senate EPW hearing that "U.S. action alone will not impact world CO2 levels." Do you agree that, even if the United States reduces CO2 emissions in line with legislative proposals in recent Congresses, such U.S. action alone would have little or no impact on global average temperatures?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe that the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe that U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Sessions 25. During the Administration's first term, EPA promulgated an endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector.

a. What other areas of the economy can we expect GHG regulations during your tenure as Administrator?

EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b) and is not currently developing any

existing source GHG regulations for power plants under section 111(d). The agency has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but has no current plan for issuing such regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and EPA does not have a timetable or plan for issuing GHG regulations of this sector.

b. What standard is EPA going to apply in determining what sectors GHG regulations should apply to?

Please see the answer to question (a), above. Administrator Jackson stressed a common sense approach to the issue of GHG regulations that included focusing on the largest sources of GHG emissions; I continue to believe that general approach was correct.

c. A March 30, 2013 article in The Economist stated: "Over the past 15 years, air temperatures at the Earth's surface have been flat while greenhouse-gas emissions have continued to soar..." Is this statement correct?

Although most of the warmest years on record have occurred in the last decade, the rate of warming has, for a short time, slowed (Karl et al., 2009). It is important to recognize, however, that year-to-year fluctuations in natural weather and climate patterns can produce a period—of individual years or even individual decades—that does not follow the long-term trend (NRC, 2010; Karl et al., 2009). EPA has responded to similar comments in the record for the 2009 Endangerment Finding regarding differences between models and observed temperatures, and has found that the possible slowdown in warming over the last decade or so does not undermine the linkage between greenhouse gases and temperature over appropriately long timescales.

5. Since 2009 EPA has issued or proposed over 2,900 pages of greenhouse gas regulations and you have stated in the past your intent to pursue a "deliberate, common sense approach"[1] to regulating carbon. However, I am concerned that there are inconsistencies with this statement and EPA's actions. For example, EPA entered into a consent decree to issue greenhouse gas New Source Performance Standards for existing units by May 26, 2012. Yet EPA has not clearly stated its plans regarding regulation of existing fossil fuel power plants. I represent a state that gets approximately 70% of its electricity from coal. How do you reconcile these inconsistencies, and can you please explain what the plan really is?

With regard to power plants, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants and is not currently developing any existing source GHG regulations for power plants. It should be noted for the record that a significant portion of the regulations to which your question refers are those addressing greenhouse gas emissions from light-duty vehicles for model years 2012-2016 and2017-2025 and from heavy-duty vehicles from 2014-2018. As I stated in my testimony before the Committee, these common-sense regulations will achieve substantial oil savings and consumer cost savings, while dramatically reducing greenhouse gas emissions. Other relevant regulations include those implementing the congressionally mandated greenhouse gas reporting program, which helps to provide the general public, industry and policymakers with transparent information with regard to greenhouse gas emissions.

6. Issuing proposed greenhouse gas (GHG) New Source Performance Standards for new and existing power plants carries an additional burden, insofar as these regulations are deemed to be in effect when proposed, not when finalized. Done incorrectly, just proposing these rules has significant negative consequences for our economy. Will you commit that when the EPA is ready to address

GHGs from existing fossil fuel power plants, it will issue an Advanced Notice of Proposed Rulemaking (ANPRM) that includes substantive content and a record backing up the proposal to allow industry and others to fully comment on EPA's contemplated approach before moving forward with a proposal?

EPA is not currently developing any existing source GHG regulations for power plants. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

22. Nebraska is a leading ethanol producer, and I want to ensure that my constituents continue to have the ability to purchase Flex Fuel Vehicles (FFVs) and fuel up with higher ethanol blends. Do the new Corporate Average Fuel Economy (CAFE)/greenhouse gas rule and accompanying guidance appropriately incentivize production of FFVs? If so,how? Is the incentive on par with that of electric vehicles?

Through Model Year (MY) 2015, the CAFE and GHG programs treat FFVs the same, i.e., they receive the same credits under the GHG program that FFVs have long received under the CAFE program. Beginning in MY2015, the CAFE credits begin a phase-out period under the Energy Independence and Security Act (EISA) of 2007. Starting in MY2016, EPA's GHG program provides credits for FFVs based on the actual use of E85 and the related GHG emissions benefits of ethanol combustion relative to gasoline. EPA believes that the GHG and CAFE credits will continue to provide an incentive to automakers to continue to build FFVs. While the FFV credits are not as large as the temporary and limited incentives that have been provided for the production of electric vehicles, the FFV credits do not phase-out over time and may actually provide stronger incentives, as the incremental costs of FFVs are much lower than for electric vehicles.

2. The forestry sector is very important in my state. It provides 120,538 jobs, $4 billion in payroll, $11.8 billion in sales and $4.15 billion toward Oregon's state GDP.

An important decision made under your direction was the three-year deferral of "biogenic GHG emissions" from biomass under the Tailoring Rule. Until the deferral, the Tailoring Rule would have treated biogenic GHG emissions the same as GHG emissions from fossil energy. The decision by your office at EPA was to defer the regulation of biomass under the Tailoring Rule to take a closer look at the science and policy. My understanding is that EPA has now completed the Biogenic Carbon Accounting Framework, and that framework has been reviewed by an independent Scientific Advisory Board.

Now we need a final policy that fully recognizes the carbon benefits of biomass energy, and we need it done before the deferral period you put in place expires in July of 2014. When the deferral expires, we revert back to the policy in the original Tailoring Rule.

When do you intend to issue a proposal?

Response: EPA does not have a schedule for a proposed rule; however, I intend for the Agency to undertake the process before the July 2014 deferral expiration date. The Agency will keep you and your staff updated on the process as we work to move forward in a way that is appropriate and takes into consideration the requirements of the Clean Air Act and existing regulations as well as the results of the scientific study.

NAAQS:

Can you identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

The U.S. Supreme Court held in Whitman v. American Trucking Associations, 531 U.S. 457 (2001) that in setting national ambient air quality standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. The Court's reasoning is found at 531 U.S. 464-472.

As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

In *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), the Supreme Court held that EPA may not consider the costs of implementing the standards in setting NAAQS that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act. The Supreme Court rejected the argument that EPA could consider costs of implementation because health and other effects could stem from implementation strategies. While EPA cannot consider the costs of implementing the standards when setting the NAAQS, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans (SIPs) to implement the NAAQS. Likewise EPA has discretion to consider costs in many of the CAA provisions authorizing EPA to set standards to control emissions.

Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? Certainly there is some. Certainly it has effects or potential effects on human health. How are they quantified when you are making health-based assessments for revised national ambient air quality standards?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

If the sole concern of a NAAQS standard-setting exercise is human health (and a protective margin for it), why is setting the standard at background levels not always the best and simplest answer?

The Clean Air Act requires that EPA to establish a primary NAAQS at a level that is requisite to protect public health with an adequate margin of safety. In setting standards that are 'requisite' to protect public health and welfare, as provided in CAA section 109(b), the EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. Considering what standards are requisite to protect public health with an adequate margin of safety requires public health policy judgments that neither overstate nor understate the strength and limitations of the evidence or the appropriate inferences to be drawn from the evidence. The Administrator must weigh the available scientific and technical information, and associated uncertainties, to reach a final decision on the appropriate standard level. For example, in considering the requirement for an adequate margin of

safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of at-risk population(s), and the kind and degree of the uncertainties that must be addressed.

If the sole concern is health, why is OMB involved? Why are there any policy considerations at all? If the dose is the only relevant metric, why is the Administrator involved? What considerations do OMB, the Administrator, and all others involved in the process bring to bear?

The Clean Air Act directs the Administrator of EPA to set primary standards that, in the Administrator's judgment, are requisite to protect public health, including the health of sensitive subpopulations, with an adequate margin of safety and secondary standards that are requisite to protect the public welfare. The Clean Air act requires EPA to periodically review the body of scientific evidence on the effects of air pollution on public health and welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act. This is required every five years. See response to the related question for discussion of the public health policy judgments involved in setting a primary NAAQS. OMB review of federal regulations occurs in accordance with Executive Order 12866.

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, we are in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. We have had extensive stakeholder involvement during the development of this guidance, so we trust that the final product will address some of your specific concerns.

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?

Although EPA has not taken any final action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?

EPA is committed to transparency with regard to the scientific bases of agency decision making. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, EPA relies on the scientific studies that are published in the peer-reviewed literature. EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking. It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not EPA. The availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?

The Clean Air Act directs EPA to set NAAQS that are requisite to protect public health with an adequate margin of safety and the public welfare from any known or anticipated adverse effects of air pollutants. These standards are based on consideration of the most up- to-date scientific evidence and technical information, advice from CASAC, and public comments. As part of the ongoing review of the ozone NAAQS, EPA will evaluate the extent to which it is appropriate to revise these standards in order to protect against adverse public health and welfare effects.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from

gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

Do you believe that the NAAQS review and Implementation process will ever catch up to its statutory 5 year deadlines for review? what steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. EPA's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical integrity.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the

draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the economic recovery. Can you comment?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits. EPA will consider adopting similar provisions as warranted whenever the agency changes NAAQS requirements.

How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issue permits, which will help avoid delays in issuing permits.

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary PM2.5 standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

40. Former EPA policy advisor Lisa Heinzerling said that the reason given for the withdrawal of the ozone standard was unlawful. Do you agree? Could the President instruct EPA where to set national ambient air quality standards based on policy considerations, or could he delay a decision?

Response: On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in many instances help states to meet the PM (and other) NAAQS.

48. Inhofe 48. EPA has been petitioned to establish NAAQS for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs? Do you agree with such a proposed approach?

Although EPA has not taken any action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

Sessions 12. Air quality in the United States has improved significantly over the past 40 years. The Clean Air Act and the clean air laws of the States deserve great credit for these improvements, as do the voluntary efforts of millions of Americans and businesses. Air quality is not a political issue. We all want our friends, families, and fellow Americans to breathe clean air. A recent report about Alabama emissions[1] found that since 1999:

a. NOx emissions have dropped more than 35% overall—and more than 65% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on NOx, this downward trajectory will continue?

b. SO2 emissions have dropped more than 50% overall—and more than 60% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on SO2, this downward trajectory will continue?

c. PM2.5 emissions have decreased by more than 30% overall. Do you agree that, even without additional new regulations from EPA on PM2.5, this downward trajectory will continue?

d. Ozone levels in Alabama are also on a downward trend. Do you believe an even tighter ozone standard is necessary? Did you support EPA's decision to reconsider the ozone standard in 2011, and did you agree with the President's decision to forego changing the ozone standard at that time?

e. For these pollutants, the numbers are on a downward trajectory even without new EPA air regulations regarding those pollutants. Do you agree?

Although emissions are likely to continue to decline as state and federal control programs already 'on the books' continue to be implemented, it is not at all clear that, without additional state or federal efforts, emissions would continue to decline in perpetuity. It also is possible that, absent additional state or federal efforts, emissions could increase depending on a number of factors. Great progress has been

made to reduce emissions considerably since the 1970s, including in Alabama, but more work remains to be done to protect public health.

Under President Obama's leadership, the EPA has worked to ensure health protections for the American people, and has made tremendous progress to ensure that Clean Air Act standards protect all Americans by reducing our exposures to harmful air pollution. In accordance with the requirements of the Clean Air Act, EPA currently is engaged in reviewing the ozone NAAQS and the science underlying these standards. Given the importance of this decision, it makes sense to ensure that the agency gives full consideration to all of the scientific evidence that is available since the conclusion of the last review in 2008. Any decisions as to whether to revise the ozone standard will be based on the available scientific evidence, exposure/risk information, the advice of CASAC, and public comments. The reconsideration will be concluded in conjunction with the ongoing review.

Sessions 15. States justifiably should expect that, when reductions in air pollutants result in areas transitioning from non-attainment to attainment for the air quality standards, this success should be recognized by EPA quickly by completing the formal re-designations. My understanding is that EPA has often taken several years to complete this process.

a. Do you agree that clean air attainment designations should be formally adopted as soon as possible when the data show that air standards have been met? b. What will you do to insure that EPA acts quickly to complete re-designation actions, given the immediate job growth implications of these actions?

When areas in a state attain the standards, states have to submit plans to satisfy certain Clean Air Act requirements. When valid plans documenting these requirements are submitted, EPA generally moves to approve these in a timely manner. There have been cases where litigation about programs that the states have relied on to control air quality has created uncertainty and delayed EPA's ability to take these actions. However, the agency is committed to keeping statesinformed in these circumstances, moving quickly to resolve issues, and processing redesignations in a timely manner.

b. It has been said that NOx and SO2 from Electric Utility Fuel Combustion sources show significant decreases over time as a result of the Acid Rain Program, NOx Budget Trading Program, and CAIR control implementation. Do you agree?

These programs have been very successful in reducing SO2 and NOx emissions from the U.S. power sector. Recent EPA air programs continue and complement the Acid Rain Program's (ARP) history of emission reductions. In 2011, sources in the ARP and the Clean Air Interstate Rule (CAIR) SO2 annual program reduced SO2 emissions by over 11 million tons (a 71 percent reduction) from 1990 levels (before ARP implementation). Similarly, sources in the ARP and CAIR NOx annual program emitted 4.4 million fewer tons of NOx (a 60 percent reduction) in 2011 than in 1990.

Wicker 1. Should our nation's steady progress in making reductions to air pollution be considered in the NAAQS revision process?

While great progress has been made in achieving national air quality standards, air pollution levels remain unhealthy in numerous areas of the country. The Clean Air Act requires EPA, every five years, to review the body of scientific evidence on the effects of air pollution on public health and welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act.

Wicker 2. NAAQS regulations are purely to benefit public health and not economic cost, but has the EPA considered how health is negatively impacted by the job losses caused by these regulations?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's mission is protecting Americans from pollution and its adverse health and environmental effects, including through implementation of Clean Air Act's requirements in accordance with the law and the best available science. Congress mandated that the NAAQS be set based on a scientific assessment of the effects of relevant air pollution on public health and welfare. The air quality standards must be set based on science without regard to costs of implementing pollution controls to achieve the standards. Costs are considered during implementation of the standards.

Wicker 4. Can the President tell EPA where to set national ambient air quality standards based on policy considerations?

a. Since the President directed EPA not to reconsider the 2008 ozone standard, can he also direct EPA to take additional time to consider revisions to NAAQS?

The Clean Air Act requires EPA periodically (every five years) to review the body of scientific evidence on the effects of air pollution on public health and welfare, and based on that determine whether to revise the standards to meet the requirements of the Act. In the rulemaking to reconsider the 2008 ozone NAAQS, the President did not instruct EPA where to set the ozone standard; instead, his request concerned the timing of the reconsideration, which is a separate rulemaking from the ongoing, five-year periodic review

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, the Office of Management and Budget (OMB) returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obamahad requested that the draft rule be returned as he did "not support finalizing the rule at this time."

Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Wicker 7. Do you believe that the NAAQS review and implementation process will ever catch up to its statutory 5 year deadlines for review? What steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. The agency's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical depth and integrity

Wicker 8. Please identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

The U.S. Supreme Court held in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting national ambient air quality standards that are requisite to protect public health and welfare, as

provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. The Court's reasoning is found at 531 U.S. 464-472.

Wicker 9. As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

In *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), the Supreme Court held that EPA may not consider the costs of implementing the standards in setting NAAQS that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act. The Court rejected the argument that EPA could consider costs of implementation because health and other effects could stem from implementation strategies. Although the EPA cannot consider the costs of implementing the standards when setting the NAAQS, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans (SIPs) to implement the NAAQS. Likewise EPA has discretion to consider costs in many of the Clean Air Act provisions authorizing EPA to set standards to control emissions.

15. Funding for mitigation activities related to ozone is currently tied to "non-attainment" status. Therefore, communities such as the Omaha metro area, which are currently in "attainment" but are trying to be pro-active and address ozone-forming emissions prior to violating air quality standards, have little financial assistance available. This places communities in the unenviable situation of having to violate air standards in order to become eligible for additional funding. EPA recently developed the Ozone Advance program to attempt to provide funds for metro areas, such as the Omaha region. Would you take proactive measures, such as participation in Ozone Advance, into consideration when designating whether a region will be deemed "non-attainment"? And would you champion opportunities to provide funding for communities that are in attainment?

Participation in Ozone Advance can help areas maintain air quality that meets the health standards. EPA is currently providing technical assistance to participants in the Advance Program but has not offered direct funding to participants. However, I have been and will continue to be a strong advocate for providing support at the community level, including EPA assistance and funding, to the extent possible given budget constraints.

17. The EPA Clean Air Scientific Advisory Committee (CASAC) last recommended the Ozone standard be set at a range between 60 and 70 parts per billion (ppb). If the standard were set at 60 parts per billion, the vast majority of the United States—including the Nebraska Panhandle (due to emissions from the Denver metro area), one of the most sparsely populated regions of the United States—would be in violation of the standard. Many metro areas who struggled for years to attain the standard set in 1997 now fear the standard will be set at an unrealistic level that will only result in perpetual nonattainment status. How would you apply common sense and reasonableness in setting air quality standards? Do you think that there are diminishing returns of further reducing air quality standards past a certain point?

Response: EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards.

However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

1. EPA plans to finalize nonattainment designations in June 2013 for the revised sulfur dioxide national ambient air quality standard. EPA has proposed a nonattainment designation for Yellowstone County, Montana, where almost 1,000 Montanans work at the three local oil refineries. Given the status of documented anomalies in the county's 2010 monitored emissions that appear unrepresentative of recent and projected emissions trends, will you commit to work closely with me on Yellowstone County's final designation?

Response: Yes

Ozone NAAQS

The Centers for Disease Control has cited numerous triggers for asthma attacks that are unrelated to air quality. How is that data factored into determination of revised NAAQS?

The Integrated Science Assessment (ISA) for ozone evaluates all of the scientific information regarding the relationship of ozone to asthma in light of other asthma triggers. It is the purpose of the ISA to reach determinations regarding whether ozone exposure is causally related to health outcomes, including asthma attacks. This information is taken into account in the agency's decisions on the current and potential alternative standards.

Will you commit to working with the CDC and others outside the agency to ensure that we are using the very best science before you set the new ozone standard?

EPA is committed to using the best available science in its NAAQS reviews, which is why the process ensures extensive peer-review by EPA's Clean Air Scientific Advisory Committee and public comment on the Integrated Science Assessment (ISA), the Risk and Exposure Assessments (REAs) and the Policy Assessment (PA), which the agency relies upon in making judgments on the current and potential alternative standards. CDC has been involved in the ongoing ozone NAAQS review.

If you do lower the standard for ozone, what do you imagine will be the compliance burden on the States? In other words, what portion of the additional emissions reductions will be as a result of things like fleet turnover, and what will localized compliance options look like?

Implementation of the NAAQS will be achieved through a combination of state plans and federal measures. The states' obligations are set forth in Title I of the Clean Air Act.

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a

detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?

The Clean Air Act directs EPA to set NAAQS that are requisite to protect public health with an adequate margin of safety and the public welfare from any known or anticipated adverse effects of air pollutants. These standards are based on consideration of the most up- to-date scientific evidence and technical information, advice from CASAC, and public comments. As part of the ongoing review of the ozone NAAQS, EPA will evaluate the extent to which it is appropriate to revise these standards in order to protect against adverse public health and welfare effects.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors,

including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA revised the ozone NAAQS in 2008 by adopting more stringent standards. Designations for that standard were made last May. EPA has said that it plans to adopt a rule on the content of state plans for implementing the revised standards. The Agency has said that it will propose that rule this coming May. What is the schedule for finalizing that rule?

Once the rule proposing requirements for state plans implementing the standards is published in the Federal Register, EPA will accept public comment for at least 60-days. After carefully considering the comments received, EPA will move as quickly as possible to finalize the rule. Achieving the health benefits required by the CAA will require the combined efforts of federal, state, local, and in some cases tribal governments, each accomplishing the tasks for which it is best suited. The agency is mindful that the requirement to implement the ozone NAAQS comes at a time when many states are facing substantial resource challenges. EPA is committed to working in partnership with states and other stakeholders to share the burden of implementing the ozone NAAQS by promulgating a number of national regulations that will provide significant reductions in ozone precursors.

A tightening of the standard from .075ppb will most likely put a significant amount of new areas into non-attainment. Your Agency has even admitted during the reconsideration in 2009 that "a significant portion of the country" cannot meet EPA's proposed ozone requirements. Studies also show that if the standard is set at .060ppb that most of the counties that already have monitors would be in violation, as well as a vast majority of unmonitored areas would be in violation of the lower standard. How does EPA expect to handle the significant amount of new counties being in non-attainment, especially with some being in non-attainment for the first time?

EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence so it is premature to conclude that a significant number of new counties would be in non-attainment.

This year marks the end of the five year review period for the ozone national ambient air quality standard (NAAQS), which was last set in 2008. Currently, the 1997 standard is still not fully implemented and EPA has yet to resolve issues concerning the 2008 standard. Given the problems and delays in implementation, do you think EPA will recommend a further reduction in the ozone NAAQS

standard? If so, what justification does the Agency have for further reducing the standard? Is it not true that air quality will continue to improve without a new ozone NAAQS?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence.

Given EPA's issues with implementation of the 2008 standard, and that you are still finishing the work to attain the 1997 standard, do you think the Agency's implementation schedule is too aggressive considering so many areas in non-attainment are still struggling to comply with the standard set more than 15 years ago? Is the Agency required by law to reduce the ozone NAAQS following each 5 year review period?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA is not required to reduce the level of the standard in each review; rather, the agency is required to determine what standards are requisite (i.e., neither more nor less stringent than necessary) to protect public health with an adequate margin of safety.

Further reduction of the ozone standard could cost between $20 and $90 billion annually according to government estimates and if the standard were set at .060ppb, the lowest in the range EPA considered during the reconsideration in 2009, a NAM study estimated that more than 7 million jobs could be lost. When CASAC and EPA are looking at proposing a range for a new ozone NAAQS, do you consider the impact on jobs and manufacturing in the areas that could be captured under the new standard?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in non-attainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing

greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the economic recovery. Can you comment?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

In the upcoming ozone NAAQS, EPA has stated that it will rely on one result from one epidemiology study to quantify mortality benefits from reductions in chronic ozone exposure when they are 11 other equally well designed epidemiology studies that suggest there is no increase in risk. Why does EPA focus only on the one positive study and the one positive result within that study to estimate benefits?

As explained in an April 10, 2013 letter sent to you by EPA on this subject (footnotes omitted):
"In developing an ISA [Integrated Science Assessment], the EPA uses a formal causal framework that provides a consistent and transparent basis for integration of scientific evidence and evaluation of the causal nature of air pollution-related health effects. This approach has been reviewed and endorsed by the Clean Air Scientific Advisory Committee (CASAC). This framework employs a five-level hierarchy that classifies the overall weight of evidence and causality using the following categorizations: causal relationship; likely to be a causal relationship; suggestive of a causal relationship; inadequate to infer a causal relationship; and not likely to be a causal relationship. Pursuant to this framework, in order to reach a determination that the weight of scientific evidence is suggestive of a causal relationship, the evidence should include "at least one high-quality epidemiologic study show[ing] an association with a given health outcome."
The previous scientific assessment for ozone in 2006 concluded that an insufficient amount of evidence existed to suggest a causal relationship between chronic ozone exposure and increased risk of mortality in humans. However, two recent studies provided new evidence for the 2013 assessment. This new evidence is consistent and coherent with the evidence from epidemiological, controlled human exposure, and animal toxicological studies for the effects of short- and long-term exposure to ozone on respiratory effects. The current body of evidence, including these two high-quality, peer-reviewed studies that observed associations between long-term exposure to ozone and mortality, is suggestive of a causal relationship between long-term exposure to ozone and total mortality.
Your letter stated that 11 earlier studies did not find statistically significant associations between long-term exposure to ozone and mortality and that the EPA selectively relied on the one positive study to support the causality determination of "suggestive." A key explanation for the lack of associations found in most of these earlier studies is that they did not specifically assess respiratory mortality. However, unlike the earlier studies, Jerrett et al. (2009) did specifically evaluate respiratory mortality and found a statistically significant association. This finding is consistent with other studies finding associations with respiratory effects (e.g., morbidity and mortality). Because of the strength of the evidence between ozone exposure and respiratory effects, it is reasonable to find associations between long-term exposure to ozone and respiratory mortality but not other sources of mortality (e.g., all-cause, cardiovascular, and cardiopulmonary). As noted above, one high-quality epidemiological study showing an association is sufficient for a determination of "suggestive" under the EPA's causal framework, even if the results of other studies do not consistently show the same association."

Given the significant controversies surrounding the studies supporting a tightening of the ozone standard, will you commit today to taking comment on the current standard?

The review of the ozone NAAQS is ongoing and EPA is committed to following the science and the law in developing the proposal. As with prior NAAQS rulemaking, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

According to recent NOAA reports, half of all the current ozone exceedances in many areas in the Western US are due to emissions from Asia. How do you plan to address this important problem?

Ozone concentrations can be affected by local, regional, international, and natural sources. EPA analyses indicate that the majority of ozone exceedances within the U.S. are driven primarily by local and regional sources of ozone precursors. For those rare cases in which international emissions can be

shown to result in a violation of the NAAQS, there is a specific Clean Air Act provision (Section 179B) that can be invoked to ensure those cases do not lead to inappropriate regulatory consequences.

EPA's own modeling shows simulated ozone background levels as high as 77ppb – a level that already exceeds the current standard. There is also strong evidence from NOAA, using a more sophisticated model with higher resolution, that EPA is still under-predicting ozone background levels. How will you take into account the fact that even the NOAA model is likely to under predict true background levels due to model limitations? How will you consider these high ozone background levels in setting the standard?

As part of the ozone review, EPA will focus on the health effects evidence and related exposure and risk analyses in determining the appropriate level of the ozone standard, and will provide information on ozone background concentrations from multiple air quality models and discuss spatial and temporal variations in peak and mean concentration levels. Regarding the assertion that current air quality models are underestimating background concentrations, EPA's analyses have shown that model predictions estimate concentrations at remote sites with considerable accuracy, especially for seasonal averages compared to individual days.

Are you planning on estimating and counting ozone benefits down to zero ozone levels?

EPA does include benefits below the standard using a methodology that is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard and also provides information about how much of total risk occurs on days with different ozone concentrations.

How would you count benefits from reductions in exposure that occur far below the level you consider as safe?

EPA's approach to estimating the benefits of reducing ozone pollution is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the epidemiological evidence suggests a generally linear response with no indication of a threshold. To reflect this, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard The risk assessment also provides information about how much of total risk occurs on days with different ozone concentrations.

19. Inhofe 19. EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the

effects of driving manufacturing offshore, to countries with little or no environmental controls? Do you believe this analysis could be covered under the Section 321 review requirement of the Clean Air Act?

EPA has found no records to indicate that CAA section 321, since its inclusion in the 1977 amendments, has been interpreted by any Administration to provide for job impacts analysis of rulemakings. Section 321 does provide a mechanism for EPA investigation of particular claims of job loss related to plant closure or layoffs in response to environmental regulation, and this would presumably include plant closures resulting from alleged environmental regulation-induced overseas relocation. However, EPA could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure, including overseas relocation. This is not surprising since data from the Bureau of Labor Statistics consistently indicate that labor markets are primarily influenced by other, larger factors including routine business cycles, changes in production technology, and the state of the overall economy. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

40. Former EPA policy advisor Lisa Heinzerling said that the reason given for the withdrawal of the ozone standard was unlawful. Do you agree? Could the President instruct EPA where to set national ambient air quality standards based on policy considerations, or could he delay a decision?

Response: On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and

implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in many instances help states to meet the PM (and other) NAAQS.

42. Inhofe 42. It is my understanding that EPA is now reviewing the Ozone rule again. Will you commit to proposing the current standard so that the public can comment on whether it will meet the health standards established in the Clean Air Act?

The review of the ozone NAAQS is ongoing. EPA is committed to following the science and the law in developing the proposed rule. As with prior NAAQS rulemakings, the agency expects the public willhave the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

43. Inhofe 43. If EPA is considering a similar range for ozone as they did in 2010, is there any reason to believe the economic impacts will be substantially different than the estimates from the 2010 reconsideration?

The review of the ozone NAAQS is ongoing. The Supreme Court held in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that the Clean Air Act prohibits EPA from considering costs of implementation in setting or revising the NAAQS. To inform the public and consistent with applicable Executive Orders, EPA will provide an updated economic analysis in conjunction with the issuance of the proposed rule.

Sessions 6. I am concerned about EPA's failure to fully defend the laws and regulations of the United States. That is partly a concern for EPA, and partly a concern for the Department of Justice. But there is no doubt that the Administration has not always defended existing laws and regulations to the fullest extent possible. For example, in June 2011 when you appeared before our committee, I asked you about EPA's plans to reconsider the ozone standards. You explained: "Senator, we are moving forward with the five-year review of ozone, but when Administrator Jackson came into office, we were facing litigation [regarding] the prior administration's decision to make a determination that 75 ppb was the appropriate level for ozone. … The Administrator decided that rather than litigate, she would work with the litigants to put that litigation on hold; she would revisit the science. … [and] rather than to defend that standard and to move forward with it, [EPA decided] to reconsider that..." Fortunately, after a bipartisan group of Senators raised serious concerns about EPA's ozone reconsideration—an effort that I was glad to lead with Sen. Landrieu, the President directed EPA to not finalize a new ozone standard at that time.

a. Would you agree that, in light of the President's subsequent decision to forego changing the ozone standard, EPA Administrator Jackson made the wrong decision to "reconsider" the ozone standard instead of, in your words, to "defend that standard"?

b. Did EPA incur significant costs as part of the ozone reconsideration process; if so, how much?

c. Do you agree that the ozone reconsideration process created significant regulatory uncertainty throughout the U.S. economy that could have been avoided if EPA had chosen to defend the standard, as ultimately decided by the President?

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draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Sessions 12. Air quality in the United States has improved significantly over the past 40 years. The Clean Air Act and the clean air laws of the States deserve great credit for these improvements, as do the voluntary efforts of millions of Americans and businesses. Air quality is not a political issue. We all want our friends, families, and fellow Americans to breathe clean air. A recent report about Alabama emissions[1] found that since 1999:

a. NOx emissions have dropped more than 35% overall—and more than 65% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on NOx, this downward trajectory will continue?

b. SO2 emissions have dropped more than 50% overall—and more than 60% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on SO2, this downward trajectory will continue?

c. PM2.5 emissions have decreased by more than 30% overall. Do you agree that, even without additional new regulations from EPA on PM2.5, this downward trajectory will continue?

d. Ozone levels in Alabama are also on a downward trend. Do you believe an even tighter ozone standard is necessary? Did you support EPA's decision to reconsider the ozone standard in 2011, and did you agree with the President's decision to forego changing the ozone standard at that time?

e. For these pollutants, the numbers are on a downward trajectory even without new EPA air regulations regarding those pollutants. Do you agree?

Although emissions are likely to continue to decline as state and federal control programs already 'on the books' continue to be implemented, it is not at all clear that, without additional state or federal efforts, emissions would continue to decline in perpetuity. It also is possible that, absent additional state or federal efforts, emissions could increase depending on a number of factors. Great progress has been made to reduce emissions considerably since the 1970s, including in Alabama, but more work remains to be done to protect public health.

Under President Obama's leadership, the EPA has worked to ensure health protections for the American people, and has made tremendous progress to ensure that Clean Air Act standards protect all Americans by reducing our exposures to harmful air pollution. In accordance with the requirements of the Clean Air Act, EPA currently is engaged in reviewing the ozone NAAQS and the science underlying these standards. Given the importance of this decision, it makes sense to ensure that the agency gives full consideration to all of the scientific evidence that is available since the conclusion of the last review in 2008. Any decisions as to whether to revise the ozone standard will be based on the available scientific evidence,

exposure/risk information, the advice of CASAC, and public comments. The reconsideration will be concluded in conjunction with the ongoing review.

Wicker 3. Will you be accepting comment on maintaining the current ozone standard once you propose the new rule? Do you believe it is appropriate to consider only new proposals that lower the current standard? Doesn't that prevent EPA from considering science showing that the current standard or even a higher standard is sufficient to maintain public health?

As with prior NAAQS rulemakings, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

Wicker 4. Can the President tell EPA where to set national ambient air quality standards based on policy considerations?

a. Since the President directed EPA not to reconsider the 2008 ozone standard, can he also direct EPA to take additional time to consider revisions to NAAQS?

The Clean Air Act requires EPA periodically (every five years) to review the body of scientific evidence on the effects of air pollution on public health and welfare, and based on that determine whether to revise the standards to meet the requirements of the Act. In the rulemaking to reconsider the 2008 ozone NAAQS, the President did not instruct EPA where to set the ozone standard; instead, his request concerned the timing of the reconsideration, which is a separate rulemaking from the ongoing, five-year periodic review

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, the Office of Management and Budget (OMB) returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obamahad requested that the draft rule be returned as he did "not support finalizing the rule at this time."

Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Wicker 6. If you do lower the standard for ozone, what will be the compliance burden on the states?

Implementation of the NAAQS will be achieved through a combination of state plans and federal measures. The states' obligations are set forth in Title I of the Clean Air Act.

Wicker 11. How will you work with the CDC and others outside the agency to ensure you are using the very best science before you set the new ozone standard?

EPA is committed to using the best available science in its NAAQS reviews, which is why the process ensures extensive peer-review by EPA's Clean Air Scientific Advisory Committee and public comment on the Integrated Science Assessment (ISA), the Risk and Exposure Assessments (REAs) and the Policy Assessment (PA), which the agency relies upon in making judgments on the current and potential alternative standards. CDC has been involved in the ongoing Ozone NAAQS review.

15. Funding for mitigation activities related to ozone is currently tied to "non-attainment" status. Therefore, communities such as the Omaha metro area, which are currently in "attainment" but are trying to be pro-active and address ozone-forming emissions prior to violating air quality standards, have little financial assistance available. This places communities in the unenviable situation of having to violate air standards in order to become eligible for additional funding. EPA recently developed the Ozone Advance program to attempt to provide funds for metro areas, such as the Omaha region. Would you take proactive measures, such as participation in Ozone Advance, into consideration when designating whether a region will be deemed "non-attainment"? And would you champion opportunities to provide funding for communities that are in attainment?

Participation in Ozone Advance can help areas maintain air quality that meets the health standards. EPA is currently providing technical assistance to participants in the Advance Program but has not offered direct funding to participants. However, I have been and will continue to be a strong advocate for providing support at the community level, including EPA assistance and funding, to the extent possible given budget constraints.

16. High ozone formation frequently occurs as a result of natural processes (heat, lack of wind, etc.) that are beyond human control. Emissions traveling from other metro areas can also have an impact. For instance, in the Omaha metro area, one can track a direct correlation between the number of high ozone days and extreme high temperature days, whereas mild summers usually result in few, if any, high ozone days. We also have annual burns that occur in the Flint Hills in Kansas that appear to contribute air quality problems. It is unfair to punish communities for factors that are beyond their control. How would EPA take into account factors that are beyond a region's control when designating attainment and non-attainment areas?

The Clean Air Act directs the EPA to designate an area "nonattainment" if it is violating a national ambient air quality standard (NAAQS) or if it is contributing to a violation of the NAAQS in a nearby area. Air quality monitoring data affected by exceptional events (e.g., wildfires, high wind dust events, stratospheric intrusions) may be excluded from use in identifying a violation at a monitor, and subsequently excluded from regulatory actions (e.g., area designations or classifications) that rely upon these data, if the data meet the criteria for exclusion specified in EPA's Final Rule on the Treatment of Data Influenced by Exceptional Events, commonly known as the 2007 Exceptional Events Rule.

17. The EPA Clean Air Scientific Advisory Committee (CASAC) last recommended the Ozone standard be set at a range between 60 and 70 parts per billion (ppb). If the standard were set at 60 parts per billion, the vast majority of the United States—including the Nebraska Panhandle (due to emissions from the Denver metro area), one of the most sparsely populated regions of the United States—would be in violation of the standard. Many metro areas who struggled for years to attain the standard set in 1997 now fear the standard will be set at an unrealistic level that will only result in perpetual nonattainment status. How would you apply common sense and reasonableness in setting air quality standards? Do you think that there are diminishing returns of further reducing air quality standards past a certain point?

Response: EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards.

However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

1. EPA plans to finalize nonattainment designations in June 2013 for the revised sulfur dioxide national ambient air quality standard. EPA has proposed a nonattainment designation for Yellowstone County, Montana, where almost 1,000 Montanans work at the three local oil refineries. Given the status of documented anomalies in the county's 2010 monitored emissions that appear unrepresentative of recent and projected emissions trends, will you commit to work closely with me on Yellowstone County's final designation?

Response: Yes

PM NAAQS

Has the agency ever claimed that there would be health benefits for levels of particulate matter below the NAAQS for particulate matter? If so, explain.

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Do you think the speciation of particulate matter is unimportant? Has the agency conducted any studies to examine the potential effect of the chemical composition of particulate matter? What have they shown?

Understanding the components of particulate matter is important. The Agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the Agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture as well as groups of components associated with specific source categories of fine particles are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator.

Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the

agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?

The PM2.5 NAAQS were revised in December 2012, and EPA is working to develop guidance and rules to provide for smooth implementation. EPA recently issued guidance on the area designations process. EPA is also developing an implementation rule that we expect to finalize soon after nonattainment areas are designated. Should EPA revise the ozone NAAQS, we would intend to develop an implementation rule for that standard in a similar manner, and finalize that implementation rule around the time that area designations are finalized.

Regarding the new source review (NSR) pre-construction permitting programs, EPA included a transition (or regulatory grandfathering) provision in the final 2012 PM NAAQS rule to help smooth the implementation of new requirements associated with the revised NAAQS under the PSD program. Emission offsets are generally associated with non-attainment NSR, which would apply to any newly designated nonattainment areas upon the effective date of such designations (2015 at the earliest). Most states projected to have areas that may be designated nonattainment for the revised PM NAAQS already have nonattainment NSR programs for PM2.5 (i.e., they currently have areas that are or were previously designated nonattainment for PM2.5), including functioning emission offset programs. Those same programs will apply to any newly designated nonattainment areas. For the limited areas that do not have an existing nonattainment NSR program for PM2.5, the lead time built into the designation process will provide the opportunity for states and sources to plan for projected offset needs.

On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA

health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?

As with all NAAQS, EPA's primary PM2.5 standards are set to protect the public health with an adequate margin of safety, based on the body of available health evidence and technical information. In determining whether a given area meets or violates the EPA's 24-hour PM2.5 standard, it is not appropriate to compare a single high day to the standard level. Rather, the 24-hour PM2.5 standard requires that the 3-year average of the 98th percentile of annual 24-hour average PM2.5 concentrations be below 35 micrograms per cubic meter. This approach to determining whether areas meet or violate the 24-hour PM2.5 standard is meant to ensure appropriate public health protection. A single day with a high PM2.5 concentration, by itself, does not result in a violation of the standard.

EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM2.5 health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?

EPA has funded, and continues to fund, a number of research studies evaluating the links between PM composition and toxicity. The agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture - as well as groups of components associated with specific source categories of fine particles – are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes, nor is it sufficient to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator (78 FR 3123). The CASAC, EPA's statutorily mandated external science advisory committee, agreed with this conclusion and with the approach of continuing to define the PM2.5 standards in terms of PM2.5 mass.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the

important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

The manufacturing sector is seeing considerable new investment in new and modified facilities, and the prospect of maintaining and creating thousands of jobs, thanks in part to enhanced production of unconventional oil and gas (e.g., shale gas). Under the Clean Air Act, EPA is required to issue a Prevention of Significant Deterioration (PSD) permit within one year of deeming the permit application "complete." What has your office done to ensure these permits are issued in a timely manner to prevent permits from slowing recovery and growth in the manufacturing sector?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits.

What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits. EPA will consider adopting similar provisions as warranted whenever the agency changes NAAQS requirements.

How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo

if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issue permits, which will help avoid delays in issuing permits.

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary PM2.5 standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in many instances help states to meet the PM (and other) NAAQS.

Sulfur NAAQS

The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.

For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.

The ECA is one of the most important environmental air programs established in the past decade and will result in the prevention of tens of thousands of premature deaths. EPA and Coast Guard are committed to allowing flexibilities allowed under the applicable IMO requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies, without compromising the environmental benefits of the ECA. In 2030 the combination of our national standards and ECA controls will prevent between 12,000 and 31,000 premature deaths and 1.4 million work days lost. The benefits of the coordinated strategy in 2030 are estimated to be between $110 and $270 billion, which is up to 90 times the projected costs of $3.1 billion.

What is EPA doing to collect additional relevant data that is necessary in determining the SO2 emission reductions from prior industry investments to reduce SO2?

EPA has conducted an extensive stakeholder process to develop a strategy for improving air quality by reducing emissions of sulfur dioxide. The strategy, available at http://www.epa.gov/oaqps001/sulfurdioxide/pdfs/20130207SO2StrategyPaper.pdf, outlines the Agency's next steps for designating and implementing the 2010 SO2 NAAQS. EPA works closely with our state, local and tribal partners to collect regularly emission information, including emissions information about SO2.

As the EPA considers its approach to implementing the Sulfur Dioxide (SO2) National Ambient Air Quality Standards, we urge you to ensure States have maximum flexibility to determine the most appropriate approach to accurately establish their attainment status. While the preference is the use of actual monitors in gathering the necessary data, we recognize financial constraints may force States to rely on modeling or perhaps a hybrid approach. The current models and assumptions in EPA guidelines are of concern as they over predict expected ambient air quality levels. Factors such as wind speed, the number of SO2 sources in a geographic area and the height of SO2 sources all can create distortions in the data. These distortions can result in pollution controls that are unnecessary from both capital and operating perspectives. Can you assure us that the proposed modeling guidelines will include more accurate assumptions, and not solely worst case scenarios? What types of assumptions are you considering?

EPA is sensitive to and shares the interests of our air quality management partners and others that the modeling to determine compliance with the new national SO2 standard be as accurate and reflective of what might have been monitored as is possible. EPA's forthcoming modeling technical assistance

document will reflect input from the extensive stakeholder outreach efforts that have been underway and the latest techniques. The public and stakeholders have and will continue to have opportunities to comment on EPA's modeling guidance.

I understand and appreciate the benefits of controlling sulfur emissions, and I understand that EPA has provided estimates of the health impacts of using ultralow sulfur fuels in the North American ECA, but why did EPA put a rule in place that will cause customers to utilize higher emitting modes of transportation? Did EPA's analysis consider the fact that this "intermodal leakage" moves the emissions source from as much as 200 miles offshore to within a few yards of schools, hospitals, residences, and urban areas? If not, shouldn't EPA take a hard look at the real world consequences of the regulation before it potentially pushes thousands more emissions sources into our communities and neighborhoods?

EPA does not agree that compliance with the ECA fuel sulfur limits will lead to transportation mode shift. The majority of the shipping affected by the ECA sulfur limits is made up of international voyages where land-based transportation is not a realistic alternative. Even in cases where mode shift can be contemplated, ships have significant cost advantages over land-based transportation. The North American ECA requires the use of 10,000 ppm sulfur fuel from August 2012 through December 2014, and 1,000 ppm sulfur fuel for January 2015 and later. The 2015 and later ECA fuel sulfur limits are more than 60 times higher than for the ultra low sulfur diesel (ULSD) used in land based modes of transport. EPA performed a detailed analysis of the economic impact of the ECA on ships operating on the Great Lakes, including whether the ECA would lead to a transportation mode shift. This study, which was developed cooperatively with stakeholders, relied on actual routes and freight rates and indicated transportation mode shift is not likely to occur in the Great Lakes area. If the rail, truck and marine freight rates for coastal areas are similar to those for the Great Lakes, then modal shift would also not be expected in other parts of the country.

Would EPA consider other means of reducing sulfur emissions from maritime shipping? Will EPA consider an equivalency for companies that minimize the impact on onshore air quality, rather than only analyzing the mass of SO2 generated?

EPA is committed to allowing flexibilities allowed under the applicable International Maritime Organization requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies within the requirements of the ECA. EPA (and Coast Guard) have utilized two flexibilities allowed under the requirements of the North American ECA, approving projects undertaken by TOTE, a U.S. based shipping firm which operates two vessels between Tacoma, Washington and Anchorage, Alaska, and Royal Caribbean Cruises.

b. It has been said that NOx and SO2 from Electric Utility Fuel Combustion sources show significant decreases over time as a result of the Acid Rain Program, NOx Budget Trading Program, and CAIR control implementation. Do you agree?

These programs have been very successful in reducing SO2 and NOx emissions from the U.S. power sector. Recent EPA air programs continue and complement the Acid Rain Program's (ARP) history of emission reductions. In 2011, sources in the ARP and the Clean Air Interstate Rule (CAIR) SO2 annual program reduced SO2 emissions by over 11 million tons (a 71 percent reduction) from 1990 levels (before ARP implementation). Similarly, sources in the ARP and CAIR NOx annual program emitted 4.4 million fewer tons of NOx (a 60 percent reduction) in 2011 than in 1990.

RFS:

Is ethanol good for the economy; does it make sense economically?

Ethanol plays a role in a number of programs and standards that EPA implements under the Clean Air Act, such as the RFS program. EPA does not have a position on ethanol beyond the scope of our responsibilities in implementing CAA provisions.

Do you think we will have 21 billion of gallons of advanced cellulosic available by 2030?

Under the Energy Independence Security Act (EISA) of 2007, which amended the Renewable Fuel Standard Program in the Clean Air Act, Congress established volume mandates of 36 billion gallons of renewable fuel by 2022, which includes 16 billion gallons of cellulosic biofuel, and 21 billion gallons of total advanced biofuel (including cellulosic biofuel). The law requires EPA to set annual volume standards designed to achieve the total renewable fuel requirement under EISA. It also requires EPA to set the volume of cellulosic biofuel for any calendar year at the projected volume of cellulosic biofuel production. It would be premature to judge whether this volume level is feasible for 2030 at this time.

Does it concern you that the D.C. Circuit expressed serious concerns over the EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?

In the E15 waiver decision, EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have standing, and the Court did not decide on the merits of EPA's waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding, EPA will carefully consider this issue of authority to the extent it arises.

When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFE standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration's CAFÉ standards?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA is reviewing comments submitted in response to the agency's proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input as it sets future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program.

The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

Your question appears to refer to DOE's 2011 study assessing whether the congressionally mandated renewable fuel standard program would impose a disproportionate economic hardship on small refineries, such that these refineries should receive an exemption under that program. My staff informs me that while this study assessed the potential need for extending relief from the RFS program for small

refineries, it did not analyze the impacts of any other EPA regulations or reach the conclusion reflected in your question. Rather, refinery closures over the past three decades have been driven primarily by market factors unrelated to environmental regulation.

Regarding cellulosic volumes, each year since 2010 EPA has taken EIA's projections about projected cellulosic biofuel production and increased it for the purpose of setting the following year's mandate. Each year, EIA has been wrong, and EPA has been more wrong, leading the U.S. Court of Appeals for the DC Circuit to vacate the 2012 cellulosic mandate. EPA is expected to voluntarily rescind the 2011 mandate. Yet the week after the Court decision, EPA proposed an *increase* in the cellulosic mandate despite the fact that only 1,000 gallons of the 10.45 million ethanol-equivalent gallons mandate was produced for compliance in 2012. The EPA's Moderated Transaction System (EMTS) shows no cellulosic production *again* in January, 2013. Given the Court's admonition and the data we now have, will EPA reduce the cellulosic mandate to zero when it finally promulgates final volumes for 2013, which are now 4 months late?

EPA is required under the CAA to annually set the standard for cellulosic biofuel at the projected volume of cellulosic biofuel production, which EPA determines based on projections from the EIA and considering other available information. In February 2013, EPA released a proposal that projected the volume of cellulosic biofuel production for 2013 at 14 million gallons, which is below the statutory volume of 1 billion gallons. EPA's proposed projection for cellulosic biofuel production is consistent with the DC Circuit's direction and is based on a neutral assessment of reasonably anticipated production for 2013. The agency will fully consider comments on the proposed cellulosic level before finalizing the standard, and will make adjustments to the proposed levels, if appropriate.

The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the CAA. EPA does not promote any specific industry.

Given the multitude of problems from the implementation of Renewable Fuels Standard (RFS), including the issue of the "blend wall," where the amount of ethanol required to be blended into gasoline exceeds the E10 threshold, is it now time to admit that the RFS is a broken program and is need of significant revisions?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with the Department of Agriculture and the Department of Energy to discuss the E10 blendwall and other issues related to RFS implementation. EPA will take this information into consideration as the agency moves forward with implementation of the program.

In your role as administrator will you have the flexibility to address the longer term issues of the Renewable Fuel Standard? What do you plan to do to address the immediate problems?

EPA is looking at the potential impacts of the blendwall and related RFS implementation issues over the near and longer term. The agency is also reviewing comments submitted in response to the proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input in setting future RFS standards. Going forward, EPA will consider whether any further actions under the directives and

authorities provided by Congress are appropriate to help ensure orderly implementation of the program. Given the importance of these issues, however, EPA recognizes that it is important to avoid precipitous action that could have adverse effects on the market.

EPA has not yet promulgated the renewable fuel obligations for 2013 for the Renewable Fuel Standard. What action will the Agency take soon to address this problem? Obviously, 2013 has already begun. Will this rule be retroactive as of January 1, 2013? Will EPA get back on schedule and finalize values for 2014 before December 31, 2013?

The public comment period recently closed for the 2013 volume standards. EPA intends to finalize the 2013 standards by the summer of 2013, and intends to propose the 2014 standards in the same time frame.

Do you agree that it is within EPA's legal authority to waive or modify the renewable fuel volume requirements of the RFS if meeting such requirements will cause severe harm to the Nation's economy? Do you think that rising consumer prices constitute the potential for severe economic harm? As Administrator, would you consider waiving or modifying the renewable volume requirements to avoid or mitigate higher gas prices on our Nation's working families?

Congress established a stringent test for granting a waiver under the RFS program. Section 211(o)(7) of the Clean Air Act allows the EPA Administrator, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the RFS under certain criteria. The waiver could be issued if the Administrator determines – after a notice and comment period – that implementation of the RFS requirements would severely harm the economy or environment of a State, a region, or the United States. That is a very fact-specific determination, and therefore would be best addressed in the context of a specific request after considering public comments.

EPA is proud of its "global leadership" role. EPA also takes the view that it is the aggregate effects of chemicals and emissions that really matter. Has EPA taken an aggregate, global approach in analyzing the impacts of its ethanol programs? I know you've analyzed national effects, but have you looked at global effects as well?

EPA has analyzed the impacts of the Renewable Fuel Standard (RFS) program in a number of different regulatory actions. For example, EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitation of the data used to support the analyses. In addition, in evaluating whether a fuel meets the greenhouse gas reductions for the RFS program EPA conducts a lifecycle analysis of greenhouse gas emissions that includes both domestic and global impacts.

EPA states, in regard to its RFS mandates, that "the quantity of food brought to market might decrease, resulting in higher food prices and possibly more malnutrition". If these higher prices and increased levels of malnutrition were shown to actually cause deaths, how serious an issue would that be, in your view?

Protecting public health is central to EPA's mission, and we therefore would consider such issues very seriously.

What is your response to recent studies, such as that by Dr. Indur Goklany in 2011, which finds that the higher food prices resulting from ethanol diversion might be responsible for as much as 192,000 deaths annually?

EPA is aware of the Goklany study and other analysis that look at global biofuels policies and their impacts. In the RIA for the March 26, 2010 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Studies have been made that show that the increase of food prices due to ethanol policy have increased hunger in countries such as Guatemala and Mexico, causing violent protests in Yemen, Haiti, Egypt, Pakistan, Indonesia and Ivory Coast, and could possibly create 42 million new poor people in India. What is your response to these studies, taking into account that the U.S. alone is responsible for approximately 62 percent of the world's biofuel production?

EPA is aware of studies such as the type referenced, but the agency has not reviewed the specific studies referenced in a level of detail sufficient to enable us to comment on them at this point. In the RIA for the March 26, 210 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Last year, the EPA denied petitions from seven governors to suspend RFS blending requirements. The governors contended that by diverting 40% of the U.S. corn crop to ethanol production, the RFS combined with the worst drought in 50 years drove corn prices to record heights, imposing severe hardship on poultry, beef, and pork producers in their states. Citing Section 211(o)(7) of the Clean Air Act, the EPA argued that to grant a waiver it must "determine that the implementation of the mandate itself would severely harm the economy; it is not enough to determine that implementation of RFS would contribute to such harm." But job losses, declining sales, bankruptcies, plant closures, and the like often have more than one cause. An RFS that does no harm when corn production and corn stocks are high and global demand is low might do considerable harm when the opposite conditions prevail, as they did in 2012. By insisting that the RFS "itself" must be responsible for severe harm, the EPA's denial of the petitions was disconcerting. If severe harm is occurring and the RFS contributes to it, what language in the statute prohibits the EPA from taking action?

In responding to the petitions, EPA consulted with the U.S. Department of Agriculture and the U.S. Department of Energy, and examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require. While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation regarding the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act. EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore was required by law to deny the waiver.

In October of 2011, two organizations, one of them an anti-hunger group, petitioned EPA to acknowledge the deadly side-effects of its ethanol-fuel programs. EPA took over a year—14 months, to be exact, to deny that petition. In contrast, the White House has a "We Can't Wait" series of policy initiatives that stress the need for urgent action. Why is that, on this issue of life-and-death, EPA obviously could wait? This was a data quality petition, and your own data quality regulations provide for a 90-day response time. What took so long?

EPA received a request for correction under the Information Quality Guidelines from the Competitive Enterprise Institute and ActionAid USA on October 13, 2011, and responded to that request in a letter dated December 13, 2012. Subsequently, EPA has received a request for reconsideration from the same two organizations. EPA acknowledges the length of time it required to respond to the October 13, 2011 letter and is currently in the process of responding to the request for reconsideration, on which the agency hopes to move more quickly.

A recent study conducted by NERA Economic Consulting, the same firm engaged by DOE for analysis of LNG exports, found that the current RFS mandates could lead to a 30% increase in consumer gas prices by 2015. NERA also found that the RFS mandates could result in a $580 billion decrease in take-home pay for working families. In your role as EPA Administrator, what steps do you intend to take to prevent these adverse impacts on our Nation's economy and working families?

The Agency has seen several analyses focusing on the potential impacts of the RFS program on retail gasoline prices. Some of these show minimal or indiscernible price impacts. The agency is carefully monitoring market dynamics. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and is working with the Department of Agriculture and the Department of Energy, to assess current market activity related to the implementation of the RFS. As EPA implements the RFS program, the agency will continue to closely evaluate the impacts of the program and to consider whether any further actions under the directives and authorities provided by Congress are appropriate to address any such impacts.

Almost all analysts agree that we have reached or will soon reach the "blend wall"—or the time when the volumes of renewable fuel required by the RFS require producers to exceed the 10% volume threshold. A recent study by NERA Economic Consulting stated that the blend wall will result in fewer available RINs available for purchase to comply with the RFS and lead to higher gasoline prices at the pump for working families. In recent weeks this analysis has been borne out as RIN prices have skyrocketed from $.05 a RIN to over $1 a RIN. Do you agree that it is within EPA's legal authority to release more RINs into the RFS market to reduce the impact of the blend wall on gas prices for consumers? As Administrator, would you favor doing so?

Only qualified registered renewable fuel producers are authorized to generate RINs. However, as we continue implementing the RFS program, EPA recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address the E10 blendwall and other issues associated with implementation of the program.

Is it within EPA's legal authority to establish a "safety valve" as part of the RFS program whereby the EPA would cap/hold steady RIN prices based on their impact on the Nation's economy? As Administrator, would you consider establishing such a safety valve as part of the RFS?

The market sets the price of the RINs. However, as EPA continues implementing the RFS program, the agency recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address adverse issues that may result from the program.

20. Inhofe 20. Are you aware of the run-up in RIN prices and do you agree that it is evidence that the industry has or soon will hit the E-10 blendwall? If not, what is your explanation for the run-up?
EPA is aware of the recent activity in the RIN markets, and together with the Department of Agriculture (USDA) and the Department of Energy (DOE), we have been monitoring this activity closely. EPA and industry alike expected a more dynamic RIN market in 2013. Industry stakeholders and market observers have expected some upward pressure on RIN prices, as the volumes of biofuel required by law approach the E10 blendwall, and as market pressure for the use of higher blends of ethanol increases. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with USDA and DOE to assess current RIN price activity and any related impacts.
21. Inhofe 21. In light of the clear evidence that the market is anticipating dire consequences from the E10 blendwall, why has EPA refused to use its discretionary powers under EISA to lower the total and advance mandates by the same amount it is lowering the cellulosic mandate?

EPA is monitoring market conditions closely and staying engaged with key stakeholders in the private sector and with other relevant federal agencies. We are also reviewing comments submitted in response to the Agency's proposed rulemaking for the 2013 RFS volume standards, and we will carefully consider this input as we set future RFS standards. Going forward, we will continue to consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. We will continue to watch this issue carefully, but given the size of the market it is important that the Agency not act precipitously in a way that could adversely affect the market.
Barrasso 32. On April 4, 2013, *Politico* reported that you continue to support the Renewable Fuel Standard (RFS). However, there is a growing recognition from people across industries and the political spectrum that the RFS is fundamentally broken and beyond reform. The RFS has failed to result in large-scale production of advanced biofuels. It has failed to provide any meaningful environmental benefits, and in certain respects, has accelerated environmental degradation. The RFS has contributed to significant increases in feed and food prices which is hurting low-income people in this country and around the world. The RFS has led EPA to approve E15 gasoline which threatens our nation's transportation and fueling infrastructure, and will almost certainly result in widespread litigation against engine manufacturers, refiners, and fuel marketers, among others. The RFS has facilitated widespread fraud in the marketing and sale of Renewable Identification Numbers (RINs). Finally, the RFS, and specifically the dramatic rise RIN prices, will significantly increase fuel costs for Americans.
a) Is it true that you continue to support the RFS? If so, why?
b) Do you consider the RFS a success?

c) Do you believe Congress should repeal the RFS? If not, what changes to the RFS would you propose to Congress if confirmed?

EPA is required by statute to implement the RFS program, and I support doing so in a manner consistent with Congressional requirements. Thus far, the program has created a substantial market for renewable fuels and enhanced the volume of advanced fuels that result in greater greenhouse gas reductions than traditional renewable fuels. The agency does not have a position on legislative changes to the program.

2. Last year, this country saw one of the worst droughts it has seen in over fifty years. As a result, corn prices skyrocketed, which in turn caused huge price spikes for those farmers that depend on corn feed for the animals they raise. In response to these high prices, some governors petitioned the EPA for a waiver to the RFS for fuels made from corn. As you know, the agency denied the waivers because EPA determined there would be no impacts to our economy – for better or worse – if the waivers were approved.

a. Since you oversee the part of EPA responsible for the RFS, what were the critical factors and thresholds EPA used to determine economic disruptions from the RFS?

b. If confirmed as EPA Administrator, what data will you need to see to approve a RFS waiver if we continue to have record droughts into the future?

Response:

While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation concerning the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act.

In consultation with the U.S. Department of Agriculture and the U.S. Department of Energy, EPA examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require.

EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore by law must deny the waiver.

3. During your term as Assistant Administrator for Air, you finalized the Cross-state Air Pollution Rule which addresses transport pollution that crosses state boundaries. This is air pollution that drifts downwind across state lines to states like Delaware– making it hard for Delaware to comply with public health air quality rules. Unfortunately, this rule was vacated by the DC Circuit Court. If confirmed as EPA Administrator, can I have your assurances that you will continue to address the problem of air transport – an ongoing issue that risks the lives of thousands of Americans, many of which are living in my home state of Delaware?

Response: Yes

E15:

E0 is now the test fuel and E10 is the predominant gasoline blend in the market. Given this reality, why is EPA pushing E15 as the new certification fuel now?

Vehicles must be tested under conditions that reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether E10 should be used for the certification test fuel.

Would it not be prudent for EPA to wait and see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the Agency is are also seeking comment on whether E10 should be the federal certification test fuel. We will fully consider comments from stakeholders and the public before making a final decision.

You have been working on a Tier 3 rule for some time, when was the decision made to propose E15 as a certification fuel? Please provide the Committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of mandating E15 as a certification fuel prior to the release of the proposed rule.

Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff informs me that the appropriate protocol is to make such a request through a separate letter to the agency. EPA will respond appropriately to any such request. **Please provide the Committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).**

Waiver requests under section 211(f)(4) for ethanol blends higher than E15 would need to show that the fuel or fuel additive at issue will not cause or contribute to the failure of an engine or vehicle to achieve compliance with the emission standards to which it has been certified over its useful life. The assessment would look, for example, at the levels of emissions when tested on the higher ethanol blend compared to emissions when tested on the fuel used for new vehicle certification. If E-15 were the certification fuel, then for those vehicles E15 would be used as the reference or baseline test fuel. This

would not change the issue that would be before EPA – determining whether the higher ethanol blend caused or contributed to the vehicle violating the emissions standards.

Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. We will fully consider comments from stakeholders and the public before making a final decision.

Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA's decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA's interpretation of its Clean Air Act authority to grant a waiver for E15. Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel if the Court grants certiorari?

During the rulemaking process, EPA expects to receive helpful comments on the issue of what level of ethanol to use in the fuel used for testing motor vehicles. It is premature to judge now what action EPA will take in the rulemaking based on the potential action the Supreme Court might take on petitions for certiorari on the D.C. Circuit's decision on review of the E15 waiver. This is especially the case as the issues raised in the petitions to the Supreme Court involve jurisdiction for judicial review, and not the merits of the E15 waiver itself.

Does it concern you that the D.C. Circuit expressed serious concerns over the EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?

In the E15 waiver decision, EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have standing, and the Court did not decide on the merits of EPA's waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding, EPA will carefully consider this issue of authority to the extent it arises.

Your Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Further, in the Regulatory Impact Analysis (RIA) for your proposed rule you are also assuming that E85 use will be negligible in 2017 to 2030. Doesn't this just affirm that your operating assumption is that consumers will be left with no choice but to use E15 whether they want to or not?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't this mean that EPA doesn't consider E85 a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as we conduct assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA has touted national uniformity in many areas of mobile source regulation, why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time we are seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15 as the certification fuel, the agency intends to allow use of E10 as the certification test fuel through 2019.

In February 2013, the President of the American Automobile Association testified before Congress that the introduction of E15 to commerce was done "without adequate protections to prevent misfuelings and despite remaining questions about potential vehicle damage." In further testimony, he suggested that testing of E15 was far too narrow in scope and that sales should be suspended until further study is done on the potential full impact of E15 on all aspects of vehicles and appropriate. Do you believe testing on E15 should have included potential impacts on engine life and fuel pumps? Do you stand by EPA's conclusion that E15 is safe and reliable for consumers to use?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Through its waiver, EPA has concluded that E15 "will not cause or contribute to the failure of engines or vehicles." If you stand by EPA's conclusion, would you support legislation requiring the federal government should indemnify companies that sell E15 from any future liability related to the use of E15 in motor vehicles and motor vehicle engines?

I am not aware of any current proposed legislation of this nature, but in any event, the EPA has no position with regard to such proposed legislation if it exists.

When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFE standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration's CAFÉ standards?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA is reviewing comments submitted in response to the agency's proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input as it sets future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program.

Many auto companies are actually warning consumers against using E15 even in EPA-approved vehicles and AAA is warning consumers not to use it. What does EPA know that the auto companies don't?

EPA would defer to the automakers to explain the basis of their communications. The EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies the EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Did EPA look at any testing data other than emissions before approving E15?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Was EPA aware of ongoing CRC testing on engine durability, fuel pumps and other engine components? Why not wait until that test was complete before making a decision? Because in the aftermath it looks like the decision was, at best, premature. The CRC data shows millions of approved vehicles are in danger of engine damage.

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA or the Department of Energy (DOE) a role in the test program. As DOE has highlighted repeatedly (see for example here: http://energy.gov/articles/getting-

it-right-accurate-testing-and-assessments-critical-deploying-next-generation-auto), the CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

How many stations are carrying E15? How is EPA ensuring compliance with the labeling requirement? Recent reports show that as many as 1/3 of stations carrying e15 are not properly labeling it.

As of April 15, 2013, EPA has approved misfueling mitigation plans for 11 companies that are offering E15 at approximately 20 retail stations. EPA is closely monitoring results from the E15 compliance survey to ensure that stations that offer E15 are complying with applicable E15 labeling requirements. In 2012, the E15 survey checked every E15 station registered with an approved Misfueling Mitigation Plan and found 100 percent compliance with the labeling requirements. Reports suggesting that 1/3 of the stations with approved misfueling mitigation plans were found not to be in compliance with the labeling requirements, are erroneous.

At what point should we conclude the mandate is causing significant harm?

EPA is not requiring the use of E15 – this will be up to the marketplace.

What was the rate of consumer misfueling during the switch from leaded to unleaded gasoline? Why didn't EPA promulgate stricter misfueling mitigation requirements like it did during that time- or even the more stringent warning label (considering that was the only misfueling mitigation measure EPA is requiring)?

EPA does not believe there was significant misfueling as unleaded gasoline was introduced. The agency did conduct tampering and misfueling surveys throughout the 1980's and into the early 90's during the phase out of lead in gasoline. The surveys generally found a very low incidence of misfueling. Further, state inspection programs implemented in many areas of the country also implemented tampering and misfueling inspections, which acted as additional deterrents to misfueling.

What is the status of an ANSI standard for E15?

I am not aware of any ANSI standards for E15.

Why is EPA suggesting an E15 cert fuel in the Tier 3 rule, considering one of the justifications is to harmonize regulations with the State of California, which certifies to E10? Is this a way to force automakers to build cars to use fuels that may or may not be commercially available?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15, the agency intends to allow use of E10 as the certification test fuel through 2019.

Given the number of issues with E15, not the least of which is liability, why does EPA think half of the fuel consumption will be E15 in 2017?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

The majority of gas stations are single store operators, and more than 90 percent are independent from refineries. Why would these small businessmen take on potential liability to sell a fuel that can only be used in less than 5 percent of vehicle (those certified by manufacturers to use E15 or FFV) and no other type of engine?

EPA does not require that any party offer E15 for sale. EPA has not made a projection of potential E15 sales, but would note that light-duty diesel vehicles represent less than five percent of vehicle sales, yet many retail stations now offer diesel fuel in order to appeal to a wider clientele of potential customers.

EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is are seeking comment on whether we should finalize E10 for certification test fuel.

Wouldn't it be prudent for EPA wait to see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

If E10 is now the predominant gasoline blend, why wouldn't EPA consider this fuel first as the new certification fuel?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time, EPA is seeking comment on whether the agency should finalize E10 for certification test fuel.

Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA's decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA's interpretation of its Clean Air Act authority to grant a waiver for E15. Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel? Would EPA consider withdrawing the proposed changes for E15 certification fuel if the court grants cert?

During the rulemaking process EPA expects to receive helpful comments on the issue of what level of ethanol to use in the fuel used for testing motor vehicles. It is premature to judge now what action EPA will take in the rulemaking based on the potential action the Supreme Court might take on petitions for certiorari on the D.C. Circuit's decision on review of the E15 waiver. This is especially the case as the

issues raised in the petitions to the Supreme Court involve jurisdiction for judicial review, and not the merits of the E15 waiver itself.

Does it concern you that the D.C. Circuit expressed serious concerns over EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?

In the E15 waiver decision EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have standing, and the Court did not decide on the merits of EPA's waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding EPA will carefully consider this issue of authority to the extent it arises.

EPA has been working on a Tier 3 rule for some time. When was the decision made to propose E15 as a certification fuel? Please provide the committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of proposing E15 as a certification fuel prior to the release of the proposed rule.

Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff inform me that the appropriate protocol is to make such a request through a separate letter to the agency. I will ask that the agency respond to any such request.

Please provide the committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).

Waiver requests under section 211(f)(4) for ethanol blends higher than E15 would need to show that the fuel or fuel additive at issue will not cause or contribute to the failure of an engine or vehicle to achieve compliance with the emission standards to which it has been certified over its useful life. The assessment would look, for example, at the levels of emissions when tested on the higher ethanol blend compared to emissions when tested on the fuel used for new vehicle certification. If E15 were the certification fuel, then for those vehicles E15 would be used as the reference or baseline test fuel. This would not change the issue that would be before EPA – determining whether the higher ethanol blend caused or contributed to the vehicle violating the emissions standards.

Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?

It has been more than 10 years since any changes have been made to federal certification test fuel, but it is time to change the certification fuel to reflect the fact that ethanol is found in most retail gasoline today. In an effort to focus on the longer term, EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that "better align(s) with the current and projected in-use fuel"?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel.

Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?

Selecting E10 as the certification fuel would not impact the exhaust emissions benefits of the proposed Tier 3 rule. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

Have you considered whether the proposed tailpipe and evaporative standards are appropriate if E10 is the new certification fuel, or would they need to be adjusted?

EPA does not believe there would need to be any adjustment to the exhaust emission standards. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

E15 is not the certification fuel in California. It is E10. I understand that California does not permit its gasoline to be E15. EPA has touted national uniformity in many areas of mobile source regulation. Why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of this uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. If EPA finalizes E15, it intends to allow use of E10 as the certification test fuel through 2019.

Your Regulatory Impact Analysis assumes that E15 utilization for 2001 and later model vehicles will be 50% by 2017, about 80% by 2019 and 90% by 2020. You also project that use of E15 will be substantially higher in Reformulated Gasoline (RFG) areas, which are major population areas by Clean Air Act definition – EPA projects nearly 75% of gasoline will be E15 in RFG areas by 2017. Yet E15 is now almost entirely absent from the market by EPA's own assessment. Are you assuming, then, that

nearly all MY 2001 and later car owners will be using E15 even if automobile companies don't warrant such cars for using E15? Why do you assume such levels of consumer acceptance?
Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.
EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?
EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.
Doesn't EPA analysis of RFG areas effectively project that 3 out of 4 retail outlets will have to be selling E15 in major cities in less than four years?
Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.
Your Regulatory Impact Analysis assumes that E15 utilization in nonroad equipment (like construction equipment, lawnmowers and chain saws) will ramp up from zero percent in 2017 to 100 percent by 2030. Yet, to date, EPA has not acted to waive restrictions on using E15 for any nonroad vehicle or piece of equipment. On what analysis is this E15 penetration rate for nonroad vehicles based?
Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.
Please detail what other regulations or EPA determinations will be necessary to force this amount of E15 into the nonroad sector within the time period projected.
Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal. The Tier 3 proposal has no bearing on fuels used in the

nonroad sector. The Tier 3 proposal does not change the fact that the partial waiver for E15 does not allow for its use by nonroad equipment.

Is EPA currently considering issuing a Clean Air Act section 211(f)(4) waiver for use of E15 blends in nonroad equipment, motorcycles and other vehicles and equipment not covered by current waivers?

No, there is no such action under consideration by the Agency.

Doesn't this mean that EPA considers E85 not to be a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as the agency conducts assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?

The proposed Tier 3 standards would result in very large emission reductions from both new and existing vehicles. The additional gasoline hydrotreating would also cause a relatively small increase in greenhouse gas (GHG) emissions at the refinery due to the additional gasoline hydrotreating. EPA analyzed these impacts in detail using our refinery-by-refinery analysis. The relatively small increase in GHG emissions from refining would be offset though reductions in vehicle emissions of GHG pollutants (methane and N2O) from the improved operation of the vehicle catalysts.

Is it EPA's intention to use the E15 cert fuel to force the automakers to produce E15 capable vehicles? Is it appropriate for EPA to use its Tier III regulation to force autos to produce E15 capable vehicles? Is the cost of hardening vehicles for E15 included in the Tier III cost calculations?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. Many of the vehicle manufacturers are already warranting their new vehicles to operate on E15. The change of certification fuel to E15 would thus have little impact on vehicle hardware, but would ensure manufacturers design their vehicles to account for emission impacts of ethanol concentrations up to E15 over the life of the vehicle.

22. Inhofe 22. Why do you think that the automakers, except for GM on 2012+ and Ford on 2013+ have refused to warrant E15 use in their existing fleet?

I would defer to the automakers with regard to explanations of the rationale for their decisions with regard to warranties.

23. Inhofe 23. Have you reviewed the fuel pump and fuel sender system test report issued by CRC in January? DO you agree that the results of that testing go a long way towards explaining why the automakers are concerned about the use of E15 in their vehicles, since it showed significant and extensive damage to fuel pumps and fuel senders?

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA and the Department of Energy (DOE) a role in the test program). The CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

Earlier this year I introduced with Senator Vitter a bill to reverse an EPA regulation that would lead to an increase in the amount of ethanol in gasoline. Ethanol is less energy efficient than oil and adds to the cost consumers pay at the pump. Furthermore, many environmental organizations have raised concerns about the increased inputs of energy, pesticides, and fertilizer needed to grow more corn for ethanol production. World hunger organizations have raised concerns about the mandate's effect on food prices. If ethanol production is a profitable venture, some claim it should not need to be mandated.

12. Can you justify why we should continue mandating the use of ethanol?

Response: EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the Clean Air Act, passed by Congress.

13. The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is to promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

Response: EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the Clean Air Act. EPA does not promote any specific industry. **Wicker 14. EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, i.e., using environmental laws as authority to require that automakers sell a certain number of a particular type of vehicle?**

Wicker 15. Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume?

Wicker 16. What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful?

Response to questions 14, 15 and 16: EPA's waiver decisions are governed by the Section 209(b) of the Clean Air Act, which requires the agency to grant a waiver request from California unless the Administrator makes any of the following three findings:

California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,

California does not need its standards to meet compelling and extraordinary conditions, or

California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

Wicker 17. What recourse do automakers have if EPA does not exercise this oversight?
The automakers have supported one national vehicle program, and harmonization of federal greenhouse gas and criteria emission vehicle standards with California standards. EPA's role in providing a waiver for California is governed Section 209(b) as described above.

22. Nebraska is a leading ethanol producer, and I want to ensure that my constituents continue to have the ability to purchase Flex Fuel Vehicles (FFVs) and fuel up with higher ethanol blends. Do the new Corporate Average Fuel Economy (CAFE)/greenhouse gas rule and accompanying guidance appropriately incentivize production of FFVs? If so,how? Is the incentive on par with that of electric vehicles?
Through Model Year (MY) 2015, the CAFE and GHG programs treat FFVs the same, i.e., they receive the same credits under the GHG program that FFVs have long received under the CAFE program. Beginning in MY2015, the CAFE credits begin a phase-out period under the Energy Independence and Security Act (EISA) of 2007. Starting in MY2016, EPA's GHG program provides credits for FFVs based on the actual use of E85 and the related GHG emissions benefits of ethanol combustion relative to gasoline. EPA believes that the GHG and CAFE credits will continue to provide an incentive to automakers to continue to build FFVs. While the FFV credits are not as large as the temporary and limited incentives that have been provided for the production of electric vehicles, the FFV credits do not phase-out over time and may actually provide stronger incentives, as the incremental costs of FFVs are much lower than for electric vehicles.

23. It is my understanding that the evaporative emissions profile for E15 and higher ethanol blends is actually somewhat better than conventional E10 gasoline. Is this true, and if so, why are EPA's current Vapor Control requirements locking these blends out of the year-round fuel market?
The evaporative emissions profile for E15 is typically better than for E10, assuming the same gasoline is used for blending. However, the volatility of E15 is limited to 9 psi Reid Vapor Pressure (RVP) in the summer for two reasons. First, the emissions testing and analysis for the waiver demonstrated that E15 needed to have an RVP of no higher than 9 psi for motor vehicles to meet EPA's evaporative emissions standards. Since compliance with the emissions standard was the criterion for granting a waiver, EPA conditioned the waiver on E15 having an RVP no higher than 9 psi. Second, the Clean Air Act (CAA) provides that summertime RVP can be no higher than 9 psi, with a 1 psi RVP increase for blends with ethanol between 9 and 10%. E15 is not eligible for this 1 psi wavier, thus the CAA limits the RVP of E15 to 9 psi in the summer.

PM:

What percentage of the health benefits claimed or projected for all rules related to air emissions proposed in the last five years are the result of lowered emissions of particulate matter?
EPA strives to quantify all of the anticipated benefits for our air rules. Pollution controls often reduce multiple pollutants, leading to significant co-benefits from the application of those controls. For example, pollution control devices, such as scrubbers reduce SO2 emissions, also provide significant PM2.5 co-benefits. In some cases, EPA does not have the data to quantify all of the benefits associated with reducing air pollution, which prevents EPA from quantifying all the benefits associated with its rules. The agency does not have the specific calculation you request readily available.

Has the agency ever claimed that there would be health benefits for levels of particulate matter below the NAAQS for particulate matter? If so, explain.

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Do you think the speciation of particulate matter is unimportant? Has the agency conducted any studies to examine the potential effect of the chemical composition of particulate matter? What have they shown?

Understanding the components of particulate matter is important. The Agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the Agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture as well as groups of components associated with specific source categories of fine particles are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator.

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing

controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have "little use for decision making?" Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?

The quotation in your question is taken out of context. The NAS commented that the EPA should not rely on the Harvard Six Cities cohort and American Cancer Society cohort alone to the exclusion of a "new generation of cohort studies." In formulating the decisions on the PM NAAQS, the EPA considered all of the available scientific evidence, including studies of new cohorts. In addition, two separate panels of EPA's independent Science Advisory Board (SAB) recently recommended that the EPA use these two cohorts to quantify PM2.5-related mortality risks and benefits (i.e., CASAC (2009, 2010) and Council (2010)). Despite some inherent limitations, these cohorts continue to have several advantages over other currently available cohorts, including age and gender representativeness, geographic representativeness, study size, consideration of confounders, and length of follow-up. EPA's approach is consistent with the advice from NAS and SAB.

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

What percentage of the health benefits in all EPA's air regulations taken together over the last five years are attributable to collateral reductions in particulate matter arising from these regulations?

EPA strives to quantify all of the anticipated benefits for our air rules. Pollution controls often reduce multiple pollutants, leading to significant co-benefits from the application of those controls. For example, pollution control devices such as scrubbers reduce SO2 emissions, which also provide significant PM2.5 co-benefits. In some cases, the EPA does not have the data to quantify all of the benefits associated with reducing air pollution, which prevents EPA from quantifying all the benefits associated with its rules. The agency does not have the specific calculation you request readily available.

I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?

The PM2.5 NAAQS were revised in December 2012, and EPA is working to develop guidance and rules to provide for smooth implementation. EPA recently issued guidance on the area designations process. EPA is also developing an implementation rule that we expect to finalize soon after nonattainment areas are designated. Should EPA revise the ozone NAAQS, we would intend to develop an implementation rule for that standard in a similar manner, and finalize that implementation rule around the time that area designations are finalized.

Regarding the new source review (NSR) pre-construction permitting programs, EPA included a transition (or regulatory grandfathering) provision in the final 2012 PM NAAQS rule to help smooth the implementation of new requirements associated with the revised NAAQS under the PSD program. Emission offsets are generally associated with non-attainment NSR, which would apply to any newly designated nonattainment areas upon the effective date of such designations (2015 at the earliest). Most states projected to have areas that may be designated nonattainment for the revised PM NAAQS already have nonattainment NSR programs for PM2.5 (i.e., they currently have areas that are or were previously designated nonattainment for PM2.5), including functioning emission offset programs. Those same programs will apply to any newly designated nonattainment areas. For the limited areas that do not have an existing nonattainment NSR program for PM2.5, the lead time built into the designation process will provide the opportunity for states and sources to plan for projected offset needs.

On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?

As with all NAAQS, EPA's primary PM2.5 standards are set to protect the public health with an adequate margin of safety, based on the body of available health evidence and technical information. In determining whether a given area meets or violates the EPA's 24-hour PM2.5 standard, it is not appropriate to compare a single high day to the standard level. Rather, the 24-hour PM2.5 standard requires that the 3-year average of the 98th percentile of annual 24-hour average PM2.5 concentrations

be below 35 micrograms per cubic meter. This approach to determining whether areas meet or violate the 24-hour PM2.5 standard is meant to ensure appropriate public health protection. A single day with a high PM2.5 concentration, by itself, does not result in a violation of the standard.

EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM2.5 health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?

EPA has funded, and continues to fund, a number of research studies evaluating the links between PM composition and toxicity. The agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture - as well as groups of components associated with specific source categories of fine particles – are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes, nor is it sufficient to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator (78 FR 3123). The CASAC, EPA's statutorily mandated external science advisory committee, agreed with this conclusion and with the approach of continuing to define the PM2.5 standards in terms of PM2.5 mass.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take

comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary PM2.5 standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

NSPS:

Has the agency done any legal analysis of the challenge of regulating greenhouse gases from powerplants under 111(d)? Can you share it with me?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

BACT standards apply to individual sources on a case-by-case basis. They generally are more stringent – and by law may not be less stringent – than Clean Air Act new source performance standards (NSPS), which the EPA establishes for categories of industrial sources. In other words, NSPS are the "floor" or minimum emission control standards for BACT determinations. Is that correct?

Yes. The Clean Air Act specifies that BACT for a source cannot be less stringent than an applicable NSPS. Thus, when EPA completes an NSPS for a source category, BACT determinations that follow for applicable sources would need to consider the levels of the pollutant standards and the supporting rationale of the NSPS.

If BACT does not require fuel-switching, we should have no reason to expect that NSPS would require fuel switching or "redefine the source" to impose identical CO2 control requirements on coal boilers and on gas turbines. Is that correct?

EPA's GHG Permitting Guidance (March 2011) says: "… a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. However, it is important to note that under the proposed carbon pollution standard for new power plants, companies would not be required to build natural gas combined cycle units; they would be required to meet a standard of

1000 lbs/MWh, which can be met either through the use of natural gas or by burning coal along with carbon capture and storage. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT: Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

As explained in responses to related questions, the statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. While EPA did not propose that CCS represented BSER, EPA stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in answers to other questions, several commercial-scale coal-fired power plants with CCS are currently progressing, and EPA's view is that coal-fired units can meet the proposed limit. The agency is still actively considering a wide range of comments on these issues, and any final decision will reflect careful consideration of these issues.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?

EPA based all provisions of the Oil and Natural Gas NSPS on the best available data sources and on proven technology that will result in net cost savings to operators through recovery of natural gas otherwise lost during well completions. A variety of data sources informed development of the rule, including data from the U.S. greenhouse gas inventory, Natural Gas STAR program, State programs, and other published studies and materials. In addition, during an extended comment period, several commenters provided supplemental data for the agency's consideration. The agency considered all of this for the final rule.

In December of last year the NRDC released a report calling on EPA to use Section 111(d) of the Clean Air Act to establish a new greenhouse gas program for existing power plants. Have any officials from your office, or elsewhere in EPA that you are aware of, met with NRDC to discuss their proposal?
A representative of NRDC asked for, and was granted, the opportunity to present the organization's proposal to senior management and staff in the Office of Air and Radiation.
Can you assure us that EPA will adopt a program that will not force new retirements of coal units?
I do not foresee the EPA adopting an NSPS program that would mandate the retirement of coal units.
Do you believe that EPA has the authority under the current language of the Clean Air Act to establish a new climate change program for existing power plants, such as the one called for by the NRDC? If so, what analyses has EPA conducted regarding the practicality or legality of using Section 111(d) of the Clean Air Act to regulate existing power plants?
Section 111(d) of the Clean Air Act (CAA) provides authority to regulate existing sources where EPA establishes a new source performance standard (NSPS) under section 111(b) for a certain pollutants. EPA has not developed an analysis of whether section 111(d) provides the authority to adopt the program proposed by NRDC.
What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?
EPA is not currently developing any existing source GHG regulations for power plants. Accordingly, the Office of Air and Radiation has not prepared draft regulations. The office's current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b).
Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?
EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.
Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the states on regulating GHG emissions from power plants and that each state must submit a plan to the agency

that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.

Using the logic in the draft NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? If we did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

Why did EPA choose to exempt simple-cycle natural gas turbines from the proposed rule?

In the preamble to the proposed new source carbon pollution standard for power plants, the EPA laid out its rationale for not including simple-cycle natural gas turbines in the proposal. Commenters also raised this issue and the agency, of course, will address the matter further in the final rule.

How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit? Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?

The preamble set out the extent to which EPA had the latitude under 111(b) and applicable regulations to propose a particular system of emission reduction as the BSER for different types of fossil fuel generating units that have the same function of generating electricity, as well as its rationale for that proposal. EPA has made a comparable BSER determination in the past. See "Standards of Performance for New Stationary Sources, Primary Copper, Zinc, and Lead Smelters," 41 Fed. Reg. 2,332, 2,333 (Jan. 15, 1976) (establishing a single standard for different types of furnaces in primary copper smelters). In addition, the D.C. Circuit recently upheld a similar action EPA took under CAA section 112 in a rulemaking for processing plywood and composite wood products (PCWP). There, EPA adopted a single standard for multiple production methods. The Court noted that in the rulemaking, EPA subcategorized PCWP equipment "according to its function." NRDC v. EPA, 489 F.3d 1364, 1375 (D.C. Cir. 2007) (citing 69 Fed. Reg. at 45,948). The agency received comments on this set of issues and is evaluating them carefully and will take them fully into account before issuing a final rule.

Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination

as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

Last August you stated: "My job is primarily to implement the Clean Air Act. Our Clean Air Act is prescriptive, but it does allow flexibility. It looks at variability in technology and design. It is not a law that picks winners and losers." However, your department just issued a draft New Source Performance Standard (NSPS) that limits carbon dioxide emissions for new power plants to 1,000 pounds per MW and, if we exclude all of the wind and solar, essentially requires all new power plants to be fueled with natural gas. Do you believe that EPA should use the "flexibility" that you referenced in the Clean Air Act to determine what fuels can and cannot be used to power, heat and cool our homes, businesses and manufacturing facilities? What about transportation fuels?

The proposed carbon pollution standard is a fuel neutral emission rate, which can be met by natural gas fired plants or coal- or petroleum-coke fired plants using carbon capture and sequestration. With respect to transportation fuels, the Agency is committed to carrying out the obligations established by Congress for the EPA under the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007 and the Clean Air Act.

When you proposed the NSPS for new powerplants, you acknowledged that it would not be equitable to apply the new standard to plants that have already been under development for many years and have already obtained their air permits. As I understand it, you recognized that these plants will not be able to meet the new standards and you didn't want to pull the rug out from under companies who have already spent a lot of time and money to develop new plants based on EPA's long-standing rules. Is this the basic reasoning behind EPA's proposal for dealing with "transitional sources"?

In the preamble to the proposed carbon pollution standards, EPA laid out its reasoning in proposing an approach to "transitional" sources. EPA emphasized that sources could qualify as "transitional sources" only if they were on the verge of commencing construction in addition to having obtained their PSD permits.

There is a power plant that has been proposed for western Kansas known as Holcomb 2. Two rural co-ops have been developing this plant for more than 6 years and have already invested almost $90 million dollars to develop a plant that they believe is in the best interests of their members. They have obtained all the necessary permits, but their air permit has now been challenged to the Kansas Supreme Court. When EPA finishes the NSPS for new power plants, will you treat plants like Holcomb 2 fairly? Will you commit to issuing a rule that will allow them to move forward with their project after getting a decision from the Kansas Supreme Court?

EPA included an explicit reference to Holcomb 2 as a potential transitional source under the proposal. The Agency has received comments and additional information with respect to this project and is carefully evaluating those comments, which it will consider and take fully into account in issuing the final rule.

EPA's April 2012 proposed New Source Performance Standards (NSPS) for Greenhouse Gas Emissions for New Stationary Sources: Electric Generating Units (EGUs) sets a standard of performance based on a single fuel – natural gas. This proposed standard cannot be achieved in practice for any source except natural gas combined cycle (NGCC) units. Can you please explain to the committee how setting a standard for all fuel types based on a single one does not violate the definition of "standard of performance" in Section 111(a)(1) of the Clean Air Act?

In the preamble and the supporting documents for the proposal, EPA explained its reasoning for proposing a single standard of performance for the fossil fuel-fired category. As noted in the answer to question 194, there are precedents for this type of action. At the same time, the proposal included an alternative compliance pathway for new coal-fired facilities. The public provided comment on these issues; the Agency is currently evaluating those comments and will take full account of them before issuing a final rule.

Given the price variation in electricity produced from natural gas in New England in the winter of 2013, does EPA still believe that the price of electricity from natural gas-fired generation will remain almost the same as it is today until 2035, as the proposed New Source Performance Standards (NSPS) for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Generating Units (EGUs) projects? If so, could you please provide the committee with a written explanation of EPA's rationale for such a projection? If you do not believe the price in 2035 will remain close to what it is today, will EPA address this changed assumption about electricity prices from natural gas in final NSPS for GHG emissions from new power plants?

As part of the rulemaking package for the proposal EPA included economic analyses that addressed, among a set of related economic issues, projections of future electricity prices. That analysis acknowledged the historic volatility in natural gas markets, including seasonal shifts in response to weather, and also examined the potential impacts of the proposed standard under a range of natural gas prices. EPA also plans to include updated economic analysis addressing these issues in support of a final rule.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

Because the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of proposed rule, EPA did perform economic modeling out to 2030. The analysis helps confirm the conclusions are consistent even beyond 2020.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases (GHGs) from new sources. If that is true, then:

24. Inhofe 24. Why is EPA promulgating a rule that has no benefits, especially in light of the President's numerous Executive Orders that are intended to eliminate unnecessary regulatory burdens on the business community? Did EPA factor in the need to have a diverse mix of electric generation into its analysis?

Power plants are the biggest emitters of carbon pollution. This proposed rule would require that any new power plants use modern technology to minimize this harmful carbon pollution, while at the same time maintaining diversity of our electric generating fleet. Companies building power plants today are already making cleaner generation choices, such as the use of natural gas combined cycle or coal with CCS, and this trend is projected to continue.

25. Inhofe 25. Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

As the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of the proposed rule, EPA did perform economic modeling out to 2030 which can be found in the docket for the proposed rule (EPA-HQ-OAR-2011-0660). The analysis helps confirm that the conclusions are consistent even beyond 2020.

26. Inhofe 26. Did EPA perform a robust analysis on the true cost of a long term switch to natural gas powered electric generation, as the rule assumes?

Yes. Moving forward, EPA predicts a mix of coal and natural gas-powered electric generation. EPA has conducted a series of sensitivity analyses to further examine the role that natural gas prices could play in the future choices of new power plants. The analyses support the conclusion that new conventional coal-fired plants, without CCS technology, are not likely to be built under a wide range of natural gas prices, even prices considerably higher than today's prices. Other independent analyses, like the Energy Information Administration's Annual Energy Outlook, support this conclusion. Even with considerably higher prices of natural gas and increased future energy demand, EPA and EIA analyses project that new coal plants will not be economic relative to other technologies in 2020.

27. Inhofe 27. A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model (IPM) with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How do you explain the difference between this analysis and EPA's?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in ICF's figuresxix. External analysts, including GAOxx, CRSxxi, the Bipartisan Policy Centerxxii, and Analysis Groupxxiii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

28. Inhofe 28. Can you explain why you used your "discretion" at the Air Office to abandon the long-standing Clean Air Act precedence of subcategorizing fuel types? Will you commit to reproposing the rule so that EPA's precedent is maintained and fuel types are subcategorized?

The Clean Air Act gives EPA the discretion to subcategorize a source category based on size, type or class. EPA has previously set fuel neutral standards (e.g., the 1998 utility boiler NSPS for NOx). The agency is still actively considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

29. Inhofe 29. Do you intend to continue using one source category for all power plants in the final rule as opposed to issuing different NSPSs or emission limits for different types of plants burning different types of fuel?

The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

30. Inhofe 30. Using the logic in the NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? Or solar units? If EPA did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

31. Inhofe 31. How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit?

a. Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?

b. Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

32. Inhofe 32. We have heard people say, on many occasions, that this proposed rule represents the first time that EPA has proposed a new source performance standard for the electricity generation sector without subcategorizing by fuel source, thereby pitting one source against another. For example, Phase I and Phase II of the Acid Rain Program utilized separate categories for reducing sulfur dioxide and nitrogen oxides. The recently-finalized Utility MACT Rule did the same thing. Considering the differences between coal and natural gas on greenhouse gas emissions, and carbon capture and sequestration technology is not commercially available, why would EPA intentionally put coal into such an untenable position?

EPA has previously set an NSPS for the electricity generation sector without subcategorizing by fuel source. The 1998 utility boiler NSPS for NOx is an example of such a fuel neutral standard. The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products

from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?
The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

36. Inhofe 36. Does EPA intend to propose and adopt a standard to regulate greenhouse gases from existing power plants? If so, when, and what role will states play in promulgating rules related to this new regulation?
At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches. In addition, as a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …."

b. Inhofe 37(b). Why did EPA only grant sources with a PSD permit one year to commence construction? If those sources already had permits that would prevent any more emissions than is already allowable, why did EPA force them to comply with a one year limitation?
In EPA's proposal (published in the Federal Register on April 13, 2012), EPA did not propose to apply the NSPS requirements for greenhouse gases to new coal-fired power plants that were on the verge of commencing construction, as indicated by the fact that they already had a PSD permit and would commence construction within one year of the proposal. For sources that were not on the verge of construction, EPA proposed to apply the NSPS requirements because, according to the proposal, it was reasonable to expect those sources to build in the proposed greenhouse gas emission limits. EPA

received many comments on this proposal and is reviewing them closely to determine the appropriate action to take.

46. Inhofe 46. During the Administration's first term, EPA promulgated its endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector. What other areas of the economy can we expect GHG regulations in the second term? (Oil and gas, refineries, cement kilns, other industrial facilities) Do you have a plan for addressing GHG emissions in the rest of the economy?

EPA is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. While the agency is evaluating GHG emissions information from a limited number of source categories, EPA has not determined that it is appropriate to regulate GHG emissions from the oil and gas sector, or from other industrial sectors. EPA has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but as stated in the answer to a related question, the Agency has no current plan for issuing such regulations. The agency also has previously said that it had insufficient data to regulate Portland cement facilities, and we do not have a timetable or plan for issuing GHG regulations of this sector.

47. Inhofe 47. Do you plan on issuing a GHG NSPS rule for refineries or oil and gas delivery systems? If so, when?

EPA has not made a determination that it is appropriate to regulate GHG emissions from oil and gas delivery systems. While the Agency acknowledged that it is appropriate to regulate greenhouse gas emissions from refineries, we do not have a current plan or timetable for regulating carbon pollution from refiners.

5. Since 2009 EPA has issued or proposed over 2,900 pages of greenhouse gas regulations and you have stated in the past your intent to pursue a "deliberate, common sense approach"[1] to regulating carbon. However, I am concerned that there are inconsistencies with this statement and EPA's actions. For example, EPA entered into a consent decree to issue greenhouse gas New Source Performance Standards for existing units by May 26, 2012. Yet EPA has not clearly stated its plans regarding regulation of existing fossil fuel power plants. I represent a state that gets approximately 70% of its electricity from coal. How do you reconcile these inconsistencies, and can you please explain what the plan really is?

With regard to power plants, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants and is not currently developing any existing source GHG regulations for power plants. It should be noted for the record that a significant portion of the regulations to which your question refers are those addressing greenhouse gas emissions from light-duty vehicles for model years 2012-2016 and2017-2025 and from heavy-duty vehicles from 2014-2018. As I stated in my testimony before the Committee, these common-sense regulations will achieve substantial oil savings and consumer cost savings, while dramatically reducing greenhouse gas emissions. Other relevant regulations include those implementing the congressionally mandated greenhouse gas reporting program, which helps to provide the general public, industry and policymakers with transparent information with regard to greenhouse gas emissions.

6. Issuing proposed greenhouse gas (GHG) New Source Performance Standards for new and existing power plants carries an additional burden, insofar as these regulations are deemed to be in effect when proposed, not when finalized. Done incorrectly, just proposing these rules has significant negative consequences for our economy. Will you commit that when the EPA is ready to address GHGs from existing fossil fuel power plants, it will issue an Advanced Notice of Proposed Rulemaking (ANPRM) that includes substantive content and a record backing up the proposal to allow industry and others to fully comment on EPA's contemplated approach before moving forward with a proposal?

EPA is not currently developing any existing source GHG regulations for power plants. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

8. How will you assure us that the finalized greenhouse gas New Source Performance Standards for new coal fired power plants will address the concerns that the standards be technically achievable and cost effective?

In response to its proposal, EPA received extensive public comment, much of it addressed to issues related to technical achievability and to cost. The agency is evaluating those comments and will take those comments fully into account before issuing a final rule. Any final rule that EPA issues will reflect the agency's best analysis of cost and achievability.

9. What are your plans to lead the EPA in the forthcoming development of the carbon dioxide New Source Performance Standards for existing power plants? How would you assure these new standards will be technically achievable and cost effective for existing coal fired power plants?

EPA is not currently developing any existing source GHG regulations for power plants, but if the agency does undertake existing source guidelines, it will ensure that they meet the Clean Air Act requirements of achievability and cost considerations.

Sue and Settle Practices:

Have you or anyone at the agency (to your knowledge) ever asked or in any solicited an NGO or other organization or person to petition or sue the agency?

Response: No.

In the last five years, how many petitions or lawsuits that have subsequently been settled have been initiated by entities or persons who are not regulated by the agency? How many of those settlements have included requirements on the agency to promulgate a rule or alter the schedule of a rule already being promulgated?

Response (to two questions above): The EPA is sued hundreds of times a year and many environmental statues include provisions that allow for any citizen to file a petition or commence a civil action against the agency whether or not they are directly regulated under a particular standard or rule. EPA does not enter into settlement agreements that purport to provide the Agency with a new authority. Nor does EPA commit in settlement agreements or consent decrees to any final, substantive outcome of a prospective rulemaking or other decision-making process. I recognize that this committee has focused

many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?

Response: Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, while EPA may agree in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas

EPA is constantly being sued for missing statutory deadlines for rulemaking and then settling the resulting litigation in a court approved settlement agreement. The deadlines in these settlements sometimes put extreme pressure on the EPA to act, and also may create hardships for regulated businesses by interfering with construction plans or requiring large investments in a short period of time. Do you believe that EPA should first consult with the adversely affected parties and other stakeholders before agreeing to such deadlines?

Response: Where EPA settles a mandatory duty lawsuit based on the Agency's failure to meet a statutory rulemaking deadline, the settlement agreement or consent decree acts to relieve pressure on EPA resulting from missed statutory deadlines by establishing extended time periods for agency action. Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, the agency does not agree to the final substantive outcome of the required action through settlement, so interested parties have an opportunity to provide input on the action itself through normal channels such as the notice and comment rulemaking process.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

Why doesn't EPA have a policy of insisting on the inclusion of relevant stakeholders into lawsuits?

Response: When the Agency is sued on the basis of a final agency action, or for an alleged failure to timely act in accordance with a statute, EPA is a defendant and it is the court that controls who may be added as a party to the lawsuit. Interested person may seek to intervene in any such lawsuit.

What will you do to ensure that States, local governments, and other stakeholders have the ability to meaningfully participate in settlement negotiations for lawsuits that involve EPA's failure to perform a non-discretionary administrative duty?

Response: I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

If confirmed, how do you plan to prevent the proliferation of wasteful lawsuits?

Response: If confirmed, I will consult with our Office of General Counsel as well as the Department of Justice about ways to reduce the number of lawsuits filed against the agency. **At the confirmation hearing, Ms. McCarthy indicated that under the Clean Air Act, the agency is required to seek public comment on settlement agreements. Does EPA also seek public comment on settlement agreements that do not pertain to the CAA? Please identify all instances where the Agency has sought public comment on settlement agreements, not associated with the CAA.**

Response: My understanding is that EPA's pesticide program also provides settlement agreements through the Agency website, but I am not familiar with the details of the settlement practices of each EPA Office. I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

At the confirmation hearing, Ms. McCarthy indicated that there are additional opportunities for public interaction beyond the public comment on settlement agreements. Please identify these additional opportunities.

Response: Additional opportunities for public interaction beyond the public comment on settlement agreements include participation in any rulemakings or other activities that may result from such agreements. For example, citizen groups, industry representatives, and other interested people may participate in stakeholder meetings that occur before a rule is proposed. Once the Agency publishes a proposal, there is a comment period open to any member of the public to provide comment on the proposed rule. These comments are considered before the agency takes final action.

There are many ways in which EPA can interact with the public in carrying out our work, and if confirmed, I can examine how to improve such opportunities.

At the hearing, Ms. McCarthy was asked if EPA had ever changed the terms of a settlement agreement in direct response to public comments. Ms. McCarthy responded that she did not know. Please respond for the record whether EPA has ever changed the substance of settlement agreements in response to public comments. Please identify every instance in which EPA changed the substance of a settlement agreement based on public comment and identify the change.

Response: My staff has made me aware of some instances in which EPA has changed the substance of Clean Air Act settlement agreements in response to public comments. For example, after receiving adverse comments on a proposed settlement agreement regarding the technology and residual risk review for more than 25 source categories, EPA modified deadlines for taking proposed or final actions and clarified the scope of such actions for a number of source categories before finalizing the agreement. However, I am not aware of every instance in which EPA has made such a change.

EPA entered into a settlement agreement with WildEarth Guardians and the Sierra Club on regional haze. The states have since insisted that under the Clean Air Act, they should be the lead regulators on this matter. Did EPA consult with the affected states before the agency settled with the Sierra Club and WildEarth Guardians?

Response: Although the Clean Air Act gives States the lead in addressing regional haze, if States do not take action consistent with the Act on a timely basis, the Act obligates EPA to take action. EPA was sued to set new deadlines because States and EPA had not taken required actions. We published the proposed settlement agreement in the Federal Register and received and considered comment on it from the States and other interested members of the public before finalizing the agreement.

At the hearing, in response to questions on regional haze, Ms. McCarthy stated that, "We worked very closely with States on regional haze issues, and we worked hard to make it a State implementation plan to the extent that we can." Yet, we know that EPA has rejected several state implementation plans. What are the limitations EPA faces that would lead the agency to reject a state implementation plan? If EPA is seeking to work with the states, why are these states currently suing EPA to challenge EPA's action on regional haze?

Response: EPA can only approve State implementation plans that are consistent with the Clean Air Act and our regulations. I am committed to working with States so that more of these plans can be approved and litigation can be avoided.

Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?

Response: Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, while EPA may commit in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

66. EPA is constantly being sued for missing statutory deadlines for rulemaking and then settles the litigation in a court approved settlement agreement. The deadlines in these settlements often put pressure on the EPA to act and also may create hardships for regulated businesses by interfering with construction plans or requiring large investments in a short period of time. Do you believe that EPA should first consult with the adversely affected businesses before agreeing to such deadlines?

Response: Where EPA settles a mandatory duty lawsuit based on the Agency's failure to meet a statutory rulemaking deadline, the settlement agreement or consent decree acts to relieve pressure on EPA resulting from missed statutory deadlines by establishing extended time periods for agency action. Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, the agency does not agree to the final substantive outcome of the required action through settlement, so interested parties have an opportunity to provide input on the action itself through normal channels such as the notice and comment rulemaking process.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

67. Where there are no statutory deadlines EPA may be required to Act within a "reasonable time." EPA is also subjected to citizen suits for not meeting the plaintiff's sense of when EPA should have acted. EPA also often signs a rulemaking schedule with a court enforceable deadline and does not provide enough time for regulated entities to do the necessary technical studies to properly comment on the proposed regulations. Additionally, the schedules result in very short compliance timelines making it difficult to install the mandated pollution controls. Why hasn't the EPA consulted with the regulated entities that have to comply with these regulatory timelines to determine if the required deadlines provide feasible periods for meaningful comment and compliance? Why doesn't EPA have a policy of insisting on intervention into law suits by adversely impacted regulated businesses and industry?

Response: While EPA may agree in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself. EPA, in conjunction with the U.S. Department of Justice (DOJ), rarely opposes motions to intervene.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

68. On December 23, 2010, EPA entered into a settlement agreement with environmentalists and some states in which the agency agreed to set new source performance standards for greenhouse gases from new power plants and, eventually, existing power plants. All of the parties to the settlement agreement are clearly in favor of drastically reducing the amount of coal that we burn for electricity. Yet the type of regulations that could come out of this settlement will impact much of the country by eliminating thousands of jobs, raising electricity rates and jeopardizing reliability, which we are already seeing. I should also add that these policies will disproportionately impact the poor and working poor.

Should the Sierra Club and Natural Resources Defense Council have more access to the federal government than the average citizens who will be most impacted by these types of settlements? Isn't that exactly what they have gotten in the case of this NSPS settlement?

Response: The Clean Air Act allows citizens, including organizations like Sierra Club, to sue EPA if they believe the agency's actions are unlawful. In addition, the statute provides all citizens the opportunity to comment on settlement agreements before they become final. Before finalizing the greenhouse gas power plant settlement agreement, EPA published the proposed agreement in the Federal Register and sought comment on it from the public.

Citizens also have the right to comment on proposed rules such as the NSPS addressing greenhouse gas emissions from power plants. In fact, EPA is currently considering the more than 2 million comments that have been filed by the public in response to EPA's proposed NSPS for greenhouse gas emissions from new power plants.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

69. Of the states that were party to the settlement agreement, all but one of them generate between zero and 17 percent of their electricity from coal, yet the states that were not privy to the settlement agreement generate as much as 96 percent from coal. In other words, the people who were in the room have the least to lose while those who were not in the room will suffer the most.

a. Do you consider that to be good policy-making? I consider this a yes or no question.

b. Should the states have equal access to the EPA in formulating a path forward on consequential issues that will impact a broad swath of the economy?

c. If they should, why then did EPA and the Administration enter into closed door settlement negotiations on the NSPS that included the states it agreed with and excluded the states that it didn't agree with?

Response: The standards that were the subject of the settlement agreement are being set through a rulemaking process that provides for participation by all states, as well as all interested members of the public and the regulated industry in question, through a public notice and comment process. EPA routinely receives substantive input from States through the rulemaking process, and considers all comments it receives before taking final action. The EPA is currently reviewing the 2 million plus public comments received on the proposed NSPS. The settlement agreement, which was also put out for public notice and comment before it was finalized, addressed only the timing of the rulemaking; the substance will be determined through the rulemaking process where everyone has the opportunity to comment.

70. Over the past four years, EPA frequently allowed its rulemaking agenda and schedule be driven by voluntary settlements entered in response to lawsuits by environmental advocacy groups. How will EPA respond to these sorts of lawsuits if you are confirmed? Does it damage respect for the rule of law among your state partners when you enter settlements that affect specific states without first consulting with the affected states. Does it damage respect for the rule of law when EPA fails to vigorously defend its prerogatives in responding to these lawsuits?

Response: It is current and longstanding practice to determine whether or not to seek settlement principally upon an assessment of the Agency's duties under the relevant statute, and the legal risks presented by the litigation. The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

5. Do you believe sue and settle agreements are an open and transparent way to make public policy that significantly impacts Americans?

Response: The EPA does not agree to the final substantive outcome of an agency action through settlement. All interested parties have an opportunity to provide input on the action itself through the

rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

6. Do you believe States and communities impacted by sue and settle agreements should have a say in court agreements that might severely impact them?

Response: As explained above, the substantive level or nature of a required action is not determined through the settlement process. Nonetheless, most litigation against EPA arises under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

7. If confirmed, would you agree not to enter into closed-door settlements where the public and affected States are not a party to these agreements?

Response: I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

8. If confirmed, would you open up litigation to local stakeholders and give impacted States and communities a seat at the table before any final agreements are signed?

Response: I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

13. There is growing concern about so-called "closed door" settlements between federal agencies and environmental organizations who sue those agencies, often over minor administrative errors. By the time those settlements are approved, the plaintiffs have essentially been paid by our government for suing our government. In his January 21, 2009, Open Government Directive, President Obama instructed federal agency heads to promote openness in government by "establishing a system of transparency, public participation, and collaboration." EPA has responded to the President's directive by developing and implementing an Open Government Plan.

Can you tell us more about this plan, and do you think it could be improved by including a notification system that would immediately provide all stakeholders with timely and transparent access to information involving any legal action, or notice of intended legal action, against the EPA in advance of any "settlement" discussions?

Response: The EPA's Open Government Plan implements the Administration's Open Government Directive to ensure that the EPA's work supports the tenets of open government – transparency, participation and collaboration – and upholds EPA's mission to protect human health and the environment. I am happy to consider suggestions about how to best implement this plan. If I am confirmed, transparency, participation and collaboration will continue to be priorities at the EPA.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

5. EPA has been increasingly relying on a tactic known as "sue and settle" with non-governmental organizations (NGOs) over issues with nationwide significance. In many of these cases, an NGO notifies EPA of its intent to sue the agency over an alleged failure by EPA to take a particular action. In many instances, EPA has negotiated settlements with these NGOs with any advance notice to impacted stakeholders or the States. Then, the NGO takes the perfunctory step of filing a lawsuit against EPA along with a proposed consent decree for the Court's approval; and, then, and only then, do affected parties, including State regulatory agencies, become aware of the often severe consequences to them of the negotiated settlement. An example of this is EPA's recent 36-State SIP call regarding startup, shutdown, and malfunction (SSM), which was discussed in my recent letter to you.

a. Do you believe that State agencies should have an opportunity to participate in negotiating terms of a settlement when the effects are greatest upon them as the primary regulatory authorities?

b. Do you believe other impacted stakeholders should be notified before EPA initiates settlement discussions in these circumstances and that those impacted stakeholders should be given an opportunity to participate in the settlement process?

c. Will you commit to increase transparency in this process?

d. Do you agree that this transparency should include public, online disclosure of the use of federal funds to cover any plaintiffs' attorneys fees or other legal costs in civil actions filed under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2); Section 505(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(2); or Section 7000(a)(2) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(2); or other similar statutes?

Response (to a through d): I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

7. Another recent example of the "sue and settle" problem involves EPA's recent decision to propose to eliminate a 40-year old regulatory exemption for emissions during periods of startup, shutdown, and malfunction (SSM). Senator Vitter and I recently wrote you about this topic, and on the issue of EPA's failure to defend the law, our letter stated: "In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction ("SSM"). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA's own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency's sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch's solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results

in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstance under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency."

(a) Please list all instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a law or regulation that had been in effect before January 20, 2009.

Response: I am aware of some instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a CAA-related regulation that had been in effect before January 20, 2009. For example, Navistar brought a case in the D.C. Circuit Court challenging a 2001 final rule that promulgated standards for new heavy-duty engines and vehicles. EPA settled that lawsuit by agreeing to a hold a public process to reexamine our policies regarding the use of SCR technology (a type of NOx control) in future model year engines. However, I am not aware of every instance in which EPA has entered into such an agreement. If confirmed, I can examine this issue more thoroughly.

(b) Please include all disbursements of federal funds to cover plaintiffs' attorney fees or legal costs in such cases.

Response: In the *Navistar* case discussed above, EPA did not pay any such fees or costs. While I am generally aware that EPA has paid such fees and costs in some cases—for example, under the Equal Access to Justice Act—I do not have specific information regarding those payments in all cases brought against EPA.

(c)Do you commit to defend all existing statutes and regulations to the extent required by law?

Response: The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

Economic Cost of Regulations

Your predecessor indicated that the new automobile mandates would add "a little upfront" cost to cars. Yet in its own documents the federal government estimates that the additional cost for a new car will increase $3200 on average as a result of the mandate. How would you characterize that amount?

The estimated average additional cost of the vehicle in 2025 (estimated at $1800 over the 2016 standards, or about $3,000 over model year 2011) will be more than offset by an estimated $8,000 in fuel cost savings to the consumer over the lifetime of the vehicle.

Who should be primarily responsible for designing automobile mandates, EPA, DOT, or California?

EPA and DOT act under their respective statutory authorities, the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA) to promulgate vehicle emissions standards (CAA) and corporate fuel economy standards (EPCA). In the Clean Air Act, Congress included preemption waiver provisions allowing California to have a state new motor vehicle emissions program, provided certain statutory requirements are met.

How regressive are the costs imposed by environmental regulations? Has the agency ever examined that?

Response: I have always been very sensitive to the costs of regulations and have worked hard to find flexibilities where I can that help us to achieve environmental and public health benefits at a lower cost. At the same time we must be sensitive to two other points. First, the costs imposed by pollution control standards are a small component of the overall costs of goods and services. For example, even with the

MATS rule in place, electricity prices are projected to remain well within their historical range of variability. Other rules, such as our Light Duty Vehicle standards for GHG emissions, can actually save consumers money over the life of a vehicle. Second, we must also keep in mind that the impacts of pollution often fall heavily on lower income individuals and protecting them can help reduce costs for medical treatment and missed work. If confirmed, I commit to continue to be sensitive to both the costs and benefits of our regulations for all Americans, including lower income families.

How concerned are you about the growing reliance of utilities on natural gas to fire powerplants? The simple reality is that natural gas is intensely volatile with respect to price. It always has been and it probably always will be. Coal, on other is very stable with respect to price. Do you think people will blame the agency when their electricity prices start to climb or, worse, gyrate? How concerned are you about public backlash against the agency eroding its ability to do its important work.

Response: I believe, as does the Administration, that coal will remain one of our nation's important sources of energy. At the same time, our nation is fortunate to have a broad range of domestic energy sources, which includes not only coal, but also natural gas, wind, solar and nuclear among others. Utilization of all these energy sources through an all of the above energy strategy will help ensure that Americans continue to have access to clean, reliable and affordable electricity.

Would it be worthwhile for the agency to conduct a "look-back" at the costs and benefits of regulations encoded over the years? Would it be wise to include stakeholders in that process?

Response: EPA has conducted a peer-reviewed retrospective study on the benefits and costs of the Clean Air Act;"The Benefits and Costs of the Clean Air Act, 1970 to 1990" was issued in 1997. In that study EPA found that, by 1990, the differences between the scenarios were so great that, under the so-called "no-control" case, an additional 205,000 Americans would have died prematurely and millions more would have suffered illnesses ranging from mild respiratory symptoms to heart disease, chronic bronchitis, asthma attacks, and other severe respiratory problems. As a result, the monetized benefits massively outweighed the costs. It is my understanding that the public was given an opportunity to comment during the development of the study. More recently, as part of E.O. 13563, EPA is taking additional steps to improve environmental regulation by retrospectively examining the process and factors that affect the estimated costs of regulations. My understanding is that a draft report of several case studies is currently undergoing review by the Scientific Advisory Board, in a process that involved input from outside stakeholders, such as the American Forest and Paper Association. If confirmed, I would look to continue an open dialog with stakeholders about the impacts of already-promulgated rules and ways in which EPA can do a better job estimating both costs and benefits going forward.

Should the federal government annually estimate the costs and benefits of all of its regulations?

Response: It is my understanding that OMB annually prepares a Report to Congress on the Benefits and Costs of Federal Regulations as required by the Regulatory-Right-to-Know Act. Based on estimates from Federal Agencies, the OMB Report summarizes the quantified and monetized benefits and costs of major Federal regulations reviewed by OMB over the previous ten years, and highlights the rules from the most recent year.

Has EPA ever investigated a plant closure or reduction in employment to see what role, if any, the administration or enforcement of the Clean Air Act played?

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee allegations that requirements under the Clean Air Act will adversely

affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. EPA does perform detailed regulatory impact analyses (RIAs) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule. The agency could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure.

Despite guidance from OMB, EPA frequently does not assess the cumulative economic impact of regulations on the regulated community. For example, although EPA touts the cumulative benefits of its Clean Air Act regulations, each regulatory proposal under the Act is only assessed for its particular costs and impacts. Will you commit to ensuring that EPA does a better job assessing the cumulative impacts of regulatory proposals, including impacts on U.S. competitiveness?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I would be happy to work with EPA economists to investigate and refine economic tools that can help us better assess our regulations.

A cursory look at the some of the largest rules that you have issued or proposed in your tenure at EPA suggests that your office has imposed between $300 to $400 billion dollars per year in higher costs on American businesses and consumers. Could you provide this Committee with an estimate of the total annual costs of all the rules you have proposed and finalized since becoming Assistant Administrator for Air and Radiation? How do you think these costs impact the ability of American firms to compete internationally? How do you think these costs impact the price of goods for people who are struggling to get by?

The Office of Management and Budget (OMB) issues a Report to Congress each year which compiles estimates of the benefits and costs of federal regulation.xiii For each year since 2009, these OMB Reports to Congress indicate the quantified benefits of air rules issued in that year significantly exceeded the costs of those rules. In addition, in a March 2011 report that studied the 1990 Clean Air Act amendments and the effects of associated programs on the economy, public health and the environment between 1990 and 2020, EPA estimated that the benefits of these clean air programs will reach approximately $2 trillion in 2020. By comparison, the cost of these actions was estimated to total $85 billion, resulting in a benefit to cost ratio of approximately 30 to one. An important implication of these findings is that prices of some goods and services may be affected by investments to reduce

pollution, but the value to all Americans of cleaner air vastly exceeds those costs. These benefits include reductions in the number of work days lost to air pollution-related health effects, and the resulting improvements in the productivity of American workers enhance the global competitiveness of American workers and the firms that employ them. Cleaner air also reduces medical costs incurred for air pollution-related health effects, resulting in direct savings to American households. In fact, the March 2011 report included economy-wide modeling which demonstrated that just these two beneficial effects alone more than offset the economy-wide effects of all compliance expenditures, with the result that economic growth rates were faster –and the economic welfare of American households was higher—throughout the study period with these clean air programs than without them

Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?

EPA has been monitoring the changes taking place in the electric utility industry, including the significant decline in natural gas prices, rising coal prices, and reduced demand for electricity. This, when combined with the fact that a majority of coal plants have been in service 40 years or longer and many of these older plants are significantly less efficient (resulting in lower utilization rates), has led to electric utility owners making decisions to retire some of these plants. Many analysts believe that these market changes in gas prices and other factors have the largest impact on retirements in this sector.

The modeling approaches EPA uses can take into account both these market shifts and recent rulemakings. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners (including retirement decisions) as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating capacity.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Like many of my colleagues, I am concerned by the recent onslaught of proposed EPA regulations and the chilling effect they are having on the economy. Many businesses are sitting on the sidelines and

are unwilling to make major investments in this uncertain and unpredictable environment. What steps will you take to ensure businesses have a more stable and predictable regulatory environment?
I understand the importance of regulatory certainty to the business community. As I stated in my testimony, I have done my best to keep my door open to businesses, environmental advocates, local communities, the states, tribes, labor and the public at large, and I will continue to do so if I am confirmed as EPA Administrator. Interactions with stakeholders has provided information and insights that have led to the development of smarter, more cost-effective rules, and better designed and implemented policies and programs to build partnerships and enhance collaboration. If confirmed, I hope to continue to build on this record of outreach and engagement.

CBA:

In March of 2011 EPA released a report: "The Benefits and Costs of the Clean Air Act from 1990 to 2020" that estimated that the monetized benefits of CAA regulations would be 2 trillion dollars annually by 2020 with cumulative benefits reaching $12 Trillion. Nearly all of the benefits came from avoiding 230,000 premature deaths annually in 2020 due to reductions in fine particulate emitted into the air we breathe. EPA stated that monetized benefits exceed costs of compliance by a 30 to 1 factor. What value did EPA use for a premature death avoided (PDA)? How was that value determined? Just how long was the PDA avoided? Was the same benefit used regardless of the time period of avoided mortality? Did the National Research Council suggest in a 2008 report to EPA that it was more appropriate to use of the value of statistical life years (VSLY) saved for determining a value of a PDA? Did EPA incorporate that recommendation?
In the March 2011 study, estimated reductions in premature mortality were monetized using EPA's standard default Value of Statistical Life (VSL) methodology, which is based on 26 premature mortality valuation studies and is expressed as a statistical distribution with a central value of $8.9 million (in year 2006 value dollars) for premature mortality risk reductions projected for the year 2020. This mortality valuation methodology was explicitly peer-reviewed by the statutorily-prescribed Advisory Council for Clean Air Compliance Analysis (Council) for use in developing the primary results of the March 2011 study. The VSL is applied to monetize the value of incremental reductions in population-wide mortality risks for each year analyzed.
EPA does not interpret the 2008 National Research Council (NRC) study you reference as expressing a preference for a value of statistical life years (VSLY) approach. To the contrary, the NRC report expresses a preference for a VSL approach in stating that "...the committee recommends the use of a constant WTP [Willingness to Pay] and corresponding VSL as the most scientifically supportable approach to monetary valuation of ozone-related mortality risk given the information available in the epidemiologic and economics literature." Consistent with that approach, the March 2011 report relied on the peer-reviewed, EPA standard VSL methodology for primary results but also estimated life-years gained and life expectancy gained using a dynamic population model, and these results were used as inputs to the economy-wide modeling conducted for the study.
When will EPA produce a full analysis of the impacts of all of its power sector regulations?
Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when

EPA modeled our mercury and air toxics (MATS) rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I will work to ensure that future EPA rules reflect careful consideration of the overall state of the power sector, including the impacts of previously finalized rules.

EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing

controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

Because the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of proposed rule, EPA did perform economic modeling out to 2030. The analysis helps confirm the conclusions are consistent even beyond 2020.

1. EPA has the ability to conduct cost-benefit analysis that considers the impact of regulations on the economy, including the effects of job losses caused by the regulations and how increased costs ripple through society. EPA used this method for two major rules in 2005.

NERA, a nationally recognized consulting firm, recently conducted a study where they did this analysis for a number of recent EPA rules, including Utility MACT, and the Cross State Air Pollution Rule. NERA's analysis demonstrates that under this EPA approved analysis tool, EPA is better able to inform Congress and the American public of the true costs of its regulations. If confirmed, will you commit to do "whole economy modeling" on all pending Clean Air Act and Clean Water Act regulations?

Response: I believe that whole economy modeling is an important type of modeling for the agency to conduct, when it is technically appropriate and when relevant data exists. I believe it is important to develop regulations with a clear understanding of the impacts on industries from the array of regulatory requirements. If confirmed, I will continue to take this approach in regulatory development and the agency will continue to work on whole economy modeling.

Automobile Mandates:

Your predecessor indicated that the new automobile mandates would add "a little upfront" cost to cars. Yet in its own documents the federal government estimates that the additional cost for a new car will increase $3200 on average as a result of the mandate. How would you characterize that amount?

The estimated average additional cost of the vehicle in 2025 (estimated at $1800 over the 2016 standards, or about $3,000 over model year 2011) will be more than offset by an estimated $8,000 in fuel cost savings to the consumer over the lifetime of the vehicle.

Who should be primarily responsible for designing automobile mandates, EPA, DOT, or California?

EPA and DOT act under their respective statutory authorities, the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA) to promulgate vehicle emissions standards (CAA) and corporate fuel economy standards (EPCA). In the Clean Air Act, Congress included preemption waiver provisions allowing California to have a state new motor.

Automobile Fuel Economy

The basic fuel economy statute, the Energy Policy Conservation Act (EPCA), expressly preempts state laws or regulations "related to" fuel economy standards. This is a very broad statement of preemption. It prohibits states not only from adopting fuel economy standards, but also from adopting laws or regulations "related to" fuel economy standards. Do you agree?

EPA can only deny a waiver of the express preemption provision in CAA section 209(a) based on one of the criteria listed in section 209(b). EPA's waiver decisions under section 209(b) are based solely on an evaluation of those criteria, and evaluation of whether California emission standards are preempted under EPCA is not among those specified criteria. As a result, in making waiver decisions EPA takes no position regarding whether or not California's GHG standards are preempted under EPCA.

For the sake of argument, let's assume that greenhouse gas motor vehicle standards, like those based on California's motor vehicle emissions law, AB 1493, are "related to" fuel economy standards. I know you don't think they are, but for now, let's assume there is a relationship to fuel economy standards. If there was, would it be lawful for California to implement AB 1493? Would it be proper for the EPA to grant California a waiver to implement it?

EPA can only deny a waiver based on one of the criteria listed in section 209(b) of the Clean Air Act. EPA's waiver decisions under section 209(b) are based solely on an evaluation of those criteria, and evaluation of whether California emission standards are preempted under EPCA is not among those specified criteria. As a result, in making waiver decisions EPA takes no position regarding whether or not California's GHG standards are preempted under EPCA.

Key agency documents and even AB 1493 itself imply that motor vehicle greenhouse gas emission standards and fuel economy standards are closely related. EPA and NHTSA acknowledge in their May 2010 Tailpipe Rule that no commercially available technologies exist to capture or filter out carbon dioxide (CO2) emissions from motor vehicles. Consequently, the only way to decrease CO2 per mile is to reduce fuel consumption per mile -- that is, increase fuel economy. Carbon dioxide constitutes 94.9% of vehicular greenhouse gas emissions, and "there is a single pool of technologies ... that reduce fuel consumption and thereby CO2 emissions as well." What this analysis tells me is that greenhouse gas motor vehicle emission standards inescapably and primarily regulate fuel economy. Do you agree?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Supreme Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

The framework document for the Obama administration's model year 2017-2025 fuel economy program, the September 2010 Interim Joint Technical Assessment Report published by the EPA, NHTSA, and the CARB, considers four fuel economy standards, ranging from 47 mpg to 62 mpg. Each is the simple reciprocal of an associated CO2 emission reduction scenario. The 54.5 mpg standard for model year 2025, approved by the White House in August 2012, is a negotiated compromise between the 4% per year (51 mpg) and 5% per year (56 mpg) CO2 reduction scenarios. If fuel economy standards derive mathematically from CO2 emission reduction scenarios, and CO2 accounts for 94.9% of all greenhouse gas emissions from motor vehicles, are not the two types of standards related?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

Nearly all of CARB's recommended technologies for reducing greenhouse gas emissions (Table 5.2-3 in CARB's 2004 Staff Report on options for implementing AB 1493) were previously recommended in a 2002 National Research Council study on fuel economy (Tables 3-1, 3-2). CARB proposes a few additional options, but each is a fuel-saving technology, not an emissions-control technology. These facts tell me that greenhouse gas emission standards inescapably and primarily regulate fuel economy. What conclusion do you draw?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

How does the "national" program created in the wake of this backroom deal comport with congressional intent? Under the statutory scheme Congress created, one agency – NHTSA – to regulate fuel economy under one statute – EPCA as amended by the Energy Independence and Security Act (EISA) – through one set of rules – corporate average fuel economy. Today, three agencies – NHTSA, the EPA, and CARB – make fuel economy policy under three statutes – EPCA, the Clean Air Act, and AB 1493 – through three sets of regulations. Where does EPCA as amended authorize this triplification of fuel economy regulation?

In *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy and concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." The National Program approach has garnered widespread support from a broad range of stakeholders including the automobile industry, for this joint, harmonized effort.

49 U.S.C. § 32919 says: "When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards." Yet holding out the threat of California setting greenhouse gas standards that were very clearly "related to fuel economy standards" was almost certainly at the heart of what went on in that secret negotiations. Two questions: Are vehicle greenhouse gas regulations wholly unrelated to fuel economy? If not, how can we have any confidence that you won't try to sidestep clear statutory limits on your authority as administrator?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." As to your second question, let me assure you that I am committed to following the requirements of the law.

Energy Reliability:

Natural Gas v. Coal

Since 2010 demand for natural gas has outpaced the delivery capacity of natural gas infrastructure. While coal plants keep a pile of coal on site for generation, gas plants tend to receive fuel as it is needed. During severe weather conditions -whether cold, hot or storms – there is great value in a "coal pile" that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not be closed – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix as an option for future needs. Recent experience in New England has shown that electric reliability is challenged during these weather related events. Electricity prices in New England were four to eight times higher than normal during a recent snowstorm as the region's overwhelming reliance on natural gas for power collided with a surge in demand for heating. Are you concerned that a major emergency back-up resource – the coal pile – will not be available in future weather events/emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

Are you concerned that regions of the country, like New England that rely on a single fuel source for the bulk of its power leave the region open to more supply and price disruptions versus a region with a diverse fuel mix?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. The agency has conducted detailed analysis to support its actions. These analyses project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

During extreme weather conditions – whether cold, hot or hurricane – there is great value in a "coal pile" that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during

exactly these weather related events. Are you concerned that a major emergency back-up resource– that "coal pile" – will not be available in future weather emergencies?
EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. The agency has conducted detailed analysis to support its actions. These analyses project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.
How many electricity reliability experts are on EPA's staff in the Office of Air and Radiation? In the Agency as a whole?
EPA has significant expertise with regard to analysis of the effects of environmental regulation on the power sector, and has examined the impact of agency rules on resource adequacy and the reliable operation of the sector. In addition, EPA has worked closely with a range of entities directly charged with reliability responsibilities, including DOE and FERC as well as state regulatory authorities and grid planning authorities, to help ensure that EPA rules are developed and implemented in a manner consistent with maintaining electric reliability.

26. Inhofe 26. Did EPA perform a robust analysis on the true cost of a long term switch to natural gas powered electric generation, as the rule assumes?
Yes. Moving forward, EPA predicts a mix of coal and natural gas-powered electric generation. EPA has conducted a series of sensitivity analyses to further examine the role that natural gas prices could play in the future choices of new power plants. The analyses support the conclusion that new conventional coal-fired plants, without CCS technology, are not likely to be built under a wide range of natural gas prices, even prices considerably higher than today's prices. Other independent analyses, like the Energy Information Administration's Annual Energy Outlook, support this conclusion. Even with considerably higher prices of natural gas and increased future energy demand, EPA and EIA analyses project that new coal plants will not be economic relative to other technologies in 2020.

32. Inhofe 32. We have heard people say, on many occasions, that this proposed rule represents the first time that EPA has proposed a new source performance standard for the electricity generation sector without subcategorizing by fuel source, thereby pitting one source against another. For example, Phase I and Phase II of the Acid Rain Program utilized separate categories for reducing sulfur dioxide and nitrogen oxides. The recently-finalized Utility MACT Rule did the same thing. Considering the differences between coal and natural gas on greenhouse gas emissions, and carbon capture and sequestration technology is not commercially available, why would EPA intentionally put coal into such an untenable position?
EPA has previously set an NSPS for the electricity generation sector without subcategorizing by fuel source. The 1998 utility boiler NSPS for NOx is an example of such a fuel neutral standard. The agency is

still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

CCS:

In March of 2012, EPA proposed New Source Performance Standards (NSPS) for CO2 for new coal, oil and natural-gas fired power plants. As proposed, the regulation would effectively prohibit the construction of new coal fired power plants.

EPA's proposal for new power plants abandons decades of precedence under the Clean Air Act (CAA) by setting one standard for all fuel types used in electricity generation. Historically, EPA considered each fuel type in a separate category with a separate standard. In the proposal all the fuel choices (coal, oil, and natural gas) are included in one overarching category/standard. The standard is that for natural gas, which in reality will be impossible for coal and oil to meet. In other words, the required "best demonstrated technology" for all categories to achieve the emission limitation is a natural gas combined cycle plant. New coal fired power plants would have to utilize carbon capture and storage (CCS) technologies that currently do not exist.

EPA makes several statements and assumptions regarding CCS in the NSPS proposal including that new coal fired units could comply with the rule through a 30 year averaging option that would allow them to deploy CCS in 11th year of operation and average emissions over a 30 year span.Is CCS commercially feasible today?

CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale.

Is there a legal and regulatory framework available to handle the sequestration of CO2 captured through CCS? Is there liability and insurance framework in place?

For over 5 years, EPA has worked to establish a regulatory framework under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) to facilitate CCS deployment. Under SDWA and through the Underground Injection Control Program, EPA established minimum Federal requirements to ensure that geologic sequestration wells are appropriately constructed, tested, monitored, and closed to ensure protection of drinking water. Under the CAA and through the Greenhouse Gas Reporting Program, EPA outlined requirements for quantifying the amount of CO2 captured and geologically sequestered. With respect to liability and insurance, the 2010 Interagency Task Force on Carbon Capture and Storage found that existing mechanisms related to long-term liability could be adequate to facilitate the initial commercial-scale CCS projects, and projects have been proceeding under existing laws.

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30

year span: While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today?

In the proposed carbon pollution standards for new power plants, EPA did not declare that CCS is not BSER. The agency is still considering a wide range of comments on the proposal, including on this issue, and we will of course take these comments into consideration in taking any final action on the proposal. The EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As explained in response to other questions, EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

Are there any CCS plants that are deployed and demonstrated on a large scale?

A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California. In addition, for more than a decade, Dakota Gasification Company's Great Plains Synfuels Plant in Bismarck, North Dakota, has been capturing and storing approximately 1.6 million tonnes of CO2 per year.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

Is there an existing and robust transportation pipeline system available to handle the CO2 captured by CCS?

Carbon dioxide has been transported via pipelines in the U.S. for nearly 40 years. Approximately 50 million metric tons of CO2 are transported each year through 3,600 miles of pipelines. [77 FR 22392]

Similarly, is there a legal and regulatory framework available to handle the sequestration of CO2 captured through CCS? Is there a liability and insurance framework in place?

For over five years, EPA has worked to establish a regulatory framework under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) to facilitate CCS deployment. Under SDWA and through the Underground Injection Control Program, EPA established minimum Federal requirements to ensure that geologic sequestration wells are appropriately constructed, tested, monitored, and closed to ensure protection of drinking water. Under the CAA and through the Greenhouse Gas Reporting Program, EPA outlined requirements for quantifying the amount of CO2 captured and geologically sequestered. With respect to liability and insurance, the 2010 Interagency Task Force on Carbon Capture and Storage found

that existing mechanisms related to long-term liability could be adequate to facilitate the initial commercial-scale CCS projects, and projects have been proceeding under existing laws.

In what year do you expect CCS to be commercially viable, given current funding?

EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in response to one of your other questions, a number of full scale commercial projects are currently in development (please see response to question 76 for more information).

Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

On March 27, 2012, EPA proposed a rule that would set a limit on the amount of carbon dioxide that new power plants could emit. In this proposal, EPA recognized that coal-fired power plants will not be able to meet this limit unless they install carbon capture and storage – a technology that EPA admits is not commercially available and, according to EPA, would almost double the cost of building a new coal-fired power plant. Do you agree that this rule, if finalized as proposed, will effectively ban new coal-fired power plants in the U.S.?

As EPA explained in the preamble to the proposed carbon pollution standard for new power plants, it was not the agency's intent to propose a rule that resulted in a de facto ban on the building of new coal-fired power plants nor does EPA believe that would be the effect of the proposed rule. The proposal reflected, instead, EPA's analysis and understanding of new electricity generation capacity expected to be built in the foreseeable future. Further, the proposal offered for comment an alternative compliance pathway for new coal-fired generation that included substantial flexibility for new coal-fired facilities. Finally, commenters raised this and related issues regarding the impact of the proposed standard on prospective coal-fired sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule.

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS

rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span:

35. Inhofe 35. While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today? Are there any CCS plants that are deployed and demonstrated on a large scale? In what year do you expect CCS to be commercially viable, given current funding?

In the NSPS proposal, EPA did not state or propose to determine that CCS is not BSER. The agency is still considering a wide range of comments on this issue. EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development.

Tier 3:

Your Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Further, in the Regulatory Impact Analysis (RIA) for your proposed rule you are also assuming that E85 use will be negligible in 2017 to 2030. Doesn't this just affirm that your operating assumption is that consumers will be left with no choice but to use E15 whether they want to or not?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't this mean that EPA doesn't consider E85 a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as we conduct assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements. Assumptions with

respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA has touted national uniformity in many areas of mobile source regulation, why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time we are seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15 as the certification fuel, the agency intends to allow use of E10 as the certification test fuel through 2019.

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

Does the just released Tier III rule also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the Tier 3 proposed rule relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively, and will use these in future EPA analyses such as that supporting the Tier 3 final rule.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from 85

refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

Why did EPA withhold the findings of its backsliding study until the Tier 3 rule was released?

The proposed Tier 3 rule is independent of the anti-backsliding study required by sections 211(q) and 211(v) of the Clean Air Act. EPA is currently conducting analysis and peer review for the anti-backsliding study and is not currently prepared to release it.

Generally, EPA shows the results of its studies, but withholds the modeling. Why is this a common practice of EPA?

It is unclear to which modeling this question refers. When EPA runs the IPM model for analysis of power sector rules, for example, it places model output in the docket for public review.

Last year, EPA identified 36 marginal ozone nonattainment areas that must attain by 2015. This means 3 clean summers, 2013 through 2015. Tier 3 will not be effective during this period. There are not many areas with attainment dates after 2015. Do they all need Tier 3? Do we need a national Tier 3 program to help a few areas?

Reductions in motor vehicle emissions from the proposed Tier 3 standards would improve air quality across the country, helping areas to attain and maintain the NAAQS. The proposed standards would significantly decrease ambient concentrations of harmful pollutants such as ozone, PM2.5 and air toxics by 2030, and would immediately reduce ozone in 2017 when the proposed sulfur controls take effect. NOX emissions would be reduced by about 284,000 tons, or about 8 % of emissions from on-highway vehicles, in 2017 alone. In 2030, when Tier 3 vehicles would make up the majority of the fleet, NOX and VOC emissions from on-highway vehicles would be reduced by about 525,000 tons and 226,000 tons, respectively, or about 25%. By 2050, when Tier 3 vehicles would make up almost the entire fleet, NOX and VOC would be reduced by nearly 40% for on-highway vehicles.

EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver

limit. At the same time EPA is are seeking comment on whether we should finalize E10 for certification test fuel.

EPA has been working on a Tier 3 rule for some time. When was the decision made to propose E15 as a certification fuel? Please provide the committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of proposing E15 as a certification fuel prior to the release of the proposed rule.

Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff inform me that the appropriate protocol is to make such a request through a separate letter to the agency. I will ask that the agency respond to any such request.

The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that "better align(s) with the current and projected in-use fuel"?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel.

Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?

Selecting E10 as the certification fuel would not impact the exhaust emissions benefits of the proposed Tier 3 rule. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA

will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?

The proposed Tier 3 standards would result in very large emission reductions from both new and existing vehicles. The additional gasoline hydrotreating would also cause a relatively small increase in greenhouse gas (GHG) emissions at the refinery due to the additional gasoline hydrotreating. EPA analyzed these impacts in detail using our refinery-by-refinery analysis. The relatively small increase in GHG emissions from refining would be offset though reductions in vehicle emissions of GHG pollutants (methane and N2O) from the improved operation of the vehicle catalysts.

1. I would like to thank you for all of the hard work that you put into the proposed Tier 3 rule to reduce tailpipe emissions. I believe that this is a good rule, and will result in significant health and air quality benefits for the American people by reducing the amount of sulfur emissions released into the environment. Regions across my State of New York are expected to see ozone reductions by 2030 because of Tier 3.

Can you discuss for the Committee some of the positive health and environmental benefits that we could be expected to see by implementing the Tier 3 rule by the end of this year?

Response: By 2030, EPA estimates that the proposed cleaner fuels and cars program will annually prevent up to 2,400 premature deaths, 23,000 cases of respiratory ailments in children, 3,200 hospital admissions and asthma-related emergency room visits, and 1.8 million lost school days, work days and days when activities would be restricted due to air pollution. Total estimated health-related benefits in 2030 for the proposal are between $8 and $23 billion annually.

The proposal would substantially reduce emissions of a range of harmful pollutants that can cause premature death and respiratory illnesses. This includes reducing smog-forming volatile organic compounds and nitrogen oxides by 80 percent, establishing a 70 percent tighter particulate matter standard, and reducing fuel vapor emissions to near zero. The proposal would also reduce vehicle emissions of toxic air pollutants, such as benzene and 1,3-butadiene, by up to 40 percent.

316(b)

In EPA's proposed 316(b) rule EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific

relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, would be willing to look closely at flexibilities for compliance with the impingement standard.

In EPA's proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new facilities several years ago, thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

Response: My understanding is that EPA explicitly discussed the proposed 316(b) rule's definition of closed cycle cooling in the NODA published in the Federal Register on June 11, 2012. If confirmed, I look forward to working towards an appropriate definition for closed cycle systems.

How does EPA intend to utilize its final stated preference report? If EPA intends to use it in the final rule, what process will EPA undergo to address concerns raised by stakeholders about the applicability and appropriateness of its use?

Response: It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) rule's stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

55. Concerns about EPA's willingness-to-pay survey – EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?

Response: It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) stated preference study as well as concerns raised by stakeholders in comments. EPA would need to

complete that review before it can make any decisions about applicability and appropriateness of the study results.

56. In October 2010, NERC issued a report concluding that a one-size-fits-all 316(b) approach could have economic impacts nearly three times greater than the combination of the Cross State Air Pollution Rule and the Mercury and Air Toxis Standards. See NERC, 2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulations (October 2010). How will EPA ensure that its 316(b) rulemaking will not precipitate the reliability and cost implications discussed in the NERC report?

Response: NERC's hypothetical analysis assumed that states will choose to mandate that all affected plants install cooling towers, even if this leads to plant retirements causing reliability problems. EPA did not propose a "one-size fits" all approach for entrainment for its 316(b) rule, instead EPA proposed a site-specific approach to entrainment. My understanding is that EPA rejected a uniform closed-cycle cooling requirement based on consideration of possible local energy reliability concerns, air quality issues, geographical constraints on the installation of closed-cycle cooling and facilities with a limited remaining useful plant life.

22. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

28. I understand EPA is in the process of developing a Section 316(b) rule.

a. Do you support a technology-based standard for the Section 316(b) rule?

b. I am told that the EPA Water Office conducted a willingness-to-pay survey for the 316(b) rule to monetize benefits, noting that this methodology is widely used and supported by the academic literature. It is my understanding that this literature specifies that a given survey should focus on one or two rare species and be geographically restricted to the area where these species live. It is my understanding that the EPA survey, on the other hand, involves all species in the waters of the United States nationwide, including common species with a commercial market. When the 316(b) survey results are published, will EPA specify that its survey was not conducted according to the accepted methodology?

c. Will states be required to use EPA's survey results in 316(b) BTA [best technology available] decision-making?

Response (to a through c): It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) stated preference study as well as concerns raised by stakeholders in comments. EPA

would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

4. If confirmed as EPA Administrator, you will likely oversee the finalization of new standards under Section 316(b) of the Clean Water Act regarding the best technology available for the location, design, construction and capacity of cooling water intake structures. Many of the constituents that will be impacted by this rule are similar to the ones you have dealt with in your days as Assistant Administrator for Air. As you know from experience, facilities in the same source category can be constructed very differently depending on various factors such as location and age – making it hard at times to have a one-size-fits-all approach. The 316(b) rule crosses over so many different types of source categories – the variants between facilities are likely to be exponential – which makes a blanketed approach even less practical. If confirmed, do I have your assurances that when issuing the 316(b) rule you will consider flexibilities that will allow facility owners to comply with a rule in a way that makes it as economical as possible for that facility, while still putting in standards that protect our water wildlife? When determining the cost-benefit ratio for new 316(b) regulations or other rules coming before you, do I have your assurances that you will use the best science available to determine both costs and benefits?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

Employment and EPA regulations

Has EPA ever investigated a plant closure or reduction in employment to see what role, if any, the administration or enforcement of the Clean Air Act played?

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee allegations that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. EPA does perform detailed regulatory impact analyses (RIAs) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule. The agency could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure.

What assurances can you give us that your agency will not continue to stand in the way of the new energy related jobs and the creation of more domestic energy here at home?

Response: I agree with President Obama that we need an all of the above energy strategy to utilize our domestic energy sources to achieve energy independence in a manner that protects our resources, our health and our environment.

Has EPA done any studies on the health impacts of job losses?

Response: I'm concerned about any American involuntarily displaced from a job, for whatever reason, and the impacts that can have on a family. However, I also understand that the peer-reviewed literature shows the effect of environmental regulation on jobs is far smaller than the exaggerated claims we often hear. The most convincing research out there shows that air pollution is a real threat to Americans' health and that claims of "job killing" regulations aren't supported by the evidence.

EPA performs detailed regulatory impact analyses (RIA) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule.

The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

Your question appears to refer to DOE's 2011 study assessing whether the congressionally mandated renewable fuel standard program would impose a disproportionate economic hardship on small refineries, such that these refineries should receive an exemption under that program. My staff informs me that while this study assessed the potential need for extending relief from the RFS program for small refineries, it did not analyze the impacts of any other EPA regulations or reach the conclusion reflected in your question. Rather, refinery closures over the past three decades have been driven primarily by market factors unrelated to environmental regulation.

Section 321 of the Clean Air Act (42 U.S.C. § 7621) requires the EPA Administrator to "conduct continuing evaluations of potential loss or shifts of employment" which may result from the administration or enforcement of regulations issued under the Act, "including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." Most other major environmental statutes contain similar language to Section 321.

17. Inhofe 17. Do you believe the Agency has an obligation to conduct continuing evaluations of the impact its regulations could have on jobs?

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee concerns that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. EPA has found no records indicating that any Administration since 1977 has interpreted section

321 to require job impacts analysis for rulemaking actions. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

18. Inhofe 18. Has EPA done a Section 321 jobs analysis for any of the major regulations it has proposed or finalized since you took office in 2009?

EPA has found no records indicating that any Administration since passage of the 1977 Amendments has interpreted CAA section 321 as requiring jobs analysis of rulemaking actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

19. Inhofe 19. EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls? Do you believe this analysis could be covered under the Section 321 review requirement of the Clean Air Act?

EPA has found no records to indicate that CAA section 321, since its inclusion in the 1977 amendments, has been interpreted by any Administration to provide for job impacts analysis of rulemakings. Section 321 does provide a mechanism for EPA investigation of particular claims of job loss related to plant closure or layoffs in response to environmental regulation, and this would presumably include plant closures resulting from alleged environmental regulation-induced overseas relocation. However, EPA could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure, including overseas relocation. This is not surprising since data from the Bureau of Labor Statistics consistently indicate that labor markets are primarily influenced by other, larger factors including routine business cycles, changes in production technology, and the state of the overall economy. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

28. In your personal meeting with me, you often sympathized with the concerns I have regarding the impact of EPA regulations on jobs. However, you also expressed in many instances that you would look for flexibility, but you were bound by agency processes, and law. If you are concerned about the impact of EPA regulations on jobs and communities, I believe you should seek the flexibility you need from Congress through policy recommendations to help save these communities and jobs. What specific legislative changes would you recommend to provide flexibility to protect workers, families and communities from job losses that might occur as a result of EPA's regulations?

Response: As you note in your question, I am very sensitive to the state of the economy and to the impacts of EPA regulation on jobs. If confirmed, I would continue to work hard to seek opportunities to find more cost-effective approaches to protecting human health and the environment.

29. Some in EPA and outside activist groups have been critical of the work of the Small Business Administration's Office of Advocacy in playing a role in the evaluation EPA regulations to protect small business. If confirmed, what steps will you take to work with the Small Business Administration's Office of Advocacy to ensure that their role is respected and maintained?

Response: I believe the Small Business Administration has an important role in the evaluation of regulations. If confirmed, I will continue to work to ensure that EPA regulations are developed in a common sense manner without unnecessarily harming small businesses.

1. Over-regulation harms American workers. Today, the United States has 3 million fewer jobs than in January 2008.

(a) Do you commit to do everything within your authority as Administrator of the EPA to ensure that the United States economy is more, not less, productive?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

(b) Do you commit to do everything within your authority as Administrator of the EPA to ensure that more, not fewer, jobs are available for American workers?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

Wicker 2. NAAQS regulations are purely to benefit public health and not economic cost, but has the EPA considered how health is negatively impacted by the job losses caused by these regulations?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's mission is protecting Americans from pollution and its adverse health and environmental effects, including through implementation of Clean Air Act's requirements in accordance with the law and the best available science. Congress mandated that the NAAQS be set based on a scientific assessment of the effects of relevant air pollution on public health and welfare. The air quality standards must be set based on science without regard to costs of implementing pollution controls to achieve the standards. Costs are considered during implementation of the standards.

O & G Issues

Recently, the U.S. Court of Appeals for the Sixth Circuit rejected EPA's interpretation with respect to aggregation, where EPA claimed that over a hundred gas wells and a processing plant, spread out over 43 square miles, were contiguous or adjacent to each other. Despite the court's conclusion, EPA issued a December 2012 memo declaring that it would ignore the Sixth Circuit's case in most states. Why does EPA insist in pursuing an interpretation of "aggregation" that is not in the regulations, that contradicts the common meaning of "contiguous and adjacent," and flouts the decision of a court of appeals?

EPA believes that it is essential to preserve flexibility in determining the scope of a source based on a case-by-case analysis of the three factors. EPA believes its historical interpretation of the "contiguous or adjacent" language is a reasonable interpretation of that phrase in the regulations. It is important to understand that EPA and states have made source determinations, at the request of the source, that aggregate smaller facilities into one larger one. By doing so, the source gains important flexibility to "net" its emissions over the larger facility, reducing or shuttering operations in one area while increasing others, without triggering permitting. For example, the State of Pennsylvania made a determination in 2012 to "aggregate" two refineries in Philadelphia which provided that source the flexibility it needed to remain operational. In another case, EPA Region 2 agreed with a request from an aluminum plant to consider two (formerly separate) plants as one (http://www.epa.gov/region07/air/nsr/nsrmemos/alcoany.pdf). In other cases, EPA has applied the three factor test and determined that adjacent sources are not part of the same stationary source, because while close together, they were not interrelated (http://www.epa.gov/region07/air/nsr/nsrmemos/we1999.pdf).

If confirmed as EPA Administrator, will you commit to adopt the common sense and legally correct reasoning of the Sixth Circuit across the nation? Why shouldn't a common sense, legally defensible, dictionary definition of "adjacent" apply throughout the country?

Response: Outside the 6th Circuit, rather than using a one-size-fits-all approach in determining which nearby, commonly-controlled emitting units should be treated as one source, EPA will continue to apply the agency's decades-old approach of making case-by-case determinations based on a review of each facility's specific situation, including the relationship between the activities at the units. The agency is concerned that national application of the 6th Circuit decision would require EPA to treat as one source facilities that are nearby and under common control, even when their activities are completely unrelated.

As part of its proposed air emission standards for hydraulically fractured oil and gas wells, EPA declined to directly regulate emissions of methane but instead mandated "green completions" of wells to control volatile organic compound emissions. It appears -- based on your own testimony stating that this rule could end up "reducing up to 290,000 tons of harmful volatile organic compound emissions and a side-benefit of reducing methane emissions equivalent to 33 million metric tons of carbon dioxide" - that EPA's decision to mandate "green completions" was in effect an effort to control methane emissions. Do you agree with this assertion? Is it typical for an EPA rules stated benefit to be vastly dwarfed by a "side-benefit?"

The oil and gas standards to which your question refers regulate emissions of volatile organic compounds (VOCs) from more than 11,000 new hydraulically fractured gas wells each year – achieving a 95 percent reduction in such emissions. These reductions are achieved through the use of a proven process – known as reduced emissions completions or "green completions" – to capture natural gas that currently escapes to the air. This process has the co-benefit of substantially reducing methane emissions, as well as reducing waste of natural gas – yielding substantial cost savings. Although the rule does not target methane emissions, it is appropriate and beneficial to account for this co-benefit in analyzing and describing the rule.

Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?

EPA based all provisions of the Oil and Natural Gas NSPS on the best available data sources and on proven technology that will result in net cost savings to operators through recovery of natural gas otherwise lost during well completions. A variety of data sources informed development of the rule, including data from the U.S. greenhouse gas inventory, Natural Gas STAR program, State programs, and other published studies and materials. In addition, during an extended comment period, several commenters provided supplemental data for the agency's consideration. The agency considered all of this for the final rule.

As you are aware, certain outside groups have filed a lawsuit challenging EPA's decision not to explicitly regulate emissions of methane. Can you commit today that you will vigorously defend your rule against this challenge and not enter into a quick settlement that will require EPA to regulate emissions of methane?

EPA will evaluate the claims but at this time cannot predetermine how the agency will respond.

The Clean Air Act requires facilities to obtain a Federal Operating Permit for air emissions from the EPA if they emit 100 tons or more of any criteria pollutant per year. Properties that are truly next to one another are generally considered one facility. But if one owner has multiple facilities spread out over a large area, say 42 square miles, the facilities are considered separate. In 2007, the Bush Administration issued a memo applying this policy in the oil and gas industry, but you overturned this memo in 2009 and instead issued one that would combine the emissions of wells that are spread over a large area, triggering significantly greater permitting requirements. When this was challenged in the 6th Circuit last year, the court agreed that "adjacent" is a plain word with plain meaning, but you have not yet applied the decision outside that circuit. Also, the states have regulations that adequately address the aggregation matter, which regulations have been reviewed and found acceptable by the state regulatory bodies as well as the stakeholder groups.

10. EPA lost this case because the court found it misinterpreted the plain meaning of the law. Will you commit to apply the 6th Circuit Court decision to the rest of the country?

Response: Outside the 6th Circuit, rather than using a one-size-fits-all approach in determining which nearby, commonly-controlled emitting units should be treated as one source, EPA will continue to apply the agency's decades-old approach of making case-by-case determinations based on a review of each facility's specific situation, including the relationship between the activities at the units. The agency is concerned that national application of the 6th Circuit decision would require EPA to treat as one source facilities that are nearby and under common control, even when their activities are completely unrelated.

85. Inhofe 85. Testifying before Congress in 2011, EPA Administrator Lisa Jackson said that natural gas creates less air pollution than other fossil fuels, "so increasing America's natural gas production is a good thing." Do you agree with this statement and could you please explain why or why not?

As I stated in my opening remarks at my nomination hearing, during these past four years, one of the most dramatic and potentially beneficial changes that our energy markets and overall economy has seen has come in the steep growth in the production and use of natural gas. I share the President's view that we must have an all of the above strategy to achieve energy independence, and a clean energy future.

Crapo 8. A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by

natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability (via infrastructure such as pipelines and permitting timelines) when you issued the utility MATS rule, CASPR and the PM NAAQS and NSPS for GHGs?
Electric utilities and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. There are adequate provisions in EPA regulations to allow for planning flexibility in response to reliability challenges. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the future and that the full range of electric generating resources will be maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses.

LNG:
In November 2012, EPA's Region 3 wrote a letter to the Federal Energy Regulatory Commission (FERC) recommending that FERC and DOE expand their NEPA analysis of LNG export facilities to include a study of the indirect and cumulative environmental impacts of exporting LNG. Do FERC and DOE have the sole statutory and regulatory authority to review and approve LNG export applications?
Response: I am not familiar with the details of LNG export applications, but it is my understanding that FERC and DOE are the two Agencies with approval authority for export facility applications.
What is your view of EPA's role in the LNG export application process?
Response: Again, I am not familiar with the details of the LNG export application process; however, it is my understanding that as part of the process under the National Environmental Policy Act, EPA can offer comments to FERC on the scope of the environmental review.
What "indirect" environmental impacts might result from LNG exports?
Response: I am not familiar enough with the process of LNG exports or with any specific proposals to offer concrete thoughts on what might constitute direct or indirect effects of any particular project. If confirmed, I would work with the Agency and with the Administration to make an appropriate determination on what, if any, environmental considerations might be appropriate to consider through the FERC led NEPA process.

Some environmental organizations filed comments on the DOE economic impact study of LNG exports that argued that DOE should examine the upstream environmental impacts of the natural gas that supplies the gas to the LNG export facilities. EPA did not file any comments on the DOE study and did not take the opportunity to weigh in on the point raised by the environmental organizations. Two regional EPA offices have filed comments on LNG exports projects calling for an EIS that assesses the upstream impact of the natural gas to the LNG export facility – basically taking the position of the environmental activists.

84. As EPA Administrator would you oppose DOE LNG export approvals if DOE did not change its established practice of deferring to FERC, as the lead NEPA agency, given that FERC has long-established practices of looking at a project's direct environmental impact but not the upstream impacts of those projects?
Response: I am not familiar with the details of how the LNG export approval process works. It is my general understanding that EPA has the ability to submit comments to other agencies, such as FERC, as part of the NEPA process. If confirmed, I can examine this issue more thoroughly.

SSM Policy

In February, EPA published the startup, shutdown, or malfunction (SSM) rule, which will force state officials in 36 states to come back to EPA for approval of provisions of their implementation plans. EPA has been crafting this policy since reaching an agreement with the Sierra Club in connection with litigation in November of 2011. How many officials from the states affected by the February SIP call did you meet with prior to announcing the Call? When did you meet with them?
First, EPA notes that its SSM policy has been publicly stated since 1982. That SSM SIP policy has been restated and refined publicly in guidance and through actions on specific SIP provisions since then, meaning EPA's approach to SIP provisions related to SSM emissions is not new to either states or sources. Over the past year, the Sierra Club's petition for rulemaking, EPA's agreement with the Sierra Club, and EPA's progress in preparing its proposed rulemaking have been covered by the press and also discussed in national meetings and telephone calls with state air agencies. Because the proposed rulemaking addresses EPA's prior actions to approve specific provisions in certain states' SIPs, the proposal is directed more to the legality of the provisions (focusing on EPA) rather than on implementation of the provisions (focusing on states).

62. Inhofe 62. EPA recently proposed to disapprove provisions in 36 state SIPs based on a change in EPA policy in response to a petition for rulemaking. Were the existing SIP provisions in question legally approved and promulgated by EPA and the states?
a. What is the legal basis for declaring a validly approved SIP provision invalid after the fact?
b. Has EPA done any analysis to determine if the SIP provisions in question are threatening attaining the NAAQS?
c. Without such an analysis, how can EPA determine that such SIP provisions are "substantially inadequate" for purposes of the CAA?
d. Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?
The bulk of the proposed action is not based on any change in EPA policy. The majority of the existing SIP provisions at issue were adopted by the states and approved by EPA, mostly before 1982. EPA realized and announced in 1982 that some SIP actions taken in the early phase of implementing the CAA were simply incorrect. In the SSM rulemaking, EPA is proposing to clarify and update the SSM policy and to correct mistakes we have generally recognized and communicated to the states for over 30 years. To evaluate these SIP provisions, EPA is using the public notice-and-comment rulemaking process explicitly set out in the Clean Air Act for addressing existing deficientprovisions in SIPs. For each state, there will

be another notice-and-comment rulemaking to approve the SIP revisions that are submitted in response to the SIP call.

With regard to your more specific questions:

a. CAA section 110(k)(5) provides the legal basis for EPA to call for a SIP revision whenever the Administrator finds that the SIP for an area is substantially inadequate to attain or maintain a NAAQS, to mitigate interstate pollutant transport adequately, or to otherwise comply with any requirement of the CAA.

b. EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. EPA's proposal that the affected SIP provisions are substantially inadequate is based upon the concern that the provisions in question do not meet legal requirements of the CAA.

c. EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state, including an explanation of the agency's reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA.

d. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with CAA requirements. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "*What are potential impacts on affected states and sources?*" at 78 FR 12467.

e. With respect to the SSM issue, should EPA analyze whether the nationwide costs to impacted industries of the action are sufficient to trigger the necessity of OMB review?

The SIP call would leave to states the choice of how to revise their SIP provisions in question to make them consistent with Clean Air Act (CAA) requirements, and states have substantial discretion when revising their SIPs as to treatment of excess emissions from sources during SSM events. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events consistent with CAA requirements and how the state chooses to revise the SIP to address excess emissions during SSM events. Analysis of impacts to emissions sources as a result of removing SSM exemptions from a SIP would appropriately be conducted as part of the state's process of revising its SIP.

f. With respect to the SSM issue, should EPA be required to show that air quality is harmed by SSM excursions before calling for States to revise their SIPs?

The Clean Air Act requires continuous compliance with emission limitations by sources, including during periods of startup, shutdown, and malfunction. The law requires that EPA disapprove (or find to be substantially inadequate) SIPs with provisions that are inconsistent with this fundamental requirement of the Clean Air Act. That said, EPA notes that an impermissible SIP provision could have adverse impacts, such as by interfering with attainment and maintenance of the NAAQS, protection of PSD increments, protection of visibility, or meeting other Clean Air Act requirements. For citations to court

decisions supporting EPA's position, see EPA's February 2013 proposed rulemaking (footnote 22, 78 FR at 12470) and EPA's supporting "Statutory, Regulatory, and Policy Context for this Rulemaking" memorandum in the rulemaking docket (see pages 17 and 21).

7. Another recent example of the "sue and settle" problem involves EPA's recent decision to propose to eliminate a 40-year old regulatory exemption for emissions during periods of startup, shutdown, and malfunction (SSM). Senator Vitter and I recently wrote you about this topic, and on the issue of EPA's failure to defend the law, our letter stated: "In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction ("SSM"). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA's own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency's sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch's solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstance under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency."

(a) Please list all instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a law or regulation that had been in effect before January 20, 2009.

Response: I am aware of some instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a CAA-related regulation that had been in effect before January 20, 2009. For example, Navistar brought a case in the D.C. Circuit Court challenging a 2001 final rule that promulgated standards for new heavy-duty engines and vehicles. EPA settled that lawsuit by agreeing to a hold a public process to reexamine our policies regarding the use of SCR technology (a type of NOx control) in future model year engines. However, I am not aware of every instance in which EPA has entered into such an agreement. If confirmed, I can examine this issue more thoroughly.

Regional Haze

EPA entered into a settlement agreement with WildEarth Guardians and the Sierra Club on regional haze. The states have since insisted that under the Clean Air Act, they should be the lead regulators on this matter. Did EPA consult with the affected states before the agency settled with the Sierra Club and WildEarth Guardians?

Response: Although the Clean Air Act gives States the lead in addressing regional haze, if States do not take action consistent with the Act on a timely basis, the Act obligates EPA to take action. EPA was sued to set new deadlines because States and EPA had not taken required actions. We published the proposed settlement agreement in the Federal Register and received and considered comment on it from the States and other interested members of the public before finalizing the agreement.

At the hearing, in response to questions on regional haze, Ms. McCarthy stated that, "We worked very closely with States on regional haze issues, and we worked hard to make it a State implementation plan to the extent that we can." Yet, we know that EPA has rejected several state implementation plans. What are the limitations EPA faces that would lead the agency to reject a state implementation plan? If EPA is seeking to work with the states, why are these states currently suing EPA to challenge EPA's action on regional haze?

Response: EPA can only approve State implementation plans that are consistent with the Clean Air Act and our regulations. I am committed to working with States so that more of these plans can be approved and litigation can be avoided.

Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect do decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach and consultation with all affected Native American communities?

Yes. EPA has recently invited every tribe in Arizona, including the Navajo Nation, to formal tribal consultation in Phoenix on April 29, 2013. EPA is also available to hold additional consultation with

tribes. In addition, EPA intends to hold public hearings this summer in Page, Phoenix, and Tucson AZ as well as a location on the Navajo Nation and a location on or near the Hopi Tribe.

The Regional Haze program is purely for aesthetics, has nothing to do with public health, and was intended to improve visibility at national parks. States were given control by Congress to establish the emission standards and the appropriate controls for implementation. Your agency overruled Oklahoma's Regional Haze State Implementation Plan (SIP) following a Sue & Settle Consent Decree with environmental groups because you said Oklahoma's cost estimates were inaccurate. In response, EPA issued its own implementation plan that would cost $1.8 billion and would not have any more favorable impact on visibility than the SIP.

1. Inhofe 1. Did EPA do a technical, an economic, and a cost-benefit comparative analysis between Oklahoma's State Implementation Plan (SIP) that was overturned by EPA and the Federal Implementation Plan (FIP) that EPA imposed instead? If EPA performed any of those three analyses for either or both the SIP and the FIP, please provide them to me. If EPA did not perform any or all of those three analyses for the two plans, please explain why you did not do so.

EPA carefully assessed the costs and the visibility benefits associated with the controls in both Oklahoma's Regional Haze SIP and our FIP. The Clean Air Act and EPA's implementing regulations require that both the costs of controls and the visibility benefits be taken into account in making a determination of the appropriate controls. The agency took comment on our analyses before taking final action on our FIP for Oklahoma. The analysis can be accessed at http://www.regulations.gov/#!documentDetail;D=EPA-R06-OAR-2010-0190-0019.

2. Inhofe 2. Do you agree that Oklahoma's low-cost SIP is more cost effective than EPA's FIP? What is the comparative cost-benefit analyses of the SIP vs. the FIP? Are there any additional or greater visibility gains achievable by the FIP that are not attainable by the SIP?

EPA does not agree that Oklahoma's SIP is more cost-effective than our FIP. The agency's analysis of the costs of control indicated that the six coal-fired units in question could install air pollution controls at less than half the cost that Oklahoma estimated, while at the same time resulting in greater visibility benefits at several Class I areas than Oklahoma's plan. However, EPA has recently reached an agreement with the state and one of the companies affected by the FIP on an alternative pathway that the agency expects will be submitted by the state as a SIP to replace the FIP. EPA is also in negotiations with the remaining company about possible replacements for the FIP at one of its plants.

3. Inhofe 3. Did EPA use the Regional Haze program to force Oklahoma utilities to install scrubbers on coal fired utilities despite Oklahoma's equally effective, less expensive SIP?

EPA disagrees that Oklahoma's plan was equally effective, as explained in the answer to Question 2. EPA's FIP follows the requirements of the Regional Haze rule, which implements the requirements established by Congress in Sections 169A and 169B of the Clean Air Act. The FIP does not close off other paths toward compliance, as evidenced by our agreement on an alternative to the FIP controls with one of the companies involved and our continuing negotiations with the remaining company.

4. Inhofe 4. Did EPA alert the state of Oklahoma or utilities in the state prior to entering into a consent decree involving Oklahoma's SIP?
a. If EPA did, did EPA provide both the state and the utilities with an opportunity to participate in the settlement discussions?
b. If EPA did not, why not?
c. Do you believe EPA should allow states and affected utilities to participate in any negotiation process prior to a Consent Decree being agreed to that would affect the SIP, the state, and the state's utilities?

In keeping with the requirements of the Clean Air Act, the states and the utilities had an opportunity to comment on the proposed consent decree before EPA provided its final agreement and the consent decree was approved by the court. EPA recently has begun providing notices of intent to sue the agency on EPA's publicly available website, which will help to provide states and others notice of potential litigation that may affect their interests. See http://epa.gov/ogc/noi.html

5. Inhofe 5. Will you please provide me with all of the unredacted correspondence between EPA and the environmental groups regarding the Regional Haze program during your tenure at the Air Office?

I am informed by agency staff that the normal protocol for such a request for documents is to submit a separate letter to the agency, rather than through a question for the record. EPA will respond appropriately to any such request it receives.

6. Inhofe 6. Through the Consent Decree, did EPA intend to establish an unrealistically aggressive set of targets and timelines for approving State Implementation Plans to artificially constrain the amount of time available to work with states on procedural issues like cost estimates so that it could ultimately force a Federal Implementation Plan at a much greater cost?

EPA's efforts to work with the states on submitting SIPs are long-standing. At the time EPA negotiated the consent decrees for taking action on the regional haze plans, the deadline for submitting the state plans had passed by more than two years. In these negotiations, EPA sought to obtain a schedule that would allow EPA time to responsibly discharge its overdue mandatory duties under the CAA through notice-and-comment rulemaking. The agency was mindful that the plaintiffs had the option of seeking an even more expedited schedule from the court, and that there was a significant risk that that the court might establish a very aggressive schedule. In EPA's judgment, a court addressing the issue of an overdue mandatory duty by EPA would be unlikely to provide time for a second chance for a state to complete the planning obligation it has already failed to meet. Some states have been able to submit SIP updates as EPA was taking action on their original submissions, and the agency has been able to approve such updates in some cases. Where a federal plan has been established under this consent decree, it is still EPA's preference that it be replaced by an approvable state plan. EPA has sought, and mostly obtained, numerous extensions to the dates in the original consent decrees when EPA determined that additional time was needed; in most instances, these extensions have allowed the agency to consider additional information provided by the states.

7. Inhofe 7. Why did EPA decide to overrule Oklahoma's State Implementation Plan (SIP) and impose a FIP instead of working with the State to address whatever deficiencies EPA saw in the SIP's cost estimate?

The Agency disapproved Oklahoma's plan because Oklahoma's cost analysis for scrubbers did not follow the requirements outlined in the Regional Haze rule. EPA pointed out this concern while Oklahoma was still developing its SIP, but the state did not change its cost evaluation before submitting the SIP. Consequently, EPA disapproved Oklahoma's SIP, which triggered a legal obligation to issue a FIP in its place. While it is the agency's preference to allow states the opportunity to correct deficiencies in their SIPs, EPA was unable to negotiate enough time in the consent decree for Oklahoma to submit a new SIP with a corrected cost analysis. Nonetheless, EPA still prefers that the state replace the FIP with a SIP.

8. Inhofe 8. As Administrator, what will your primary objective be when implementing the Regional Haze program?

a. Will you assure me that EPA will make every conceivable effort to work with states to ensure that their SIPs are approved, and that FIPs will only be implemented once EPA has exhausted the Clean Air Act's cooperative federalism concepts and conclusively determines through a technical comparative analysis that the overruled SIP will not meet the visibility requirements outlined in the Regional Haze program?

b. Will you also ensure that any FIP is the least expensive option available to EPA to meet the minimum requirements of the Regional Haze law? Will you provide economic comparative analysis of the separate plans?

In general, it is my goal to work with the states as closely as possible and I will continue to look for opportunities to involve them in decision making that affects their interests. The states are required to submit their next full regional haze plans in 2018. I am committed to work with states to approve their SIPs.

9. Inhofe 9. In the CAA, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

"Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the standards. If EPA disapproves a plan for failing to meet the Act's requirements, or if a State fails to submit a plan in whole or in part, then the Act requires EPA to issue a federal plan for the State unless there is a timely correction of the deficiency and subsequent approval by EPA. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. In instances where EPA has not been under a consent decree deadline for a federal plan, the agency has disapproved SIPs with technical errors without immediately putting into place a federal plan. Except for

a few instances in which EPA and the state agreed in advance that EPA would promulgate a FIP because of resource and technical capacity limitations at the state level (Hawaii, Virgin Islands, and Montana), in every instance in which EPA has adopted a federal regional haze plan, the agency had found errors in the state's technical analysis that the agency concluded would make EPA approval of the state plan unsustainable under legal challenge. In all cases without such technical errors, EPA has accepted the state's balancing of costs and visibility benefits.

Barasso 27. My home state of Wyoming is the largest coal producer in the country. I have deep concerns about the process for developing and implementing the regional haze program in Wyoming. Can you commit to a process that does not disadvantage generation or the coal based resource in Wyoming?
Because of public comments that were critical of some of the basic technical analysis supporting our first proposed action on Wyoming's regional haze SIP, EPA plans to re-propose that action soon and provide the public with another comment period to review our revised technical analysis before taking final action. The agency is sensitive to the large number of coal-fired units that are at issue in Wyoming, and to the challenges of addressing the best available retrofit technology and reasonable progress requirements for these units in the limited compliance time period allowed under the CAA. EPA plans to note these challenges in our new proposal and invite comment, including supporting technical information, on a number of alternative paths forward.

Crapo 6. The Air Pollution Cost Manual currently used by EPA in estimating costs for regional haze and other "best available retrofit technology (BART) determinations was published in 2002. Costs for designing, engineering and installing controls obviously have increased significantly since then. Given that the current cost manual was published over a decade ago, is it out-of-date? What steps are being taken by EPA to update it? Doesn't the use of an outdated cost manual increase the likelihood that EPA is underestimating regional haze compliance costs?
EPA encourages the use of up-to-date, case-specific cost information. The Control Cost Manual and EPA's Best Available Retrofit Technology (BART) Guidelines state that users of the manual, including states when developing regional haze state implementation plans (SIPs) and EPA when developing federal implementation plans (FIPs), can and should use more recent and more case-specific information provided it is properly documented so that the public and the state can assess its relevance and technical validity.

During my opening remarks, I mentioned the recent settlement between EPA, the State of New Mexico and PNM Resources.
(a) EPA has been charged with overreaching on regional haze rules. The story of the San Juan Generating Station would suggest otherwise, wouldn't it?
Response: Yes, the story of San Juan Generating Station is a great example of EPA working with the State of New Mexico, PNM, and other stakeholders to finalize a plan that will improve visibility in the surrounding areas while also being cost-effective.
(b) In the end, we want the states implementing these programs, don't we?
Response: Yes, it is EPA's preference to work with states to approve a State Implementation Plan, rather than issue a Federal Implementation Plan.

BACT Standards

BACT standards apply to individual sources on a case-by-case basis. They generally are more stringent – and by law may not be less stringent – than Clean Air Act new source performance standards (NSPS), which the EPA establishes for categories of industrial sources. In other words, NSPS are the "floor" or minimum emission control standards for BACT determinations. Is that correct?

Yes. The Clean Air Act specifies that BACT for a source cannot be less stringent than an applicable NSPS. Thus, when EPA completes an NSPS for a source category, BACT determinations that follow for applicable sources would need to consider the levels of the pollutant standards and the supporting rationale of the NSPS.

If BACT does not require fuel-switching, we should have no reason to expect that NSPS would require fuel switching or "redefine the source" to impose identical CO2 control requirements on coal boilers and on gas turbines. Is that correct?

EPA's GHG Permitting Guidance (March 2011) says: "… a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. However, it is important to note that under the proposed carbon pollution standard for new power plants, companies would not be required to build natural gas combined cycle units; they would be required to meet a standard of 1000 lbs/MWh, which can be met either through the use of natural gas or by burning coal along with carbon capture and storage. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT: Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

As explained in responses to related questions, the statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. While EPA did not propose that CCS represented BSER, EPA stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in answers to other questions, several commercial-scale coal-fired power plants with CCS are currently progressing, and EPA's view is that coal-fired units can meet the proposed limit. The agency is still actively considering a wide range of comments on these issues, and any final decision will reflect careful consideration of these issues.

The Air Office's PSD and Title V Permitting Guidance for Greenhouse Gases, both as proposed in November 20102 and as adopted in March 2011, similarly states that the "initial list of control options for a BACT analysis does not need to include 'clean fuel' options that would fundamentally redefine the source." In other words, an applicant would not be required to "switch to a primary fuel type

other than the type of fuel that an applicant proposes to use for its primary combustion process." In addition, a Q&A document published along with March 2011 guidance asks whether "fuel switching (coal to natural gas) should be selected as BACT for a power plant?" The document answers: "No." It goes on to state that BACT for CO2 should "consider the most energy efficient design," but "does not necessarily require a different type of fuel from the one proposed." These documents suggest that the EPA will not require fuel switching in BACT determinations. Was that a reasonable conclusion for Congress and electric utilities to draw at the time?

That is a reasonable interpretation, and EPA continues to believe that its BACT guidance is reasonable for the specific purposes for which the guidance is intended.

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT:

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

34. Inhofe 34. EPA's BACT guidance stated that units should consider the "most energy efficient design and control options" when determining GHG BACT for power plants, regardless of fuel source. Why, then, did the Agency deviate from this plan in setting standards for new sources?

The EPA's GHG BACT guidance was intended to provide general guidance to permitting authorities on pollution control methods worthy of evaluation in a Best Available Control Technology assessment for a wide range of sources, and the guidance does not represent an EPA determination regarding the control method that must be selected as BACT for a particular source or category of sources. Subsequent to issuance of the guidance, EPA undertook a more detailed technological assessment of emissions control systems for the purposes of developing a proposed NSPS for the power plant category. At this time, CCS is the only system that EPA has identified for coal-fired electric generating units as being capable of meeting the proposed standard. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your

question. We of course will take these comments into consideration in taking any final action on the proposal.

Data Quality

In most cases, the EPA is required to document a threat to public health or the environment before issuing a new regulation. But evidence abounds that the agency routinely relies upon speculative and poorly constructed computer models to justify its rulemaking. The Government Accountability Office, among others, has revealed serious shortcomings in the agency's scientific analyses. Unjustified regulations misdirect resources from real threats, and thus jeopardize public health and safety. What actions, if any, will you take to ensure that the agency applies the best science available through rulemaking?

EPA works to ensure the use of the best available science, including though compliance with its Data Quality and Peer Review Guidelines which respond fully to Federal standards established by the Office of Management and Budget. I intend to continue the agency's ongoing efforts to ensure that scientific and technical information that is intended to inform or support agency decisions continues to be based on the best available science.

NHSM Rule:

The final Boiler MACT and related Non-Hazardous Secondary Material (NHSM) rule published at the beginning of this year are a significant improvement compared to where EPA started and better than the December 2011 reproposal. EPA promised in the final NHSM to amend the list of non-waste fuels to include (1) paper recycling residuals, (2) processed construction and demolition wood, and (3) railroad crossties. We have been hoping EPA would start this supplemental rulemaking quickly given the existing, extensive record and new information provided since the rule was promulgated showing how EPA's criteria for listing have been met. However, EPA has not announced a schedule for this critical action. Facilities need to know very soon for compliance purposes whether materials they have relied upon in the past as important energy sources will remain fuels. Uncertainty or failure by EPA to act will result in facilities abandoning the use of high energy residuals and filling up landfill space and being replaced by fossil fuels; clearly not a good environmental outcome. When do you plan to start this supplemental rulemaking?

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

Boiler MACT

The final Boiler MACT and related Non-Hazardous Secondary Material (NHSM) rule published at the beginning of this year are a significant improvement compared to where EPA started and better than the December 2011 reproposal. EPA promised in the final NHSM to amend the list of non-waste fuels to include (1) paper recycling residuals, (2) processed construction and demolition wood, and (3) railroad crossties. We have been hoping EPA would start this supplemental rulemaking quickly given the existing, extensive record and new information provided since the rule was promulgated showing how EPA's criteria for listing have been met. However, EPA has not announced a schedule for this

critical action. Facilities need to know very soon for compliance purposes whether materials they have relied upon in the past as important energy sources will remain fuels. Uncertainty or failure by EPA to act will result in facilities abandoning the use of high energy residuals and filling up landfill space and being replaced by fossil fuels; clearly not a good environmental outcome. When do you plan to start this supplemental rulemaking?

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

Power plant Regulations

We have all heard the claims that if the US acts then other countries will follow. Can EPA provide this committee which examples of specific countries that will follow the US lead if the US adopts more stringent regulations on existing power plants?

During my tenure at EPA, I have seen that the United States is recognized as a global leader in many aspects of environmental protection and many countries look to the United States for leadership in this area. Although I would defer to the State Department with regard to the positions and commitments of specific countries in this area, I believe that U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in international climate discussions.

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in Appalachian Voices v. Jackson (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)? Can you assure us that EPA will not define coal ash as a hazardous waste?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Coal Power Plant Closings

A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is probably not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability when you issued the Utility MACT rule, CSAPR, the PM NAAQS and NSPS for GHGs?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the future so that the full range of electric generating resources is maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis projects that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting analyses of its power sector rules.

EPA has not done a cumulative analysis of the impact of its many recent regulations affecting power plants. There has been no government analysis by any government agency of which plants are closing, where they are located and whether or not the area has natural gas infrastructure in place or can be supplied with additional supplies of natural gas in existing infrastructure. Certain sections of the country are very coal dependent while others have little coal generation. Ten states depend on coal for over 70% of generation; 11 states are 50-70% dependent. These states will experience disproportionate impacts including higher costs. Is this something EPA examined? Does this concern you?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. Many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. External analysts, including GAOi, CRSii, the Bipartisan Policy Centeriii, and Analysis Groupiv,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. EPA performs detailed regulatory impact analyses of its power sector rules, including estimates of potential impacts on the mix of generation resources as well as electricity prices, and these analyses are publicly available and subject to notice and comment.

Have EPA regulations played a role in the premature closing of coal-fired powerplants?

A number of factors may influence an owner/operator's business decision to retire a plant; in some instances, environmental rules may be a part of the equation. External analysts, including GAOv, CRSvi, the Bipartisan Policy Centervii, and Analysis Groupviii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

Bloomberg Government recently put together a comparison chart of various estimates of plant closures made by government agencies and private financial firms and other experts. EPA's estimate in December 2011 of plant closures resulting from EPA's regulation at 17.5 GW. The EIA estimated 49 GW in July 2012, most of it within 5 years but put the overall range at 34 GW to 70 GW. Other private sector groups have estimated coal plant closures at 34.5 GW to 77 GW. Is it concerning to you that EPA's estimate constitutes such an outlier?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, including GAOix, CRSx, the Bipartisan Policy Centerxi, and Analysis Groupxii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

EPA regulations and low natural gas prices are leading many utilities to fuel switch from coal- to natural gas-fired generation. However, it is not clear yet whether there will be sufficient pipeline infrastructure or storage to accommodate the greater use of natural gas by electric utilities. And as is evidenced in your home region of New England, a region heavily reliant on natural gas for electric generation, there are issues with pipeline capacity and competing demand for gas for home heating. Electricity prices in New England were four to eight times higher than normal in February 2013 because of the lack of fuel diversity. And New England is not the only region of the country with potential reliability concerns. A January 2013 EPA Compliance Update by the Midwest Independent System Operator (MISO) states the ISO has concerns about whether there is sufficient resource adequacy in the Midwest beginning in 2016. With the significant number of coal-fired generation retiring due to EPA regulations and low natural gas prices, MISO projects there will be a potential 11.7 GW shortfall of resource adequacy in the winter of 2016 and a 3.5 GW one in the summer of 2016. MISO anticipates increased utilization of natural gas fuel generation that will result in "changes to the system's generation configuration and concerns about the ability of the current pipeline infrastructure's ability to deliver enough gas." Do you agree that EPA environmental regulations are now driving U.S. energy policy with serious implications for electric reliability and electricity prices? Is EPA working closely with the Federal Energy Regulatory Commission to ensure the reliability of the electric grid and smaller load pockets facing potential generation shortfalls? Can you please provide the committee with specific information about inter-agency meetings on these issues?

EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability. EPA will continue to work with FERC, DOE, grid planning authorities and electric utilities to address any specific challenges that may arise. EPA, FERC and DOE meet regularly to coordinate on these issues. The three agencies participate jointly in monthly calls with key Regional Transmission Organizations, have met jointly with other key planning authorities, and participate in engagement with state regulatory authorities and other stakeholders. With regard to your question concerning impacts of environmental regulations, please see the agency's responses to the previous questions.

During extreme weather conditions – whether cold, hot or hurricane – there is great value in a "coal pile" that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during exactly these weather related events. Are you concerned that a major emergency back-up resource– that "coal pile" – will not be available in future weather emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?

EPA has been monitoring the changes taking place in the electric utility industry, including the significant decline in natural gas prices, rising coal prices, and reduced demand for electricity. This, when combined with the fact that a majority of coal plants have been in service 40 years or longer and many of these older plants are significantly less efficient (resulting in lower utilization rates), has led to electric utility owners making decisions to retire some of these plants. Many analysts believe that these market changes in gas prices and other factors have the largest impact on retirements in this sector.

The modeling approaches EPA uses can take into account both these market shifts and recent rulemakings. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners (including retirement decisions) as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating capacity.

Can you assure us that EPA will adopt a program that will not force new retirements of coal units?

I do not foresee the EPA adopting an NSPS program that would mandate the retirement of coal units.

A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How can you explain the difference between this analysis and EPA's?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these ICF figures.**Error! Bookmark not defined.** External analysts, including GAOxv, CRSxvi, the Bipartisan Policy Centerxvii, and Analysis Groupxviii,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by

economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

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133

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EPA projected that UMACT would cause 4.7 GW of coal plant retirements (RIA, P. 3-16). The North American Electric Reliability Corporation (NERC) recently issued its Long-Term Reliability Assessment, determining that over 70 GW of fossil-fired generating capacity – predominantly coal – will retire over the next ten years. According to NERC, 90% of those retirements will take place over the next five years, resulting in the loss of 20% of the nation's coal-fired generation by 2017.

38. Inhofe 38. Please explain - how can EPA's estimates of retirements be so low when compared with NERC's estimate?

Included in NERC's 2012 Long-Term Reliability Assessment are a number of economic factors influencing retirements well beyond EPA's clean air rules. External analysts, including GAOxxiv, CRSxxv, the Bipartisan Policy Centerxxvi, and Analysis Groupxxvii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Barrasso 16. As Assistant Administrator for EPA's OAR, you have had direct responsibility for promulgating the Mercury and Air Toxics Standards (MATS) for power plants. On March 20th 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that "only a modest amount of generating capacity" -- 4,700 megawatts (MW) -- will become uneconomic to operate under MATS. This rule will cause 35,000 MW to retire, according to the Institute for Energy Research, and 42,000 MW to retire, according to Barclays.

Do you stand by your testimony that "only a modest amount" of coal-fired generating capacity will be forced to retire by EPA regulations? Or would you reconsider your testimony in light of more recent

analyses and already announced retirements that show EPA's projections to be off by as much as 800 percent?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figuresxxviii. External analysts, including GAOxxix, CRSxxx, the Bipartisan Policy Centerxxxi, and Analysis Groupxxxii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

22. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

a. Do you agree that the United States is losing some of its coal-fired generating capacity as a result of recent EPA regulations?

A number of factors may influence an owner/operator's independent business decision to retire a plant. Environmental rules are only a part of the equation. External analysts, including GAOxxxiii, CRSxxxiv, the Bipartisan Policy Centerxxxv, and Analysis Groupxxxvi,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

7. Regarding impacts from final, proposed, and expected EPA regulations on coal-fired generation, please explain the significant differences on coal-fired generation shutdown projections between the EPA projections and industry expert organizations projections, such as those from FERC, NERC, EIA, and others.

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, , including GAOxliv, CRSxlv, the Bipartisan Policy Centerxlvi, and Analysis Groupxlvii have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

8. How will you assure us that the finalized greenhouse gas New Source Performance Standards for new coal fired power plants will address the concerns that the standards be technically achievable and cost effective?

In response to its proposal, EPA received extensive public comment, much of it addressed to issues related to technical achievability and to cost. The agency is evaluating those comments and will take those comments fully into account before issuing a final rule. Any final rule that EPA issues will reflect the agency's best analysis of cost and achievability.

9. What are your plans to lead the EPA in the forthcoming development of the carbon dioxide New Source Performance Standards for existing power plants? How would you assure these new standards will be technically achievable and cost effective for existing coal fired power plants?

EPA is not currently developing any existing source GHG regulations for power plants, but if the agency does undertake existing source guidelines, it will ensure that they meet the Clean Air Act requirements of achievability and cost considerations.

International Issues

If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your source.

To respond to your precise question would require more specific information about the current or potential future regulations to be considered. The common sense regulations to address greenhouse gases that EPA has undertaken under this administration will achieve significant emission reductions. The light-duty vehicle emissions and fuel economy standards that EPA and NHTSA have established for model years 2012-2025, for example, are expected to result in reductions of over 6 billion metric tons carbon dioxide equivalent over the lifetime of these vehicles. Further actions, from both the United States and all of the major emitting countries, will be necessary to achieve the reductions that science indicates are necessary to address climate change.

If the US has committed to a specific course of action through regulations, what leverage would U.S. diplomats have to craft international compromises on climate issues?

I would defer to the State Department with regard to the positions and commitments of specific countries in this area and more generally with regard to the conduct of international climate negotiations. That said, I believe U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in these discussions.

In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be "leaders" in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007, ranging from the GHG requirements in the RFS, to EPA's GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to "follow our lead" in reducing GHG emissions?

My understanding is that a number of major developing countries have taken significant actions to reduce greenhouse gas emissions in recent years. Although I don't have sufficient information to respond to your question as to the relationship between those actions and specific actions taken by the

United States, I believe U.S. leadership in reducing carbon pollution does help to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

The EPA's greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America's energy mix. The consequences are higher energy prices for families and a contraction of our nation's economic growth for no noticeable impact on the earth's temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address the most severe impacts of climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Risk Management:

For chemicals management, the Agency has traditionally used an approach where the risks associated with a chemical are systematically evaluated first. If risks are identified that merit the introduction of risk management intervention, EPA separately assesses risk management instruments that would be the most appropriate. Will the Agency continue to use this tiered approach where risks are assessed separately from consideration of the need for risk management? Some regional regulatory authorities, most notably the Europeans, are increasingly using hazard as the basis for proposing regulatory restrictions for industrial chemicals. This appears especially the case for controversial human health endpoints, such as endocrine activity, where the science in still evolving. Will EPA continue to use risk as the basis for regulating industrial chemicals?"

Response: It is my understanding that currently under TSCA, the EPA is required to use risk as a basis for risk management activities, recognizing the need to act in the absence of scientific certainty. I also support the Administration's interest in reforming this outdated law and, if confirmed, look forward to working on it with you and this committee.

CCR:

The Agency proposed a coal combustion residuals (CCR) rule in 2010, and that rule has not been finalized. At the same time EPA has made a commitment to propose revised effluent guidelines for the steam electric industry by April 19 and then finalize the guidelines by May 2014. How does the Agency plan to ensure coordination between these two rules, which involve many of the same wastestreams?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash

rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

EPA is still considering two regulatory options for coal ash – the first would regulate coal ash under RCRA's Subtitle C hazardous waste program and the second would regulate coal ash as a non-hazardous waste under RCRA's Subtitle D program. Both options have their drawbacks, especially in my view the Subtitle C option, and EPA has received approximately 450,000 comments on the proposal identifying major shortcomings with both approaches. Given this, last year the Senate introduced bi-partisan legislation (S. 3512) that would establish federal non-hazardous waste standards for the management of coal ash under RCRA Subtitle D. I expect similar legislation to be introduced shortly in the House. The legislation draws from the key components of EPA's proposed Subtitle D regulatory proposal and would allow the States to take the lead in implementing enforceable permit programs for coal ash, with EPA ensuring that State programs meet the federal standards or, if not, EPA would implement and enforce the federal controls for coal ash. In light of the controversy surrounding EPA's regulatory options, would you support federal legislation along the lines of S. 3512 that would create a federal regime for the management of coal ash? What would be the key criteria that EPA would like to see in federal legislation for coal ash? Do you agree with the views of ECOS, ASTSWMO and individual state agencies that the states are up to task of implementing federal controls for coal ash?"

Response: I am not familiar with the provisions of that particular legislative proposal; however, if confirmed, I would be happy to take a look at that and/or other bills and to provide feedback at that time.

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in *Appalachian Voices v. Jackson* (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking.

49. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking

comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

26. Where do you stand on the proposed coal residuals regulation? Regulation as hazardous waste would mean important efforts to reuse or recycle material would be curtailed. Is a "one size fits all" policy for the nation really necessary, or would it better to let the states manage coal waste? Do you believe a system of state led oversight based on sound science would be much more preferable than the top-down approach currently proposed by EPA?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

12. What is EPA doing to encourage the recycling of coal ash? As Administrator, will you help the growth in coal ash recycling resume by at least taking the threat of a hazardous waste designation off the table?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

4. In the wake of the 2008 failure of a dike used to contain fly ash at the Tennessee Valley Authority's Kingston Fossil Plant, EPA initiated a rulemaking for coal combustion residuals under the Solid Waste Disposal Act. Four and a half years after the Kingston spill, the rulemaking is ongoing and coal combustion residuals remain regulated only by inconsistent state laws. Will you commit to work with members of Congress on amending the Solid Waste Disposal Act to authorize the regulation of coal combustion residuals under a nonhazardous waste permit program?

Response: Yes, EPA stands ready to provide technical assistance to members of Congress in its efforts to develop legislation regarding coal combustion residuals (CCR).

CSAPR:

On March 29, 2013, the Department of Justice filed a cert petition asking the Supreme Court to reverse the decision by the D.C. Circuit striking down EPA's Cross State Air Pollution Rule (CSAPR). This cert petition makes certain claims about the impact of the Court's decision that appear to be inconsistent with statements that you recently made to the U.S. General Accountability Office (GAO). In a letter dated January 7, 2013, to David Trimble of the GAO, you stated as follows: Annual 2012 SO2 emissions levels from power plants within the CSAPR region are on track to be 23% below what CSAPR would have required in 2012. Similary, annual NOx and ozone season NOx emissions in the CSAPR region are projected to be 12% and 5% below what CSAPR required for 2012." Yet the cert petition to

the Supreme Court asserts that "By vacating the Transport Rule [CSAPR], . . . the court of appeals' decision will directly and negatively affect the public health." How does the court of appeals' decision "directly and negatively affect the public health" if emissions from power plants are well below the levels that would have been required under CSAPR?

Response: I can't speak to matters that are currently in litigation or to specific litigation decisions made by the Department of Justice. However, the brief filed by the Department of Justice speaks for itself and I am told that it explains, with specific citation to the CSAPR rulemaking record, the ways in which the EME Homer City decision directly and negatively affects the public health by delaying needed emission reductions and hobbling EPA's efforts to address interstate air pollution problems. A single year of emissions data does not provide a complete picture and is not a substitute for having the CSAPR regulatory requirements in place to guarantee that those emission reductions endure over time. Unfortunately, in recent months, we have seen an increase in harmful emissions from some sources that were covered by CSAPR.

Do you believe that EPA and the Department of Justice have an obligation to be forthright and honest with the Supreme Court? Do you agree that, at the very least, the statements in the cert petition regarding the public health impacts of the CSAPR decision could be misleading?

Response: I, personally, believe it is extremely important to be forthright and honest in all circumstances and especially with the courts. As noted above, the brief filed by the Department of Justice speaks for itself and I am told that it explains, based on specific findings made by EPA as part of the CSAPR rulemaking, the ways in which the EME Homer City decision directly and negatively affects the public health.

In CSAPR, EPA originally proposed that Texas would not be covered under the rule because power plants in Texas did not "contribute significantly" to nonattainment problems in other states. In the final rule, however, EPA changed its mind and asserted that emissions from Texas would contribute just over one percent of the problem with projected PM2.5 concentrations at one air monitor in Illinois. As a result of this new projection, EPA issued a final rule that required substantial and costly emission reductions in Texas. In fact, emission reductions required in Texas amounted to more than 25 percent of the total SO2 reductions in CSAPR. Do you believe that EPA overreached by imposing such a substantial burden on Texas in the final rule? When trying to regulate interstate transport of emissions, do you agree with the D.C. Circuit that EPA can only regulate to the extent necessary to eliminate a state's contribution to downwind nonattainment?

EPA's requirements of Texas in CSAPR were in fact calculated as the reductions necessary to resolve Texas's significant contribution to nonattainment and interference with maintenance at downwind receptors projected to have difficulty attaining and maintaining the NAAQS without the rule. The D.C. Circuit Court's ruling made no finding regarding EPA's requirements of Texas under CSAPR. EPA is moving forward to assess options that implement the interstate transport requirements of the Clean Air Act. As part of this effort, EPA is seeking input from Texas and the other states.

Do you anticipate proposing a replacement rule for CSAPR? Will EPA ensure that states and utilities are given adequate time to comply with the rule?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's

EME Homer City opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, EPA will be mindful of the need to provide appropriate timelines for states and the regulated community.

What lessons have you learned from the CSAPR experience?

The CSAPR experience reinforces that upwind state emissions of ozone and PM precursors can be important contributors to levels of PM and ozone in downwind states. Reducing emissions of these precursors will have important public health benefits, and EPA is already working closely with states on further efforts to address interstate transport of these pollutants.

Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect do decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

44. Inhofe 44. This rule caused great concern in the industry because of its incredibly short compliance timeline. Final rule wasn't published in the Federal Register until August 2011, yet utilities were expected to begin complying in 2012. In late December 2011, on the eve of the rule going into effect, the D.C. Circuit Court of Appeals stayed the rule and the Court subsequently overturned it. One of the reasons the Court overturned the rule is because EPA did not give states the time to develop their own compliance plans. What are EPA's intentions with respect to a new transport pollution rule?

What timeline will EPA give to states and utilities to comply with the rules? Will you set a timeline that states and utilities agree to?
EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, the agency will be mindful of the need to provide appropriate timelines for states and the regulated community.
45. Inhofe 45. EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will grant certiorari on the *EME Homer City* decision, as that action will affect the agency's options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides. Depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court's decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

b. In particular, to the extent EPA seeks to initiate new rulemaking proceedings in light of the D.C. Circuit's recent vacatur of the Cross State Air Pollution Rule (CSAPR), will you commit to ensure that EPA provides me and/or my staff with regular briefings on the status of any EPA decisions or efforts related to the CSAPR?
Response: Yes

Endangerment:
In 2009, EPA determined in its Endangerment Finding that carbon dioxide and related substances pose a danger to human health and welfare. EPA made this determination without the peer review of the Scientific Advisory Board, a panel of independent scientists whose function is to ensure the scientific credibility of EPA's Clean Air Act proposals. What explains EPA decision to impose such a draconian regulation without complying with its statutory duty of scientific peer review?
EPA relied on comprehensive peer-reviewed scientific assessment reports conducted by the US Global Change Research Program, the Intergovernmental Panel on Climate Change, and the National Research Council, which are subjected to rigorous expert and in some cases government review. This approach was validated by the D.C. Circuit Court in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102

(D.C. Cir. 2012). The Court found that EPA had based its Endangerment Finding on substantial scientific evidence, noting that "the body of scientific evidence marshaled by EPA in support of the Endangerment Finding is substantial," and that EPA's reliance on these scientific assessments was proper and consistent with the methods decision-makers often use to make a science-based judgment. EPA followed all applicable agency and OMB guidelines regarding data quality and peer review in developing the Endangerment Finding. The D.C. Circuit rejected arguments that EPA was required to submit the proposed Endangerment Finding to SAB for review under the terms of 42 U.S.C. § 4365(c)(1).

Energy Star

Why, after being warned of the problem by the EPA's Office of Inspector General, did you allow so many products to be labeled as ENERGY STAR appliances devices even though they weren't among the more efficient ones?

Keeping ENERGY STAR requirements up-to-date is a priority for the Agency. All appliance specifications have been recently updated, with effective dates as follows: clothes washers (January 2011), dish washers (January 2012), dehumidifiers (October 2012), room air conditioners (October 2013), water heaters (July 2013), refrigerators (in process, anticipated March 2014).

Wicker 18. EPA recently mandated a third-party certification regime for products in order to participate in the ENERGY STAR program. This appears to be an effort to address concerns raised in a 2010 GAO report. I am concerned the EPA's response is overly broad and attempts to use a one-size-fits-all approach to a program with over 60 diverse product categories. Will you closely review these changes, specifically the addition of the third-party certification process, and meet with industry stake-holders to discuss the real impact of these regulatory changes?

Yes, EPA continues to monitor the new third-party certification process, working with EPA-recognized certification bodies and industry stake-holders on an ongoing basis to minimize adverse impacts.

Wicker 19. Will you ensure that a consensus-based process is utilized, as accredited by the American National Standards Institute, to safeguard transparency and fairness in any changes to and development of the ENERGY STAR program?

In changing or developing new elements of the ENERGY STAR program, EPA remains committed to an open and transparent process that actively engages stakeholder input.

Wicker 20. What is EPA's plan for product categories to "test-out" of the new testing mandates based on their compliance track record?

EPA is open to adjusting aspects of the ENERGY STAR third-party certification program, in consultation with our industry partners, as our experience with it grows.

1. During the last several years, the windows manufacturing and installing industry has been through difficult market declines and destabilizing economic times. While the overall economy has been challenging to many Americans, those in the housing sector have been particularly hard hit. One of the major areas of interaction between those who provide windows to the market and consumers is the Energy Star program.

The Energy Star program is essential to delivering information to consumers on how to buy the most energy efficient appliances and products. My understanding is that the EPA is currently reevaluating the proposed standards for the Energy Star for Windows, Doors, and Skylights. The original proposed

effective date the new standard was targeted for the end of this calendar year. Obviously, the Agency's thoughtful review of the standard has taken longer than envisioned.

New standards involve significant and expensive changes to production, which means that manufacturers need substantial notice to give time to make those changes. In the interest of providing certainty to this important domestic manufacturing industry, EPA's own guidelines for progressing from final proposal to effective date requires no less than 9 months and the product cycle for manufacturers really requires a January 1 effective date. Can you confirm that the effective date for whatever the new standards may come from this process will be January 1, 2015 to prevent unnecessary and extraordinary ramp up costs for a sector struggling to recover from the recession?

Response: EPA recognizes that it needs additional time to review and respond to the comments received on the ENERGY STAR for Windows, Doors, and Skylights Version 6.0 Draft 2 specification and revised skylight criteria. While a revised timeline is not yet available and we are not ready to make a formal announcement, it is likely this additional work will result in delaying the effective date closer to the January 1, 2015 timeframe. EPA plans to keep stakeholders informed of its process on the criteria revision. We are committed to ensuring that our partners have adequate time to respond to the final Version 6.0 specification and will make adjustments to the implementation schedule as needed.

Federal-State Relationship

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, the agency is in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. EPA has had extensive stakeholder involvement during the development of this guidance, and the agency would expect that the final product will address some of your specific concerns.

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Congress made clear in the Energy Policy Act of 2005 that the states are responsible for regulating hydraulic fracturing within their borders, and that the EPA has a very limited role regulating hydraulic fracturing through the Safe Drinking Water AcT. EPA has constantly pushed to expand its reach beyond what Congress has authorized, and that seems to be what the agency is attempting to do with draft guidance on the use of diesel fuels in hydraulic fracturing issued last year. The guidance offers a vague and unworkable definition of "diesel fuels," which covers more than just diesel fuels, and unnecessarily calls into question the legitimacy of decades-old, state-run regulatory programs that to date have produced zero cases of groundwater contamination as a result of hydraulic fracturing. If you are confirmed, will you withdraw this draft guidance? What are the plans of the Agency with regard to the diesel issue? What is the timing?

Response: As I understand it, EPACT 2005 specifically exempted diesel fuel from the exclusion from the Safe Drinking Water Act. If confirmed, I will work with you on the specifics of the issue of diesel fuel use in fracking.

In the Clean Air Act, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

Response: "Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. I can conceive of circumstances where EPA has disagreed with State's approach on policy grounds but did not intervene to override the state because the state met the relevant legal criteria.

Are there any circumstances where a State implementing the Clean Air Act should, as a policy matter, be insulated from EPA interference?

Partnership between the states and the federal government in reducing air pollution is one of the cornerstone principles of the Clean Air Act. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues federal rules that assist areas in meeting the air quality standards.

Do you agree that it was Congress' intent for the States to play the lead role in relevant air quality regulatory decisions? Are you committed to having the EPA implement the Clean Air Act in a manner that reflected that intent?

Congress established the Clean Air Act as a system under which the EPA and States both have important roles in setting and implementing the Clean Air Act. Congress assigned different roles to EPA and the states, respectively, depending on the nature of the air pollution problem. If confirmed as Administrator, I am committed to ensuring that EPA continues to implement the Clean Air Act in partnership with state, local, federal and tribal governments, consistent with the Clean Air Act's requirements.

States have the primary responsibility for implementing the environmental programs and regulations that EPA develops. Most States receive less than 20% of their overall budget from EPA, and in some cases, significantly less; yet EPA continues to adopt new regulations and programs without providing the States with commensurate funding. If confirmed, how will you balance the increasing demand for the State's services with the decreasing availability of the resources needed to implement EPA's ever expanding programs?

Response: Having over two decades of experience at the State and Local level, I recognize and appreciate the need for funding to States. If I'm confirmed, I will work with you and others to find innovative solutions to balance the need for federal funding to States with the need to continue important State efforts.

3. I am concerned that EPA is not working as cooperatively with the States as it should under the law. That was the clear message of the D.C. Circuit in its recent decision striking down the CSAPR. I am concerned that EPA is not giving due deference to the States.

a. The Clean Air Act is based on a principle of "cooperative federalism." Do you agree?

Response: As someone who spent the bulk of my career at the State level, I certainly appreciate that cooperative federalism is a cornerstone of the success of the Clean Air Act.

b. Will you commit to sit down with State leaders—Governors, State Attorneys General, and State Environmental Agencies—to solicit their ideas for improving the Clean Air Act, including steps that can be taken to reduce red-tape, increase efficiencies, reduce costs, and minimize economic impacts?

Response: Yes

Wicker 5 How do you view the importance of input from the states when formulating standards and reviewing implementation?

In the Clean Air Act, Congress established a system under which EPA and states each have important roles in setting standards and implementing the Act. Dialogue and partnerships with States are an important part of EPA's efforts to reduce air pollution under the Clean Air Act. I have learned from experience, including my experience working for state governments, that working closely with stakeholders, including state government partners, can lead to better programs. *If I am confirmed, EPA will continue to work with states and other stakeholders under the Clean Air Act to reduce air pollution and the damage that it causes.*

Health Concerns:

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Has EPA done any studies on the health impacts of job losses?

Response: I'm concerned about any American involuntarily displaced from a job, for whatever reason, and the impacts that can have on a family. However, I also understand that the peer-reviewed literature shows the effect of environmental regulation on jobs is far smaller than the exaggerated claims we often hear. The most convincing research out there shows that air pollution is a real threat to Americans' health and that claims of "job killing" regulations aren't supported by the evidence.

EPA performs detailed regulatory impact analyses (RIA) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule.

EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have "little use for decision making?" Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?

The quotation in your question is taken out of context. The NAS commented that the EPA should not rely on the Harvard Six Cities cohort and American Cancer Society cohort alone to the exclusion of a

"new generation of cohort studies." In formulating the decisions on the PM NAAQS, the EPA considered all of the available scientific evidence, including studies of new cohorts. In addition, two separate panels of EPA's independent Science Advisory Board (SAB) recently recommended that the EPA use these two cohorts to quantify PM2.5-related mortality risks and benefits (i.e., CASAC (2009, 2010) and Council (2010)). Despite some inherent limitations, these cohorts continue to have several advantages over other currently available cohorts, including age and gender representativeness, geographic representativeness, study size, consideration of confounders, and length of follow-up. EPA's approach is consistent with the advice from NAS and SAB.

On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?

EPA is committed to transparency with regard to the scientific bases of agency decision making. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, EPA relies on the scientific studies that are published in the peer-reviewed literature. EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking. It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not EPA. The availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

Doesn't your reticence to release the data suggest that the Agency is fearful the data will not hold up to public scrutiny and that there really is no support for the hundreds of billions of dollars in costs that you have imposed on the American public?

The studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006) have been extensively peer-reviewed. Studies of these cohorts were subject to a full external re-analysis by the Health Effects Institute in 2000. The results of this peer-reviewed reanalysis confirmed the findings in the original studies, concluding that "[o]verall, the reanalyses assured the quality of the original data, replicated the original results, and tested those results against alternative risk models and analytic approaches without substantively altering the original findings of an association between indicators of particulate matter air pollution and mortality."

Given that you are relying on 30-year old data for your health benefit estimates, can you realistically argue that your benefit estimates are in any way as certain as your cost estimates that are based on current market prices for equipment and labor?

EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively).

If HHS can code medical records to protect confidentiality and other agencies can code research data, why can't EPA do the same for data that are now over 30 years old?

EPA provided all of the data received from the researchers. These underlying data consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution. Due to this linkage, at minimum there are serious questions as to whether it would be possible to fully protect the confidential medical information by coding the data.

What efforts have you taken to investigate the potential of employing these techniques?

Prior to disseminating the death data provided by Harvard University, EPA coordinated with the Centers for Disease Control and Prevention to ensure that the data did not identify the particular establishment or individual supplying the information.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

EPA routinely justifies more stringent air quality standards on the basis of reducing asthma attacks. In fact, EPA credits its rules with avoiding about a million asthma attacks each year. However, while U.S. emissions of criteria pollutants have been cut by about 50% since just 1990, the incidence of asthma attacks has increased. Taken together, these two facts suggest that EPA efforts to further reduce emissions and consequent health benefits will not necessarily be correlated. In fact, the US Government's own CDC cites numerous triggers for asthma attacks that are not related to ambient air quality. Of course, the dramatic improvements to our air quality must be maintained, but each incremental improvement comes at a greater and greater cost. Is it time for EPA to re-think some its valuations of health benefits? Is it time to consider that implementation of the rules, ultimately yield a negative impact on consumers' health and welfare because they make them poorer?

EPA's approach to estimating the health benefits associated with reducing air pollution, including avoided asthma attacks, is based on the best available, peer-reviewed science. Projected health benefits from EPA's recent Clean Air Act rules, including avoided asthma attacks, are substantial and often

substantially outweigh projected costs. Newer scientific studies have shown that some pollutants can harm public health and welfare even at lower levels than before.

The U.S. has achieved significant progress in reducing air pollution in the 40 years since the Clean Air Act's passage. According to EPA statistics, total emissions of the six principal air pollutants have dropped by 59 percent since 1970. Current federal regulations will continue this progress by significantly reducing ground level ozone-causing emissions over the next two decades. Emissions from power plants are expected to be cut in half by 2015 and the emissions from cars and trucks are expected to be reduced by 70 percent by 2030. Do you think that Americans are enjoying the benefits of cleaner air, and will continue to enjoy those benefits as the air gets cleaner in the future, regardless whether the existing standards are adjusted?

Despite dramatic progress improving air quality since 1970, air pollution in the United States continues to harm people's health and the environment. Under the Clean Air Act, EPA continues to work with state, local and tribal governments, other federal agencies, and stakeholders to reduce air pollution and the damage that it causes.

Sessions 22. I am aware that the EPA is considering whether a health-based standard is possible for the brick industry. I also understand that the brick industry has supplied you with all information necessary to evaluate a health-based compliance alternative for every major source.

a. What are the impediments to establishing a health-based rule for this industry comprised of a large number of small businesses, and how could those impediments be overcome?

Under the Clean Air Act, EPA is authorized to establish MACT standards that consider a health threshold where the science supports a finding that such a threshold exists. In order to establish such a standard, EPA would need sufficient information to determine whether a threshold for health effects indeed exists and that the health-based standard being established provides for an ample margin of safety. EPA is currently evaluating information provided by the industry to determine whether such a standard would be appropriate and consistent with the statutory requirements.

b. An emission standard is broadly defined in the Clean Air Act. Why would EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?

As stated above, under the Clean Air Act, EPA may only establish a standard considering a health threshold where the science supports a finding that such a threshold exists, and where the standard provides an ample margin of safety. EPA is currently considering the range of potential approaches that could be used to set a standard.

Wicker 10. Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? How are they quantified when making health-based assessments for revised National Ambient Air Quality Standards?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

Keystone XL

317. What role will EPA play in the development of the State Department's Final Environmental Impact Statement for the Keystone XL pipeline permit?

318. What role will EPA play in the development of the Administration's National Interest Determination for the Keystone XL pipeline permit?

319. According to a State Department spokeswoman, the agency has been working with the EPA on the latest Draft Supplemental Environmental Impact Statement. What role has EPA played in the Draft SEIS?

320. The State Department is in the midst of an open comment period on the Draft Environmental Impact Statement for the KXL project. What do you think about State's climate estimates in the new Draft Supplemental EIS? Do you think they took a thorough enough look at the GHG emissions?

321. In the draft SEIS, the State Department seems to indicate that Keystone XL is the safest, most environmentally responsible way to deliver the oil that refineries and consumers need to fuel our economy, businesses, homes and maintain our quality of life. What are your thoughts on that?

322. The DSEIS noted that Keystone XL would result in "no substantive change in global GHG emissions" and it is "unlikely to have a substantial impact on the rate of development in the oil sands, or on the amount of heavy crude oil refined in the Gulf Coast area." Based on your agencies review of the Draft SEIS and your office's work in helping the State Department develop the latest Draft SEIS, would you comment on those statements?

Response (to Keystone XL questions): The State Department has long held the permitting authority for energy projects crossing international boundaries, including the Keystone XL pipeline project, and for gathering all facts necessary to make such permitting decisions. Accordingly, the State Department has overseen a process that provides for input by several federal departments, interested stakeholders, and members of the public. The State Department's publication of the Draft Supplemental Environmental Impact Statement marks an important step in that process. The public and all interested stakeholders will now have an opportunity to comment on the Draft Supplemental EIS. Any comments on the DSEIS should therefore be directed to the State Department. I understand that EPA has reviewed the DSEIS and made appropriate comments. Ultimately, the decision on TransCanada's permit will be based upon a "national interest" determination, taking all relevant factors into account.

LCFS:

Several bills have been introduced in the U.S. Congress to establish a federal low-carbon fuel standard, or "LCFS" – including by then-Senator Obama in 2007. In fact, LCFS was originally part of the 2009 Waxman-Markey climate bill before being removed at the request of a number of Democrats. However, given that efforts to move LCFS legislation through Congress have failed, some proponents of such a program have raised the question of whether EPA might implement a federal LCFS through regulation. Do you believe that EPA has the statutory authority, under the Clean Air Act to promulgate a federal low-carbon fuel standard? If so, what is the legal basis upon which the EPA has the authority to promulgate an LCFS?

During the previous administration, in the July 11, 2008, Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act, EPA solicited comment on whether the agency had the authority under the Clean Air Act to design and implement a new GHG fuel program that

is broader in scope than the RFS program. EPA has not addressed this issue further at this time. The agency is not considering nor does it currently have any plans to establish an LCFS under the Clean Air Act.

You may be aware a study was done in 2010 by Charles River Associates, a highly regarded economic forecasting firm, on what the impacts of a national LCFS program would be. The results were fairly impressive – up to 4.5 million American jobs lost, a reduction in U.S. GDP of up to $750 billion, and an increase in gasoline prices of up to 170 percent over a 10-year period. In fact, a number of studies have analyzed what the results of an LCFS would be, either at the state, regional, or national level – and the consensus is that there would be universally negative, severe economic impacts. These studies all used the Energy Information Administration's projections for the availability of some of these low-carbon fuel options, such as cellulosic ethanol and electric vehicles. In light of the conclusions from these studies, will the Agency seek to promulgate a federal LCFS during the current Administration? If so, how does the Agency intent to mitigate the consumer costs associated with an LCFS?

I am not personally aware of the study to which your question refers, and EPA is not considering nor does it have any plans to seek to establish a federal LCFS.

Given the numerous problems now evident with the federal Renewable Fuels Standard, the prospect of simply replacing the RFS with a federal LCFS is starting to be discussed by some in Congress. What is the Agency's position on this possible substitute?

I am not aware of any current legislative proposal to replace the RFS with a federal LCFS, but in any event EPA has no position on any such proposal.

Can you discuss the problems associated with potential "fuel shuffling" that might occur as the result of the imposition of an LCFS? Does the agency have the ability to prevent such compliance approaches?

EPA is not considering nor does it have any plans to seek to establish a federal LCFS, and I am not familiar with the issue to which your question refers.

Lead Issues

According to a recent lawsuit filed by environmental groups, EPA has known for a decade that "general aviation aircraft" are the single largest source of lead emissions. Yet, EPA has made its own judgment not to issue an endangerment finding regarding lead emissions from air plane fuel. Why has EPA decided to not regulate lead emissions from aircraft which it has acknowledged is the largest source of lead emissions?

EPA has not made any decisions on whether to regulate lead emissions from aircraft at this time. EPA is currently conducting the analytical work, including modeling and monitoring, to evaluate whether lead emissions from the use of leaded aviation gasoline (avgas) in piston-engine aircraft cause or contribute to the endangerment of human health or welfare. Any proposed determination with regard to endangerment would be subject to notice and comment, and we estimate the final determination will be in mid-to-late 2015. If a positive endangerment determination were made, as part of any future assessment of control measures, EPA would consider safety, fuel supply, and economic impact issues, including effects on small businesses.

On March 7, EPA responded to questions for the record from a Senate hearing, held last summer, regarding lead-based paint exposures. In the response, EPA cited 8 studies as "relevant" to information to lead-based paint (LBP) and renovations in public and commercial (P&C) buildings. On April 9, EPA responded to another letter on this issue. This time, EPA identified 5 studies as "relevant" to LBP and renovations in P&C buildings. In fact, 3 of the same studies cited in the April 9 letter were also cited in the March 7 letter. One of the studies cited twice plainly states: "There are no data at this time to assess whether environmental exposures monitored in target housing are representative of environmental exposures encountered in public and commercial buildings." (Environmental Field Sampling Study, Volume I Technical Report, (May 1997) at p. 4-5).) Why did EPA cite this study, when it is plainly not relevant to lead-based paint exposures in public and commercial buildings?

In EPA's April 9 letter, one of the new studies that the agency cites is a "Health Hazard and Evaluation Report" out of the University of California at Berkley, from July 2001: http://www.cdc.gov/niosh/hhe/reports/pdfs/1999-0113-2853.pdf. This study states (at p. 1) that the project took place at 3 "unoccupied" buildings that were scheduled for demolition: two 2-story multifamily residences, and a "daycare center." All three of these buildings would be already covered under EPA's current lead-based paint program for "target housing." Were any public or commercial buildings assessed in this 2001 Berkley study? If no, then why did EPA cite it as relevant to the issue of lead-based paint exposures and renovation activities in public and commercial buildings?

In fact, in looking through all of the studies cited in both the March 7 and April 9 letters, all of the structures assessed in these studies concern "target housing" or "child occupied facilities," which are regulated under EPA's current residential lead paint rules. In all of these studies, the only non-residential structures considered by EPA that we could identify were: (1) a school built in 1967; and (2) a 1-story office building well over 150 years old. Does EPA think that a major new regulatory program, regulating renovation activities in public and commercial buildings across the U.S., can be supported by the studies on a 1960s-era school, and a 150-year old, 1-story office building? In any of the studies cited by EPA, can the agency point to any structure that is a public and commercial building, where lead-based paint issues and renovation activities were assessed? Would you please describe any non-residential structure that was considered in these studies? Will your staff meet with interested private sector stakeholders, who would be immediately affected by any new lead-paint program, to go over these studies jointly with Committee staff? In the April 9 letter, EPA also refers to a lead "technical studies" webpage: http://www2.epa.gov/lead/technical-studies. Can you show us where, in any of these studies, public and commercial buildings specifically were assessed for possible lead-based paint hazards?

Shouldn't EPA have a public and commercial building "hazard" finding in place first, and then determine if it needs to regulate renovation activities? After all, this is the sequence the agency followed for pre-1978 "target housing." Over seven years lapsed between the residential "hazard" finding, and the eventual residential "renovation" rule. Why isn't EPA pursuing the same process here? What "hazard" may any commercial building renovation regulations be designed to prevent?

The February 13 letter to EPA explained that this commercial building rule will have great consequences for federal buildings – including those right here on Capitol Hill. In EPA's April 9 response, the agency generally identified the agencies and departments it has, or plans to, contact in the federal buildings community. But the agency has not provided the Committee with any

substantive, detailed plans for how it is coordinating with agencies and departments like the General Services Administration, the Architect of the Capitol, or the military branches. Please give details on the steps EPA has taken to work with GSA and other federal building managers to carefully study lead-based paint hazards in federal buildings. What outreach plans does EPA have in place to gather substantive information on lead-based paint issues in public and commercial buildings? Does EPA know what the lead paint hazards are in its own buildings?
Has EPA contacted the Architect of the Capitol to get an understanding of any lead paint hazards on Capitol Hill – such as at the House Cannon Building, which is undergoing a major renovation project? Would EPA be willing to meet with the GSA, Architect of the Capitol, the military branches, and other federal facilities owners – along with EPW Committee staff – to get a better understanding of EPA's plan to coordinate with the federal buildings community on this rule? We understand that affected real estate and contracting trade groups have offered to meet jointly with EPA, GSA, and other federal building managers on this issue. Does EPA plan to hold such a joint meeting with real estate and contracting trade groups? If yes, when?
Response (to the eight questions above): I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.

2. Last year, USA Today published a series that investigated hundreds of old industrial sites that had emitted lead into the nearby areas, including where people live today. While EPA and states have tracked and begun cleanups at some sites, I believe that more must be done to protect families and children who live in neighborhoods near these sites. Cleaning these sites up is particularly important in light of the best available science demonstrating that lead is even more dangerous to the health of infants and children than we had previously known.
If you are confirmed, will you commit to review the adequacy of lead-contaminated soil and dust standards to ensure they are set or revised at a level that protects pregnant women, infants, and children, and will you commit to an open and public process of tracking and cleaning up these old lead-contaminated sites?
Response: Yes.

ECA:
The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.
For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the

impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.

The ECA is one of the most important environmental air programs established in the past decade and will result in the prevention of tens of thousands of premature deaths. EPA and Coast Guard are committed to allowing flexibilities allowed under the applicable IMO requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies, without compromising the environmental benefits of the ECA. In 2030 the combination of our national standards and ECA controls will prevent between 12,000 and 31,000 premature deaths and 1.4 million work days lost. The benefits of the coordinated strategy in 2030 are estimated to be between $110 and $270 billion, which is up to 90 times the projected costs of $3.1 billion.

Native Issues

Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach and consultation with all affected Native American communities?

Yes. EPA has recently invited every tribe in Arizona, including the Navajo Nation, to formal tribal consultation in Phoenix on April 29, 2013. EPA is also available to hold additional consultation with tribes. In addition, EPA intends to hold public hearings this summer in Page, Phoenix, and Tucson AZ as well as a location on the Navajo Nation and a location on or near the Hopi Tribe.

If confirmed, will you commit to identifying an NGS solution that upholds federal trust obligations to Native American communities, supports sustainable water policy, does not impose significant additional costs on struggling Arizonans, and does not require an appropriation or otherwise add to the national debt?

EPA is committed to working with the Department of the Interior and the Department of Energy, our federal partners in the Joint Interagency Working Group on Navajo Generating Station, to find a long-term path forward for NGS that meets the needs to the wide variety of stakeholders involved in this issue. DOI, DOE, and EPA will work together to support Arizona and tribal stakeholders' interests in aligning energy infrastructure investments made by the Federal and private owners of the NGS (such as upgrades that may be needed for NGS to comply with Clean Air Act emission requirements) with long term goals of producing clean, affordable and reliable power, affordable and sustainable water supplies, and sustainable economic development, while minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations.

EPA's proposal did not include cost estimates for baghouses. Can you confirm that the NGS owners would not be required to install baghouses as a result of the change in emissions created by installing SCRs?

EPA's proposed BART determination and BART alternatives do not require the installation of baghouses at NGS. The alternative timeframes for meeting BART limits could extend roughly a decade or more into the future and EPA cannot determine now what a future permit many years down the road might

require. However, we note that permitting of SCR on a similar facility in Arizona, the Coronado Generating Station, did not require the installation of a new baghouse.

Barrasso 30. Please explain why you decided to ignore your responsibilities as a federal trustee to the Navajo Nation during the development of the Utility MACT rule, when your offices had prior knowledge of the Navajo Nation's concerns about EPA regulatory impacts to Four Corners Power Plant and Navajo Generating Station; and when your offices had collaborated with the Navajo Nation in proposing and promulgating the Clean Air Mercury Rule? Since 2010, EPA has proposed new regulations that impact coal fired power plants, yet there has been very little communication between EPA and Navajo Nation about the Navajo Nation's desire to continue the use of coal for generating electricity and other purposes. Further EPA may be developing greenhouse gas and carbon dioxide regulations without consulting or understanding what impact this may have on Indian Country and tribes that rely on natural resources to fuel their economies.

EPA has held a number of meetings, conversations, and consultations with the Navajo and other Tribes in the region regarding both MATS and BART. Many of these meetings have been face-to-face meetings in Arizona. For example, in January 2012, I went to the Navajo Generating Station and also met with the Navajo Nation. Additionally, the Deputy Assistant Administrator Janet McCabe held at least 5 different meetings with Tribes, including the Navajo Nation, between mid-September and early-November 2011. EPA also held national conference calls and webinars for Tribes on MATS, given that MATS is a national rule and many Tribes have an interest in it. EPA intends to continue to work with the Navajo and all other Tribes to meet federal trust obligations and provide opportunities for consultation on issues that are of interest to individual Tribes and groups of Tribes.

Barasso 31. Ms. McCarthy, what is your view of the EPA's responsibilities to consult with Indian Tribes about the potential impacts of these forthcoming regulations on the tribal economies that rely on non renewable natural resources?

EPA values its relationship with Indian Tribes and takes its federal trust responsibility seriously. I have learned from experience that working closely with tribes can lead to better programs. EPA regularly conducts consultation and outreach activities with tribal governments because dialogue and partnerships with stakeholders are an important part of EPA's efforts to reduce pollution under the Clean Air Act. The Office of Air and Radiation consults with Tribal governments to review EPA regulatory actions for possible impacts on tribes and Indian country. Consulting with and offering early, meaningful tribal involvement is consistent with the federal trust responsibility to federally-recognized tribes.

Last spring, I understand that you toured the Navajo Generating Station in Arizona to see first-hand the plant operations and community. With your five hour drive there, I am sure the remoteness of the location was very apparent to you.

As you know, the plant and mine have 1,000 jobs, over 800 of which come from the Navajo Nation, where unemployment levels fluctuate between 40 and 45 percent. This is particularly important to Navajo living and working in New Mexico.

(a) Given the importance of the plant, and the impact potential regulations can have on it, can EPA continue to work with the Navajo Nation the way it worked with the State of New Mexico and PNM to

ensure that the economic necessities of the tribe and its unique reliance on the Navajo Generating Station are appropriately taken into consideration in EPA decision-making?
Response: Yes, it is EPA's intent to work with the Navajo Nation and other stakeholders as we move forward in the rulemaking process.
(b) Do you believe EPA will work with all stakeholders who are seeking reasonable ways forward to address pollution issues, but to preserve jobs and keep electricity rates down?
Response: Yes

Cap and Trade:

Can you assure us that EPA will not adopt a cap and trade program?
Both former Administrator Jackson and I have said in the past that the EPA has no intention of pursuing a cap and trade program for greenhouse gases and I continue to stand by those statements.

Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.
I am aware that in connection with the Clean Air Mercury Rule, issued under the prior Administration, EPA took the position that section 111(d) obligations could be met through a cap-and-trade program.

SIP's: State Implementation Plans

Without analysis how can EPA determine that SIP provisions related to start-up, shut-down, and malfunction are "substantially inadequate" for purposes of the Clean Air Act?

EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state. There, EPA carefully explained its reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA. Where EPA proposed to find that a provision is impermissible under the CAA, but the exact meaning of that provision was open to interpretation, the agency solicited comments from all parties including the affected state to determine whether EPA's reading of the provision was accurate or whether the state had an alternative interpretation that would render the provision permissible.
Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?
The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.
Do you agree that policy changes are not enforceable or mandatory requirements of the EPA?

EPA agrees that policy changes are not enforceable or mandatory until the interpretations reflected in those changes have gone through the appropriate legal process, such as notice-and-comment rulemaking. EPA's interpretation of the CAA with respect to the treatment of excess emissions during SSM periods is expressed in a series of guidance documents issued in 1982, 1983, 1999, and 2001. While these guidance documents are not themselves binding on the states, EPA has consistently applied the SSM policy contained therein in a number of individual rulemaking actions that were subject to notice and comment. Therefore, because the SSM policy has undergone and survived the rigors of public scrutiny associated with the rulemaking process, and has previously been upheld by courts, EPA believes that the SSM policy is correct interpretation of the requirements of the CAA.

Has EPA done any analysis like it did for the NOx SIP call to determine if the SIP provisions in question are threatening the NAAQS?

EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. In fact, it is because of SSM exemptions that excess emissions during periods of SSM are not accurately accounted for in SIPs, with the result that even though the attainment and maintenance of the NAAQS is potentially compromised by SSM exemptions, there are few data readily available on which to conduct a quantitative assessment.

EPA argues that SSM prevents the enforcement of emissions limits. Isn't this circular since the validly approved SIP exempts such events from the emissions limits?

EPA's proposed action addresses existing SIP provisions with several types of deficiencies, including automatic exemptions from emissions limits and discretionary exemptions from emissions limits during SSM events. Because these types of exemptions are not valid under the CAA, EPA's approval of these types of provisions was in error. Reliance on such provisions has thus frustrated effective enforcement of emissions limits in SIPs. Other types of provisions addressed in the proposal also interfere with effective enforcement of emissions limits by purporting to prevent enforcement by EPA or citizens if the state elects not to enforce or to preclude the availability of penalties or injunctive relief for violations in enforcement actions by any party.

Were the existing SIP provisions in question legally approved and promulgated by EPA and the states? What is the legal basis for declaring a validly-approve SIP provision invalid after the fact?

Under CAA section 110(k)(5), EPA is authorized to require states to revise previously approved SIP provisions. In this instance, EPA has acknowledged that it should not have approved the provisions in the first instance, and thus is proposing to require the affected states to correct these provisions.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

It is often not feasible to operate or use pollution control equipment during SSM periods without causing damage to that equipment. Some types of pollution control equipment cannot operate at full efficiency during startup periods, and some facilities and equipment must use alternative fuels during startup periods that pollution control equipment was not designed to target. What steps will EPA take to avoid a one-size-fits-all approach to implementing this rulemaking? Why is the EPA proposing to take away the ability of states to use enforcement discretion for excess emissions resulting from startup, shutdown and malfunctioning periods? Does EPA think that states are abusing this authority?
EPA is not taking a "one-size-fits-all" approach in the February 2013 proposed rulemaking. Under the principles of cooperative federalism, the CAA vests air agencies with substantial discretion as to how their SIP provisions meet the legal requirements and objectives of the CAA. EPA is not prescribing to states exactly how they must implement the CAA, nor is EPA directing states to adopt particular control measures. Rather, in issuing a SIP call, EPA is requiring that states bring their SIPs into compliance with the legal requirements of the CAA but leaving discretion to the states to remove or revise impermissible provisions, consistent with CAA requirements. Implementation concerns would be more appropriately considered during the state's process of revising its SIP to remove illegal SSM-related provisions. EPA's proposed rule also does not take away the ability of states to use enforcement discretion.

The Regional Haze program is purely for aesthetics, has nothing to do with public health, and was intended to improve visibility at national parks. States were given control by Congress to establish the emission standards and the appropriate controls for implementation. Your agency overruled Oklahoma's Regional Haze State Implementation Plan (SIP) following a Sue & Settle Consent Decree with environmental groups because you said Oklahoma's cost estimates were inaccurate. In response, EPA issued its own implementation plan that would cost $1.8 billion and would not have any more favorable impact on visibility than the SIP.

1. Inhofe 1. Did EPA do a technical, an economic, and a cost-benefit comparative analysis between Oklahoma's State Implementation Plan (SIP) that was overturned by EPA and the Federal Implementation Plan (FIP) that EPA imposed instead? If EPA performed any of those three analyses for either or both the SIP and the FIP, please provide them to me. If EPA did not perform any or all of those three analyses for the two plans, please explain why you did not do so.
EPA carefully assessed the costs and the visibility benefits associated with the controls in both Oklahoma's Regional Haze SIP and our FIP. The Clean Air Act and EPA's implementing regulations require that both the costs of controls and the visibility benefits be taken into account in making a determination of the appropriate controls. The agency took comment on our analyses before taking final action on our FIP for Oklahoma. The analysis can be accessed at http://www.regulations.gov/#!documentDetail;D=EPA-R06-OAR-2010-0190-0019.
2. Inhofe 2. Do you agree that Oklahoma's low-cost SIP is more cost effective than EPA's FIP? What is the comparative cost-benefit analyses of the SIP vs. the FIP? Are there any additional or greater visibility gains achievable by the FIP that are not attainable by the SIP?

EPA does not agree that Oklahoma's SIP is more cost-effective than our FIP. The agency's analysis of the costs of control indicated that the six coal-fired units in question could install air pollution controls at less than half the cost that Oklahoma estimated, while at the same time resulting in greater visibility benefits at several Class I areas than Oklahoma's plan. However, EPA has recently reached an agreement with the state and one of the companies affected by the FIP on an alternative pathway that the agency expects will be submitted by the state as a SIP to replace the FIP. EPA is also in negotiations with the remaining company about possible replacements for the FIP at one of its plants.

3. Inhofe 3. Did EPA use the Regional Haze program to force Oklahoma utilities to install scrubbers on coal fired utilities despite Oklahoma's equally effective, less expensive SIP?

EPA disagrees that Oklahoma's plan was equally effective, as explained in the answer to Question 2. EPA's FIP follows the requirements of the Regional Haze rule, which implements the requirements established by Congress in Sections 169A and 169B of the Clean Air Act. The FIP does not close off other paths toward compliance, as evidenced by our agreement on an alternative to the FIP controls with one of the companies involved and our continuing negotiations with the remaining company.

4. Inhofe 4. Did EPA alert the state of Oklahoma or utilities in the state prior to entering into a consent decree involving Oklahoma's SIP?

a. If EPA did, did EPA provide both the state and the utilities with an opportunity to participate in the settlement discussions?

b. If EPA did not, why not?

c. Do you believe EPA should allow states and affected utilities to participate in any negotiation process prior to a Consent Decree being agreed to that would affect the SIP, the state, and the state's utilities?

In keeping with the requirements of the Clean Air Act, the states and the utilities had an opportunity to comment on the proposed consent decree before EPA provided its final agreement and the consent decree was approved by the court. EPA recently has begun providing notices of intent to sue the agency on EPA's publicly available website, which will help to provide states and others notice of potential litigation that may affect their interests. See http://epa.gov/ogc/noi.html

5. Inhofe 5. Will you please provide me with all of the unredacted correspondence between EPA and the environmental groups regarding the Regional Haze program during your tenure at the Air Office?

I am informed by agency staff that the normal protocol for such a request for documents is to submit a separate letter to the agency, rather than through a question for the record. EPA will respond appropriately to any such request it receives.

6. Inhofe 6. Through the Consent Decree, did EPA intend to establish an unrealistically aggressive set of targets and timelines for approving State Implementation Plans to artificially constrain the amount of time available to work with states on procedural issues like cost estimates so that it could ultimately force a Federal Implementation Plan at a much greater cost?

EPA's efforts to work with the states on submitting SIPs are long-standing. At the time EPA negotiated the consent decrees for taking action on the regional haze plans, the deadline for submitting the state plans had passed by more than two years. In these negotiations, EPA sought to obtain a schedule that would allow EPA time to responsibly discharge its overdue mandatory duties under the CAA through notice-and-comment rulemaking. The agency was mindful that the plaintiffs had the option of seeking an even more expedited schedule from the court, and that there was a significant risk that that the court might establish a very aggressive schedule. In EPA's judgment, a court addressing the issue of an overdue mandatory duty by EPA would be unlikely to provide time for a second chance for a state to complete the planning obligation it has already failed to meet. Some states have been able to submit SIP updates as EPA was taking action on their original submissions, and the agency has been able to approve such updates in some cases. Where a federal plan has been established under this consent decree, it is still EPA's preference that it be replaced by an approvable state plan. EPA has sought, and mostly obtained, numerous extensions to the dates in the original consent decrees when EPA determined that additional time was needed; in most instances, these extensions have allowed the agency to consider additional information provided by the states.

7. Inhofe 7. Why did EPA decide to overrule Oklahoma's State Implementation Plan (SIP) and impose a FIP instead of working with the State to address whatever deficiencies EPA saw in the SIP's cost estimate?

The Agency disapproved Oklahoma's plan because Oklahoma's cost analysis for scrubbers did not follow the requirements outlined in the Regional Haze rule. EPA pointed out this concern while Oklahoma was still developing its SIP, but the state did not change its cost evaluation before submitting the SIP. Consequently, EPA disapproved Oklahoma's SIP, which triggered a legal obligation to issue a FIP in its place. While it is the agency's preference to allow states the opportunity to correct deficiencies in their SIPs, EPA was unable to negotiate enough time in the consent decree for Oklahoma to submit a new SIP with a corrected cost analysis. Nonetheless, EPA still prefers that the state replace the FIP with a SIP.

8. Inhofe 8. As Administrator, what will your primary objective be when implementing the Regional Haze program?

a. Will you assure me that EPA will make every conceivable effort to work with states to ensure that their SIPs are approved, and that FIPs will only be implemented once EPA has exhausted the Clean Air Act's cooperative federalism concepts and conclusively determines through a technical comparative analysis that the overruled SIP will not meet the visibility requirements outlined in the Regional Haze program?

b. Will you also ensure that any FIP is the least expensive option available to EPA to meet the minimum requirements of the Regional Haze law? Will you provide economic comparative analysis of the separate plans?

In general, it is my goal to work with the states as closely as possible and I will continue to look for opportunities to involve them in decision making that affects their interests. The states are required to submit their next full regional haze plans in 2018. I am committed to work with states to approve their SIPs.

9. Inhofe 9. In the CAA, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

"Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the standards. If EPA disapproves a plan for failing to meet the Act's requirements, or if a State fails to submit a plan in whole or in part, then the Act requires EPA to issue a federal plan for the State unless there is a timely correction of the deficiency and subsequent approval by EPA. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. In instances where EPA has not been under a consent decree deadline for a federal plan, the agency has disapproved SIPs with technical errors without immediately putting into place a federal plan. Except for a few instances in which EPA and the state agreed in advance that EPA would promulgate a FIP because of resource and technical capacity limitations at the state level (Hawaii, Virgin Islands, and Montana), in every instance in which EPA has adopted a federal regional haze plan, the agency had found errors in the state's technical analysis that the agency concluded would make EPA approval of the state plan unsustainable under legal challenge. In all cases without such technical errors, EPA has accepted the state's balancing of costs and visibility benefits.

62. Inhofe 62. EPA recently proposed to disapprove provisions in 36 state SIPs based on a change in EPA policy in response to a petition for rulemaking. Were the existing SIP provisions in question legally approved and promulgated by EPA and the states?
a. What is the legal basis for declaring a validly approved SIP provision invalid after the fact?
b. Has EPA done any analysis to determine if the SIP provisions in question are threatening attaining the NAAQS?
c. Without such an analysis, how can EPA determine that such SIP provisions are "substantially inadequate" for purposes of the CAA?
d. Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?
The bulk of the proposed action is not based on any change in EPA policy. The majority of the existing SIP provisions at issue were adopted by the states and approved by EPA, mostly before 1982. EPA realized and announced in 1982 that some SIP actions taken in the early phase of implementing the CAA were simply incorrect. In the SSM rulemaking, EPA is proposing to clarify and update the SSM policy and to correct mistakes we have generally recognized and communicated to the states for over 30 years. To evaluate these SIP provisions, EPA is using the public notice-and-comment rulemaking process explicitly set out in the Clean Air Act for addressing existing deficientprovisions in SIPs. For each state, there will

be another notice-and-comment rulemaking to approve the SIP revisions that are submitted in response to the SIP call.

With regard to your more specific questions:

a. CAA section 110(k)(5) provides the legal basis for EPA to call for a SIP revision whenever the Administrator finds that the SIP for an area is substantially inadequate to attain or maintain a NAAQS, to mitigate interstate pollutant transport adequately, or to otherwise comply with any requirement of the CAA.

b. EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. EPA's proposal that the affected SIP provisions are substantially inadequate is based upon the concern that the provisions in question do not meet legal requirements of the CAA.

c. EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state, including an explanation of the agency's reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA.

d. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with CAA requirements. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "*What are potential impacts on affected states and sources?*" at 78 FR 12467.

Barasso 27. My home state of Wyoming is the largest coal producer in the country. I have deep concerns about the process for developing and implementing the regional haze program in Wyoming. Can you commit to a process that does not disadvantage generation or the coal based resource in Wyoming?

Because of public comments that were critical of some of the basic technical analysis supporting our first proposed action on Wyoming's regional haze SIP, EPA plans to re-propose that action soon and provide the public with another comment period to review our revised technical analysis before taking final action. The agency is sensitive to the large number of coal-fired units that are at issue in Wyoming, and to the challenges of addressing the best available retrofit technology and reasonable progress requirements for these units in the limited compliance time period allowed under the CAA. EPA plans to note these challenges in our new proposal and invite comment, including supporting technical information, on a number of alternative paths forward.

e. With respect to the SSM issue, should EPA analyze whether the nationwide costs to impacted industries of the action are sufficient to trigger the necessity of OMB review?

The SIP call would leave to states the choice of how to revise their SIP provisions in question to make them consistent with Clean Air Act (CAA) requirements, and states have substantial discretion when revising their SIPs as to treatment of excess emissions from sources during SSM events. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events consistent with CAA requirements and how the state chooses to revise the SIP to address excess emissions during SSM events. Analysis of impacts to emissions sources as a result of removing SSM exemptions from a SIP would appropriately be conducted as part of the state's process of revising its SIP.

f. With respect to the SSM issue, should EPA be required to show that air quality is harmed by SSM excursions before calling for States to revise their SIPs?

The Clean Air Act requires continuous compliance with emission limitations by sources, including during periods of startup, shutdown, and malfunction. The law requires that EPA disapprove (or find to be substantially inadequate) SIPs with provisions that are inconsistent with this fundamental requirement of the Clean Air Act. That said, EPA notes that an impermissible SIP provision could have adverse impacts, such as by interfering with attainment and maintenance of the NAAQS, protection of PSD increments, protection of visibility, or meeting other Clean Air Act requirements. For citations to court decisions supporting EPA's position, see EPA's February 2013 proposed rulemaking (footnote 22, 78 FR at 12470) and EPA's supporting "Statutory, Regulatory, and Policy Context for this Rulemaking" memorandum in the rulemaking docket (see pages 17 and 21).

Sessions 16. I have been advised that EPA has, in several instances, illegally made unilateral revisions to State SIP's when the proper procedure was through a SIP Call.

a. Please explain how you determine if a SIP call or a FIP should be used.

The use of a SIP call or a FIP is governed by the provisions of the Clean Air Act. Under section 110(c), the EPA is legally required to issue FIPs in two specific circumstances:

1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever),or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.

By contrast, EPA is authorized to promulgate a SIP call under section 110(k)(5) whenever EPA determines that a state's existing SIP is substantially inadequate to provide for attainment and maintenance of the NAAQS, to mitigate interstate transport adequately, or to meet any other requirements of the CAA. EPA has discretion regarding whether to make a finding on whether a state's SIP is substantially inadequate. If EPA makes such a finding, however, then the agency has a legal obligation to issue a SIP call and to require the state to revise its SIP to bring it into compliance with CAA requirements.

b. Will you limit the use of FIPs to the situations actually anticipated in the CAA?

States and EPA both have authorities and responsibilities under the CAA. As noted above, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA already strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible. EPA does not use FIPs in situations not anticipated in the CAA.

11. **In your experience and opinion, do you believe states do a good job of protecting state and local environments? Do you believe the states have the first responsibility to develop environmental compliance plans? If so, how would you explain the EPA's recent efforts to put Federal Implementation Plans in place prior to allowing the States to implement their State Implementation Plans?**

My experience is that states and EPA need to work together to protect the environment. This is the approach taken in the Clean Air Act, which gives both states and EPA authorities and responsibilities to provide clean air and protect public health. As discussed below, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible.

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1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever), or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.

During my opening remarks, I mentioned the recent settlement between EPA, the State of New Mexico and PNM Resources.

(a) EPA has been charged with overreaching on regional haze rules. The story of the San Juan Generating Station would suggest otherwise, wouldn't it?

Response: Yes, the story of San Juan Generating Station is a great example of EPA working with the State of New Mexico, PNM, and other stakeholders to finalize a plan that will improve visibility in the surrounding areas while also being cost-effective.

(b) In the end, we want the states implementing these programs, don't we?

Response: Yes, it is EPA's preference to work with states to approve a State Implementation Plan, rather than issue a Federal Implementation Plan.

Brick Industry MACT's

Sessions 20. We understand that EPA is currently evaluating whether to finalize a consent decree with the Sierra Club for the issuance of new MACT standards for the brick industry. EPA began the rulemaking process for the second MACT several years ago, requiring two sets of information collection requests (ICRs) to be completed by the industry. However, EPA recently proposed a new schedule whereby the rule would be finalized in July 2014. I am concerned that the proposed schedule for this new Brick MACT is too short to allow meaningful review of brick industry emissions, how the proposed rule would affect the economic survival of the brick industry - especially with respect to impacted small businesses - and whether the proposed rule would provide discernible environmental and health benefits.

a. How did EPA arrive at the Brick MACT schedule contained in the proposed consent decree?

Environmental plaintiffs sued the EPA, arguing that the Agency should be subject to a court-imposed schedule. EPA asked the court to dismiss the case, but the court ruled in the plaintiffs' favor. In order to avoid a court-imposed schedule that might be more difficult to meet, EPA negotiated a proposed schedule for new rulemaking with the litigants. The proposed schedule was based on consideration of the efforts needed to gather and evaluate information relevant to developing standards that meet the requirements of CAA section 112(d)(2) and (d)(3). The proposed consent decree, including the proposed schedule, was published in the Federal Register on December 7, 2012, with a request for public comment. EPA has subsequently negotiated a revised schedule that will allow us additional time to, among other things, address small business concerns. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C. Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule.

b. Does EPA's schedule allow for adequate consideration of the Small Business Administration's (SBA) Small Business Panel review pursuant to SBREFA?

Yes. EPA takes very seriously the potential impacts of its rules on small businesses, as well as its obligations to confer with those businesses and to work to minimize any avoidable adverse impacts. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C. Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule. This will ensure adequate time for review by the SBA's Small Business Panel.

c. What emissions reductions would be achieved pursuant to full implementation of the proposed standards? Because the agency has neither concluded its analyses of the available information, nor consulted with interested stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the emission reductions that would result. This process will include small business consultation under SBREFA, as well as interagency review prior to proposing any emission standards.

d. What are the potential economic impacts and costs to the domestic US brick industry related to the proposed standards?

Because the agency has neither concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the economic impacts and costs of compliance. However, EPA fully intends to consult with members of the U.S. brick industry, including through the SBREFA process, to identify potential

impacts and ways to minimize any unnecessary and avoidable adverse economic impacts on the brick industry.

e. How would the costs of these new standards compare, on a per-ton basis, with other industries recently subjected to new MACT standards?

Because the agency has not yet concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the costs of compliance or how they would compare with other industries subject to MACT standards.

21. The brick industry was subject to a Brick MACT issued in 2003. The industry came into compliance with that MACT (and continues to comply) at a cumulative cost upward of $100 million. This MACT was vacated by the D.C. Circuit in 2007, but many of the controls installed by the brick industry remain in place. I am told that these new controls are now being used to establish a new "floor" for brick industry emissions. This "MACT on MACT" situation (i.e. full compliance with a MACT standard for almost a year before the rule was vacated) is very concerning to brick manufacturers around the country.

a. What other industries have been subject to successive rounds of regulation similar to the situation the brick industry now finds itself?

Several rules have been remanded to EPA for further justification or revision based on court decisions holding that EPA's original MACT standards were unlawful. This includes, for example, rules for Hospital, Medical, and Infectious Waste Incineration; Commercial and Industrial Waste Incinerators; and Commercial, Industrial, and Institutional Boilers. The D.C. Circuit has upheld the agency's ability to correct errors in its MACT standards and rejected the "MACT on MACT" argument where the agency is either responding to a court remand or otherwise correcting a legally deficient MACT standard.

RadNet

Sessions 31 In EPA's response to the accident at the Fukushima Daiichi nuclear power plant in Japan, I am told that the RadNet system carried out its mission "to monitor environmental radioactivity in the United States in order to provide high quality data for assessing public exposure and environmental impacts resulting from nuclear emergencies." In particular, my understanding is that the timely, comprehensive and publicly accessible monitoring data generated from RadNet provided a factual basis for federal and state governments to reassure the American people that levels of radioactivity reaching the United States from Fukushima were "hundreds of times below levels of concern." As recognized at the time of inception of the RadNet system, it would be impractical to attempt to stand up such a monitoring system only in the event of an actual nuclear emergency. This is particularly true considering the need to make near-term assessments of potential risks and formulate protective actions, if needed, to protect public health. In addition, I am told that maintaining RadNet in a monitoring mode is necessary to maintain data on ambient levels of radiation in the environment for baseline and trend analysis, as well as in assuring continual readiness, including maintaining equipment and training personnel to respond rapidly to an event. Nevertheless, I am also told that some shortcomings in the RadNet system were noted during the Fukushima event and thereafter. What is needed to assure that the RadNet system will be fully maintained at a high level of readiness? What has EPA learned from the Fukushima event in regard to potential improvements to the system?

More generally, what has EPA learned from the Fukushima event in regard to our nation's capability to monitor and analyze radiation in real-time to be able to more effectively fulfill its mission?
EPA agrees that the RadNet System performed well in providing information to the American public during the Fukushima event. As you noted, the Agency also identified challenges during this event and has taken a number of steps to further improve the program. Foremost, EPA has established stricter readiness goals and improved internal reporting for RadNet. EPA has an established goal of at least 80% of the RadNet monitors operating at all times, with the expectation that the Agency will regularly exceed that goal in practice. Additionally, the Agency has improved these elements:
EPA personnel at the National Analytical Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama, evaluate the status of each monitor daily.

NAREL staff use high-speed computer connections to each air monitor to perform significant remote maintenance each day. NAREL is also installing backup telecommunications methods.

Monitors requiring repair are returned to full service within two weeks, or sooner if EPA is responding to an emergency such as the Fukushima event. NAREL has worked with the monitor manufacturer to ensure that essential components are available, and appropriately stocked in inventory.

EPA has also improved the presentation of RadNet data on the Agency's website so that it is easier to access and understand. This is an ongoing project and EPA will continue to work on ways to improve how radiation information is presented.

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
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Subject: Hearing Prep
Attachments: Agenda for 11-28-16 RFS hearing prep session.docx
Location: WJC-N 5400

Start: 11/28/2016 5:00:00 PM
End: 11/28/2016 6:00:00 PM
Show Time As: Busy

To: McCabe, Janet; Niebling, William; Lubetsky, Jonathan; Sutton, Tia; Haman, Patricia; Lewis, Josh; Hengst, Ben; Argyropoulos, Paul; Burkholder, Dallas; Korotney, David; Lie, Sharyn; Machiele, Paul; Manners, Mary; Dubois, Roland; Orlin, David
Cc: Cyran, Carissa; Charmley, William; Simon, Karl

Agenda for
11-28-16 RFS he...

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
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Subject: Prebrief for Rep. Simpson Meeting
Attachments: RE: Rep. Simpson Meeting; 5/18/2016 "Prebrief for Rep Simpson" meeting
Location: WJC-N 5400 + **Conference line and code / Ex. 6**

Start: 5/18/2016 7:00:00 PM
End: 5/18/2016 7:30:00 PM
Show Time As: Busy

To: McCabe, Janet; Niebling, William; Sutton, Tia; Lubetsky, Jonathan; Grundler, Christopher; Hengst, Benjamin; Stewart, Lori; Read, David; Cohen, Janet; Bunker, Byron; Stahle, Susan; Orlin, David; Le, Madison; Walsh, Ed

RE: Rep. Simpson Meeting

5/18/2016 "Prebrief for Rep Simpson...

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
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Subject: Rep. Simpson Hill Briefing (Confirmed)
Attachments: RE: Rep. Simpson Meeting; RE: Rep. Simpson Meeting?; RE: Rep. Simpson Meeting?
Location: Rayburn, Room 2312

Start: 5/19/2016 1:30:00 PM
End: 5/19/2016 2:30:00 PM
Show Time As: Busy

To: Janet McCabe, Ben Hengst, Ed Walsh, David Orlin
FYI: Chris Grundler, William Niebling, Tia Sutton

RE: Rep. Simpson Meeting | RE: Rep. Simpson Meeting? | RE: Rep. Simpson Meeting?

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 3/29/2016 6:04:30 PM

Subject: Arkansas is on Central Time

Start: 4/21/2016 4:00:00 AM
End: 4/22/2016 4:00:00 AM
Show Time As: Free

7:45am CT 8:15am CT	Management Roundtable
8:30am CT 9:30am CT	RFS Small Refinery Decision Update
10:15am CT 10:30am CT	Drive from the hotel to the speech
10:45am CT 11:45am CT	Speech
12:00pm CT 12:30pm CT	Open / No Meetings
12:30pm CT 1:30pm CT	Drive to Bentonville, AR for Walmart Meeting
1:30pm CT 2:00pm CT	Open / No Meetings
2:00pm CT 4:00pm CT	Walmart Meeting
4:00pm CT 4:30pm	Drive to Bentonville Airport
4:30pm CT	Rental Car Return
5:00pm CT	TSA Screening / Boarding
6:25pm CT	Flight through Charlotte to DCA

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
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Subject: Briefing on Small Refinery Hardships
Attachments: JanetMcCabe-Mtg-request-form-3-1-16.docx
Location: WJC-N 5400 + Video AA Room C174 + **Conference line and code/Ex. 6**

Start: 3/10/2016 2:30:00 PM
End: 3/10/2016 3:30:00 PM
Show Time As: Busy

To: McCabe, Janet; Grundler, Christopher; Bunker, Byron; Le, Madison; Hengst, Ben; Manner, Mary; Cohen, Janet; Read, David; Weihrauch, John; Stahle, Susan; Orlin, David; Haman, Pam; Sutton, Tia; Argyropoulos, Paul;

JanetMcCabe-Mt...

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 1/27/2016 4:37:57 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Read, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd15b97b60dd487bb865978544f1f6be-Read, David]; Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]

Subject: Prebrief for the 2/9 Meeting with Small Refinery Owners' Ad Hoc Coalition re: RFS
Attachments: RE: Meet with Small Refinery Owners' Ad Hoc Coalition re: RFS (Confirmed)
Location: WJC-N 5400 + Video with AA + Conference line and code/Ex. 6

Start: 2/5/2016 3:30:00 PM
End: 2/5/2016 4:00:00 PM
Show Time As: Busy

To: Janet McCabe, Ben Hengst, David Orlin, Chris Grundler, Byron Bunker, Janet Cohen, Sue Stahle, Paul Machiele, Tia Sutton, David Read, Dallas Burkholder

RE: Meet with Small Refinery O...

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 1/15/2016 8:55:09 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Read, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd15b97b60dd487bb865978544f1f6be-Read, David]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
CC: Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]

Subject: Meet with Small Refinery Owners' Ad Hoc Coalition re: RFS (Confirmed)
Attachments: RE: Request for Meeting with Ms. McCabe - Renewable Fuel Standard; RE: Request for Meeting with Ms. McCabe - Renewable Fuel Standard; Confirmed 2/9 at 2pm: Request for Meeting with Ms. McCabe - Renewable Fuel Standard; RE: Confirmed 2/9 at 2pm: Request for Meeting with Ms. McCabe - Renewable Fuel Standard; FW: Confirmed 2/9 at 2pm: Request for Meeting with Ms. McCabe - Renewable Fuel Standard; Agenda for Meeting with Small Refinery Owners Coalition - 2.9.2016.pdf
Location: WJC-N 5400 + **Conference line and code / Ex. 6**

Start: 2/9/2016 8:15:00 PM
End: 2/9/2016 9:00:00 PM
Show Time As: Busy

To: McCabe, Janet; Sutton, Tia; Hengst, Benjamin; Grundler, Christopher; Argyropoulos, Paul; Bunker, Byron; Cohen, Janet; Machiele, Paul; Orlin, David; Read, David; Stahle, Susan
Cc: Bunker, Byron
Outside Attendees (in person):

Agenda for Meeting with Sm...

1. Warren (Bob) Neufeld (Wyoming Refining Company)
2. Pam Posster (Placid Refining Company, LLC)

3. Anne Goldsmith (Calumet Specialty Products Partners, L.P.)
4. John Krutz (Calumet Specialty Products Partners, L.P.)
5. David Podratz (Calumet Specialty Products Partners, L.P.)
6. David Carroll (Hunt Refining Company)
7. Tom Schmitt (Hunt Refining Company)
8. Joe Giglotto (Hunt Refining Company)
9. LeAnn Johnson Koch (Perkins Coie)
10. Krista Hughes (Perkins Coie)

RE: Request for Meeting with Ms.... | RE: Request for Meeting with Ms.... | Confirmed 2/9 at 2pm: Request for... | RE: Confirmed 2/9 at 2pm: Request ... | FW: Confirmed 2/9 at 2pm: Request ...

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 1/28/2015 2:21:22 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Manners, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebdb1392504a4b71894970b1a7bb186c-Manners, Mary]; Weihrauch, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=74d426b7439045d9a0a65b186ea68b21-Jweihrau]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]; Hoyer, Marion [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8dcdb076983049369a80f430a9f1d067-Hoyer, Marion]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]

Subject: Small Refiner Hardship Issue
Attachments: RE: Extremely Time Sensitive - Need to a Meeting this Thursday (January 29) with Janet on Small Refiner Hardship Issue
Location: WJC-N 5400 + Video with AA + **Conference line and code / Ex. 6**

Start: 1/29/2015 3:30:00 PM
End: 1/29/2015 4:00:00 PM
Show Time As: Busy

To: McCabe, Janet; Grundler, Chris; Hengst, Ben; Manners, Mary; Weihrauch, John; Argyropoulos, Paul; Sutton, Tia; Sargeant, Kathryn; Hoyer, Marion

RE: Extremely Time Sensitive - ...

Message

From: Mcquilkin, Wendy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=62085E84B8FA4756A92B53096E72FFAE-MCQUILKIN, WENDY]
Sent: 7/2/2013 5:24:13 PM
To: Jutras, Nathaniel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33ecf1cd934d4b18858a17e2099ceac7-NJutras6]
CC: Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Eagles, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6e3f422f9a2e4c8a94efdd5871f6cba8-TEagles]; Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]; Geller, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a4cb1583a884038bdef193017d31e72-Geller, Michael]; McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Drinkard, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=808a6b7b65bf447f93dad2f510feaf61-ADRINKAR]; Dennis, Allison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9bf7959058b241fab18e564e9c957b56-ADennis]; Goffman, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=861d0835510c4bb0b32bbca40afbdbf9-Goffman, Joseph]; Owens, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=30cf6e677ee74b2f998423e6e2836fdd-NOwens]; Pritchard, Eileen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a396601f910b4c528707d7d3bbeb197b-Epritch]; Adams, Darryl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2dee7c4c2dad4012b9176f91f7716ee1-Dadams03]; Muellerleile, Caryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b86f484dca634a46ba81be8009ffc290-CMueller]; Cole, Amy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e14cfcbabbb44d9695d6fa35351c7393-Cole, Amy]; Morris, Stephanie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a01ee901d61c44ff91af135f2ed1eb08-Morris, Stephanie]; Brown, Stephanie N. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a393c3018cc484b9bfa2b3e6a09fd95-Brown, Stephanie_67be04ec50]; Brooks, Patricia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=992ba9859855468499155d32acd9e058-Pbrook03]; Free, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=665bf4a33ca940eeb3e40b4301584584-Free, Laura]; Morgan, Ruthw [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=514074e564144982a695e0eaefb1b58e-RMorga02]; Scoville, Pat [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3a78d930883b4664ad29d6afa5cec4be-PScovill]; Ghanta, Venu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]; MacAllister, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d72e3dbea2843018007b53de3670d90-MacAllister, Julia]; Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; Hamilton, Sabrina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=68d3167c798743848aafcdfb73bb74f1-shamiltn]; Hammond, Gloria [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=48d278b2a56442599e4614e9b6891dbd-GHammond]; Faulkner, Martha

[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e8e57f624a4457dacf5349997c5bb25-Faulkner, Martha]
Subject: SAN # 5615 - RFS Volume Standards for 2013
Attachments: EO12866_RFSAnnual Rule 2060-AR43 FRM FRN_20130702.docx

TO: OP/Nathaniel J. for review and submittal to OMB for clearance.

07/02/2013	**SAN#:** 5615	**CMS Control #:**	
	RFS Volume Standards for 2013		
	Tier: 2	**RIN#:**2060-AR43	OTAQ

TO: OP/Nathaniel Jutras, OAR Correspondence Unit, OAR Reg Processing Team, OTAQ File

Final Action is ready for OMB

Comments:

OTAQ Reg Contact: Julie MacAllister, 734-214-4131
OTAQ Mgmt. Level Reviewer: Patricia Scoville (202) 564-1101

Communications Contact:

Thanks,

Wendy Mcquilkin
564-1348, 6538 AR North

Message

From: Birgfeld, Erin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3383BC15DD5542E5BFF5C3DE13BA9BF2-EBIRGFEL]
Sent: 11/17/2016 4:59:46 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
CC: Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: RFS materials
Attachments: RFS 2017 Final RVO_Roll Out Plan 11_17_16.docx; RFS 2017 PR DRAFT - 11 17 16.docx

Hi Laura,

Here are the RFS communications materials.

Thanks!

-Erin

From: Hengst, Benjamin
Sent: Thursday, November 17, 2016 11:53 AM
To: Vaught, Laura <Vaught.Laura@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: Re: RFS materials

We are making a few tweaks now.

Erin, when done can you pls send to Laura? Thanks. Ben

On Nov 17, 2016, at 11:47 AM, Vaught, Laura <Vaught.Laura@epa.gov> wrote:

> Katie asking me to send her RFS rollout materials – can you send me what I should send to her? Thanks!
>
> **Laura E. Vaught**
> Associate Administrator
> Office of Policy
> U.S. Environmental Protection Agency
> (202) 564-0304 (direct)

Message

From: Cyran, Carissa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A903847A9424979B89400688B5C2F5E-CYRAN, CARISSA]
Sent: 10/12/2016 9:32:24 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Goffman, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=861d0835510c4bb0b32bbca40afbdbf9-Goffman, Joseph]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Niebling, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8fb45c85622f4be5a2f0ce12a9798204-Niebling, W]; Banister, Beverly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d7573525c894f5dbfc19abd6a7fda91-Banister, Beverly]; DeMocker, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d331cfe11ecc4729ae582d379c2ad18b-JDemocke]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: FYI: OAR Transition Issue Papers
Attachments: Transition Issue Paper Biomass 10-11-2016.docx; Transition Issue Paper Climate Beyond CPP.docx; Transition Issue Paper CPP.docx; Transition Issue Paper GHG Emission Trends 10-7-16.docx; Transition Issue Paper NAAQS.docx; Transition Issue Paper RFS 10-4-2016.docx; Transition Issue Paper Transportation and Climate Change 10-12-2016.docx; Transition Issue Paper Post-Paris.docx; Transition Issue Paper VW.docx

Hello,

Attached are all of OAR's Transition issue papers that have been submitted to OP. If you see any major red flags please let me know, otherwise we will have the opportunity to provide additional comments after OP has completed their review. We should start receiving feedback starting COB Friday.

Thank you,

Carissa

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 9/23/2016 8:19:39 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RFS documents, news, goings-on
Attachments: Compiled preamble for AA review 9-23-16.docx; Draft Petition Responsev8 RLSO.docx

Hi Janet,

I've attached 2 documents for you.

The first is a redline of the POO decision, incorporating your most recent edits/comments.

The second is a draft of the 2017 RVO preamble. We are still working on some areas of this, and I'd suggest Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Separately, Deliberative Process / Ex. 5

Given where we are in the week, at this point Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks
Ben

Message

From: Millett, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C067CAA6C93544F78C26AB08CC567D27-MILLETT, JOHN]
Sent: 5/17/2016 9:35:55 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Niebling, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8fb45c85622f4be5a2f0ce12a9798204-Niebling, W]
Subject: FW: RFS Press release edits, updated roll out, and web for review.
Attachments: RFS NPRM 2016_ Press Release 5-17-16 230pm.docx; RFS Volumes Chart 2014-2018 -5-16-16.docx; RFS 2017 NPRM Roll Out Plan - 5 17 16 230pm.docx

Hi Janet, Lori and William -- Some corrections to the final RFS materials from OTAQ below. Announcement is at 2 pm. OCIR has asked that no heads up calls go out till after noon. I plan to send the heads up materials to the regions just after noon, with a note to send questions back to HQ.

From: Birgfeld, Erin
Sent: Tuesday, May 17, 2016 3:02 PM
To: Allen, Laura <Allen.Laura@epa.gov>
Cc: StClair, Christie <StClair.Christie@epa.gov>; Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RFS Press release edits, updated roll out, and web for review.

Hi Laura,

Two critical edits to the RFS PR for tomorrow .

1) Make this edit:

Deliberative Process / Ex. 5

These are made in the clean version attached. I highlight the key edits because you may be working off another version by now.

The web page is available for your review on staging here: https://wcms.epa.gov/node/149725/revisions/376003/view/.

To view login here first with your password and LAN ID.

Note that the page right now does NOT include the annual standards graph **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 What is included on that page for your review is safely behind the fire wall. The graph is attached for reference. The final page will have in just under the matrices with the volume standards.

Finally, we still have a place holder for the web link. Drupal generates the url automatically for a new page, and we cannot predict with full accuracy what it will be. So it is safest to give to you just before it is live. We plan to post the site at 1:30 so we can send you the actual link right after it posts to incorporate into the website.

Let us know if you have questions.

Thanks!

-Erin

From: Argyropoulos, Paul
Sent: Tuesday, May 17, 2016 2:28 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Korotney, David <korotney.david@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Richards, David <Richards.David@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: RE: Press release and roll-out plan, updated

Ben, see my comments

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

From: Hengst, Benjamin
Sent: Tuesday, May 17, 2016 2:24 PM
To: Korotney, David <korotney.david@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Richards, David <Richards.David@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Subject: RE: Press release and roll-out plan, updated

Thanks

I made the changes and saved it to the x-drive folder

From: Korotney, David
Sent: Tuesday, May 17, 2016 2:21 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Richards, David <Richards.David@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Subject: RE: Press release and roll-out plan, updated

I found a couple of errors in both documents.

From: Hengst, Benjamin
Sent: Tuesday, May 17, 2016 2:10 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Richards, David <Richards.David@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Cc: Korotney, David <korotney.david@epa.gov>
Subject: Press release and roll-out plan, updated

Team,

I made a few final tweaks Deliberative Process / Ex. 5 to the PR. I also updated the call list and timing in the roll-out plan. Can folks please take a quick look and make sure this is all accurate? In a few hours I'll circulate to a much broader group.

Thanks,
Ben

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 5/17/2016 1:23:00 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: REGS NPRM: briefing for interagency
Attachments: REGS Overview for OMB 051516.pptx

Hi Janet,

Sorry for getting this to you so late, but tomorrow we are scheduled to give our kick-off briefing to the interagency gang on the REGS NPRM. For the slides (attached) we started with the briefing we gave to the WH a month or so ago, then added some detail on a few topics (e.g., E-RINs).

The meeting is at 11 tomorrow, but we won't circulate these until around 10am.

thanks,
Ben

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 2/17/2016 12:52:26 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Cyran, Carissa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a903847a9424979b89400688b5c2f5e-Cyran, Carissa]; Jones, Marlene [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb606fcd99754d5083a4306503647c8a-Jones, Marl]
Subject: Fwd: Materials for Janet: agenda for 2:30 meeting and responses to Janet's EPW hearing testimony comments
Attachments: Agenda for 2-17-16 RFS hearing prep session.docx; ATT00001.htm; 1a McCabe Testimony for Feb 2016 EPW RFS Hearing_JM+OTAQ responses.docx; ATT00002.htm

Janet, I am not sure this made it to your book tonight but, if not, we'll print in the morning.

Sent from my iPhone

Begin forwarded message:

> **From:** "Sutton, Tia" <sutton.tia@epa.gov>
> **Date:** February 16, 2016 at 5:54:54 PM EST
> **To:** OAR Briefings <OAR_Briefings@epa.gov>
> **Cc:** "Cyran, Carissa" <Cyran.Carissa@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>, "Lubetsky, Jonathan" <Lubetsky.Jonathan@epa.gov>, "Haman, Patricia" <Haman.Patricia@epa.gov>, "Davis, Matthew" <Davis.Matthew@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
> **Subject: Materials for Janet: agenda for 2:30 meeting and responses to Janet's EPW hearing testimony comments**
>
> Hi all,
> Attached are two items for Janet's book tonight:
> 1. <!--[if !supportLists]--><!--[endif]-->Agenda for tomorrow's 2:30 "Hearing Prep" session.
> 2. <!--[if !supportLists]--><!--[endif]-->Responses to Janet's comments on the EPW RFS hearing testimony.
>
> Thanks!
> -Tia

Message

From: Millett, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C067CAA6C93544F78C26AB08CC567D27-MILLETT, JOHN]
Sent: 2/19/2015 5:38:10 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: Fw: OPIS: EPA Official: Agency to Issue Three-Year RFS Proposal this Spring

Fyi from Dallas -- other fuel press were there, so we'll be seeing this from other outlets, and will get asked to confirm, etc.

I guess the question is, Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.
Original Message
From: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Sent: Thursday, February 19, 2015 12:15 PM
To: Millett, John
Subject: FW: OPIS: EPA Official: Agency to Issue Three-Year RFS Proposal this Spring

Here you go...

-----Original Message-----
From: StClair, Christie
Sent: Thursday, February 19, 2015 11:08 AM
To: Purchia, Liz; Mylan, Christopher; Birgfeld, Erin; Millett, John
Subject: OPIS: EPA Official: Agency to Issue Three-Year RFS Proposal this Spring

2015-02-19 11:04:14 EST
***EPA Official: Agency to Issue Three-Year RFS Proposal this Spring

Grapevine, Texas -- This spring, EPA plans to issue a proposal for 2014, 2015 and 2016 Renewable Fuel Standard (RFS2) targets, EPA Office of Air Quality and Transportation Director Chris Grundler told attendees here this morning at the Renewable Fuels Association annual conference.

"To me, this is the single most important thing we can do to advance the RFS" and get the provision back on track, Grundler said to the approximately 900 attendees. He provided few other details, although earlier this month, OPIS exclusively reported that the agency was learning towards re-proposing the 2014 target to take into account market changes.

EPA's 2014 proposal, issued in November 2013, called for nearly across-the-board cuts, but the targets were never finalized. EPA has been attacked by stakeholders and congressional members alike for repeatedly missing its statutorily required deadlines for issuing annual RFS targets, something that Grundler acknowledged in his comments.

EPA is "sorry ... we did not get our work done," Grundler said. "I know words are cheap, but in this case they are sincere. I get that there are consequences when the government fails to act for producers and obligated parties alike. This simply is not acceptable," he said. "There is no one more frustrated than I am about the current state of affairs," he added.

"Obviously implementing the RFS has proved to be very challenging for us," Grundler continued, noting that he was not involved in negotiations on the 2007 energy bill, which included RFS2. "Had I been, I probably would have pointed out that doing annual rules ... is a tall order," he said. "I am not going to stand here and blame others. We didn't get it done and that's a fact," he added.

There are also other issues on EPA's plate, Grundler noted. His office has a "small dedicated staff" of between 10 and 12 that focus on RFS implementation.
"But we have a few distractions that you should know about," including multiple RFS-related lawsuits, as well as those related to the Tier 3 proposed regulation, he said. "Defending those lawsuits will take up my people's time and our lawyers,'" he noted, in addition to "a steady stream of requests for [RFS] regulatory relief from small refiners and three large Freedom of Information Act requests on the provision.

"For the next few months, we are regrouping," Grundler continued. "EPA's goal remains to get the RFS back on track and provide for long-term growth of renewable fuels in this sector," he said.

"The RFS debate in Washington has become overheated and gotten ugly at times. My hope is that we can find a way to have a civil discourse with all sides of the debate," Grundler added.

--Rachel Gantz, rgantz@opisnet.com

This year's 7th Annual OPIS RFS2, RINs & Biodiesel Forum dates and location have been finalized. Please visit www.opisnet.com/events/rfs2rins/ to register now and take advantage of the $300 discount - it's the largest we'll offer. You can also request agenda details be sent to you as soon as they become available. Make sure you join us in downtown Chicago October 15-16, 2015 so you can learn how to stay in compliance and avoid hefty fines!

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Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 2/16/2015 7:42:43 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Ethanol Remarks
Attachments: National Ethanol Conf 2015-latest review draft.docx

Janet—on Thursday I am in Texas addressing the National Ethanol Conference. Attached is a draft of my remarks as of now. This reflects the basic content I plan on covering, but not the exact language. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Also, the press office has arranged a couple of interviews for me to do. One is with OPIS---the fuel industry trade rag. This is the reporter who wrote the story that not only are we reproposing 2014, but that we were going to repropose 2 weeks ago. Another is some Ag Radio that wants 6-8 minutes of sound bite. Liz is seeing about having the Region 6 press office at the conference to help.

Chris

Message

From: Millett, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C067CAA6C93544F78C26AB08CC567D27-MILLETT, JOHN]
Sent: 6/11/2015 6:03:30 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: WSJ: Gasoline Industry Wrestles With Biofuel Law's Unintended Consequences

FYI -- we had provided a statement for this, since we don't get into RIN prices --

http://www.wsj.com/articles/gasoline-industry-wrestles-with-biofuel-laws-unintended-consequences-1434043770

Gasoline Industry Wrestles With Biofuel Law's Unintended Consequences

A new Environmental Protection Agency proposal has shaken the market for an esoteric asset underlying the fuel industry, as suppliers and financial speculators trade billions of federal credits aimed at cutting pollution and reliance on foreign oil.

By
IANTHE JEANNE DUGAN
June 11, 2015 1:29 p.m. ET
0 COMMENTS

A new Environmental Protection Agency proposal has shaken the market for an esoteric asset underlying the fuel industry, as suppliers and financial speculators trade billions of federal credits aimed at cutting pollution and reliance on foreign oil.

Gasoline producers and importers receive these credits from the EPA for mixing corn and other feedstock into motor fuel for domestic consumption. Between the biofuel processors that earn the credits and the refinery operators that must buy them to meet quotas, a cottage industry of brokers and investors who buy and sell the credits like commodities has sprouted.

The program was innocuous enough when it began in 2005. The credits, known as renewable investor numbers—or RINs—initially cost just pennies. But as speculators flooded into the market and drove up prices and some refiners held the credits waiting for prices to rise, it became a big unintended expense for some refiners.

"We are hostage to the RINs market," says Ben Hirst, chief legal officer for Delta Air Lines Inc.,which in 2012 bought a Pennsylvania refinery in hopes of liberating itself from fuel speculators it alleged were driving up prices. Last year, the carrier spent $111 million on the credits, and now is trying to disentangle itself from the renewable-fuel program.

In the past two weeks, more than 300 million of the credits were bought and sold, brokers said—about twice the norm. The market, prone to slumbers and surges, became frenetic just before the EPA recently proposed new quotas for the amount of gasoline that must be blended with renewable fuel.

Advertisement

The frenzy highlighted an unintended outcome of a federal policy to reduce fossil fuels used in cars and trucks. The program has generated tens of billions of receipts showing that fuel producers and importers comply with new renewable-fuel standards. These receipts are the hidden currency behind the nation's core renewable-fuel program.

On one side of these trades are "blenders"—refiners and importers that get credits for mixing ethanol into gasoline. On the other side are refineries that, because they don't blend, must buy credits to meet quotas. Those refineries include ones owned by Delta, private-equity giant Carlyle Group and Valero Energy Corp.
RINs are traded through private contracts. Prices have seesawed from pennies two years ago to more than a dollar. This year, brokers say, they were trading for an average of about 60 cents before sliding to 30 cents on May 29, when the EPA announced its proposal. The quotas are expected to be finalized in November.

Seven U.S. refiners collectively spent more than $1 billion last year buying these credits, according to public filings.

The EPA didn't intend for the program to become a market, and an agency spokesperson declined to comment on RIN price movement.

"RINs are used to demonstrate compliance under the Renewable Fuel Standard program," the EPA said. The agency manages an electronic system that tracks the RINs, but not their prices on the open market.

"There is no way the system was ever meant to be this high-priced or controversial," says Scott Irwin, an economics professor at the University of Illinois. "How did this program get this out of control?"

The EPA launched the program in 2005 and expanded it in 2007 under a congressional mandate that a certain amount of corn and other renewable feedstock be blended into gasoline, with quantities escalating annually. This makes gas burn more cleanly.

Last year, about 14 billion credits were generated. The EPA in late May proposed raising the quota to 16.3 billion this year and 17.4 billion in 2016.

The quotas are controversial; they fall short of a goal suggested by Congress, riling some corn growers, environmentalists and elected officials. Democratic presidential candidate Hillary Clintonproposed expanding the program, in a op-ed late last month in The Gazette in Iowa, where she faces an important Democratic caucus in a farming state.

"We're going to Washington to push for more," says Jerry Mohr,president of the Iowa Corn Growers Association, which claims they will lose 1 billion bushels of corn sales this year as a result of the EPA's credit-quota shortfall compared with congressional recommendations.

Refiners that don't blend aren't happy either. Depending on how much gasoline and diesel they produce for consumption in the U.S., they are required to buy a certain number of RINs. This, some have complained to government officials, make them captive buyers in an artificial commodities market.

Philadelphia Energy Solutions, owned in part by Carlyle, cited the volatility and cost of the credits as a risk in documents it filed in February with federal securities regulators as part of a public disclosure for an initial public offering. RINs had a "significant impact on our results of operations," it said, rising in cost to $116.3 million in 2013 from $19 million in 2011. For the first nine months of 2014, the refinery spent $101.4 million on the credits, the filing said.

The cost hinges, it said, on the amount of biofuels blended into transportation fuel, the price and availability of the credits for purchase, transportation-fuel production levels, EPA rules and other factors.

At Valero, the credits cost $372 million in 2014. In 2013, the San Antonio-based fuel company spent $517 million. It had $3.5 billion in earnings in 2014.

"It's not an investment," says Valero spokesman Bill Day. "It's not something you get a return on. It's just an expense."

He says when the prices of the credits rise, Valero and other gasoline sellers export more gas. "The expense gets passed along," he says. "They go into fuel prices."

James Stock, a Harvard University economics professor, says RIN prices have a negligible effect on gasoline prices. But he and other economists say that the price of diesel, which is attached to another set of credits, is affected. That Is because each gallon of diesel is blended with a smaller amount of renewable fuel and therefore producers are spending more on the credits.

The EPA occasionally grants exemptions to small refiners who can prove that RIN buying is a hardship.

Calumet Specialty Products Partners L.P. said in a March securities filing that it recouped $18.2 million spent on these credits in 2013, after the EPA retroactively granted exemptions for the firm's refineries in San Antonio and Shreveport, La. The firm proved a hardship as a small refinery, which is allowed sometimes under EPA rules.

~~~~~~~~~~~~~~~~

John Millett
~~~~~~~~~~~~~~~~

Director, OAR Communications
Desk: 202-564-2903
Cell: 202-510-1822

Message

From: Niebling, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8FB45C85622F4BE5A2F0CE12A9798204-NIEBLING, W]
Sent: 12/9/2014 2:09:20 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Fw: RFS hearing prep, Monday night materials
Attachments: Fast Facts - RFSv4.docx; House Oversight hearing, Dec 10 2014, Q&A set#4.docx; McCabe Oversight - Draft Testimony 12-10-14 for OMB_oce.OTAQ.docx; RFS case summary #2.docx

Just left hard copies on your chair. Haven't had a chance to look things over but I did look at and share thoughts on the passback testimony when it first came in, namely **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

From: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Sent: Monday, December 8, 2014 20:38
To: McCabe, Janet; Niebling, William
Cc: Mackay, Cheryl; Argyropoulos, Paul; Grundler, Christopher; Rackoff, Jonathan
Subject: RFS hearing prep, Monday night materials

Hi Janet, William:

I'm attaching the next batch of RFS hearing prep materials for your review.

-- Q&A Set #4 (we've provided #1 and #3 already; #2 you should have from William). This Q&A set includes a few Qs that we hadn't yet gotten to, including Carbio, a basic science question + answer you requested, and some facts/background on relevant topics (QAP, small refiner hardship petitions).

-- Testimony. This version is the redline markup that we'd return to OMB. It shows where we accepted/rejected edits. (William, I took your comments into account as I went through this). This is now ready for Janet's review.

-- Fast facts. This document includes basic #s, such as statutory volumes, as well as the chronology of our various volume rules.

-- A summary of court cases on RFS from OGC.

thanks,
Ben

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/22/2014 4:38:26 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: Clarify Q re small refineries

The info I just sent you represents only RFS exemptions.

In the past, we have also provided relief to small refiners and refineries from sulfur and benzene fuel standards (both by rule by providing more time, and through case by case hardship exemptions)

From: McCabe, Janet
Sent: Tuesday, July 22, 2014 12:35 PM
To: Grundler, Christopher
Subject: Fw: Clarify Q re small refineries

Somehow my first attempt didn't go through..

Janet McCabe

From: McCabe, Janet <McCabe.Janet@epa.gov>
Sent: Tuesday, July 22, 2014 10:30 AM
To: Grundler.christopher.@Epa.gov
Subject: Clarify Q re small refineries

Have some of these waivers been in the context of the RFS program? I don't need a list or numbers--just confirmation.

Thanks

Janet McCabe

Message

From: Feldt, Lisa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=80808C8D963343FC9208D4FB99A286A6-FELDT, ELISABETH]
Sent: 8/23/2014 12:57:40 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: OAR Hot list for week of 8/18

Have a wonderful and hopefully relaxing vacation. You deserve it. See you when you get back. Lisa

From: McCabe, Janet
Sent: Friday, August 22, 2014 10:37 PM
To: Adm13McCarthy, Gina; Atkinson, Emily; Beauvais, Joel; Feldt, Lisa; Fritz, Matthew; Ganesan, Arvin; Goffman, Joseph; KeyesFleming, Gwendolyn; Powers, Tom; Reynolds, Thomas; Rupp, Mark; Shaw, Betsy; Stewart, Lori; Vaught, Laura; Niebling, William; Knapp, Kristien; Millett, John; Drinkard, Andrea
Subject: RE: OAR Hot list for week of 8/18

OAR Hot List
Week of August 25, 2014

Clean Power Plan: This was another action packed week. Joe spoke at the Illinois Public Service Commission and points out again just how helpful Doug Scott has been throughout this process. He truly understands the importance of coordinating and facilitating dialogue both among the states and between EPA and the states. On Tuesday, I spoke at the EPRI/AWMA MEGA symposium up in Baltimore. While I touched on all of our actions that affect power plants, 111(d) really took center stage. On Wednesday, I spoke to the Natural Resources Committee of the National Conference of State Legislatures, along with the famous and wonderful Collette Honorable. It was a good opportunity to interact with state legislatures, to hear what they're hearing from their power companies and state agencies and to ensure that they understand what's being asked of their states. Staff had numerous calls with states and utilities this week, and that work will continue into next.

RFS 2014 Volume Standards: This rule finally went to OMB on Thursday, and they finally officially accepted it on Friday evening. **Deliberative Process / Ex. 5**

Small Refinery Exemption Decisions: **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Upcoming Rules **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

I'll be calling in for the 111d meetings and keeping tabs on RFS while I am on vacation. Both Lori Stewart and I will be out next week, but Joe, Betsy, Tom, Will, Kristien and Emily will be available and leap to help if needed.

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 8/22/2014 10:10:18 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Goffman, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=861d0835510c4bb0b32bbca40afbdbf9-Goffman, Joseph]; Niebling, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8fb45c85622f4be5a2f0ce12a9798204-Niebling, W]; Powers, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5436be456964e5682a4953a007bf488-Powers, Tom]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]
CC: Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Drinkard, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=808a6b7b65bf447f93dad2f510feaf61-ADRINKAR]
Subject: Draft Hot List
Attachments: OAR Hot List 8-25-14 draft.docx

The list is a bit short this week, but here you go. Have a great time Janet. Hope all goes well next week for everyone (and thanks for covering Kristien). Thanks.

OAR Hot List
Week of August 25, 2014

Clean Power Plan: This was another action packed week. Joe's trip to Illinois was productive and highlights just how helpful Doug Scott has been throughout this process. He truly understands the importance of coordinating and facilitating dialogue both among the states and between EPA and the states. It was definitely worth Joe's time to go out there for the day. On Tuesday, I spoke at the EPRI/AWMA MEGA symposium up in Baltimore. While I touched on all of our actions that affect power plants, 111(d) really took center stage. I stressed that our proposed plan provides the states with considerable flexibility and that there are quite a few options that the states can use to meet our proposed goals. We got some credit for our extensive outreach and for setting the goals based on the unique circumstances in each state. On Wednesday, I made my second trip out to Minneapolis (the first was the previous Friday). It was a good opportunity to interact with state legislatures, to hear what they're hearing from their power companies and state agencies and to ensure that they understand what's being asked of their states. I can't say that I saw heads nodding across the board, but every chance we get to meet with the states is well worth the trip. Next week I'm on vacation and I'm really looking forward to it, but I know folks here in DC will be working just as hard as they have been for the past year, so you'll be in good hands.

RFS 2014 Volume Standards: This rule finally went to OMB on Thursday, and they finally officially accepted it on Friday evening. Deliberative Process / Ex. 5

Small Refinery Exemption Decisions: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Upcoming Rules: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'll be calling in for the 111d meetings while I am on vacation.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/20/2014 12:54:11 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Fw: USE THIS VERSION: Revised Version of 2014 RFS Package for Uploading
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 FRM FRN_20140820 (2).docx

Importance: High

Whoops. For your file

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Sent: Wednesday, August 20, 2014 8:52 AM
To: Beauvais, Joel; Barron, Alex; Cristofaro, Alexander; Balserak, Paul; Owens, Nicole; Nickerson, William
Cc: Stewart, Lori; Grundler, Christopher; Korotney, David; Scoville, Pat; Knapp, Kristien; Jutras, Nathaniel
Subject: USE THIS VERSION: Revised Version of 2014 RFS Package for Uploading

There was a left over phrase in Section II. It has been corrected. The attached is the version for uploading.

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

From: Argyropoulos, Paul
Sent: Wednesday, August 20, 2014 7:09 AM
To: Beauvais, Joel; Barron, Alex; Cristofaro, Alexander; Balserak, Paul; Owens, Nicole; Nickerson, William
Cc: Stewart, Lori; Grundler, Christopher; Korotney, David; Scoville, Pat; Knapp, Kristien
Subject: Revised Version of 2014 RFS Package for Uploading
Importance: High

Good morning,

The attached package contains the final round of revisions from the Administrator, Janet McCabe and Chris Grundler. This is the clean version and is dated today, August 20. This should replace the previous version that was provided for upload into ROCIS. Please let me know if you have any questions.

Thanks, Paul

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/20/2014 11:22:28 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Fw: Revised Version of 2014 RFS Package for Uploading
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 FRM FRN_20140820.docx

Importance: High

Feel free to start calling Howard....

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Sent: Wednesday, August 20, 2014 7:08 AM
To: Beauvais, Joel; Barron, Alex; Cristofaro, Alexander; Balserak, Paul; Owens, Nicole; Nickerson, William
Cc: Stewart, Lori; Grundler, Christopher; Korotney, David; Scoville, Pat; Knapp, Kristien
Subject: Revised Version of 2014 RFS Package for Uploading

Good morning,

The attached package contains the final round of revisions from the Administrator, Janet McCabe and Chris Grundler. This is the clean version and is dated today, August 20. This should replace the previous version that was provided for upload into ROCIS. Please let me know if you have any questions.

Thanks, Paul

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 8/18/2014 9:32:41 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: FW: Revised 2014 RFS Volume Rule - With the Administrators Edits in the Updated Version
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 FRM FRN_20140818.docx; Track Changes 8-15 versus 8-18.docx

Importance: High

From: Argyropoulos, Paul
Sent: Monday, August 18, 2014 1:31 PM
To: Stewart, Lori; Knapp, Kristien
Cc: Grundler, Christopher
Subject: Revised 2014 RFS Volume Rule - With the Administrators Edits in the Updated Version
Importance: High

Hi Lori and Kristien,

Lori, I just left you an VM. I'm only sending this to you and Kristien at this time. Please let me know if you are going to review it further. If not, please let me know if it is OK to send along to OP.

Deliberative Process / Ex. 5

I've attached the clean revised compiled version which would go to OP and a copy of the revised Section 1 to show our revisions based on the Administrators comments. Please call with questions.

Thanks, Paul

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 8/15/2014 5:16:01 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RFS 2014 Rule
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 FRM FRN_20140815.docx

Janet, here is the version that went to OP.

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 11/2/2013 2:06:05 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Fw: edits
Attachments: RFS 2014 NPRM - Track Changes 10-28 versus 11-1 jcb +cg+jm+bh.docx

FYI - let me know what you think re process with Administrator and USDA. Feel free to call my landline Personal Matters / Ex. 6 or cel Personal Matters / Ex. 6

From: Hengst, Benjamin
Sent: Saturday, November 02, 2013 9:49:45 AM
To: Beauvais, Joel
Cc: Grundler, Christopher; Hannon, John; Korotney, David; Machiele, Paul; Simon, Karl
Subject: Fw: edits

See below note and attachment. Had only very minor edits. I reviewed all the new text and I think this could definitely be sent over to USDA today if needed. I didn't see any issues/errors with the text, though it will be useful to have the full team review it Monday.

From: Ben Hengst Personal Email / Ex. 6
Sent: Saturday, November 02, 2013 9:40:16 AM
To: Hengst, Benjamin
Subject: edits

Sending from personal email as access from home computer not working

Deliberative Process / Ex. 5

Minor edits on Deliberative Process / Ex. 5

Message

From: Janet McCabe Personal Email Address / Ex. 6
Sent: 11/2/2013 12:07:56 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: RFS 2014 NPRM Track Changes
Attachments: RFS 2014 NPRM - Track Changes 10-28 versus 11-1 jcb docx+cg+jm.docx

Changes can be found in the following places:

Deliberative Process / Ex. 5

From: McCabe, Janet [mailto:McCabe.Janet@epa.gov]
Sent: Saturday, November 02, 2013 7:52 AM
To: Janet McCabe; McCabe, Janet
Subject: Fw: RFS 2014 NPRM Track Changes

From: Personal Email Address / Ex. 6 >
Sent: Saturday, November 02, 2013 12:00:34 AM
To: Beauvais, Joel; McCabe, Janet
Cc: Grundler, Christopher
Subject: RFS 2014 NPRM Track Changes

Janet/Joel: I have reviewed Joel's edits on top of the teams edits and have added one on pg 94. I am comfortable sending this on to the Administrator and USDA, altho am a bit uneasy sending the entire NPRM only due to length. If you decide to send entire document forward, I suggest directing her attention to key passages that have been added in response to the principals meeting. I think Joel's email highlights the most important pages, but perhaps you have additional pages.

Chris

Message

From: kerchris@comcast.net [kerchris@comcast.net]
Sent: 11/2/2013 4:00:34 AM
To: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RFS 2014 NPRM Track Changes
Attachments: RFS 2014 NPRM - Track Changes 10-28 versus 11-1 jcb.docx+cg.docx

Janet/Joel: I have reviewed Joel's edits on top of the teams edits and have added one on pg 94. I am comfortable sending this on to the Administrator and USDA, altho am a bit uneasy sending the entire NPRM only due to length. If you decide to send entire document forward, I suggest directing her attention to key passages that have been added in response to the principals meeting. I think Joel's email highlights the most important pages, but perhaps you have additional pages.

Chris

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 11/5/2013 10:14:22 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: FW: 11/5 EPA response pertaining to 2014 RFS Volume Standards [RIN2060-AR76]
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 NPRM FRN_20131105.docx; Track Changes 10-28 versus 11-5.docx

FYI

From: Hengst, Benjamin
Sent: Tuesday, November 05, 2013 4:32 PM
To: Grundler, Christopher; Beauvais, Joel
Cc: Ghanta, Venu
Subject: Fw: 11/5 EPA response pertaining to 2014 RFS Volume Standards [RIN2060-AR76]

FYI.

From: Ghanta, Venu
Sent: Tuesday, November 05, 2013 4:22:45 PM
To: Whiteman, Chad
Cc: Korotney, David; Machiele, Paul; Burkholder, Dallas; Lie, Sharyn; Hengst, Benjamin; Simon, Karl; Argyropoulos, Paul; Farber, Glenn; Nagelhout, Peter; Dubois, Roland; Hannon, John
Subject: 11/5 EPA response pertaining to 2014 RFS Volume Standards [RIN2060-AR76]

Hi Chad-

Please find attached clean and redline versions of our latest passback.

Thanks,

Venu Ghanta
Office of Transportation and Air Quality
US Environmental Protection Agency
202-564-1374 (phone)

Message

From: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Sent: 8/13/2013 3:41:30 PM
To: Geller, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a4cb1583a884038bdef193017d31e72-Geller, Michael]
CC: Hopkins, Daniel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ff90dda6717f4df4b8b78526a0b2a98f-DHopki02]; McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Ghanta, Venu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf46c0305194992a35fd4fa7b1b78fc-vghanta]
Subject: RFS piece for Administrator trip
Attachments: RFS Overview august13.2.docx

Many thanks to the RFS team for pulling together one-stop-shopping information on the RFS program as it stands now.

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/9/2013 3:13:52 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Re: Kim Strassel's Op Piece Posts RFS Exemptions

Deliberative Process / Ex. 5

From: McCabe, Janet
Sent: Friday, August 09, 2013 11:11:36 AM
To: Grundler, Christopher
Subject: Fw: Kim Strassel's Op Piece Posts RFS Exemptions

Chris-- **Deliberative Process / Ex. 5**

From: McMichael, Nate
Sent: Friday, August 09, 2013 10:10:12 AM
To: McCabe, Janet
Cc: Ketcham-Colwill, Nancy; Millett, John; Stewart, Lori; Drinkard, Andrea
Subject: FW: Kim Strassel's Op Piece Posts RFS Exemptions

Janet,

I want to flag the WSJ opinion piece in the chain below. **Deliberative Process / Ex. 5** **Deliberative Process / Ex. 5** Here is what we provided through the third floor when she contacted us asking about the exemption process:

Statement:
The Department of Energy (DOE) developed metrics in a 2011 study for small refinery requests for exemption from RFS. These include, for example, access to capital, whether compliance costs could lead to a shutdown, or whether these small refiners are subject to exceptional state regulations. Based on these metrics DOE evaluates small refinery applications for exemption and makes recommendations to EPA. Because encouraging small business growth is a priority for the EPA, the agency carefully considers these recommendations as well as any potential impacts its actions may have on small businesses.

In 2013, EPA received four requests from small refineries for RFS exemption. After taking into consideration DOE's metric-driven evaluation and other requirements in the RFS rule, EPA has granted one exemption, and no determination has yet been made with the other three exemption requests. Due to confidentiality restrictions, EPA cannot provide any specifics on the actions the agency has taken regarding these exemption requests.

You can find a list of hardship requests we received here: http://www.epa.gov/otaq/regs/hardship-exemptions/hardship.htm

You can find the criteria for hardship exemption outlined under 80.1442(e)(2) here: http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol17/pdf/CFR-2012-title40-vol17-sec80-1442.pdf

You can find additional information on the DOE 2011 study at this link: http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf

Nate McMichael
US EPA Office of Air and Radiation
202-564-0382 (Office)
202-236-4176 (Cell)

From: Delp, Robert
Sent: Friday, August 09, 2013 9:43 AM
To: McMichael, Nate
Subject: FW: Kim Strassel's Op Piece Posts

Kim Strassel: Washington's Latest Special Favor. Of the nation's 143 refineries, one was exempted from the EPA's ethanol mandate. Why?

http://online.wsj.com/article/SB10001424127887324522504579000792763966698.html

For a glimpse at the secret, special-favors factory that Washington has become under President Obama, check out this week's big news out of the Environmental Protection Agency. Or rather, look beyond the headlines to the corporate handout hidden within.

The big news was that the EPA issued—finally—its infamous annual quota for renewable fuels. That mandate tells the nation's refineries how much renewable fuel (ethanol) must be blended annually into gasoline, a quota that is becoming a pernicious driver of gas prices. The EPA was supposed to release the 2013 quota last November but decided to leave the industry in panicked uncertainty until now.

The 89-page rule is dull reading, until you get to page 11. Tucked on that page is one short sentence, which reads: "EPA has approved a single small refinery/small refiner exemption for 2013, so an adjustment has been made to the standards to account for this exemption." In English: Of the nation's 143 refineries, one (and only one) lucky player somehow had the pull to win itself a free pass from this government burden. Not only that, the rest of the industry gets to pick up its slack.

An exemption is no small privilege. Congress, in its limited wisdom (and fealty to corn farmers), passed legislation in 2007 requiring that the U.S. use of renewable fuels increase to 36 billion gallons annually by 2022. This year's EPA quota is 16.5 billion gallons, and the requirements keep ratcheting up even though U.S. gasoline use is falling.

This matters because for refineries to stuff ballooning amounts of ethanol into a static gas pool, they must blend it at levels of more than 10%. Since the nation's auto makers have declared they will void the warranties of cars using gas with more than 10% ethanol, refineries face lawsuits. Most have instead turned to buying federal renewable "credits" to make up for the ethanol they don't blend.

As demand for these credits skyrockets, so has the price—jumping from a few pennies a gallon last year to close to $1 a gallon today. Oil refiner Valero has said the credits could raise its cost by a stunning $750 million this year, a hit that will be passed on to consumers. PBF Energy just told investors that its disappointing second-quarter earnings were rooted in the mandate, noting that the $200 million it expects to fork over for ethanol credits this year will exceed the salaries and wages that it pays to operate all three of its refineries.

Some refineries are lowering production simply to mitigate the credit costs. Others are beginning to export products to avoid the mandate. Both moves could tighten U.S. supplies and lead to higher prices at the pump. Most every refinery is hurt by this rule.

So an exemption from today's mandate is far more than a perk—it is a lifeline, an outright payday. Making this indulgence even more curious is that it is being issued by the Obama EPA, an agency that isn't exactly known for doing favors for beastly carbon producers.

So who is the lucky dog? Who could make this happen? That's the best part. The EPA won't say. The agency not only refused to name the refinery in its rule, but also obscured certain numbers in the document to hide the beneficiary's identity. An EPA press officer would not give me the name, citing "confidentiality restrictions."

The agency did send me a 2011 document that shows it granted exemptions at that time to 13 small refineries. But that exemption applied only to 2011 and 2012—and the 13 refineries had been recommended by a public Department of Energy analysis, which laid out reasons for the exemptions. The EPA rule this week said this exemption had been granted under EPA's authority to evaluate refineries on a "case by case" basis. The press officer said DOE was involved in the evaluation.

What was the actual process? It's a worthy question, given that the refinery sector is no stranger to politics. As hard times have hit, politicians have become deeply involved in protecting their home-state refineries. Many are unionized, which raises the question of whether Big Labor engaged in an exemption request.

Dozens of small refineries are being crushed by the mandate, and a number have petitioned the EPA for exemptions. If "disproportionate economic hardship" is the agency's standard, no doubt plenty would qualify. Yet only one got the nod. The rest of the industry is dying to know what is so special about this refinery, especially since the EPA is making every other refinery shoulder its burden.

The public should want to know too. Washington is rife with secret deals that reward select corporate players, and the numbers have only accelerated under this "most transparent" of administrations. If the process by which the EPA issued this exemption was aboveboard, it should have no problem divulging details. Until that time, the public might fairly assume funny business.

Write to kim@wsj.com

(via Instapaper)

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/7/2013 9:56:42 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: EPA exempted one refiner from RFS rule

Will do. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Fyi, this is not a new issue.

From: McCabe, Janet
Sent: Wednesday, August 07, 2013 5:25 PM
To: Grundler, Christopher
Subject: FW: EPA exempted one refiner from RFS rule

He got a little ink.....We'd best have some details/a statement pulled together in case questions come in.

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

From: Drinkard, Andrea
Sent: Wednesday, August 07, 2013 4:40 PM
To: McCabe, Janet
Subject: FW: EPA exempted one refiner from RFS rule

From: POLITICO Pro Whiteboard
Sent: Wednesday, August 07, 2013 4:37:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: Drinkard, Andrea
Subject: EPA exempted one refiner from RFS rule

8/7/13 4:34 PM EDT

One small refiner was exempted from the requirements of EPA's 2013 volume standards for the Renewable Fuel Standard, officials from the American Petroleum Institute said today.

"It's an unnamed refinery — it's confidential," Bob Greco, API's group director for downstream and operations, told reporters today. "It got our attention when we saw that."

Greco said the result of exempting the refiner means the volume mandate "for everybody else was moved up" to compensate.

Under the RFS statute, EPA can grant an exemption for small refineries that face a disproportionate economic hardship. The agency exempted several refineries in 2011 and 2012 as the result of a congressionally-ordered Energy Department report.

This year, in the final 2013 RFS volume standards released yesterday, EPA only exempted one refinery, according to the rule. The rule does not specify which refiner received the exemption, or the basis for the hardship determination.

— *Erica Martinson*

You've received this POLITICO Pro content because your customized settings include: Energy Topic: EPA. To change your alert settings, please go to https://www.politicopro.com/member/?webaction=viewAlerts.

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Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 10/27/2013 7:48:38 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
Subject: 2014 RFS proposal - Joel's edits
Attachments: RFS 2014 RVO NPRM Track Changes 9-30 versus 10-25, version 2 +jcb.docx

Janet, Chris - I am attaching my proposed edits to the track changes version of the RFS proposal that David circulated late Friday (which I forwarded to you Janet). I'd like to pass these along to the team tonight, but wanted to see if you concur and/or may have further changes to the doc that you want to make. Let me know what you think - or if I should just go ahead and send these along.

Joel

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 10/25/2013 9:17:20 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Recompiled 2014 NPRM with all changes
Attachments: Interagency comments 10-22-13.docx; Track Changes 9-30 versus 10-25, version 2.docx

Janet – Chris and I will be reviewing this weekend as well. I will give you the download from various EOP calls when you call from the train. (Chris, if you want to hear any of that, happy to chat over the weekend or Monday.)

Deliberative Process / Ex. 5

Joel

From: Korotney, David
Sent: Friday, October 25, 2013 4:45 PM
To: Hannon, John; Hengst, Benjamin; Machiele, Paul; Burkholder, Dallas; Argyropoulos, Paul; Simon, Karl; Dubois, Roland; Beauvais, Joel; Grundler, Christopher
Cc: Stewart, Lori; Ghanta, Venu
Subject: Recompiled 2014 NPRM with all changes

The attached contains all edits and new text that I have received so far, including the following:

Deliberative Process / Ex. 5

Note to Pat and Lori: This version is not OMB ready - I didn't get around to doing all the necessary formatting, table of contents, etc. I'll do that Monday.

Track Changes 9-30 versus 10-2...

Interagency comments 10-22...

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 7/29/2013 9:14:26 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]
Subject: FW: Compiled 2014 standards NPRM for review 7-19-13 jcb
Attachments: Compiled 2014 standards NPRM for review 7-19-13 jcb.docx

Janet – Forwarding these to you, in case they are of any use in my absence. I talked to Hannon and am expecting to take a look at the legal piece on inadequate domestic supply before leaving as well.

Joel

From: Beauvais, Joel
Sent: Friday, July 26, 2013 5:33 PM
To: Grundler, Christopher; Argyropoulos, Paul; Hengst, Benjamin; Stewart, Lori
Subject: Compiled 2014 standards NPRM for review 7-19-13 jcb

I'm attaching some comments on the 7-19 draft of the 2014 proposal. Thanks for the opportunity to review this at an early stage. I recognize that this is a work in progress, so some of my comments may be less helpful than others.

Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/22/2013 10:11:38 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
Subject: FW: Forward-looking language edits from OMB for discussion at 4:30pm
Attachments: Forward-looking language - current version.docx; Forward-looking language - OMB text.docx

Janet—We are on track to respond to all received interagency comments on RFS 2013 standard by COB tomorrow. We believe them to be manageable. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 At this point there is no need for you to make any calls; if I see any bumps in the road (and I will know by COB Wednesday,, I will alert you immediately)

Chris

From: Korotney, David
Sent: Monday, July 22, 2013 4:10 PM
To: Grundler, Christopher; Argyropoulos, Paul; Machiele, Paul; Hengst, Benjamin; Charmley, William; Bunker, Byron; Ghanta, Venu; Simon, Karl
Subject: Forward-looking language edits from OMB for discussion at 4:30pm

I've attached both the language as it now stands, and the edits that OMB suggested.

Message

From: Owens, Nicole [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=30CF6E677EE74B2F998423E6E2836FDD-NOWENS]
Sent: 8/30/2013 1:38:45 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Goo, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=22e356bfce834efbbe3bddc3b7b73faa-Goo, Michael]; Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]; Le, Madison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9297d8b52bcb41319ba40d11142ab307-Le, Madison]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; Kenny, Shannon [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57cd4660f9e342a99180ac2cbc3d264c-Kenny, Shannon]
Subject: RE: RFS 2014
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 NPRM FRN_20130826 io.docx

Hello -

The file is attached.

If Howard agrees we can send this, would you cc Michael and me when you email OMB.

Thanks,
Nicole

-----Original Message-----
From: McCabe, Janet
Sent: Friday, August 30, 2013 12:04 AM
To: Ketcham-Colwill, Nancy; Stewart, Lori; Beauvais, Joel; Owens, Nicole
Subject: RFS 2014

I spoke to Dom several times this evening and we have a plan of action for tomorrow, I think.

Deliberative Process / Ex. 5

Thanks,

Janet

Message

From: Stewart, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8404F4FF6C924B2F8F3FB80C3A4467A7-LSTEWA04]
Sent: 7/22/2013 1:42:21 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]; Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
Subject: FW: RIN fraud and 2013 volumes rule
Attachments: EO12866_RFSAnnual Rule 2060-AR43 FRM FRN_20130702 (2).docx

Janet, here is the version of the RFS 2013 volume rule that went to OMB. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-----Original Message-----
From: Grundler, Christopher
Sent: Monday, July 22, 2013 9:27 AM
To: Stewart, Lori; Bunker, Byron
Subject: Fw: RIN fraud and 2013 volumes rule

From: McCabe, Janet
Sent: Monday, July 22, 2013 8:40:55 AM
To: Grundler, Christopher
Cc: Beauvais, Joel; Goffman, Joseph; Atkinson, Emily; Ketcham-Colwill, Nancy
Subject: RIN fraud and 2013 volumes rule

Deliberative Process / Ex. 5

Thanks

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 7/26/2013 11:08:17 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Re: latest on small refinery issue

Ok

From: McCabe, Janet
Sent: Friday, July 26, 2013 6:59:12 AM
To: Beauvais, Joel
Subject: Fw: latest on small refinery issue

Let's touch base on this as well.

From: Grundler, Christopher
Sent: Friday, July 26, 2013 6:40:13 AM
To: McCabe, Janet
Subject: Fw: latest on small refinery issue

Janet-here is further info on the small refiner issue Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Chris

From: Machiele, Paul
Sent: Friday, July 26, 2013 12:50:03 AM
To: Ghanta, Venu; Grundler, Christopher
Cc: Stewart, Lori; Bunker, Byron; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Korotney, David
Subject: Re: latest on small refinery issue

Sorry I was not able to review this before you sent it to Chris. I would just highlight for him 2 more things.

Deliberative Process / Ex. 5

Paul

From: Ghanta, Venu
Sent: Thursday, July 25, 2013 8:50:08 PM
To: Grundler, Christopher

Cc: Stewart, Lori; Bunker, Byron; Machiele, Paul; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Korotney, David
Subject: latest on small refinery issue

Deliberative Process / Ex. 5

Venu Ghanta
Office of Transportation and Air Quality
US Environmental Protection Agency
202-564-1374 (phone)

Message

From: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Sent: 7/22/2013 12:44:17 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Fw: hot issues list for next week
Attachments: OAR Hot Issues List 7-22.2.doc

Let me know if this is OK to send or if you'd like changes. See you tomorrow!

From: Ketcham-Colwill, Nancy
Sent: Friday, July 19, 2013 9:56:21 PM
To: McCabe, Janet; Beauvais, Joel; Goffman, Joseph; Shaw, Betsy
Subject: hot issues list for next week

I used next week's edition to mention some of the climate action plan/111d outreach we did this week and will do next week. There's also an entry for 2013 RFS. The NGS and South Mountain items are updates and largely recycled. Anything else we should include? Of course, none of this is news to Gina, but these lists are also useful to Bob and Gwen and they will continue being due every week in the McCarthy era. As Janet and I have discussed, I'll plan to pick your brains about what to put in these weekly lists at future Friday scheduling meetings.

OAR Hot Issues List
Week of July 22, 2013

President's Climate Action Plan – Deliberative Process / Ex. 5 On Friday, Mark Rupp and I participated in a conference call hosted by ECOS to discuss next steps in developing an approach for existing power plants. As the ECOS organizer described it, the call "was a helpful and promising start to an intensive process of engagement." We look forward to getting more specific ideas from ECOS members about how to structure and inform further outreach. I also had the opportunity to discuss the President's plan in a meeting with the American Thoracic Society on Thursday and will do the same in meeting with the Industrial Energy Consumers of America this upcoming Tuesday. Also next week, we'll be joining you in a meeting with the BlueGreen Alliance on Monday, hosting other labor leaders on Friday, and reaching out to the National Tribal Air Association on Thursday. These meetings are really just the tip of the iceberg of our outreach efforts – we continue to lay and implement plans for calls, webinars and meetings with the full suite of stakeholders and the public.

Renewable Fuel Standards – Interagency comments on the 2013 RFS volume requirements were due on Friday, Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Navajo Generating Station – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 As we mentioned last week, a coalition of stakeholders including the operator of the plant, the Navajo Nation, Hopi and Gila River Tribes, DOI Bureau of Reclamation, EDF and others, have been developing an alternative proposal that they will ask us to issue as a supplemental proposal. The alternative, which is intended to meet or match the NOx reductions our proposal would achieve over time while providing time for NGS to consider clean energy alternatives and projects in Indian country, looks very promising.

South Mountain Freeway DEIS – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 8/26/2013 5:04:11 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Hannon, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25c873d522e94729b8d70106c88cbadf-JHANNON]; McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: New document with Janet's comments on RFS (attached)
Attachments: RFS 2014 jb jm 8-26.docx

Importance: High

From: Atkinson, Emily
Sent: Monday, August 26, 2013 12:27 PM
To: Hengst, Benjamin
Cc: Beauvais, Joel; Simon, Karl; Stewart, Lori; Hannon, John; McCabe, Janet
Subject: Janet's comments on RFS

Ben,

Thanks for alerting us to the missing comments . . . . Janet and I are looking for the version that has her comments and will send it on as soon as we find it.

Sorry about the confusion . . .

Emily

Emily Atkinson
Staff Assistant
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406B, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

Message

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
on behalf of McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/26/2013 2:14:25 PM
To: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Hannon, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25c873d522e94729b8d70106c88cbadf-JHANNON]
CC: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: RFS 2014 draft proposal markup 8-25-13
Attachments: RFS 2014 jb.docx

Janet's comment on RFS 2014 (see attached)

Emily Atkinson
Staff Assistant
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
Voice: 202-564-1850

From: Beauvais, Joel
Sent: Sunday, August 25, 2013 12:50 PM
To: Simon, Karl; Stewart, Lori; Hengst, Benjamin; Hannon, John
Cc: McCabe, Janet
Subject: Fw: RFS 2014 draft proposal markup 8-25-13

Karl and company - I am attaching my markup of the draft NPRM. It looks good to me. Mostly stylistic edits for clarity but I have proposed some substantive changes and or requested some further clarifications. Most notable are the following:

Deliberative Process / Ex. 5

Joel

From: Personal Email / Ex. 6
Sent: Sunday, August 25, 2013 12:38:41 PM
To: Beauvais, Joel
Subject: RFS 2014 draft proposal markup 8-25-13

Given lack of remote access, sending to my EPA account for forwarding to EPA staff

Message

From: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Sent: 8/25/2013 6:46:30 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Fw: OAR Hot List Week of August 26

Deliberative Process / Ex. 5 I think she and OAQPS are on it but I can follow-up to make sure.

From: Adm13McCarthy, Gina
Sent: Sunday, August 25, 2013 2:35:53 PM
To: McCabe, Janet; Atkinson, Emily; Ketcham-Colwill, Nancy; Deputy Administrator; KeyesFleming, Gwen
Subject: Re: OAR Hot List Week of August 26

Thx Janet. Glad to see the WSJ running your response. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 You know the drill.

A bit frustrating that the HCFC rule needs to go thru hoops at OMB since it has no surprises as far as I know.

I am working from home Friday as well. Should be a good time to catch up.

Gina McCarthy
Administrator

From: McCabe, Janet
Sent: Sunday, August 25, 2013 6:56 AM
To: Adm13McCarthy, Gina; Atkinson, Emily; Ketcham-Colwill, Nancy; Deputy Administrator; KeyesFleming, Gwen
Subject: OAR Hot List Week of August 26

Administrator, Bob, Gwen--

Attached and pasted below is the OAR Hotlist for this coming week.

OAR Hot Issues List
Week of August 23, 2013

President's Climate Action Plan –
• Existing power plants outreach: Over 250 state and local officials have signed up for the webinar on Tuesday. We are running the webinar twice that day to provide our state and local partners with scheduling flexibility. EPA staff will be available at the end of both sessions to answer questions. The webinar will be posted on the web by Wednesday and available to all stakeholders to view, prior to stakeholder-specific calls we are scheduling to answer questions.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Renewable Fuel Standards – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Carnival Cruise Line: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Air Quality Trends Data: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Since I thought Friday would be a furlough day, I made plans to go home Thursday night, but will plan to work Friday from home, if that's ok.

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 8/25/2013 4:49:59 PM
To: Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Hannon, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25c873d522e94729b8d70106c88cbadf-JHANNON]
CC: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Fw: RFS 2014 draft proposal markup 8-25-13
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 NPRM FRN_20130822 +jcb8-25.docx

Karl and company - I am attaching my markup of the draft NPRM. It looks good to me. Mostly stylistic edits for clarity but I have proposed some substantive changes and or requested some further clarifications. Most notable are the following:

Deliberative Process / Ex. 5

Joel

From: Personal Email / Ex. 6
Sent: Sunday, August 25, 2013 12:38:41 PM
To: Beauvais, Joel
Subject: RFS 2014 draft proposal markup 8-25-13

Given lack of remote access, sending to my EPA account for forwarding to EPA staff

Message

From: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Sent: 8/24/2013 1:05:07 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Goffman, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=861d0835510c4bb0b32bbca40afbdbf9-Goffman, Joseph]
CC: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
Subject: hot issues list
Attachments: OAR Hot Issues List.8-23.docx

Attached and pasted below is a draft for your review. RFS 2014 news was contributed by Joel, the air quality design values item by Andrea. A little less-than-good news about the 2015-2019 HCFC allowance package is at the end (OMB is asking for a one-pager and briefing before upload). Let me know if I can help distribute this when it's ready for prime time.

OAR Hot Issues List
Week of August 23, 2013

President's Climate Action Plan –

- Existing power plants outreach: Over 250 state and local officials have signed up for the webinar on Tuesday. We are running the webinar twice that day to provide our state and local partners with scheduling flexibility. EPA staff will be available at the end of both sessions to answer questions. The webinar will be posted on the web by Wednesday.
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5

Renewable Fuel Standards – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Carnival Cruise Line: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Air Quality Trends Data: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

OAR Hot Issues List
Week of August 23, 2013

President's Climate Action Plan –

- Existing power plants outreach: Over 250 state and local officials have signed up for the webinar on Tuesday. We are running the webinar twice that day to provide our state and local partners with scheduling flexibility. EPA staff will be available at the end of both sessions to answer questions. The webinar will be posted on the web by Wednesday.
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5

Renewable Fuel Standards – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Carnival Cruise Line: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Air Quality Trends Data: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 9/29/2013 1:52:27 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Revised 2014 standards NPRM for transmittal to OMB
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 NPRM FRN_20130927 (2) pm +jcb.docx

Janet - Sending this along to you in case you want to review/weigh in. I think we're pretty much there, so no need to do so unless you feel compelled (I know you're on leave Monday). Unless we hear otherwise or Chris sees differently, we'll plan to push this over to OMB tomorrow am, though who knows whether anyone will be there to work on it on Tuesday and beyond . . . .

Joel

From: Beauvais, Joel
Sent: Sunday, September 29, 2013 9:49 AM
To: Machiele, Paul; Korotney, David; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Lie, Sharyn; Weihrauch, John; Charmley, William; Hannon, John; Burkholder, Dallas; Ghanta, Venu; Stewart, Lori; Grundler, Christopher
Subject: RE: Revised 2014 standards NPRM for transmittal to OMB

Dave, Paul and company - This looks really good and near ready to transmit. I am including a few further edits/comments **Deliberative Process / Ex. 5** **Deliberative Process / Ex. 5** Provided we can address this, I do not need to review again before this is transmitted to OMB. I will send separately to Janet, ccíng Chris, in case she wants to weigh in, but I think you should plan to proceed with getting it over to OMB as early in the day Monday as possible.

Thanks to all for your heroic efforts on this.

Joel

From: Machiele, Paul
Sent: Friday, September 27, 2013 5:55 PM
To: Korotney, David; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Lie, Sharyn; Weihrauch, John; Charmley, William; Hannon, John; Burkholder, Dallas; Ghanta, Venu; Stewart, Lori; Grundler, Christopher; Beauvais, Joel
Subject: RE: Revised 2014 standards NPRM for transmittal to OMB

Here's a few suggested edits and clarifications. I think it reads and flows a whole lot better than it did before. I figured I would try to get my input prior to the rush Monday morning and give others a chance to modify or reject my suggestions. (There are a couple comment bubbles with questions for Dave.)

Paul

From: Korotney, David
Sent: Friday, September 27, 2013 3:35 PM

To: Machiele, Paul; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Lie, Sharyn; Weihrauch, John; Charmley, William; Hannon, John; Burkholder, Dallas; Ghanta, Venu; Stewart, Lori
Subject: Revised 2014 standards NPRM for transmittal to OMB

Attached is the revised version. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

I need Ativan.

Message

From: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Sent: 8/16/2013 11:10:59 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: hot issues list for sending
Attachments: OAR Hot Issues List.8-19.docx

This incorporates changes from you and Joe. It says I'll be in Tuesday through Friday next week (but I'll sleep late on Tuesday!). I can send this from your computer when it's convenient for you.

OAR Hot Issues List
Week of August 19, 2013

President's Climate Action Plan –

- Existing power plants outreach: This week we sent out invitations to the August 27th webinar and follow-on conference calls to a broad range of stakeholders. Joe and I talked today with Collin O'Mara and Martha Rudolph on outreach to states and ECOS' involvement in that effort.
- Deliberative Process / Ex. 5
- OAP will be hosting a meeting with stakeholders next Thursday on next steps for addressing HFCs under the President's plan.
- Deliberative Process / Ex. 5

Renewable Fuel Standards – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Interstate Transport: On Thursday, OAR staff convened a call with state and tribal air agencies to review our plans for the air quality analysis underpinning a new rule to address cross-state air pollution. All 150 available phone lines were filled by air agencies. During a lengthy Q&A session following EPA's technical presentation, many air agencies expressed appreciation for the continued interaction on this important rule.

Deliberative Process / Ex. 5

Start Up, Shut Down, Malfunction SIP Call—I heard more today about how important this rule is to environmental and EJ stakeholders. Sierra Club organized the meeting with community members from Detroit and Birmingham and a law school professor who has worked with an EJ community in Illinois trying to address emissions from SSM events at nearby plants. They urged a speedy final rule.

Just a reminder that Joe and I are on vacation next week. Chris Grundler will be on vacation as well. I'll be generally reachable via, and keeping an eye on, bberry phone and email, in the Pacific time zone. Betsy and Joel will be in all week, and Nancy will be in Tuesday through Friday.

We moved a number of rules through this week, anticipating vacation. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Janet McCabe Personal Email / Ex. 6
Sent: 9/27/2013 11:33:59 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: rfs
Attachments: RFS 2014 9-26 version.docx

Message

From: Beauvais, Joel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=088A99C4B0F04E2AA5784349BCCF7B95-BEAUVAIS, JOEL]
Sent: 9/27/2013 3:30:06 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Compiled 2014 standards NPRM for review 9-26-13 jcb
Attachments: Compiled 2014 standards NPRM for review 9-26-13 jcb.docx

Janet – I had hoped to get these to you earlier, but as often happens, it took me longer than I thought. Chris is reviewing separately and may have different comments. I don't know if you will get a chance to read this, but my key edits are at Deliberative Process / Ex. 5 If you would like, I can also send you OTAQ's redline against the version that was sent to OMB.

From my viewpoint, Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Joel

From: Beauvais, Joel
Sent: Thursday, September 26, 2013 11:21 PM
To: Grundler, Christopher; Simon, Karl; Argyropoulos, Paul; Machiele, Paul; Korotney, David; Hengst, Benjamin
Cc: Beauvais, Joel
Subject: Compiled 2014 standards NPRM for review 9-26-13 jcb

My comments on the passback are attached – I did them, as Paul M suggested, on the clean version.

First of all, you guys have done a great job with handling a difficult set of issues in a tight time frame. My comments are almost entirely on the section relating to Deliberative Process / Ex. 5 A few highlights:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if we need to discuss any of this. I will be passing these along to Janet on a separate chain with Chris and I'm sure she'll let us know if she has any further guidance.

Message

From: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Sent: 8/16/2013 9:31:34 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Goffman, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=861d0835510c4bb0b32bbca40afbdbf9-Goffman, Joseph]
Subject: draft hot issues list
Attachments: OAR Hot Issues List.8-19.docx

Drafty list with a few placeholders/questions about adding more information on other/related topics. The Administrator's Report week does include an entry on the launch of the 2013 National Buildings Competition so we don't mention that here.

OAR Hot Issues List
Week of August 19, 2013

President's Climate Action Plan –

- Existing power plants outreach: This week we sent out invitations to the August 27th webinar to a broad range of stakeholders. Joe and I talked today with Collin O'Mara and Martha Rudolph on outreach to states and ECOS' involvement in that effort.
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5

Renewable Fuel Standards – Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Interstate Transport: On Thursday, OAR staff convened a call with state and tribal air agencies to review our plans for the air quality analysis underpinning a new rule to address cross-state air pollution. All 150 available phone lines were filled by air agencies. During a lengthy Q&A session following EPA's technical presentation, many air agencies expressed appreciation for the continued interaction on this important rule. EPA is planning to have additional technical- and policy-related calls with air agencies over the next few months.

Start Up, Shut Down, Malfunction SIP Call— Joe and I heard more today about how important this rule is to environmental and EJ stakeholders. Sierra Club organized the meeting with community members from Detroit and Birmingham and a law school professor who has worked with an EJ community in Illinois trying to address emissions from SSM events at nearby plants. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Just a reminder that Joe and I are on vacation next week. I'll be generally reachable via bberry phone and email.

Message

From: Millett, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C067CAA6C93544F78C26AB08CC567D27-MILLETT, JOHN]
Sent: 8/16/2013 2:31:56 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
CC: McMichael, Nate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58fb85a6a601456d87c58f23c40015d0-NMcMicha]; Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]
Subject: FW: RFS letter
Attachments: RFS Waiver Letter to Editor 8 16 db.docx

Good edits back from Bloomgren --

OTAQ -- has OGC started looking yet?

Also -- Deliberative Process / Ex. 5

From: Bloomgren, David
Sent: Friday, August 16, 2013 9:46 AM
To: McMichael, Nate; Millett, John
Cc: Johnson, Alisha; Cohen, David
Subject: RE: RFS letter

A few minor edits, thoughts? Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: McMichael, Nate
Sent: Friday, August 16, 2013 9:35 AM
To: McCabe, Janet; Millett, John; Grundler, Christopher; Stewart, Lori; Mylan, Christopher; Kika, Stacy; Bloomgren, David; Ketcham-Colwill, Nancy; Valentine, Julia
Subject: RE: RFS letter

Thanks, Janet. I incorporated your comments (and a few from other folks) and worked with John on the closing line. An updated version is attached.

Nate McMichael
US EPA Office of Air and Radiation
202-564-0382 (Office)
202-236-4176 (Cell)

From: McCabe, Janet
Sent: Friday, August 16, 2013 12:20 AM
To: McMichael, Nate; Millett, John; Grundler, Christopher; Stewart, Lori; Mylan, Christopher; Kika, Stacy; Bloomgren, David; Ketcham-Colwill, Nancy; Valentine, Julia
Subject: Fw: RFS letter

I've done a fair amount of editing on the letter--see what you think. The top version shows with edits, the bottom one clean text. Ran out of gas at the end.

From: Janet McCabe <janetgmccabe@gmail.com>
Sent: Friday, August 16, 2013 12:14:43 AM
To: McCabe, Janet
Subject: RFS letter

Message

From: Janet McCabe Personal Email / Ex. 6
Sent: 8/16/2013 4:14:43 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RFS letter
Attachments: RFS Waiver Letter to Editor jm.docx

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/14/2013 11:22:52 PM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Fw: WSJ op-ed on RFS

Just learned about this. The story is wrong, of course. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Bunker, Byron
Sent: Wednesday, August 14, 2013 7:17:37 PM
To: Grundler, Christopher; Stewart, Lori; Simon, Karl
Subject: Fw: WSJ op-ed on RFS

From: Dubois, Roland
Sent: Wednesday, August 14, 2013 6:38:30 PM
To: McKenna, Chris; Bunker, Byron
Subject: FW: WSJ op-ed on RFS

In case you haven't seen this gem. Apparently in today's WSJ

Strassel: Behind an Ethanol Special Favor

An Alon USA Energy refinery in Louisiana was the only one—out of 143—exempted from an EPA mandate. Why?

By

- KIMBERLEY A. STRASSEL

Why does the public demand transparency in government? Read on.

Last week, the Environmental Protection Agency issued its annual renewable-fuels mandate, telling refineries how much ethanol they must blend into the nation's gas supply. This quota, which grows each year, is becoming a horrific financial burden on the industry, forcing many refineries to buy federal ethanol "credits" to satisfy the rules. The skyrocketing price of those credits is adding hundreds of millions of dollars to refineries' annual costs.

So it was more than a little curious that the EPA, as part of its rule, announced it was exempting just one mystery refinery (out of 143) from this year's mandate. The dispensation amounts to a significant financial favor to one lucky player, as I wrote in the Journal on Friday. Further reporting has revealed that the refinery is Alon USA Energy's Krotz Springs facility in Louisiana. There's reason to wonder why Krotz Springs alone got a deal. The EPA maintains a program that allows "small refineries"—those with an average capacity of less than 155,000 barrels of crude daily—to apply for a hardship exemption from the mandate. Krotz Springs was one of four refineries that applied for 2013. The other three—Hunt Refining in Alabama, Kern Oil & Refining in California and Placid Refining in Louisiana—are small, privately held concerns. The biggest, Placid, has a capacity of about 57,000 barrels a day, according to January statistics from the federal Energy Information Administration.

Krotz Springs has a capacity of 80,000 barrels, so it meets the definition. Then again, Krotz Springs is just one of Alon's five refineries, which are located in Louisiana, Texas and California, and have a combined capacity of about 215,000 barrels. A New York Stock Exchange-listed company, Alon isn't exactly a mom-and-pop outfit.

REUTERS

Alon USA Energy's refinery in Krotz Springs, La.

Krotz Springs is a merchant refinery, and the ethanol mandate takes a particularly hard toll on such outfits. Alon earlier this month reported a big hit to its second-quarter earnings, partly due to what it estimates this year will be $20 million in ethanol-credit expenses. So yes, Krotz Springs is hurt by the rule.

Then again, so are other refineries. What particularly burned the industry about this exemption is that the EPA is requiring the rest of the industry (including other small, struggling refineries) to pay to cover the Krotz Springs pass.

So what's so special about Alon? If nothing else, it appears to understand how Washington works. Lobbying disclosure records show Alon paid $60,000 in the second quarter of 2013 to the Manatt, Phelps & Phillips firm. This was the same quarter when Alon filed for its exemption. The records show that Manatt lobbied in the House and in the Senate for Alon on the sole issue of "renewable fuel standards." Alon didn't report any appreciable lobbying expenses for the year preceding the quarter. The records also did not turn up similar lobbying efforts by other refineries applying for an exemption.

Republican Sen. David Vitter's office acknowledged on Tuesday that he had joined other Louisiana politicians in sending a letter to President Obama supporting the Krotz Springs exemption. Sen. Vitter's co-signers were Democratic Sen. Mary Landrieu, and Republican Reps. Charles Boustany and Rodney Alexander. Mr. Vitter's spokesman said the office had not been approached by other refineries for support, and noted that the senator has been pushing to waive the 2014 ethanol mandate for every refinery.

Ms. Landrieu's office would not answer inquiries about whether the senator had further involvement in the exemption. This is worth knowing, given that Ms. Landrieu's tough re-election next year will help determine whether Democrats hold the Senate. The Obama administration has an interest in helping her out.

Industry analysts meanwhile note that Alon has a financial tie up with J. Aron, the commodities-trading arm of Goldman Sachs. That bank has more than a few of its ex-executives in key Obama administration positions, and it has retained ex-Obama officials like former White House counsel Gregory Craig to do work for it.

"There's no question [Krotz Springs] is a disadvantaged refinery," Tom Kloza, chief oil analyst at Gasbuddy.com, tells me. "But there are other merchant refineries that are disadvantaged. And within the industry there is a healthy sense of cynicism about this [exemption], given the Goldman Sachs-J.Aron relationship."

In response to queries, an Alon spokesman said the company did not think it "appropriate to respond to any questions on the status of the application or the exemption process." The EPA did not respond to inquiries about why Alon received the exemption. The EPA had previously told me that its "case by case" decisions on exemptions are based on "metrics" and Energy Department "recommendations."

Maybe so. Perhaps Krotz Springs is facing a financial challenge that dwarfs that of other small refineries. Perhaps the EPA conducted a careful analysis, devoid of political pressure

The problem is we don't know. The EPA, citing confidentiality restrictions, won't explain the process. We are to trust that it did the right thing. Yet this is the same Obama administration that has spent years doling out billions in grants and loans to politically connected energy companies and junking federal rules to help favored players. Why trust the EPA now?

With federal mandates growing to crushing sizes, agencies like the EPA increasingly hold discretionary powers that can mean life or death for companies. The public deserves to know how and why that power is being exercised.

Ms. Strassel writes the Journal's Potomac Watch column.

A version of this article appeared August 14, 2013, on page A11 in the U.S. edition of The Wall Street Journal, with the headline: Behind an Ethanol Special Favor.

Copyright 2012 Dow Jones & C

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 5/14/2016 5:26:49 PM
To: John Millett [Millett.John@epa.gov]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RFS 2016 NPRM Roll Out Plan - 5 11 16.docx
Attachments: RFS 2016 NPRM Roll Out Plan - 5 11 16.docx

I had just a few little nits on the backgrounder paper—it's simple and good. I had no comments on the press release—yay. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We're good with USDA, right guys?

Thanks,
Janet

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 10/22/2013 11:21:29 PM
To: Flynn, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=735bf2d12a064b0998510511c5b4644b-MFlynn]
Subject: FW: Daily Reading File: October 22, 2013
Attachments: Daily Reading File.10.22.13.pdf

Can you or Jon please take a look at the letter starting on p.6? Is this something we're following? Thanks.

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

From: Adm13McCarthy, Gina
Sent: Tuesday, October 22, 2013 5:16 PM
To: McCabe, Janet
Subject: FW: Daily Reading File: October 22, 2013

The letter about the low and intermediate radioactive waste disposal site in Ontario is interesting. Do you know if we are engaging in this at all or should be?

From: Eliska Postell-Glover [mailto:Postell-Glover.Eliska@epamail.epa.gov] **On Behalf Of** EPAExecSec@epa.gov
Sent: Tuesday, October 22, 2013 4:06 PM
To: Dickerson, Aaron; Bittleman, Sarah; Bond, Brian; briefings; Burley, Veronica; Corman, Bicky; Feldt, Lisa; Fried, Hannah; Fritz, Matthew; Ganesan, Arvin; Goo, Michael; KeyesFleming, Gwen; Porterfield, Teri; Reynolds, Thomas; Rivas-Vazquez, Victoria; Stroman, Gladys; Vaught, Laura; Wachter, Eric; Deputy Administrator; Adm13McCarthy, Gina; Distefano, Nichole
Subject: Daily Reading File: October 22, 2013

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/28/2013 1:29:39 AM
To: Janet McCabe [janetgmccabe@gmail.com]
Subject: Fw: draft hot issues list
Attachments: OAR Hot Issues List.7-29.docx

From: Ketcham-Colwill, Nancy
Sent: Friday, July 26, 2013 9:06:01 PM
To: McCabe, Janet; Goffman, Joseph; Beauvais, Joel
Subject: draft hot issues list

Deliberative Process / Ex. 5

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 11/25/2015 7:40:02 PM
To: Janet McCabe [janetgmccabe@gmail.com]
Subject: Fwd: RFS rule
Attachments: Track changes 11-18 versus 11-23 with OMB comments.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Stewart, Lori" <Stewart.Lori@epa.gov>
To: "McCabe, Janet" <McCabe.Janet@epa.gov>
Subject: RE: RFS rule

Here it is. It was in Carissa's e-folder Monday evening. We're still waiting for the signature version.

From: McCabe, Janet
Sent: Wednesday, November 25, 2015 11:42 AM
To: Stewart, Lori <Stewart.Lori@epa.gov>
Subject: RFS rule

For some reason, I can't find the most recent version of the RFS rule that was sent to me. I must not remember who actually sent it to me. Can someone please send it to me? Whatever's the most recent.

Thanks

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/20/2014 12:45:45 PM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: FW: Revised Version of 2014 RFS Package for Uploading
Attachments: EO12866_RFS 2014 Annual Rule 2060-AR76 FRM FRN_20140820.docx

Importance: High

From: Grundler, Christopher
Sent: Wednesday, August 20, 2014 7:22 AM
To: McCabe, Janet
Subject: Fw: Revised Version of 2014 RFS Package for Uploading
Importance: High

Feel free to start calling Howard....

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

From: Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>
Sent: Wednesday, August 20, 2014 7:08 AM
To: Beauvais, Joel; Barron, Alex; Cristofaro, Alexander; Balserak, Paul; Owens, Nicole; Nickerson, William
Cc: Stewart, Lori; Grundler, Christopher; Korotney, David; Scoville, Pat; Knapp, Kristien
Subject: Revised Version of 2014 RFS Package for Uploading

Good morning,

The attached package contains the final round of revisions from the Administrator, Janet McCabe and Chris Grundler. This is the clean version and is dated today, August 20. This should replace the previous version that was provided for upload into ROCIS. Please let me know if you have any questions.

Thanks, Paul

Paul Argyropoulos
Senior Policy Advisor
US EPA
Office of Transportation and Air Quality
Phone: 202-564-1123
Mobile: 202-577-9354
Email: argyropoulos.paul@epa.gov
Web: www.epa.gov

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 4/16/2014 12:38:16 AM
To: KeyesFleming, Gwendolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7e15f12f183d4f839b8786d74bf9e40e-Keyes Fleming, Gwen]; Reeder, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa56f6b0d507483fba530f3abbf6c94f-JREEDER]
Subject: FW: Final report _ GAO-14-249, Petroleum Refining: Industry's Outlook Depends on Market Changes and Key Environmental Regulations, 361457
Attachments: wMXh_d14249.pdf

Following up on my prior note, attached is a copy of a report GAO issued today on its review of the refining industry. The report reaches a number of conclusions about factors affecting the refining industry, most of which have nothing to do with us. It notes EPA's lack of timeliness on the annual RFS rules as one factor, however, and recommendations that we undertake a review ot figure out what is causing the delays and implement a plan to address the issue.

As per usual, we'll be drafting and submitting a formal reply to the report by May 14.

From: Hingeley, Maureen
Sent: Tuesday, April 15, 2014 9:50 AM
To: McCabe, Janet; Shaw, Betsy; Grundler, Christopher; Ghanta, Venu; Hengst, Benjamin; Machiele, Paul; Bunker, Byron; Simon, Karl; Moran, Robin; Stewart, Lori; Argyropoulos, Paul
Cc: Salgado, Omayra
Subject: Final report _ GAO-14-249, Petroleum Refining: Industry's Outlook Depends on Market Changes and Key Environmental Regulations, 361457

Hi All,

Attached is GAO's final report on petroleum refining, including 2 recommendations for EPA to address. OAR will need to prepare a response to the final report (similar to the response to the draft report) by May 14th . Page 50 contains GAO's evaluation of OAR's response to the draft report and the corrective action plan for addressing the recommendations. I will contact Venu separately regarding the necessary format and delivery process for responding to GAO's final report. Please note this report was publically released yesterday. Thanks.

GAO-14-249

Petroleum Refining: Industry's Outlook Depends on Market Changes and Key Environmental Regulations

Recommendations:
To improve EPA's ability to meet the annual statutory deadline for issuing annual RFS standards, we recommend that the Administrator of the EPA take the following two actions:

• Assess past experience to identify the underlying causes of delays in issuing annual RFS standards.

• Develop and implement a plan to address the causes of delays and help ensure RFS annual standards are issued on time.

http://www.gao.gov/prerelease/wMXh

Best,
Maureen

Maureen Hingeley
Office of Program Management Operations
Office of Air and Radiation
US EPA
202-564-1306
202-564-1327 fax

From: Trent, Bobbie
Sent: Monday, April 14, 2014 9:11 AM
To: Hingeley, Maureen
Cc: Howard, MarkT; Miles-McLean, Stuart; Woodard, Linda
Subject: FW: Release of formerly restricted product: GAO-14-249, Petroleum Refining: Industry's Outlook Depends on Market Changes and Key Environmental Regulations, 361457

Good Morning Maureen:

GAO has released its Final Report with recommendations, your response in the form of a Memorandum addressed to Carol Terris, Acting Director, Office of Budget is due COB Wednesday May 14, 2014, thank you and please let me know if you have any questions.

Bob Trent
202-566-0983

From: GAO Reports [mailto:GAOReports@gao.gov]
Sent: Monday, April 14, 2014 8:23 AM
To: OCFO-GAO; Hingeley, Maureen; Trent, Bobbie
Cc: KehrC@gao.gov; FrancoQ@gao.gov; RuscoF@gao.gov; HockadayS@gao.gov; ReidJJ@gao.gov; Norrisc@gao.gov
Subject: Release of formerly restricted product: GAO-14-249, Petroleum Refining: Industry's Outlook Depends on Market Changes and Key Environmental Regulations, 361457

GAO will release the following previously restricted product to the public today. Until then, use the secure link below to access the product.

GAO-14-249

Petroleum Refining: Industry's Outlook Depends on Market Changes and Key Environmental Regulations

http://www.gao.gov/prerelease/wMXh

This report contains recommendations to your agency. As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement of the actions taken on our recommendations to the Senate Committee on Homeland Security and Governmental Affairs and to the House Committee on Oversight and Government Reform not later than 60 calendar days from the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 calendar days after that date. Since the congressional requester has asked that the distribution of the report be restricted, as provided by GAO's Congressional Protocols, the 60-day period begins on the date the report is released and e-mailed to you. Because agency personnel serve as the primary source of information on the status of recommendations, GAO requests that you also provide GAO with a copy of your agency's statement of action to serve as preliminary information on the status of open recommendations. Please send your statement of action to Kehr, Christine (kehrc@gao.gov) or to me at (ruscof@gao.gov).

We appreciate the assistance and cooperation of your staff during our review.

Frank Rusco

Director, Government Accountability Office: Natural Resources and Environment

After public release later today, the following link should be used to obtain the product.

http://www.gao.gov/products/GAO-14-249

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 9/26/2016 3:37:53 AM
To: Janet McCabe Personal Email / Ex. 6
Subject: Fwd: RFS documents, news, goings-on
Attachments: Compiled preamble for AA review 9-23-16.docx; ATT00001.htm; Draft Petition Responsev8 RLSO.docx; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
To: "McCabe, Janet" <McCabe.Janet@epa.gov>
Cc: "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: RFS documents, news, goings-on

Hi Janet,

I've attached 2 documents for you.

The first is a redline of the POO decision, incorporating your most recent edits/comments.

The second is a draft of the 2017 RVO preamble. We are still working on some areas of this, Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 as those have gotten the least amount of review thus far. The other sections are ready for your review now Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Separately, we continue to work on the REGS/POO roll-out documents and will send those along as soon as we can.

Given where we are in the week, at this point I'm thinking Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Thanks
Ben

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/1/2014 3:10:33 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Pathways 2/QAP update

I'll call Dom tomorrow.

From: Grundler, Christopher
Sent: Monday, June 30, 2014 9:07 PM
To: McCabe, Janet
Subject: Pathways 2/QAP update

We SHOULD be done. We incorporated text that on Friday Deliberative Process / Ex. 5 today got ogc concurrence, and sent back complete final and redline text.

Deliberative Process / Ex. 5

Clearance tomorrow would be grand

Chris
Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4207 (Ann Arbor)
www.epa.gov/otaq

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 9/26/2016 3:21:51 AM
To: Cyran, Carissa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a903847a9424979b89400688b5c2f5e-Cyran, Carissa]
Subject: FW: RFS documents, news, goings-on
Attachments: Compiled preamble for AA review 9-23-16.docx; Draft Petition Responsev8 RLSO.docx

Carissa---can someone please print these documents for me so I can pick them up tomorrow evening when I stop by at the end of the day?

Thanks.

From: Hengst, Benjamin
Sent: Friday, September 23, 2016 4:20 PM
To: McCabe, Janet <McCabe.Janet@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RFS documents, news, goings-on

Hi Janet,

I've attached 2 documents for you.

The first is a redline of the POO decision, incorporating your most recent edits/comments.

The second is a draft of the 2017 RVO preamble. We are still working on some areas of this, and Deliberative Process / Ex. 5 Deliberative Process / Ex. 5, as those have gotten the least amount of review thus far. The other sections are ready for your review now Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Separately, we continue to work on the REGS/POO roll-out documents and will send those along as soon as we can.

Given where we are in the week, at this point I'm thinking Deliberative Process / Ex. 5 Deliberative Process / Ex. 5

Thanks
Ben

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 12/9/2014 2:15:40 AM
To: Niebling, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8fb45c85622f4be5a2f0ce12a9798204-Niebling, W]
Subject: Re: RFS hearing prep, Monday night materials

Thanks. I'm at home but can look at them on my laptop

Sent from my iPhone

On Dec 8, 2014, at 9:09 PM, "Niebling, William" <Niebling.William@epa.gov> wrote:

Just left hard copies on your chair. Haven't had a chance to look things over but I did look at and share thoughts on the passback testimony when it first came in, namely Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Sent: Monday, December 8, 2014 20:38
To: McCabe, Janet; Niebling, William
Cc: Mackay, Cheryl; Argyropoulos, Paul; Grundler, Christopher; Rackoff, Jonathan
Subject: RFS hearing prep, Monday night materials

Hi Janet, William:

I'm attaching the next batch of RFS hearing prep materials for your review.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

thanks,

Ben

<Fast Facts - RFSv4.docx>
<House Oversight hearing, Dec 10 2014, Q&A set#4.docx>
<McCabe Oversight - Draft Testimony 12-10-14 for OMB_oce.OTAQ.docx>
<RFS case summary #2.docx>

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 12/9/2014 2:06:34 AM
To: Janet McCabe [Ex. 6]
Subject: Fwd: RFS hearing prep, Monday night materials
Attachments: Fast Facts - RFSv4.docx; ATT00001.htm; House Oversight hearing, Dec 10 2014, Q&A set#4.docx; ATT00002.htm; McCabe Oversight - Draft Testimony 12-10-14 for OMB_oce.OTAQ.docx; ATT00003.htm; RFS case summary #2.docx; ATT00004.htm

Sent from my iPhone

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Date: December 8, 2014 at 8:38:48 PM EST
To: "McCabe, Janet" <McCabe.Janet@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>
Cc: "Mackay, Cheryl" <Mackay.Cheryl@epa.gov>, "Argyropoulos, Paul" <Argyropoulos.Paul@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Rackoff, Jonathan" <Rackoff.Jonathan@epa.gov>
Subject: RFS hearing prep, Monday night materials

Hi Janet, William:

I'm attaching the next batch of RFS hearing prep materials for your review.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

thanks,

Ben

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/22/2013 2:48:18 PM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: FW: RIN fraud and 2013 volumes rule
Attachments: EO12866_RFSAnnual Rule 2060-AR43 FRM FRN_20130702 (2).docx

Not nearly as long a rule as I thought it would be! Can you print, please? Thanks.

Janet McCabe
Principal Deputy Assistant Administrator
Office of Air and Radiation, USEPA
Room 5426K, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

-----Original Message-----
From: Stewart, Lori
Sent: Monday, July 22, 2013 9:42 AM
To: McCabe, Janet
Cc: Grundler, Christopher; Ketcham-Colwill, Nancy; Beauvais, Joel
Subject: FW: RIN fraud and 2013 volumes rule

Janet, here is the version of the RFS 2013 volume rule that went to OMB. The look-ahead language begins on page 64. We'll also get a briefing on your calendar soon on the RIN fraud rule.

-----Original Message-----
From: Grundler, Christopher
Sent: Monday, July 22, 2013 9:27 AM
To: Stewart, Lori; Bunker, Byron
Subject: Fw: RIN fraud and 2013 volumes rule

From: McCabe, Janet
Sent: Monday, July 22, 2013 8:40:55 AM
To: Grundler, Christopher
Cc: Beauvais, Joel; Goffman, Joseph; Atkinson, Emily; Ketcham-Colwill, Nancy
Subject: RIN fraud and 2013 volumes rule

Can I please get a briefing on the RIN fraud rule before the Option Selection meeting?

Also, I should probably (ugh) get some familiar with the volumes rule, and in particular the text everyone's talking about re future volumes/blendwall. Could someone please send me whatever the best draft of the rule is with that, and other key areas, identified. It's fine to wait until later this week since I know you're responding to interagency comments at the moment.

Thanks

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/22/2013 8:42:02 AM
To: Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]
Subject: Fw: hot issues list for next week
Attachments: OAR Hot Issues List jm 7-21-13.docx

It looks like it sent last night after all, but here it is again.

From: Janet McCabe <janetgmccabe@gmail.com>
Sent: Sunday, July 21, 2013 9:58:16 PM
To: McCabe, Janet; Ketcham-Colwill, Nancy
Subject: RE: hot issues list for next week

Nancy—some revisions here. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 We can discuss in the morning.

Thanks.

From: McCabe, Janet [mailto:McCabe.Janet@epa.gov]
Sent: Sunday, July 21, 2013 9:36 PM
To: Janet McCabe
Subject: Fw: hot issues list for next week

From: Ketcham-Colwill, Nancy
Sent: Friday, July 19, 2013 9:56:21 PM
To: McCabe, Janet; Beauvais, Joel; Goffman, Joseph; Shaw, Betsy
Subject: hot issues list for next week

Deliberative Process / Ex. 5

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 9/21/2016 3:04:09 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Re:

Right--thanks for the reminder .

Sent from my iPhone

On Sep 20, 2016, at 9:09 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Hi Janet,

A few POO updates.

I think we are all set with the EOP briefing. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

I spoke with Trevor (glad you brought that up). I can provide a bit more detail tomorrow for you, but here are the main items on his list:

Deliberative Process / Ex. 5

You asked last night about the legal authority issue. To refresh your memory, David Orlin provided this:

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 6/13/2014 7:53:45 PM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: Fw: Current reline of 2014 RFS final rule
Attachments: Track Changes 6-5 versus 6-13.docx

Can you please print this for me to take with me?

Janet McCabe

From: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Sent: Friday, June 13, 2014 3:50 PM
To: McCabe, Janet
Cc: Stewart, Lori; Grundler, Christopher
Subject: Current reline of 2014 RFS final rule

Janet—attached is the 2014 RVO FRM Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 Here are a few key points as you read through the redline:

Deliberative Process / Ex. 5

We have a print-out of the redline that I'll get to Lori shortly. Thanks
Ben

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/22/2013 8:40:59 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Summary of Interagency discussion on 2013 RFS FRM

Thanks chris. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Where will you be this week?

From: Grundler, Christopher
Sent: Sunday, July 21, 2013 10:15:13 PM
To: McCabe, Janet
Subject: Re: Summary of Interagency discussion on 2013 RFS FRM

Ok. Will know more by end of day tomorrow and will advise

RIN Fraud FRM scheduled to go to OMB Aug 23

From: McCabe, Janet
Sent: Sunday, July 21, 2013 8:59:21 PM
To: Grundler, Christopher
Cc: Beauvais, Joel; Simon, Karl; Stewart, Lori
Subject: Re: Summary of Interagency discussion on 2013 RFS FRM

Thanks Chris--joel's on furlough tomorrow. Let's talk about whether/when I should call Dom ...

Can you please remind me the status of the RIN fraud rule? Shouldn't it be moving?

Thanks

From: Grundler, Christopher
Sent: Friday, July 19, 2013 12:37:22 PM
To: McCabe, Janet
Cc: Beauvais, Joel; Simon, Karl; Stewart, Lori
Subject: FW: Summary of Interagency discussion on 2013 RFS FRM

Janet—here is a summary of where we are on 2013 RFS Standard

From: Simon, Karl
Sent: Friday, July 19, 2013 12:31 PM
To: Grundler, Christopher
Cc: Machiele, Paul; Argyropoulos, Paul; Korotney, David; Ghanta, Venu; Stewart, Lori; Lie, Sharyn; Hengst, Benjamin; Bunker, Byron; Charmley, William
Subject: Summary of Interagency discussion on 2013 FRM

Chris,

We had a call with the interagency group yesterday on the FRM document and their comments. Attendees were OMB, EIA, CEA, EIA, OSTP, DPC, and DOE. OP was on the call as well. Earlier in the day, we received a document mark-up from Chad. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Karl

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 9/21/2016 12:06:18 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: RE: EOP slides, roll-out plan

I apologize for not getting more feedback to you guys today on this.

I think the ppt is fine. **Deliberative Process / Ex. 5** ?

From: Hengst, Benjamin
Sent: Monday, September 19, 2016 9:02 PM
To: McCabe, Janet <McCabe.Janet@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>
Subject: POO: EOP slides, roll-out plan

Janet, Chris:

Attached are the draft slides for Wednesday's EOP meeting on POO, and the draft rollout plan. A few notes:

-
- **Deliberative Process / Ex. 5**
-

Janet, we received your comments on the POO write-up and will turn the next version around.

thanks
Ben

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 11/2/2013 12:13:35 PM
To: Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; Chris Grundler [kerchris Personal Email / Ex. 6
Subject: Fw: RFS 2014 NPRM Track Changes
Attachments: RFS 2014 NPRM - Track Changes 10-28 versus 11-1 jcb docx+cg+jm.docx

This language looks good to me--great job to the team....I made a few small edits on -

Deliberative Process / Ex. 5

I will forward to Gina.

From: Janet McCabe Personal Email / Ex. 6
Sent: Saturday, November 02, 2013 8:07:56 AM
To: McCabe, Janet
Subject: RE: RFS 2014 NPRM Track Changes

Changes can be found in the following places:

- Deliberative Process / Ex. 5

From: McCabe, Janet [mailto:McCabe.Janet@epa.gov]
Sent: Saturday, November 02, 2013 7:52 AM
To: Janet McCabe; McCabe, Janet
Subject: Fw: RFS 2014 NPRM Track Changes

From: Personal Email / Ex. 6
Sent: Saturday, November 02, 2013 12:00:34 AM
To: Beauvais, Joel; McCabe, Janet
Cc: Grundler, Christopher
Subject: RFS 2014 NPRM Track Changes

Janet/Joel: I have reviewed Joel's edits on top of the teams edits and have added one on Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Chris

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 9/27/2013 3:44:44 AM
To: Janet McCabe Personal Email / Ex. 6
Subject: Fw: Compiled 2014 standards NPRM for review 9-26-13 jcb
Attachments: Compiled 2014 standards NPRM for review 9-26-13 jcb.docx

---

From: Beauvais, Joel
Sent: Thursday, September 26, 2013 11:30:06 PM
To: McCabe, Janet
Cc: Grundler, Christopher
Subject: FW: Compiled 2014 standards NPRM for review 9-26-13 jcb

Janet – I had hoped to get these to you earlier, but as often happens, it took me longer than I thought. Chris is reviewing separately and may have different comments. I don't know if you will get a chance to read this, but my key edits are at Deliberative Process / Ex. 5 If you would like, I can also send you OTAQ's redline against the version that was sent to OMB.

Deliberative Process / Ex. 5

This is your call of course, and Chris may have different views, but I wanted to flag it for you.

Joel

From: Beauvais, Joel
Sent: Thursday, September 26, 2013 11:21 PM
To: Grundler, Christopher; Simon, Karl; Argyropoulos, Paul; Machiele, Paul; Korotney, David; Hengst, Benjamin
Cc: Beauvais, Joel
Subject: Compiled 2014 standards NPRM for review 9-26-13 jcb

My comments on the passback are attached – I did them, as Paul M suggested, on the clean version.

First of all, you guys have done a great job with handling a difficult set of issues in a tight time frame. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 A few highlights:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if we need to discuss any of this. I will be passing these along to Janet on a separate chain with Chris and I'm sure she'll let us know if she has any further guidance.

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 11/2/2013 12:06:07 PM
To: Janet McCabe Personal Email / Ex. 6
Subject: Fw: RFS 2014 NPRM - Track Changes 10-28 versus 11-1 jcb
Attachments: RFS 2014 NPRM - Track Changes 10-28 versus 11-1 jcb.docx

Importance: High

From: Beauvais, Joel
Sent: Friday, November 01, 2013 6:05:38 PM
To: McCabe, Janet; Grundler, Christopher; Simon, Karl; Hengst, Benjamin; Argyropoulos, Paul; Machiele, Paul; Hannon, John; Korotney, David
Cc: Beauvais, Joel
Subject: RFS 2014 NPRM - Track Changes 10-28 versus 11-1 jcb

Janet, Chris and team – I am attaching my proposed edits on top of what David K sent earlier today.

Changes can be found in the following places:

- Deliberative Process / Ex. 5

I am sorry that it took me until this hour on a Friday to get this back to you all. Although we are now looking at a potential roll-out date of 11/12 (day after Veterans Day), Janet remains interested in getting this to the Administrator and to USDA over the course of the weekend if possible.

Because comms with USDA presumably will be docketed, it would be great if it were possible for key folks to take a quick look at this tonight or tomorrow am to make sure I have not made any grave errors in my edits. If that is not possible, please let us know and Janet, Chris and I can evaluate our comfort level with pushing to USDA over the weekend without your review.

Janet, we can connect later on how best to proceed.

Joel

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 11/8/2016 3:34:06 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: POO Petition Response 11 7 16jm.docx
Attachments: POO Petition Response 11 7 16jm.docx

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 11/8/2016 3:33:50 AM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: POO Petition Response 11 7 16jm.docx
Attachments: POO Petition Response 11 7 16jm.docx

Here are my comments—not that many—and mostly in the Deliberative Process / Ex. 5 with a couple of minor things

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

The bulk of the document looks great to me.

Also, Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We can chat tomorrow.

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 10/28/2013 1:17:57 AM
To: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]; Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]
CC: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: RE: 2014 RFS NPRM
Attachments: RFS 2014 jb cg jm 10-27-13.docx

And a very few additional notes from me. I like the new language.....

From: Grundler, Christopher
Sent: Sunday, October 27, 2013 6:19 PM
To: Beauvais, Joel; McCabe, Janet
Subject: Fw: 2014 RFS NPRM

I added a couple of edits on to Joel's edits

From: Personal Email / Ex. 6
Sent: Sunday, October 27, 2013 6:10:51 PM
To: Grundler, Christopher
Subject: 2014 RFS NPRM

<html><head><style> body {height: 100%; color:#000000; font-size:12pt; font-family:Arial;}</style></head><body></body></html>

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 10/23/2015 8:58:15 PM
To: Janet McCabe Personal Email / Ex. 6
Subject: Fw: OAR Rules & Weekly - Oct 23, 2015
Attachments: OAR WEEKLY Oct 23.docx; 5786 RFS 2014-2015-2016 final rule 10-22-15.docx; FR Notice drinking water PAG Clean 10-21-2015.docx; PAG Proposal Clean 10-21-2015.docx; CISWI 2nd Recon final 10-21-15_CLEAN.DOCX

From: McCoy, Britney
Sent: Friday, October 23, 2015 8:37 AM
To: McCabe, Janet
Cc: Stewart, Lori
Subject: OAR Rules & Weekly - Oct 23, 2015

Good Morning Janet,

I've attached electronic versions of the rules provided to you yesterday below. Also, I've the Weekly for your review as well.

OAR Weekly

1. **PAGs**

2. **RFS**

3. **CISWI**

Have a great day.

Britney

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/27/2013 1:10:43 AM
To: Personal Email / Ex. 6
Subject: FW: No Special EPA Refinery Favor Here

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

-----Original Message-----
From: Johnson, Alisha
Sent: Monday, August 26, 2013 7:15 AM
To: McCabe, Janet; Goffman, Joseph; Drinkard, Andrea; Millett, John; Bloomgren, David; Valentine, Julia; Reynolds, Thomas; Delp, Robert; Cohen, David
Subject: WSJ: No Special EPA Refinery Favor Here

No Special EPA Refinery Favor Here
The EPA evaluates small refinery exemption requests based on an analysis of facts.

The Journal recently published two misleading opinion pieces ("Behind an Ethanol Special Favor," op-ed, Aug. 14 and "Washington's Latest Special Favor," Potomac Watch, Aug. 9) by Kimberley Strassel questioning the EPA's reasoning and transparency around requests for a small-refinery hardship exemption under the congressionally mandated renewable transportation fuel program.

Ms. Strassel asks why, of the nation's 143 refineries, one was exempted from the EPA's ethanol mandate. She implies that the EPA is giving special deals to certain refiners at the expense of others behind closed doors. Nothing could be further from the truth. The EPA has received four waiver requests for 2013, out of the nation's 143 refineries. A list of companies that requested exemptions is available on our website.

As Congress directed, the EPA's regulations must establish the criteria used in considering a waiver request. In evaluating a claim of disproportionate economic hardship the EPA assesses many things, including a company's access to capital, whether compliance costs could lead to a shutdown and whether these small refiners are subject to exceptional state regulations.

The EPA takes seriously its responsibility under the law to safeguard information that a company claims is confidential business information that could harm a company's competitiveness if divulged. Contrary to the Journal's claim that the agency isn't being transparent, the EPA is complying with its legal obligations and has clearly explained the criteria and methods it uses when evaluating requests.

The EPA evaluates small refinery exemption requests based on an analysis of facts, consultation with the Department of Energy and commitment to the law—not hidden agendas.

Janet McCabe

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/25/2013 1:53:17 PM
To: Ketcham-Colwill, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=118C7A0CDCAA420CA8E0F079670D0A4B-KETCHAM-COLWILL, NANCY]
Subject: RE: hot issues list
Attachments: OAR Hot List August 26.docx

Nancy--attached is a RLSO version of the hotlist so you can see the few edits I made to your excellent draft. Since they aren't earthshattering, I'll go ahead and send the clean version to Gina, Bob, etc....

From: Ketcham-Colwill, Nancy
Sent: Friday, August 23, 2013 9:05 PM
To: McCabe, Janet; Goffman, Joseph
Cc: Beauvais, Joel
Subject: hot issues list

Attached and pasted below is a draft for your review. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Let me know if I can help distribute this when it's ready for prime time.

OAR Hot Issues List
Week of August 23, 2013

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 4/6/2015 12:17:20 AM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: Fwd: Full 2014/2015/2016 NPRM for your review
Attachments: Compiled 2014-2015-2016 rule for OD review 4-3-15.docx; ATT00001.htm

Could you please print out for me? Thanks

Sent from my iPhone

Begin forwarded message:

> **From:** "Grundler, Christopher" <grundler.christopher@epa.gov>
> **Date:** April 5, 2015 at 9:09:34 AM EDT
> **To:** "McCabe, Janet" <McCabe.Janet@epa.gov>
> **Subject: Fwd: Full 2014/2015/2016 NPRM for your review**
>
> Hi Janet:
> Here you go. This is a work in progress (see Daves note) but passes my embarrassment test..... Deliberative Process / Ex. 5
>
> **Deliberative Process / Ex. 5**
>
> Deliberative Process / Ex. 5
>
> I have a number of comments and questions I will asking the team, and some of the numbers I'd like to double check (not the standards).
>
> It would be good for you to Deliberative Process / Ex. 5
>
> Deliberative Process / Ex. 5
>
> C.
>
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. EPA
> 202-564-1682 (DC)
> 734-214-4207 (Ann Arbor)
>
> Begin forwarded message:
>
> > **From:** "Korotney, David" <korotney.david@epa.gov>
> > **Date:** April 3, 2015 at 2:40:16 PM EDT
> > **To:** "Grundler, Christopher" <grundler.christopher@epa.gov>, "Simon, Karl" <Simon.Karl@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Charmley, William" <charmley.william@epa.gov>
> > **Cc:** "Machiele, Paul" <machiele.paul@epa.gov>, "Argyropoulos, Paul" <Argyropoulos.Paul@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Audette, Lucie" <audette.lucie@epa.gov>, "Lie, Sharyn" <Lie.Sharyn@epa.gov>, "Manners, Mary" <manners.mary@epa.gov>, "Dubois,

Roland" <Dubois.Roland@epa.gov>
Subject: Full 2014/2015/2016 NPRM for your review

Chris and division directors,

Attached for your review is the NPRM for the 2014/2015/2016 RFS standards. Our plan is to send it to the workgroup on Friday April 10. FAR is Friday April 24.

The team continues to work through a number of open issues on how to convey the storyline, but the attached is more or less complete in this regard. We will be spending much of next week making sure all placeholders are filled in, outstanding questions from reviewers and editors are answered, etc. Note that OGC has fully reviewed the Executive Summary, Section II on the advanced and total standards, and the Deliberative Process / Ex. 5 Outlook, but has not yet been able to review Section III on the BBD standard - that will happen first thing next week.

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 10/17/2015 12:10:11 AM
To: Janet McCabe Personal Email / Ex. 6
Subject: Fw: Weekend Reading Packet - October 16, 2015
Attachments: 5733 Boiler MACT Preamble and Rule (10-16-2015) CLEAN.docx; Draft 2014-2015-2016 RFS final rule for workgroup review 10-15-15.docx; Final short notice_v2_10_16-15.docx

---

From: McCoy, Britney
Sent: Friday, October 16, 2015 4:15 PM
To: McCabe, Janet
Cc: Stewart, Lori
Subject: Weekend Reading Packet - October 16, 2015

Hey Janet,

I've attached the electronic version of the rules for your review below. Please let me know if you have any questions.

1. MATS Considering Costs

2. Boilers MACT

3. Renewable Fuel Volume Standards

Have a great weekend. See you on Monday.

Britney

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/22/2013 2:10:36 AM
To: Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Ketcham-Colwill, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=118c7a0cdcaa420ca8e0f079670d0a4b-Ketcham-Colwill, Nancy]; Beauvais, Joel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=088a99c4b0f04e2aa5784349bccf7b95-Beauvais, Joel]; Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: Re: Question from WSJ letters editor on Janet McCabe's letter to us

Amusing...I didn't know we were striving to be no longer than the G'byrg address, but will keep that in mind for the future.

With the tweak re Congress, the edited version seems ok to me.

From: Millett, John
Sent: Wednesday, August 21, 2013 1:21:24 PM
To: McCabe, Janet; Ketcham-Colwill, Nancy; Beauvais, Joel; Stewart, Lori
Subject: FW: Question from WSJ letters editor on Janet McCabe's letter to us

Hi Janet, Joel, Nancy and Lori – it looks like the letter responding to the WSJ/Strassel pieces will be printed tomorrow with edits for length. The WSJ's admonition to be brief is as well-taken and amusing as it is condescending.

I hope the track changes come across on blackberry.

We lost one sentence that explains that Congress wrote and passed the law requiring/allowing the RFS/hardship waivers -- so we made one tweak to work Congress' role back in. Here's the new first sentence of the 3rd paragraph below --

Congress established the criteria the EPA must use in considering waiver requests.

From: Bloomgren, David
Sent: Wednesday, August 21, 2013 3:54 PM
To: Millett, John
Subject: FW: Question from WSJ letters editor on Janet McCabe's letter to us

---

From: Lemmer, Timothy [mailto:Timothy.Lemmer@wsj.com]
Sent: Wednesday, August 21, 2013 3:47 PM
To: Bloomgren, David
Subject: Question from WSJ letters editor on Janet McCabe's letter to us

Dear Mr. Bloomgren,

Thank you for writing. Ms. McCabe's letter is longer than the 272-word Gettysburg Address, which is our general length standard for letters. I have distilled this to a near-Lincolnian length and we are happy to run the

letter at this length. You should see regular text, which will print, and struck-through text, which will not print. If you don't see two kinds of text, let me know and I'll hand-edit and resend. Let's talk.

Timothy Lemmer
Letters Editor, The Wall Street Journal
1211 Avenue of the Americas, New York, NY 10036
(212) 416-2258 (voice)
(212) 416-2891 (fax)
wsj.ltrs@wsj.com

~~Behind an Ethanol Special Favor By Kimberley A. Strassel 14 August 2013~~

~~Potomac Watch Washington's Latest Special Favor By Kimberley A. Strassel 9 August~~

The ~~Wall Street~~ Journal recently published two misleading opinion pieces ("Behind an Ethanol Special Favor, op-ed, Aug. 14 and "Washington's Latest Special Favor," Potomac Watch, Aug. 9) by Kimberley Strassel questioning the EPA's reasoning and transparency around requests for a small-refinery hardship exemption under the congressionally mandated renewable transportation fuel program.

Ms. Strassel asks, "Of the nation's 143 refineries, one was exempted from the EPA's ethanol mandate. Why?" and imply that EPA is giving special deals to certain refiners at the expense of others behind closed doors. Nothing could be further from the truth. ~~Congress recognized that compliance with renewable fuel volume obligations could impose disproportionate economic hardship for small refineries in certain circumstances, and provided a waiver process for them.~~ The EPA has received four waiver requests for 2013, out of the nation's 143 refineries. A list of companies that requested exemptions is available on our~~EPA's~~ website and was provided to the ~~Wall Street~~ Journal.

~~The law and the EPA's regulations establish the criteria the EPA must use in considering waiver requests~~.
Congress established the criteria the EPA must use in considering waiver requests.
In evaluating a claim of disproportionate economic hardship the EPA assesses many things, including a company's access to capital, whether compliance costs could lead to a shutdown, and whether these small refiners are subject to exceptional state regulations. ~~EPA considers factors such as these and makes its determination in consultation with the U.S. Department of Energy.~~

The EPA takes seriously its responsibility under the law to safeguard information that a company claims is confidential business information that could harm a company's competitiveness if divulged. Contrary to the ~~Wall Street~~ Journal's claim that the Agency isn't being transparent, the EPA is complying with its legal obligations and has clearly explained the criteria and methods it uses when evaluating requests. ~~Again, these details are available on the Agency's website and were provided to the Wall Street Journal.~~

~~Despite the author's misleading claims,~~ The EPA evaluates small refinery exemption requests based on an analysis of facts, consultation with the Department of Energy, and commitment to the law—not hidden agendas.

Janet McCabe

~~Acting Assistant Administrator, Office of Air and Radiation~~ U.S. Environmental Protection Agency

Washington [confirm]

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/16/2013 3:55:06 AM
To: Janet McCabe [janetgmccabe@gmail.com]
Subject: Fw: Draft Letter to the Editor: WSJ RFS Small Refinery Waivers
Attachments: RFS Waiver Letter to Editor.docx

From: McMichael, Nate
Sent: Thursday, August 15, 2013 6:37:37 PM
To: Grundler, Christopher; McCabe, Janet; Millett, John; Bloomgren, David
Cc: Mylan, Christopher; Stewart, Lori; Kika, Stacy; Valentine, Julia; Ketcham-Colwill, Nancy
Subject: Draft Letter to the Editor: WSJ RFS Small Refinery Waivers

Here is a first cut at the letter to the editor. Since we're on a time crunch, I am sending it to everyone at once. Please send your comments to John and me so we can reconcile them tomorrow morning.

Thank you,
-Nate

Nate McMichael
US EPA Office of Air and Radiation
202-564-0382 (Office)
202-236-4176 (Cell)

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 5/27/2014 1:44:07 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RFS 2014
Attachments: RFS 2014 5-24-14 gmdraft (2).docx

Following are Gina's comments to me on the preamble, and attached are her marginal comments (they show up as "AG.") Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

See you guys tomorrow.

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 6/2/2015 4:01:12 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Small Refinery Decision

I hear you....

From: Grundler, Christopher
Sent: Tuesday, June 02, 2015 12:00 PM
To: McCabe, Janet
Subject: RE: Small Refinery Decision

Annoying. Deliberative Process / Ex. 5

From: McCabe, Janet
Sent: Tuesday, June 02, 2015 11:50 AM
To: Grundler, Christopher
Subject: RE: Small Refinery Decision

Sheesh—you'd never get an inkling of any of that from the coverage.

From: Grundler, Christopher
Sent: Tuesday, June 02, 2015 11:43 AM
To: McCabe, Janet
Subject: Small Refinery Decision

Did not see the article, but here is the trial attorney's assessment:

Attorney Client / Ex. 5

Best regards,

Justin

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 5/26/2014 8:02:21 PM
To: Janet McCabe Personal Email / Ex. 6
Subject: Fw: RFS 2014
Attachments: RFS 2014 5-24-14 gmdraft.docx; RFS 2014 5-24-14 gmdraft.docx

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From: Adm13McCarthy, Gina
Sent: Monday, May 26, 2014 3:51:50 PM
To: McCabe, Janet
Subject: RE: RFS 2014

Janet - Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: McCabe, Janet
Sent: Sunday, May 25, 2014 10:27 AM
To: Adm13McCarthy, Gina
Subject: RFS 2014

Attached is the current version of the RFS 2104 rule, Gina, and the slides for the tuesday meeting at the WH. The latter give you the table of numbers and a high level description of the rule. We still have time to make changes, so your comments and questions are welcome.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 (OTAQ includes page numbers in their table of contents, so it's pretty easy to find the section you're looking for.)

I'm so sorry to have to bring any of this to you right now, but if there's any hope of getting this out at the end of June, we need to move it to OMB this week. Of course we'll still be able to dicker with OIRA and the other agencies while it's in interagency review.

Lastly, it's not necessary that you have looked at this for us to have our call....

Janet

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 6/2/2015 3:39:50 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Court says math mistakes send EPA back to the drawing board

You've seen?

From: POLITICO Pro Energy Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Tuesday, June 02, 2015 11:35 AM
To: McCabe, Janet
Subject: Court says math mistakes send EPA back to the drawing board

6/2/15 11:33 AM EDT

Time for EPA to pull out its calculator.

The D.C. Circuit Court of Appeals ruled today that the agency's 2013 decision not to extend a Wyoming oil refinery's exemption for renewable fuel blending requirements was based on an analysis that contained two mathematical errors.

The judges sent the request back to EPA because they couldn't be sure the agency would make the same decision with those errors corrected.

Judges Merrick Garland, David S. Tatel and Sri Srinivasan rejected several other arguments made by the refinery, including that EPA misconstrued the statutory term "disproportionate economic hardship" and that the Energy Department changed its scoring practice without notice.

The Wyoming Refining Co.'s refinery in Newcastle, Wyo., was previously granted an exemption from renewable fuel mandates, along with several other small refineries that have limited blending capacity. The WRC refinery is one of the smallest in the U.S., processing just 14,000 barrels per day, and as such was particularly susceptible to RIN prices that began fluctuating in 2013 as the transportation fuels market approached the so-called "blend wall."

— *Alex Guillen*

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https://www.politicopro.com/go/?wbid=54600

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Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 11/29/2016 3:19:40 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: stay of RFS compliance deadlines denied

Sent from my iPhone

On Nov 29, 2016, at 9:59 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202/564-1682 (Washington DC)
734/214-4207 (Ann Arbor MI)

Begin forwarded message:

From: "Orlin, David" <Orlin.David@epa.gov>
Date: November 29, 2016 at 9:58:53 AM EST
To: "McCabe, Janet" <McCabe.Janet@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Argyropoulos, Paul" <Argyropoulos.Paul@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>, "Korotney, David" <korotney.david@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Weihrauch, John" <Weihrauch.John@epa.gov>, "Anderson, Robert" <Anderson.Robert@epa.gov>, "Burkholder, Dallas" <burkholder.dallas@epa.gov>, "Parsons, Nick" <Parsons.Nick@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Manners, Mary" <manners.mary@epa.gov>, "Cohen, Janet" <cohen.janet@epa.gov>
Cc: "Dubois, Roland" <Dubois.Roland@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
Subject: stay of RFS compliance deadlines denied

Attorney Client / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Bell, Lisa (ENRD) [mailto:Lisa.Bell@usdoj.gov]
Sent: Tuesday, November 29, 2016 9:50 AM
To: Dubois, Roland <Dubois.Roland@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Spence, Samara (ENRD) <Samara.Spence@usdoj.gov>
Subject: ACE--Order denying stay motion

Hi,

Attorney Client / Ex. 5

Thanks,
Lisa

Lisa Bell
Trial Attorney
United States Department of Justice
Environmental Defense Section
(202) 514-9275
Lisa.Bell@usdoj.gov

<ACE--Order denying motion to stay; granting amicus briefs; referring motion to supplement to merits panel.pdf>

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/9/2013 4:47:35 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Kim Strassel's Op Piece Posts RFS Exemptions

Ok

From: Grundler, Christopher
Sent: Friday, August 09, 2013 11:32:48 AM
To: McCabe, Janet
Subject: Fw: Kim Strassel's Op Piece Posts RFS Exemptions

From: Le, Madison
Sent: Friday, August 09, 2013 11:24:05 AM
To: Stewart, Lori; Grundler, Christopher; Bunker, Byron
Subject: RE: Kim Strassel's Op Piece Posts RFS Exemptions

Deliberative Process / Ex. 5

From: Stewart, Lori
Sent: Friday, August 09, 2013 10:46 AM
To: Grundler, Christopher
Cc: Le, Madison
Subject: FW: Kim Strassel's Op Piece Posts RFS Exemptions

Deliberative Process / Ex. 5

From: McMichael, Nate
Sent: Friday, August 09, 2013 10:10 AM
To: McCabe, Janet
Cc: Ketcham-Colwill, Nancy; Millett, John; Stewart, Lori; Drinkard, Andrea
Subject: FW: Kim Strassel's Op Piece Posts RFS Exemptions

Janet,

I want to flag the WSJ opinion piece in the chain below. **Deliberative Process / Ex. 5** **Deliberative Process / Ex. 5** Here is what we provided through the third floor when she contacted us asking about the exemption process:

Statement:
The Department of Energy (DOE) developed metrics in a 2011 study for small refinery requests for exemption from RFS. These include, for example, access to capital, whether compliance costs could lead to a shutdown, or whether these small refiners are subject to exceptional state regulations. Based on these metrics DOE evaluates small refinery applications for exemption and makes recommendations to EPA. Because encouraging small

business growth is a priority for the EPA, the agency carefully considers these recommendations as well as any potential impacts its actions may have on small businesses.

In 2013, EPA received four requests from small refineries for RFS exemption. After taking into consideration DOE's metric-driven evaluation and other requirements in the RFS rule, EPA has granted one exemption, and no determination has yet been made with the other three exemption requests. Due to confidentiality restrictions, EPA cannot provide any specifics on the actions the agency has taken regarding these exemption requests.

You can find a list of hardship requests we received here: http://www.epa.gov/otaq/regs/hardship-exemptions/hardship.htm

You can find the criteria for hardship exemption outlined under 80.1442(e)(2) here: http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol17/pdf/CFR-2012-title40-vol17-sec80-1442.pdf

You can find additional information on the DOE 2011 study at this link: http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf

Nate McMichael
US EPA Office of Air and Radiation
202-564-0382 (Office)
Ex. 6 (Cell)

From: Delp, Robert
Sent: Friday, August 09, 2013 9:43 AM
To: McMichael, Nate
Subject: FW: Kim Strassel's Op Piece Posts

Kim Strassel: Washington's Latest Special Favor. Of the nation's 143 refineries, one was exempted from the EPA's ethanol mandate. Why?

http://online.wsj.com/article/SB10001424127887324522504579000792763966698.html

For a glimpse at the secret, special-favors factory that Washington has become under President Obama, check out this week's big news out of the Environmental Protection Agency. Or rather, look beyond the headlines to the corporate handout hidden within.

The big news was that the EPA issued—finally—its infamous annual quota for renewable fuels. That mandate tells the nation's refineries how much renewable fuel (ethanol) must be blended annually into gasoline, a quota that is becoming a pernicious driver of gas prices. The EPA was supposed to release the 2013 quota last November but decided to leave the industry in panicked uncertainty until now.

The 89-page rule is dull reading, until you get to page 11. Tucked on that page is one short sentence, which reads: "EPA has approved a single small refinery/small refiner exemption for 2013, so an adjustment has been made to the standards to account for this exemption." In English: Of the nation's 143 refineries, one (and only one) lucky player somehow had the pull to win itself a free pass from this government burden. Not only that, the rest of the industry gets to pick up its slack.

An exemption is no small privilege. Congress, in its limited wisdom (and fealty to corn farmers), passed legislation in 2007 requiring that the U.S. use of renewable fuels increase to 36 billion gallons annually by

2022. This year's EPA quota is 16.5 billion gallons, and the requirements keep ratcheting up even though U.S. gasoline use is falling.

This matters because for refineries to stuff ballooning amounts of ethanol into a static gas pool, they must blend it at levels of more than 10%. Since the nation's auto makers have declared they will void the warranties of cars using gas with more than 10% ethanol, refineries face lawsuits. Most have instead turned to buying federal renewable "credits" to make up for the ethanol they don't blend.

As demand for these credits skyrockets, so has the price—jumping from a few pennies a gallon last year to close to $1 a gallon today. Oil refiner Valero has said the credits could raise its cost by a stunning $750 million this year, a hit that will be passed on to consumers. PBF Energy just told investors that its disappointing second-quarter earnings were rooted in the mandate, noting that the $200 million it expects to fork over for ethanol credits this year will exceed the salaries and wages that it pays to operate all three of its refineries.

Some refineries are lowering production simply to mitigate the credit costs. Others are beginning to export products to avoid the mandate. Both moves could tighten U.S. supplies and lead to higher prices at the pump. Most every refinery is hurt by this rule.

So an exemption from today's mandate is far more than a perk—it is a lifeline, an outright payday. Making this indulgence even more curious is that it is being issued by the Obama EPA, an agency that isn't exactly known for doing favors for beastly carbon producers.

So who is the lucky dog? Who could make this happen? That's the best part. The EPA won't say. The agency not only refused to name the refinery in its rule, but also obscured certain numbers in the document to hide the beneficiary's identity. An EPA press officer would not give me the name, citing "confidentiality restrictions."

The agency did send me a 2011 document that shows it granted exemptions at that time to 13 small refineries. But that exemption applied only to 2011 and 2012—and the 13 refineries had been recommended by a public Department of Energy analysis, which laid out reasons for the exemptions. The EPA rule this week said this exemption had been granted under EPA's authority to evaluate refineries on a "case by case" basis. The press officer said DOE was involved in the evaluation.

What was the actual process? It's a worthy question, given that the refinery sector is no stranger to politics. As hard times have hit, politicians have become deeply involved in protecting their home-state refineries. Many are unionized, which raises the question of whether Big Labor engaged in an exemption request.

Dozens of small refineries are being crushed by the mandate, and a number have petitioned the EPA for exemptions. If "disproportionate economic hardship" is the agency's standard, no doubt plenty would qualify. Yet only one got the nod. The rest of the industry is dying to know what is so special about this refinery, especially since the EPA is making every other refinery shoulder its burden.

The public should want to know too. Washington is rife with secret deals that reward select corporate players, and the numbers have only accelerated under this "most transparent" of administrations. If the process by which the EPA issued this exemption was aboveboard, it should have no problem divulging details. Until that time, the public might fairly assume funny business.

Write to kim@wsj.com

(via Instapaper)

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/9/2013 3:31:29 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Kim Strassel's Op Piece Posts RFS Exemptions

Deliberative Process / Ex. 5 --let's talk about this when we're together later.

From: Grundler, Christopher
Sent: Friday, August 09, 2013 11:17:04 AM
To: McCabe, Janet
Subject: Re: Kim Strassel's Op Piece Posts RFS Exemptions

Deliberative Process / Ex. 5

From: McCabe, Janet
Sent: Friday, August 09, 2013 11:11:36 AM
To: Grundler, Christopher
Subject: Fw: Kim Strassel's Op Piece Posts RFS Exemptions

Chris-- Deliberative Process / Ex. 5

From: McMichael, Nate
Sent: Friday, August 09, 2013 10:10:12 AM
To: McCabe, Janet
Cc: Ketcham-Colwill, Nancy; Millett, John; Stewart, Lori; Drinkard, Andrea
Subject: FW: Kim Strassel's Op Piece Posts RFS Exemptions

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---

Nate McMichael
US EPA Office of Air and Radiation
202-564-0382 (Office)
202-236-4176 (Cell)

From: Delp, Robert
Sent: Friday, August 09, 2013 9:43 AM
To: McMichael, Nate
Subject: FW: Kim Strassel's Op Piece Posts

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Write to kim@wsj.com

(via Instapaper)

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 5/28/2015 3:07:22 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Stewart, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8404f4ff6c924b2f8f3fb80c3a4467a7-lstewa04]
Subject: Re: RFS status update

Fantastic! Well done, team!

From: Grundler, Christopher
Sent: Wednesday, May 27, 2015 10:51 PM
To: Hengst, Benjamin
Cc: McCabe, Janet; Stewart, Lori
Subject: Re: RFS status update

Yay!

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. EPA
202-564-1682 (DC)
734-214-4207 (Ann Arbor)

On May 27, 2015, at 10:28 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

Janet, Chris:

Just a quick update on where things stand on the RVO package:

- Roll-out: you should have a stack of rollout-related documents to review at this point. We will finalize everything tomorrow, and we have a meeting to discuss rollout at 11:30 tomorrow with Millet and others.
- Interagency review remaining topics:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- Mechanics for tomorrow: I've spoken to OP and OMB about how we will choreograph OMB clearance, uploading, etc, so I think we are in decent shape there. We will try to get the rule officially signed late tomorrow, or very early Friday if we have to.

I think that's it for now. Thanks, Ben

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/7/2013 9:24:34 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: EPA exempted one refiner from RFS rule

He got a little ink... **Deliberative Process / Ex. 5**

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

From: Drinkard, Andrea
Sent: Wednesday, August 07, 2013 4:40 PM
To: McCabe, Janet
Subject: FW: EPA exempted one refiner from RFS rule

From: POLITICO Pro Whiteboard
Sent: Wednesday, August 07, 2013 4:37:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: Drinkard, Andrea
Subject: EPA exempted one refiner from RFS rule

8/7/13 4:34 PM EDT

One small refiner was exempted from the requirements of EPA's 2013 volume standards for the Renewable Fuel Standard, officials from the American Petroleum Institute said today.

"It's an unnamed refinery — it's confidential," Bob Greco, API's group director for downstream and operations, told reporters today. "It got our attention when we saw that."

Greco said the result of exempting the refiner means the volume mandate "for everybody else was moved up" to compensate.

Under the RFS statute, EPA can grant an exemption for small refineries that face a disproportionate economic hardship. The agency exempted several refineries in 2011 and 2012 as the result of a congressionally-ordered Energy Department report.

This year, in the final 2013 RFS volume standards released yesterday, EPA only exempted one refinery, according to the rule. The rule does not specify which refiner received the exemption, or the basis for the hardship determination.

— *Erica Martinson*

You've received this POLITICO Pro content because your customized settings include: Energy Topic: EPA. To change your alert settings, please go to https://www.politicopro.com/member/?webaction=viewAlerts.

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Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/22/2016 2:14:21 AM
To: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: FW: Materials for Janet's call with Sen Carper tomorrow
Attachments: RFS Point of Obligation Response Plan, backgrounder 7.22.16 Carper call.docx

---

From: Stewart, Lori
Sent: Thursday, July 21, 2016 5:16 PM
To: McCabe, Janet <McCabe.Janet@epa.gov>
Cc: Cyran, Carissa <Cyran.Carissa@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Subject: FW: Materials for Janet's call with Sen Carper tomorrow

Actually a backgrounder v. talkers.

From: Hengst, Benjamin
Sent: Thursday, July 21, 2016 4:35 PM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Subject: Materials for Janet's call with Sen Carper tomorrow

Hi all,

Though Janet doesn't really need any further background info on the RFS point of obligation issue for her call with Sen Carper tomorrow, we have attached a backgrounder as a 'refresher' should she want it. I'll be joining Janet for the call (unless told otherwise!).

Thanks,
Ben

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 10/6/2016 6:29:37 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: OTAQ (Painful) Transitions

Oh dear oh dear....thank you so much for letting me know. We are a family here,

---

From: Grundler, Christopher
Sent: Thursday, October 06, 2016 9:04 AM
To: McCabe, Janet <McCabe.Janet@epa.gov>
Subject: OTAQ (Painful) Transitions

Janet-
I want to share with you some happy and very sad transition news in our office.

1.
2. Personal Matters / Ex. 6
3.

Personal Matters / Ex. 6

Chris

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/5/2013 1:53:33 AM
To: Janet McCabe Personal Email / Ex. 6
Subject: Fw: 8/2 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]
Attachments: EO12866_RFS 2013 Annual Rule 2060-AR43 FRM FRN_20130802.docx

---

From: Grundler, Christopher
Sent: Sunday, August 04, 2013 9:48:00 PM
To: McCabe, Janet
Subject: Fw: 8/2 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]

Janet--on bb, so this is best I can do. Here is final pass back

---

From: Ghanta, Venu
Sent: Friday, August 02, 2013 7:50:42 PM
To: Stewart, Lori; Grundler, Christopher
Subject: FW: 8/2 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]

Sorry, my email went haywire so I am just now getting this to you. We will convene with EIA first thing Monday and try to get that issue squared away.

From: Ghanta, Venu
Sent: Friday, August 02, 2013 6:38 PM
To: Whiteman, Chad
Cc: Korotney, David; Machiele, Paul; Argyropoulos, Paul; Simon, Karl; Hengst, Benjamin; Lie, Sharyn; Farber, Glenn; Nagelhout, Peter; Hannon, John
Subject: 8/2 EPA Response pertaining to 2013 RFS Volume Standards [RIN 2060-AR43]

Chad-

Please find our response, which is in redline from your passback earlier today. This should address all comments except for the one remaining EIA issue. We plan to have a discussion Monday morning to resolve that.

Thanks, Venu

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/5/2013 1:26:07 AM
To: Deputy Administrator [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dc00d1f496a345a791f3c5e082854d64-Perciasepe, Bob]; KeyesFleming, Gwen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7e15f12f183d4f839b8786d74bf9e40e-Keyes Fleming, Gwen]
Subject: Fw: earlier version
Attachments: RFS 2013 Volume Standards NFRM jm 8-4-13.pptx

Here's the earlier version I started with bob. I think it made some oif the points you mentioned more clearly.

I'll see about finding the forward looking language now and send it to you.

From: Janet McCabe Personal Email / Ex. 6
Sent: Sunday, August 04, 2013 9:12:45 PM
To: McCabe, Janet
Subject: earlier version

Here is the version I started with

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 8/2/2013 4:17:12 PM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: FW: Draft of 2014 standards NPRM for your review
Attachments: Compiled 2014 standards NPRM for OD review 8-2-13.docx; Track Changes 2014 standards NPRM 7-19 versus 8-2.docx

Can you please rpint for my folder? The clean version is fine.

Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

From: Korotney, David
Sent: Friday, August 02, 2013 11:59 AM
To: Grundler, Christopher; McCabe, Janet
Cc: Beauvais, Joel; Machiele, Paul; Argyropoulos, Paul; Hengst, Benjamin; Simon, Karl; Charmley, William; Hannon, John; Dubois, Roland; Lie, Sharyn
Subject: Draft of 2014 standards NPRM for your review

Attached is a draft of the 2014 standards NPRM for your review. I was able to get through Joel's comments on the 7/19 version up through about 1/2 of Section IV - I'll get to the rest first thing next week.

I have also attached a Track Changes version to show what has changed since the 7/19 version, for those who care to see this.

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/28/2013 2:38:13 AM
To: Janet McCabe; Personal Email / Ex. 6
Subject: Fw: draft RFS small refinery letter 7-26
Attachments: draft RFS small refinery letter 7-26 v2.docx

From: Beauvais, Joel
Sent: Friday, July 26, 2013 4:52:30 PM
To: McCabe, Janet
Cc: Grundler, Christopher
Subject: FW: draft RFS small refinery letter 7-26

Janet – Attached is a draft of the small refiner letter from OTAQ.

From: Stewart, Lori
Sent: Friday, July 26, 2013 4:51 PM
To: Beauvais, Joel; Ghanta, Venu
Cc: Argyropoulos, Paul; Hengst, Benjamin; Grundler, Christopher
Subject: RE: draft RFS small refinery letter 7-26

Thanks Joel. I am attaching a clean version. Chris asked that this go to Janet as well. Would you like to share this with Janet or should I send forward?

From: Beauvais, Joel
Sent: Friday, July 26, 2013 4:44 PM
To: Ghanta, Venu
Cc: Argyropoulos, Paul; Hengst, Benjamin; Stewart, Lori
Subject: draft RFS small refinery letter 7-26

Looks fine – a few nits attached

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 7/13/2016 1:26:06 AM
To: Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]
CC: McCabe, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2ca413e5a534895bd6042d82e5b5f63-McCabe, Janet]
Subject: Re: RFS point of obligation, next steps

Ok--good idea.

Sent from my iPhone

On Jul 12, 2016, at 9:25 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:

> Oh okay, I will print and put in her inbox. But if you also want to duplicate with an email, I doubt that would hurt.
>
> Sent from my iPhone
>
> On Jul 12, 2016, at 8:50 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:
>
> > It's not super time sensitive. Would she prefer it electronically or in hard copy, do you think?
> >
> > Sent from my iPhone
> >
> > On Jul 12, 2016, at 8:38 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:
> >
> > > Janet, I would be happy to forward it on to her, but because she's traveling would you want to just send it to her directly?
> > >
> > > Sent from my iPhone
> > >
> > > On Jul 12, 2016, at 7:59 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:
> > >
> > > > Kristien—would you be able to get this attachment to the Administrator, with the following note from me:
> > > >
> > > > Gina—

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,
Janet

Thanks, Kristien.

From: Hengst, Benjamin
Sent: Tuesday, July 12, 2016 9:53 AM
To: McCabe, Janet <McCabe.Janet@epa.gov>
Cc: Stewart, Lori <Stewart.Lori@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: RFS point of obligation, next steps

Great, thanks Janet. An updated backgrounder is attached. Thanks, Ben

---

From: McCabe, Janet
Sent: Tuesday, July 12, 2016 7:25 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Cc: Stewart, Lori <Stewart.Lori@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Re: RFS point of obligation, next steps

Thanks Ben. This is very clear. One requested addition-

Deliberative Process / Ex. 5

I gave Gina a heads up about this issue and said we'd have more coming for her, so this paper will be good follow up, and she can ask for more, or a briefing, if she wants. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 11, 2016, at 4:49 PM, Hengst, Benjamin <Hengst.Benjamin@epa.gov> wrote:

> Hi Janet:
>
> Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process; ACP / Ex. 5

Please let us know if you need more.
Thanks, Ben

<RFS Point of Obligation Response Plan for Admin 7.11.16.docx>

<RFS Point of Obligation Response Plan for Admin 7 12 16.docx>

Message

From: Morrison, Matthew W. [matthew.morrison@pillsburylaw.com]
Sent: 6/4/2018 12:43:04 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
CC: A-AND-R-DOCKET [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1690becd79334c75b66c4d7a9b14da66-A-AND-R-DOC]
Subject: Renewable Fuels Coalition -- Petition for Reconsideration of Small Refineries Regulation
Attachments: Small Refinery Petition to EPA Revised with Appendices 4840-6794-0455 v.1 4839-2599-4087 v.9.pdf; Appendices.pdf

Dear Administrator Pruitt,

Attached is a request filed by a coalition of biofuel interests seeking EPA's reconsideration of certain regulations promulgated under the Renewable Fuels Standard of the Clean Air Act. The request specifically seeks reconsideration of the regulations promulgated by EPA to address small refinery exemptions granted under the RFS program.

Please do not hesitate to contact me if you have any questions or wish to discuss this request further.

Sincerely,

Matt Morrison

Matthew W. Morrison | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.8036 | f 202.663.8007 | m Ex. 6
matthew.morrison@pillsburylaw.com | website bio

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LOS ANGELES MIAMI NASHVILLE NEW YORK NORTHERN VIRGINIA
PALM BEACH SACRAMENTO SAN DIEGO SAN DIEGO NORTH COUNTY
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pillsbury

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June 4, 2018

Via Certified and Electronic Mail

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Petition for Reconsideration of 40 C.F.R. §80.1405(c), EPA Docket No. EPA–HQ–OAR–2005–0161, promulgated in 75 Fed. Reg. 14,670 (Mar. 26, 2010); Petition for Reconsideration of Periodic Reviews for the Renewable Fuel Standard Program, 82 Fed. Reg. 58,364 (Dec. 12, 2017)

Dear Administrator Pruitt:

Pursuant to Clean Air Act ("CAA") Section 307(d)(7)(B), the Renewable Fuels Association, American Coalition for Ethanol, Biotechnology Innovation Organization, Growth Energy, National Biodiesel Board, National Corn Growers Association, and National Farmers Union (collectively, the "Coalition") hereby petition the Environmental Protection Agency ("EPA") to (1) convene a proceeding to reconsider the annual standard equations in 40 C.F.R. § 80.1405(c), Docket No. EPA–HQ–OAR–2005–0161, 75 Fed. Reg. 14,670, 14,867 (Mar. 26, 2010) (hereinafter referred to as the "Annual Standard Equations" or "Final Rule"), attached hereto as Appendix A and (2) convene a proceeding to reconsider the final action entitled "Periodic Reviews for the Renewable Fuel Standard Program," notice of which was published at 82 Fed. Reg. 58,364 (Dec. 12, 2017), attached hereto as Appendix B.

The Coalition represents producers of renewable feedstocks and fuels that are blended into transportation fuel as required by the Renewable Fuel Standard ("RFS"). EPA has already recognized the impact of the Final Rule on such entities. *See* 75 Fed. Reg. 14,670.

The Annual Standard Equations account for small refinery exemptions granted for a particular year only if they are issued before the final Renewable Volume Obligations ("RVOs") are issued for that year. Thus, the Annual Standard Equations do not provide a means to "true up" the annual standards for any retroactive small refinery exemptions, i.e., exemptions granted after the RVOs for that year have been finalized, and any volumes covered by such exemptions are lost. Accordingly, the Annual Standard Equations cannot ensure that the applicable volume requirements of the statute are being met pursuant to 42 U.S.C. § 7545(o)(3)(B)(i). When adopting the Annual Standard Equations in 2010, EPA assumed that it would grant very few extensions of small refinery hardship exemptions in any given year, and that the overall number would decline steadily over time until no more extensions would be granted—and thus assumed that the net effect of the exemptions would be *de minimis* at first and eventually non-existent. In this earlier era when small refinery exemptions were rare, EPA's failure to account for retroactive exemptions may have been a justifiable administrative convenience. But EPA's continued use of its Annual Standard Equations in the face of its recently and greatly expanded use of retroactive small refinery exemptions—news reports within the last 60 days reveal a flood of more than two dozen retroactive small refinery hardship exemptions have already been granted this year—is now arbitrary and capricious. The Annual Standard Equations must therefore be reconsidered in accordance with CAA Section 307(d)(7)(B).

The following sections explain the legal basis of this Petition and outline why EPA's inadequate approach to calculating annual standards has become arbitrary and capricious and must be re-examined.

I. Background

In the RFS, Congress directed EPA to promulgate regulations to ensure that all transportation fuel sold or introduced into commerce in the United States contains, on an annual average basis, the applicable volumes of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel set by Congress for each calendar year. 42 U.S.C. § 7545(o)(2)(A)(i). The CAA also requires EPA to determine and publish a renewable fuel obligation each year "that ensures that requirements are met." 42 U.S.C. § 7545(o)(3)(B)(i).

As a regulatory flexibility measure, Congress provided a temporary exemption, through December 31, 2010, to small refineries with a crude oil throughput of no more than 75,000 barrels per day. *See* 42 U.S.C. § 7545(o)(9). Congress also provided that small refineries could receive a temporary extension of the exemption beyond 2010 based on either 1) the results of a required Department of Energy ("DOE") study, or 2) an EPA determination of "disproportionate economic hardship" on a case-by-case basis in response to petitions from small refineries. *Id.* §§ 7545(o)(9)(A)(ii), 7545(o)(9)(B). In reviewing individual petitions to extend a small refinery exemption, EPA must consult with DOE to evaluate how achieving compliance with the RFS requirements affects the refineries' competitiveness and profitability. *See id.* Small refineries may apply for the disproportionate hardship exemption "at any time," and EPA must review and decide on the petition within 90 days. *Id.* § 7545(o)(9)(B)(i), (iii).

Each year since the 2010 Final Rule, EPA has calculated the value of the annual standards according to the Annual Standard Equations set forth at 40 CFR § 80.1405(c). Two variables in the denominator of the Annual Standard Equations—GE_i and DE_i—account for the volumes of gasoline and diesel "projected to be produced by exempt small refineries and small refiners, in year $_i$, in gallons in any year they are exempt per §§ 80.1441 and 80.1442,

respectively." 40 C.F.R. § 80.1405(c). Thus, EPA has accounted for the small refinery hardship exemptions granted before the final RVOs each year by assigning values to GE_i and DE_i, which in turn "result in a proportionally higher percentage standard for remaining obligated parties," 75 Fed. Reg. 76,790, 76,805 (Dec. 9, 2010). *See, e.g.*, 75 Fed. Reg. 14,716-14,717 ("Thus we have excluded their gasoline and diesel volumes from the overall nonrenewable gasoline and diesel volumes used to determine the applicable percentages until 2011."); 77 Fed. Reg. 1,319, 1,324 (Jan. 9, 2012) (EPA "has also adjusted the final 2012 percentage standards to reflect the exemption of these small refineries from being RFS obligated parties in 2012.").

The Annual Standard Equations do not, however, account for small refinery exemptions granted *retroactively* after EPA has finalized a given year's RVOs.

This practice seemed less problematic until recently. Indeed, the Coalition and other similarly situated parties had little reason to believe that EPA was granting numerous retroactive exemptions, thereby systematically skewing the volumes of renewable fuel required nationally.

II. The Agency Must Reconsider Its Annual Standard Equations to Account for the Unprecedented Increase in Retroactive Small Refinery Exemptions.

News reports in the last 60 days have revealed that EPA has recently granted two dozen small refinery hardship exemptions, most of them seemingly retroactively. *See e.g.*, Jarrett Renshaw & Chris Prentice, *Chevron, Exxon Seek 'Small Refinery' Waivers from U.S. Biofuels Law*, Reuters, Apr. 12, 2018, attached hereto as Appendix C (EPA "has already issued an unusually high 25 hardship waivers to small refineries in recent months, according to an agency source, driving blending credit prices down and helping the oil industry reduce compliance costs."); Jarrett Renshaw & Chris Prentice, *U.S. EPA Grants Biofuels Wavier to Billionaire Icahn's Oil Refinery-Sources*, Reuters, Apr. 30, 2018, attached hereto as Appendix D ("The Trump Administration has encouraged small refiners to apply for the hardship waivers. A surge

of applications has come to the EPA....”); Jarrett Renshaw & Chris Prentice, *Large U.S. Refiner Marathon Seeks Biofuel Hardship Waiver-Sources*, Reuters, May 23, 2018, attached hereto as Appendix E (“[T]he agency has granted more than two dozen small refinery waivers for 2017 in recent months, a level that former officials say is about triple the number given each year under previous administrations.”). This represents a dramatic increase in the number of such exemptions and thus greatly increases their effect on the use of renewable fuel.

EPA’s apparent new permissive interpretation in granting small refinery economic hardship exemptions constitutes grounds for reconsideration arising after the close of the Final Rule’s public comment period on July 27, 2009. This dramatic development—the full extent of which has been kept secret by EPA—negates the legal basis on which EPA had relied to justify the Annual Standard Equations.

A. EPA Has a Duty to Grant Reconsideration Where, as Here, the Grounds for Reconsideration Are of Central Relevance and Have Arisen After Promulgation of the Final Rule.

EPA is legally required to grant this petition for reconsideration, under both the CAA and general administrative law principles. Section 307(d)(7)(B) of the CAA establishes the following approach for EPA to use in adjudicating reconsideration petitions:

> If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

See 42 U.S.C. § 7607(d)(7)(B). The “time specified for judicial review” is 60 days “after such grounds arise.” *Id.* § 7607(b)(1). This petition satisfies these requirements: it is based on news reports within the past 60 days of a significant increase in the number of small refinery exemptions being granted; and this development is of central relevance to the Annual Standard

Equations rule because it shows that, by not accounting for retroactive exemptions, the rule is now arbitrary and capricious.

The D.C. Circuit recognizes that "new information" may "dictate a revision or modification of any promulgated standard or regulation established under the act." *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654, 660 (D.C. Cir. 1975) (quoting S. Rep. No. 91-1196, at 41-42 (1970)). The D.C. Circuit has established a process for petitioners and EPA to follow with regard to petitions to reconsider Clean Air Act rules based on "new information":

> (1) The person seeking revision of a standard of performance, or any other standard reviewable under Section 307, should petition EPA to revise the standard in question. The petition should be submitted together with supporting materials, or references to supporting materials. (2) EPA should respond to the petition and, if it denies the petition, set forth its reasons. (3) If the petition is denied, the petitioner may seek review of the denial in this court pursuant to Section 307.

Id. at 666.

This Petition satisfies the first step outlined in the *Oljato* process because it asks EPA to revise 1) the Annual Standard Equations (40 C.F.R. § 80.1405(c)) and 2) its Nov. 2017 Periodic Review of the RFS to account for retroactive exemptions based on specific legal grounds and appropriate supporting materials. EPA must therefore respond to this Petition, and if it denies the Petition, it must state its reasons for doing so. *See* 515 F.2d at 667 ("[T]he public's right to petition the Administrator for revision of a standard of performance and the Administrator's duty to respond substantively to such requests exist completely independently of Section 307 and this court's appellate jurisdiction."). Any explanation and record developed by EPA in denying the relief requested by the Coalition may be reviewed in the D.C. Circuit pursuant to the third step outlined in *Oljato*.

B. EPA's Permissive Granting of Retroactive Exemptions and the Resulting Collective Magnitude of Those Exemptions Invalidate EPA's Statutory Obligation and Prior Rationale for the Annual Standard Equations.

i. Until Recently, Small Refinery Hardship Exemptions Did Not Materially Affect EPA's Ability to Ensure Required Volumes Were Being Met.

At the time of the RFS2 Final Rule in 2010, there was little need for the Annual Standard Equations to account for retroactive small refinery exemptions prior to 2010 because Congress had mandated that *all* small refineries were exempted until 2011, 75 Fed. Reg. 14,716, and after that, EPA did not anticipate granting additional small refinery hardship exemptions prospectively except in rare circumstances, 75 Fed. Reg. 14,736 ("DOE thus determined that small refineries would not be subject to disproportionate economic hardship under the proposed RFS2 program, and that the exemption should not, on the basis of the study, be extended for small refineries (including those small refiners who own refineries meeting the small refinery definition) beyond December 31, 2010."); 75 Fed. Reg. 76,790, 76,804 (Dec. 9, 2010) ("Beginning in 2011, gasoline and diesel volumes produced by small refineries and small refiners will generally no longer be exempt, and thus there is no adjustment to the gasoline and diesel volumes in today's final rule to account for such an exemption.").

Although EPA later extended the small refinery exemptions for 2011 and 2012 to 13 of 59 small refineries based on a 2011 DOE study, *see Sinclair Wyo. Refining Co. v. EPA*, 874 F.3d 1159, 1163 (10th Cir. 2017), those extensions should, per the CAA, have been determined before the RVOs for 2011 and 2012 were finalized and thus there would have been no reason to expect those exemptions to be retroactive. *See* 42 U.S.C. § 7545(o)(9)(A)(ii). And for a long time thereafter, EPA granted exemptions on a case-by-case basis sparingly. Based on the limited data EPA has released to date, out of the approximately 58 petitions EPA had received for years 2013 to 2016, EPA granted a total of 29 small refinery one-year exemptions. *See* Appendix B at 11

n.33; Jarrett Renshaw, *U.S. Small Refiners Make Surge of Biofuel Waiver Requests – Sources*, Reuters, Jan. 25, 2018, attached hereto as Appendix G. This means that EPA granted on average seven or eight hardship exemptions per year for the first four years in which it made case-by-case exemption determinations based on extension petitions filed by the refineries. *See* Appendix G. And only a fraction of those were *retroactive*.

As recently as the Proposed Rule for the 2018 RVOs, EPA has continued to assert that most small refineries would not qualify for an economic hardship exemption. EPA admitted, "Currently available information shows that the impact on small entities from implementation of this rule would not be significant." 82 Fed. Reg. 34,206, 34,243 (July 21, 2017). Even using conservative estimates, "the costs to small entities of the RFS standards are far less than 1 percent of the value of their sales." *Id.* Moreover, EPA concluded that "obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program." *Id.*

Although little data has been made public on the number and magnitude of small refinery exemptions, the information EPA has released strongly suggests that exemptions granted after the annual standards were finalized would be rare and would have a miniscule impact on the percentage standards. *Cf.* Response to Petitions of the American Petroleum Institute, American Fuel and Petrochemical Manufacturers, and Monroe Energy LLC for Reconsideration of Portions of the 2013 Renewable Fuel Standards Annual Rule (Sept. 2016) at 14, attached hereto as Appendix P (accounting for one exemption granted between 2013 proposed and final rule only made a difference of 0.01% to the total renewable fuel standard for 2013). Regulatory certainty has been the stated reason, in response to comments over the years, that EPA has consistently

declined to make up volumes waived as a result of retroactive small refinery exemptions when it is setting the next year's standards. *See*, *e.g.*, 77 Fed. Reg. 1,340. That position may have made sense when any adjustments to the annual standards might arguably have been *de minimis,* but that is no longer true.

ii. EPA Has Dramatically Increased the Number and Magnitude of Small Refinery Exemptions.

Given previously available information, the credible reports in April 2018 that EPA had granted a large number of small refinery hardship exemptions for calendar years whose RVOs were already finalized was surprising and troubling. *See* Appendix C.

Based on news reports, it appears that the number of exemptions—and of retroactive exemptions specifically—granted for 2017 is about three times higher than the historical average. *See* Appendix E. In testimony before the House Energy and Commerce Committee on April 26, 2018, Administrator Scott Pruitt acknowledged that EPA had received 24 applications in 2017 (for exemptions in calendar year 2016) and over 30 applications in 2018 (presumably for exemptions in calendar year 2017). Transcript of U.S. House of Representatives Energy and Commerce Committee, Subcommittee on Environment hearing on Fiscal Year 2019 Environmental Protection Agency Budget at ln. 1231-32 (April 26, 2018), attached hereto as Appendix H. Administrator Pruitt also confirmed that EPA approved approximately 25 small refinery waivers in 2017 and an even higher number for 2018. *Id.* at ln. 4371-81. Moreover, according to a summary of recent reports in a letter from Senator Grassley to EPA and as explained further *infra*, EPA appears to have issued these hardship exemptions to small refineries that are evidently profitable, contrary to EPA's own standards for evaluating these petitions. *See* Letter from Charles E. Grassley, United States Senator, to Scott Pruitt, EPA Administrator (Apr. 12, 2018), attached hereto as Appendix Q; EPA, *Financial and Other Information to be*

Submitted with 2016 RFS Small Refinery Hardship Exemption Requests, at 2 (Dec. 6, 2016), attached hereto as Appendix I.

Additionally, it is unknown whether the reported numbers are the full extent of EPA's recent grants of hardship exemptions because EPA itself has not publicly disclosed any decisions regarding any exemption petitions in the Federal Register or elsewhere. *See Lion Oil Co. v. EPA*, 792 F.3d 978, 980 (8th Cir. 2015) ("EPA sent its decision to Lion Oil only."); 78 Fed. Reg. 49,794 49,826 (Aug. 15, 2013) (withholding volume of projected gasoline and diesel from single exempt small refinery on basis of confidential business information). The Coalition has not received have actual notice of any of the individual exemptions, save for whatever information has been provided by refiners as part of their respective SEC filings.[1] In fact, to date, EPA has not disclosed information requested pursuant to the Freedom of Information Act ("FOIA") by the Renewable Fuels Association, Growth Energy, and National Biodiesel Board about specific small refinery exemptions. *See* Appendix F. Even members of Congress remain uninformed, which has prompted letters from multiple Senators requesting additional information. *See* Appendix Q; Letter from John P. Sarbanes, United States Representative, to Scott Pruitt, EPA Administrator (May 16, 2018), attached hereto as Appendix R.

iii. EPA's Unannounced Policy Change for Liberally Approving Small Refinery Exemptions Is Unsupportable and Was Unforeseeable in 2010.

EPA's apparent shift in policy to liberally granting small refinery exemptions retroactively is unwarranted, both legally and economically. The dramatic increase in small refinery exemptions evidently reflects what can only be an internal policy shift. EPA has previously expressed, consistent with the RFS statute, that the small refinery hardship waivers

[1] *See* Appendix L at 76.

are a temporary measure and that extensions of the waivers would continue to diminish in number. *See* 75 Fed. Reg. 14,736; 75 Fed. Reg. 76,804. EPA's sudden hardship exemption free-for-all cannot be explained by the Tenth Circuit Court of Appeals' decision in *Sinclair Wyoming Refining v. EPA*, 874 F.3d 1159 (10th Cir. 2017); that case does not support EPA's actions. Although the Tenth Circuit held in *Sinclair* that EPA could not equate "hardship" with long-term "viability," the court did not permit unfettered exemptions for any small refinery that could demonstrate minimal hardship. The court also directed EPA "to consider the *disproportionate* impact of the RFS Program, which inherently requires a comparative evaluation." *Id.* at 1170 (emphasis in original). The court therefore faulted EPA's viability test for not comparing, as the statute establishes it must, "the effect of the RFS Program compliance costs on a given refinery with the economic state of other refineries." *Id.* In other words, the Tenth Circuit did no more than insist that EPA apply a plausible interpretation of the statutory text when evaluating small refinery waiver petitions. It certainly did *not* give EPA license to—as it now appears to have done—go "far beyond what Congress intended" in the opposite direction, by permitting exemptions for any small refinery that can demonstrate any hardship *at all* as a result of the RFS mandate. If EPA's current policy is that the RFS Program imposes hardship on *all* small refineries simply because being an obligated party has a cost (and thus is in some sense a "hardship"), such that EPA now finds that they all are deserving of exemptions, EPA is equally "impermissibly read[ing] the word 'disproportionate' out of the statute." *Id.*

Whatever the basis is of EPA's misguided policy change with regard to these small refinery waivers, the unprecedented increase in small refinery exemptions cannot be attributed to deteriorating refining economics alone. RIN prices are at multi-year lows, oil prices are increasing, and refineries are enjoying solid margins and corporate tax cuts. *See* Nilanjan

Choudhury, *EPA's Hardship Waiver News Sends RIN Prices to 3-Year Lows*, Apr. 6, 2018, attached hereto as Appendix J; Laura Blewitt, *U.S. Refiners Talk Expansion After Reaping Billions in Tax Gains*, Bloomberg, Feb. 1, 2018, attached hereto as Appendix K. For example, in 2017, EPA granted HollyFrontier two retroactive small refinery hardship exemptions for calendar year 2016 that saved the company about $58 million in RIN compliance costs. *See* Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, HollyFrontier Corporation (Feb. 21, 2018) at 76, attached hereto as Appendix L. In 2018 EPA also apparently allowed HollyFrontier "to generate new 2018 vintage RINs to replace the RINs previously submitted to meet the Cheyenne Refinery's 2015 RVO." Jarrett Renshaw & Chris Prentice, U.S. *EPA Grants Refiners Biofuel Credits to Remedy Obama-Era Waiver Denials*, Reuters, May 31, 2018 (quoting HollyFrontier first quarter 2018 financial disclosure). During that same 2015 to 2016 period, the company was in the midst of a $1 billion stock repurchase plan that had been approved in 2015. Appendix L. At the end of 2016, the company had spent over $800 million for share repurchases. *Id.* Thus, EPA appears to have determined that HollyFrontier could afford to pay its shareholders almost one billion dollars but could not scrounge together $58 million for compliance with its RFS obligations.

Similarly, CVR Energy, which reportedly received an exemption for its two refineries for 2017, appears to have been profitable that year. According to its investor disclosures, the margin per barrel of crude oil throughput at CVR Refining, LP's Wynnewood Refinery increased to $9.85 in 2017 from $8.07 in 2016. *See* CVR Refining, LP, 4th Quarter 2017 Earnings Report (Feb. 22, 2018) at 16, attached hereto as Appendix S. Due to its retroactive exemption, CVR expects its 2018 cost of compliance with the RFS to be $120 million less than the amount it had estimated just two months prior. Jarrett Renshaw & Chris Prentice, *CVR Q1 Income Doubles on*

Stronger Crack Spreads, Lower Biofuels Cost, Reuters, Apr. 26, 2018, attached hereto as Appendix M; *see also* Appendix D.

Such an application of the small refinery exemption provision misapplies EPA's statutory authority. Moreover, EPA evinced no expectation that it would use the exemption this way when it finalized the Annual Standard Equations in 2010, which is why the new information about EPA's recent actions granting unprecedented numbers of retroactive small refinery hardship waivers is sufficient grounds to entitle the Coalition to seek review of the RFS2 Final Rule setting the Annual Standard Equations.

iv. EPA Is Obligated to Ensure that the RFS Volume Requirements Are Being Met, but EPA's Annual Standard Equations No Longer Do So, and Instead Ensure that the RFS Volume Requirements Will Not Be Met by a Significant Amount.

In light of this change in practice, the Annual Standard Equations can no longer ensure that the RFS volume requirements are met. *See* 42 U.S.C. §§ 7545(o)(2)(A)(i), (o)(3)(B)(i). Each of the four separate annual renewable fuel standards (for cellulosic biofuel, advanced biofuel, biomass-based diesel, and renewable fuel, respectively) is expressed as a volume percentage of combined gasoline and diesel sold or introduced into commerce in the United States. *See* 75 Fed. Reg. 14,716. Obligated parties use these standards to determine their respective annual renewable volume obligations. *Id.* To generate the specific standards for each type of renewable fuel, EPA inserts applicable values into the Annual Standard Equations.

$$Std_{CB,i} = 100 * \frac{RFV_{CB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{BBD,i} = 100 * \frac{RFV_{BBD,i} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{AB,i} = 100 * \frac{RFV_{AB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{BR,i} = 100 * \frac{RFV_{BR,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

40 C.F.R. § 1405(c).

As explained above, the Annual Standard Equations do not account for retroactive exemptions for the previous year or for the current compliance year that has already begun. Indeed, the variables GE_i and DE_i in the denominator account for gasoline and diesel volumes from exempt small refineries, but only from those small refineries who received the exemption for the upcoming calendar year prior to the date the standard is finalized. *Id.* Exemptions granted after the standard is finalized are *not* included in the calculation. This means that although the pre-RVO-rule exemptions for the upcoming calendar year "result in a proportionally higher percentage standard" for the remaining obligated parties, 75 Fed. Reg. at 76,805, the volumes of required renewable fuel attributable to retroactive exemptions—which, as just discussed, appear to be the vast majority of the recent wave of hardship exemptions—are simply lost.

That result is unsupportable in light of recent revelations. While a single exemption may affect the annual percentage standard by only a fraction of a percent, ignoring the recent retroactive exemptions altogether artificially suppresses the annual standard by a material amount, contrary to EPA's obligation to ensure that the necessary volumes are met. 42 U.S.C. §§ 7545(o)(2)(A)(i), (o)(3)(B)(i).

Taken together, small refineries represent *over 10 percent* of domestic refining output. *See* 75 Fed. Reg. 14,717. Based on recent data, lost renewable fuel volumes from the small refineries to which the EPA is reported to have recently granted exemptions could be as high as 1.6 billion gallons just for the 2016 and 2017 compliance years. *See* Appendix N.

Using 2012 as the anchor point, the 3.2 billion gallons produced from the 13 exempted refineries that year accounted for 2.5% of both gasoline and diesel pools. 76 Fed. Reg. 38,844, 38,858 (July 1, 2011). And recent reports indicate that EPA has granted approximately twice as many exemptions in 2017 and 2018 (for calendar years 2016 and 2017) as it did in 2012. Transcript of U.S. House of Representatives Energy and Commerce Committee, Subcommittee on Environment Hearing on Fiscal Year 2019 Environmental Protection Agency Budget (Apr. 26, 2018) at ln. 4371-81, attached hereto as Appendix O. If true, this would mean that for the past two years EPA's applicable percentage for obligated parties has failed to account for *at least 12 billion gallons* of gasoline and diesel from exempted small refineries, assuming the sizes of the refineries granted exemptions and the scope of exemptions granted (partial vs. full) are similar. This would translate into roughly 1.2 billion gallons of renewable fuel that obligated parties should have blended over the 2016-17 period, but did not because EPA's calculations failed to account for the exemptions.

Of course, if the size of the refineries granted exemptions in 2016-2017 were on average *larger* than those granted exemptions in 2012, as it appears likely that they are, or if previous exemptions applied only to a portion of the small refineries' gasoline and diesel output (i.e., a partial waiver), then effective cut to RFS obligations resulting from EPA's recent actions would be even greater than estimated above. Indeed, EPA's own data strongly implies that small refinery exemptions have resulted in lowering the required volume of renewable fuels for 2017

alone by 1.11 billion gallons, or 6%. The data also show that small refinery exemptions also effectively reduced the 2016 RFS requirement by an additional 523 million gallons. The EPA data show large discrepancies between actual gasoline and diesel consumption and the volumes obligated for renewable fuel blending as reported by obligated parties. The only reasonable explanation for these large discrepancies between actual gasoline and diesel consumption and the volume of gasoline and diesel obligated for renewable fuel blending is the surge in small refinery exemptions for calendar year 2016 and after. Appendix N contains additional details on how Petitioner Renewable Fuels Association estimated these lost volumes.

v. In Light of EPA's New Approach to Small Refinery Exemption Extensions, Continued Application of EPA's Annual Standards Regulation Is Arbitrary and Capricious.

The Annual Standard Equations are arbitrary and capricious because they fail to account for the now-substantial volumes of transportation fuel—and thus renewable fuel—that are covered by the many retroactively-exempt small refineries. EPA has a statutory duty under 42 U.S.C. § 7545(o)(3)(B)(i) to ensure the required volumes of renewable fuel are being met. Yet, in the absence of public notice and comment, EPA has shifted from granting only a handful of small refinery exemptions per year to granting all or nearly all the petitions it receives, even those from highly profitable refining companies. As a result of the unprecedented large number of small refinery exemptions EPA retroactively granted for 2016 and 2017, *see* Appendix O, the required renewable fuel volumes have not been met by a material percentage in 2016 and 2017, because the Annual Standard Equations failed to account for the aggregate volume of these exempt refineries. *See* Appendix N. Because the underlying assumptions behind the Annual Standard Equations—that any volumes attributable to small refinery exemptions granted but unaccounted for by the Annual Standard Equations would be *de minimis*—are no longer valid, EPA must revise the Annual Standard Equations.

EPA's prior reasons for not accounting for retroactive exemptions no longer make sense. EPA previously said that it would not adjust the percentage calculation for the current calendar year based on retroactive exemptions because it believed that "the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements." 77 Fed. Reg. 1,340. Similarly, EPA stated that the retroactive exemptions granted for the previous year would not be "'made up'" the following year because "there is no provision for changing the percentage standards once they are set," and because Congress did not require that the volume requirements be "precisely met" given that the RVOs are defined to be a percentage of *projected* transportation fuel use in the next year. 77 Fed. Reg. 1,340; *see also* 75 Fed. Reg. 76,780. And as recently as September 2016, EPA defended the Annual Standard Equations as striking the right balance between regulatory certainty and its own statutory duty to "achieve the CAA's objectives of ensuring that applicable volumes of renewable fuel are used in the transportation sector." Appendix P at 14.

But retroactively changing RVOs once they have been set is not the only way to make up retroactive exemption volumes. Instead, EPA could account for the exemptions in the *next year's* RVO rulemaking. EPA has used a similar approach in other circumstances. *See NPRA*, 630 F.3d at 155-157; *Monroe Energy*, 750 F.3d at 916, 919-921.[2] That would also provide ample notice and regulatory certainty to the industry and obligated parties as they prepare to make up exempt volumes. In contrast, EPA's new practice of granting many exemptions after the fact threatens to

[2] EPA will have to adjust the required volumes for 2019 due to the remand in *Americans for Clean Energy v. EPA*, 864 F.3d 691 (D.C. Cir. 2017). This remand presents an opportunity for EPA to adjust the applicable percentage to account for previously granted retroactive small refinery exemptions.

substantially disrupt the investment-backed expectations of renewable-fuel producers, obligated parties, and other participants in the transportation fuel industry by suddenly and unexpectedly depreciating the value of RINs. *See* Appendix P at 14. And even though Congress tolerated some gap between the final RVOs and the amount of renewable fuel eventually used, there is a material difference between using best available projections to estimate gasoline and diesel use—which could equally overestimate or underestimate actual use—and structurally excluding retroactive small refinery exemptions from the Annual Standard Equations, which will *always* result in a *reduction in* required renewable-fuel usage. The latter, as explained, violates EPA's statutory mandate. 42 U.S.C. §§ 7545(o)(2)(A)(i), (o)(3)(B)(i).

vi. EPA Must Revise Its Annual Standard Equations Because EPA's Failure to Account for Retroactive Exemptions Amounts to an Impermissible Waiver of RFS Volumes.

EPA's decision to open the floodgates to retroactive small refinery exemptions effectively serves as a waiver of the previous year's RVOs. This not only undermines the integrity of the RFS program but also directly contravenes EPA's obligations under the statute.

Congress established in CAA § 211(o)(7) the procedure for waiving the RFS volumes. Specifically, EPA can waive the statutorily mandated volume requirements *only* if, after public notice and opportunity for comment, the Administrator finds that implementation of those requirements would "severely harm the economy or environment of a State, a region, or the United States" or that "there is an inadequate domestic supply." 42 U.S.C. § 7545(o)(7). In granting waivers of over one billion gallons of renewable fuel volumes through two dozen or more small refinery waivers in each of the past two years without an opportunity for comment, or even notice of the decisions themselves, and without reallocating the renewable fuel volume obligations from the exempted small refineries to non-exempt obligated parties, EPA effectively issued a waiver not authorized under the Act. Even if EPA were to now argue that its actions

should be considered the equivalent of an waiver based on economic harm to a state, region, or the United States, EPA cannot now invoke § 211(o)(7) because it never complied with the procedures applicable to such waivers. Sneaking an effective waiver of over a billion gallons through a backdoor of small refinery exemptions is simply impermissible. Where Congress has spoken to an issue directly, such as supplying a procedure for reducing the overall RFS volume requirements as it did in § 211(o)(7), Congress has indicated that other authorities – such as the small refinery exemption provision – cannot be used to accomplish the same result by different means. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984).

Although EPA hinted that there could be a change in the number and magnitude of exemptions granted, 82 Fed. Reg. 34,242, it gave no indication of the scope of the coming change to EPA policy. *See* 82 Fed. Reg. 58,523 ("EPA has granted exemptions pursuant to this process in the past. However, at this time no exemptions have been approved for 2018, and therefore we have calculated the percentage standards for 2018 without any adjustment for exempted volumes."). Nor did it indicate that it had changed its prior position that the RFS program would not pose a significant economic impact on most small refining entities. *See* 82 Fed. Reg. 34,242 ("[T]he impact on small entities from implementation of this rule would not be significant….a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are far less than 1 percent of the value of their sales"), and thus it is difficult to see how there could be such a sudden increase in "disproportionate hardship" to so many small refineries, particularly when RIN compliance costs have recently been at multi-year lows. *See* Appendix G at 4; Appendix J. Yet at the same time EPA declined to adjust the 2018 volumes to account for lost small refinery volumes from calendar years 2016 and 2017, *see* 82 Fed. Reg. 34,242,

unbeknownst to the Coalition and other interested parties, it was apparently in the process of approving a record number of small refinery hardship exemptions.

As a result of new information – namely, the substantial increase in the number of retroactive small refinery exemptions granted – that has been brought to light by credible news reports only within the past 60 days, EPA's Annual Standard Equations at 40 C.F.R. § 1405(c) now systematically fail to ensure that the required volumes under the RFS are being met pursuant to 42 U.S.C. § 7545(o)(3)(B)(i). Consequently, 40 C.F.R. § 1405(c) can no longer be defended as a reasonable exercise of EPA's discretion.

III. EPA's Periodic Review of the RFS Program Arbitrarily and Capriciously Ignored the Impact of Permissively Granting Large Numbers of Small Refinery Exemptions.

Section 211(o)(11)(B) of the CAA requires EPA to conduct periodic reviews of the RFS Program to ensure compliance with the RFS requirements is being achieved. In December of 2017, EPA released its most recent review pursuant to this section. Appendix B. In assessing the feasibility of achieving compliance, EPA completely ignored the impact of granting large numbers of small refinery exemptions retroactively without making them up. EPA did evaluate the feasibility of achieving compliance in the context of multiple waiver requests, however. *See Id.* at 10. And as noted, small refinery exemptions effectively serve as waivers of required volumes if EPA does not require them to be made up in the following year.

In this same document, EPA acknowledged that it *reviewed* 16 small refinery exemptions for 2016, but it gave no indication that the number of exemptions granted had dramatically increased compared to previous years. *Id.* at 11 n.33. Because over one billion gallons of lost renewable fuel volumes impacts the feasibility of compliance with RFS requirements, it was arbitrary and capricious for EPA to ignore the impact of small refinery exemptions in its periodic review, given its knowledge (not shared with the public) that it had already granted an

unprecedented high number of such exemptions or that it was likely to do so. The Coalition requests that EPA reconsider the impact of small refinery exemptions in its review and propose appropriate adjustments of the standards to account for lost volumes from retroactive exemptions.

IV. Conclusion

Section 211(o)(2)(a)(i) requires EPA to ensure that the annual required volumes of renewable fuel are introduced into the nation's transportation fuel supply. By suddenly reversing its prior policy and granting retroactive exemptions to so many small refineries without adjusting its Annual Standard Equations to account for the resulting lost volumes, EPA is failing to meet its statutory obligation to "ensure" that transportation fuels in the United States contain the applicable volumes of renewable fuel. Consequently, EPA's Annual Standard Equation in 40 C.F.R. § 1405(c) and its Periodic Review of the RFS Program are arbitrary and capricious.

Thank you for your consideration of the Coalition's petition.

Sincerely,

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Ex. 6

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Anne Steckel
Biofuels Advisor
National Farmers Union
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Washington, DC 20001
(202) 554-1600

Appendices:

Appendix A, "Annual Standard Equations," Docket No. EPA–HQ–OAR–2005–0161, 75 Fed. Reg. 14,670, 14,867 (Mar. 26, 2010)

Appendix B, *Periodic Reviews for the Renewable Fuel Standard Program*, EPA-420-S-17-002 (Nov. 2017), notice of which was published at 82 Fed. Reg. 58,364 (Dec. 12, 2017)

Appendix C, *Chevron, Exxon Seek 'Small Refinery' Waivers from U.S. Biofuels Law*, Reuters (Apr. 12, 2018)

Appendix D, *U.S. EPA Grants Biofuels Wavier to Billionaire Icahn's Oil Refinery-Sources,* Reuters (Apr. 30, 2018)

Appendix E, *Large U.S. Refiner Marathon Seeks Biofuel Hardship Waiver-Sources,* Reuters (May 23, 2018)

Appendix F, Freedom of Information Act Requests from Renewable Fuels Association, National Biodiesel Board, and WilmerHale to EPA (April 2018)

Appendix G, *U.S. Small Refiners Make Surge of Biofuel Waiver Requests – Sources, Reuters* (Jan. 25, 2018)

Appendix H, Transcript of U.S. House of Representatives Energy and Commerce Committee, Subcommittee on Environment hearing on Fiscal Year 2019 Environmental Protection Agency Budget (April 26, 2018) (excerpts)

Appendix I, EPA, *Financial and Other Information to be Submitted with 2016 RFS Small Refinery Hardship Exemption Requests* (Dec. 6, 2016)

Appendix J, *EPA's Hardship Waiver News Sends RIN Prices to 3-Year Lows* (Apr. 6, 2018)

Appendix K, *U.S. Refiners Talk Expansion After Reaping Billions in Tax Gains* (Feb. 1, 2018)

Appendix L, HollyFrontier Corporation, Form 10-K, Annual Report (Feb. 21, 2018)

Appendix M, *CVR Q1 Income Doubles on Stronger Crack Spreads, Lower Biofuels Cost* (Apr. 26, 2018)

Appendix N, *EPA's Own Data Show Small Refiner Exemptions Cut 2016 and 2017 RFS Obligations by at Least 1.6 Billion Gallons* (April 24, 2016)

Appendix O, Transcript of U.S. House of Representatives Energy and Commerce Committee, Subcommittee on Environment hearing on Fiscal Year 2019 Environmental Protection Agency Budget (April 26, 2018) (excerpts)

Appendix P, *Response to Petitions of the American Petroleum Institute, American Fuel and Petrochemical Manufacturers, and Monroe Energy LLC for Reconsideration of Portions of the 2013 Renewable Fuel Standards Annual Rule*, at 14 (Sept. 2016)

Appendix Q: Letter from Charles E. Grassley, United States Senator, to Scott Pruitt, EPA Administrator (Apr. 12, 2018)

Appendix R: Letter from John P. Sarbanes, United States Representative, to Scott Pruitt, EPA Administrator (May 16, 2018)

Appendix S: CVR Refining, 4th Quarter 2017 Earnings Report (Feb. 22, 2018)

Message

From: Stephen F. McLaughlin [Personal email / Ex. 6]
Sent: 6/1/2018 5:25:00 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
Subject: Fw: Information Request

Good afternoon, ladies and/or gentlemen,

I realize that a week is not long when one seeks information from the Federal Government, but I would appreciate an indication of when I might expect a response to the inquiry set forth below, which was sent to the specific email address you provided for such questions. Please advise soonest possible.

Thanks and regards,

Stephen F. McLaughlin, Esq
Managing Principal
Economic Development Incentives - Texas, LLC
15844 Rio Rancho Road
Harlingen, TX 78552-1901
Tel: [Personal phone / Ex. 6]
Email: [Personal email / Ex. 6]

On Wednesday, May 23, 2018 4:44 PM, Stephen F. McLaughlin <[Personal email / Ex. 6]> wrote:

Dear Sir or Madam:

I am working with a client who seeks to construct a new small refinery (throughput of 55,000 bpd) in Texas. However, the client has been advised by his financial advisors (which include the world's second largest funder of oil and gas infrastructure investments worldwide) that the refinery's expected return on investment is so low that the proposed refinery cannot be financed. This analysis has assumed that the refinery will have to purchase RIN's to meet the RFS standards, but we have been advised that if that requirement were removed (i.e., if the refinery were able to obtain a small refinery hardship exemption) then the return on investment is sufficient to obtain funding.

Accordingly, I am writing to inquire whether it is possible to obtain any sort of advance ruling regarding the proposed refinery's qualifying for the small refinery hardship exemption, given that such would thereby enable the refinery to actually obtain funding, be constructed, and commence operations. Obviously the inability to even finance a refinery and commence operations would seem to qualify as a definite hardship.

Any information you can provide which sheds some light on these issues would be greatly appreciated.

Thanks and regards,

Stephen F. McLaughlin, Esq.
Managing Principal
Economic Development Incentives - Texas, LLC
15844 Rio Rancho Road
Harlingen, TX 78552-1901
Tel: [Personal phone / Ex. 6]
Email: [Personal email / Ex. 6]

Message

From: Deana Wiese [dwiese@clearwatercommunications.net]
Sent: 5/4/2018 6:06:33 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
CC: Lance Gaebe [lgaebe@clearwatercommunications.net]; 'Gerald Bachmeier' [gerald@redtrailenergy.com]
Subject: Letter Regarding RFS
Attachments: Pruitt.5.4.18.FINAL.pdf

Administrator Pruitt,

Attached please find a letter from the North Dakota Ethanol Producers Association regarding the Renewable Fuels Standard (RFS).

Deana

Deana Wiese
ND Ethanol Producers Association
Bismarck, ND
701-355-4458
Ex. 6 (cell)
dwiese@clearwatercommunications.net

NDEPA
NORTH DAKOTA ETHANOL PRODUCERS ASSOCIATION

May 4, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

The North Dakota Ethanol Producers Association (NDEPA) strongly opposes the economic hardship waivers the Environmental Protection Agency (EPA) has authorized for several oil refiners to exempt compliance with the Renewable Fuels Standard (RFS). This action, combined with recent proposals to cap Renewable Identification Number (RIN) prices, has serious implications for the ethanol industry and agricultural sector. We urge you to honor the Congressional intent of the RFS by halting the issuance of economic hardship waivers and rejecting any RIN price cap proposals. Additional ethanol market opportunities can be established by addressing the Reid Vapor Pressure (RVP) issue and allowing sales of higher blends year-round nationwide.

During recent testimony to Congress, you acknowledged EPA has approved economic hardship waivers for several small refineries. Studies have shown there is no economic hardship with blending ethanol as the finished product is more valuable than the cost of the renewable fuel that was blended. In addition, these waivers could seriously impact corn demand, which would be disastrous to an already struggling farm economy.

It is critical that EPA not haphazardly relinquish industry obligations to incorporate ethanol into the nation's fuel supply. North Dakota's ethanol industry opposes manipulation of the legal volume objectives or RIN certificate prices, as this too will undermine the integrity of the RFS and significantly reduce demand for ethanol, corn and all agricultural commodities.

Regarding RVP, the existing waiver is an arbitrary cap on ethanol that can be blended in gasoline. Resolving this seasonal sales limitation would allow for an estimated 1 billion gallons of ethanol into the market, which represents approximately 357 million bushels of corn, just under the total size of North Dakota's annual corn crop. We applaud President Trump's recent statement of support of higher ethanol blend sales year-round. Your immediate implementation of regulatory adjustment to allow these sales will reduce fuel costs, reduce evaporative and tailpipe emissions, improve the environment, and enhance rural economies. We urge you to release a timeline of the rulemaking process to specify how EPA will authorize higher ethanol blend sales and ask that higher ethanol blends be allowed to be sold during the interim while regulations are updated.

Congress passed the RFS to improve air quality, lower fuel costs, encourage energy independence, and support investment in rural America. It has been successful in accomplishing these goals. The RFS has created certainty for the ethanol and corn industries, while contributing to a multi-billion-dollar investment in facilities. This market supports all of agriculture and has had a transformative positive impact on rural economies. We urge you to maintain the intent of Congress in its adoption of the RFS by halting the issuance of economic hardship waivers, rejecting RIN price cap proposals, and authorizing year-round sales of higher level ethanol blends.

Sincerely,

Gerald Bachmeier, *President*
Red Trail Energy, LLC
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Tracey Olson, *Director*
Hankinson Renewable Energy
952-465-0223
tracey.olson@guardianNRG.com

Message

From: Alexis Dunnum [aDunnum@nfudc.org]
Sent: 4/4/2018 4:40:10 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
CC: Anne Steckel [asteckel@nfudc.org]
Subject: RE: Small Refinery Exemption and the RFS
Attachments: NFU - Small refineries letter 5.18 Final.pdf

Dear Administrator Pruitt,

Please see the attached letter from the National Farmers Union regarding the small refinery exemption issue and the RFS.

Please let us know if you have any questions.

Thank you,

Alexis Dunnum
Executive Assistant
National Farmers Union
20 F Street NW, Suite 300
Washington, DC 20001
202.554.1600

April 4, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460|
Pruitt.scott@Epa.gov

Re: Small Refinery Exemption

Dear Administrator Pruitt:

Recent reports indicate that you are receiving an increasing number of requests for small refiner exemptions under the Renewable Fuel Standard (RFS) program. Additional requests are expected after a report that the U.S. Environmental Protection Agency (EPA) granted an exemption to one of the nation's largest oil refining companies for its *2016* obligation.[1] EPA has reportedly granted "hardship waivers" to three of Andeavor's refineries despite the corporation's net profits of $1.5 billion last year.[2] "Hardship waivers" were not designed for large corporations who net billions in profit each year. The National Farmers Union (NFU) is deeply disturbed by these reports, and requests that EPA cease granting these waivers.

NFU is a staunch proponent of the RFS and its benefits to family farmers and their communities. Exempting refiners from RFS compliance essentially waives away demand for corn at a time when family farmers need to significantly cut into corn oversupply and is certainly contrary to the intent of the RFS. Your actions appear to fly in the face of the Administration's numerous promises to family farmers and rural communities to support the RFS.

EPA is required to "ensure" transportation fuel sold in the United States includes the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-

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[1] Jarrett Renshaw and Chris Prentice, *Exclusive: EPA gives giant refiner a 'hardship' waiver from regulation*, Reuters, Apr. 3, 2018, https://www.reuters.com/article/us-usa-biofuels-epa-refineries-exclusive/exclusive-epa-gives-giant-refiner-a-hardship-waiver-from-regulation-idUSKCN1HA21P.
[2] *Id.*

based diesel.[3] Congress gave EPA limited waiver authority to reduce the applicable volumes.[4] To use this waiver authority, EPA must comply with procedural and substantive statutory requirements. EPA has utilized this authority in reducing the statutory volumes for renewable fuel and, since 2016, has set the RFS volumes based on what it found were "reasonably attainable."[5] EPA also found that the volumes it was using to set the standards would not have significant economic impacts on small refiners.[6]

Separately, the statute provided a temporary exemption from the annual RFS requirements for small refineries, defined as a refinery whose average aggregate daily crude oil throughput does not exceed 75,000 barrels per day.[7] This exemption can be extended based on a finding by the U.S. Department of Energy (DOE) or based on a petition from the small refinery. These extensions are to be based on a finding that compliance with RFS obligations will impose a "disproportionate economic hardship" on the refinery. EPA is required to account for these small refinery exemptions when it sets the standards.[8]

Reports indicate that up to 30 small refinery exemption requests may be pending at EPA,[9] which can be compared to the 13 requests EPA indicated it received for the 2014 standards.[10] The statute, however, only allows for "extensions" of these exemptions, not for "new" exemptions years after the temporary one expired. This exemption was to allow small refineries more time to prepare, but the RFS program has been in effect for over ten years. The American Petroleum Institute (API) acknowledges "refiners have had ample time to adjust their businesses to operate" under the RFS.[11] It cannot be that Congress intended for small refineries to seek new exemptions so many years into the program. Nor should small refineries be allowed to game the system by coming in and out of the program based on market fluctuations (or a change in administration). Given the lack of information, it is not clear what grounds EPA is claiming to grant these exemptions.

Even more troubling, EPA is granting these exemptions *after* the volumes have been set (and apparently even *after* the compliance deadlines have passed in the case of Andeavor's small refinery exemptions).[12] In so doing, this results in a reduction of the applicable volumes set by EPA, improperly waiving additional volumes.

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[3] 42 U.S.C. § 7545(o)(2)(A)(i); *see also id.* § 7545(o)(3)(B)(i).
[4] *Id.* §7545(o)(7).
[5] *See, e.g.,* 82 Fed. Reg. 58,486, 58,513-58,514 (Dec. 12, 2017).
[6] *See, e.g., id.* at 58,526. Several studies, including EPA's own analysis, have concluded that RIN costs are largely recovered by refineries.
[7] 42 U.S.C. §7545(o)(1)(K), (o)(9).
[8] 40 C.F.R. §80.1405(c).
[9] We believe the bulk of these requests relate to the 2017 volume requirements.
[10] 81 Fed. Reg. 89,746, 89,803 (Dec. 12, 2016). As further discussed below, EPA has not provided the public with complete information on the small refinery exemptions. However, EPA has indicated that only 13 small refineries received extensions based on the DOE study. 80 Fed. Reg. 77,420, 77,510 n.222 (Dec. 14, 2015).
[11] *See* API Aug. 31, 2017 Comments at 2 (EPA-HQ-OAR-2017-0091-3647).
[12] It is unclear if this request was made to eliminate a deficit carryover from 2016 into 2017. If so, this also potentially allows the refinery to avoid the statutory limits on when it can carry a deficit.

These additional waivers appear to be significant. According to the U.S. Energy Information Administration (EIA), the three "small refineries" owned by Andeavor represent over 2.3 billion gallons of production capacity,[13] resulting in a reduction of the 2016 RFS requirements by almost 200 million ethanol-equivalent gallons.[14] This approval also comes *after* the U.S. Court of Appeals for the District of Columbia Circuit held that EPA misapplied its waiver authority when it set the 2016 renewable fuel volume requirement.[15] And, this is in addition to the 390 million RINs that already did not need to be retired based on exemptions previously granted for 2016.[16] Estimates indicate that the requests that have been submitted could represent a reduction of approximately 1 billion gallons of renewable fuel for 2017.[17] But, EPA and its implementing regulations are required to "ensure" the applicable volumes are met. Even if there were some grounds to grant these exemptions, EPA can no longer avoid its obligation to follow Congress's directives.

These exemptions also have a deleterious impact on volumes needed in later years, given the ability of obligated parties to use prior-year RINs. EPA has acknowledged that the grant of these exemptions, after the fact, allow additional RINs to enter the market.[18] Even API has noted that "[s]mall refinery exemptions, especially when granted retroactively, introduce additional uncertainty and RIN market disruptions."[19] Reducing the actual volumes required and market uncertainty have significant adverse impacts on the rural economy. It also punishes those that have responded to Congress's directives and EPA's own requirements, rewarding those that have refused to acknowledge this country's need for diverse sources of energy, including renewable energy.[20]

Equally concerning is that these actions have purportedly been taken without any transparency, which violates central tenets of responsible governance. We cannot hold our officials accountable for their actions when they are taken behind closed doors. Indeed, the

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[13] EIA, List of U.S. Refineries, 2017, *available at Oil Crude and Petroleum Products Explained: Refining Crude Oil*, https://www.eia.gov/energyexplained/index.cfm?page=oil_refining#tab4 (last updated June 22, 2017). One of the Andeavor refineries is listed by EIA has having 73,800 barrels/day capacity, just under the 75,000 barrel/day threshold for small refiners under the RFS.

[14] This is based on an average yield for gasoline and diesel fuel production for U.S. refineries based on EIA data (https://www.eia.gov/dnav/pet/pet_pnp_pct_dc_nus_pct_a.htm).

[15] EPA must still "true-up" the 2016 renewable fuel volume requirement in light of the Court's decision.

[16] 82 Fed. Reg. at 58,393 n.28.

[17] Renewable Fuels Association, *EPA Actions on the RFS are Destroying Demand for Ethanol and Corn* (Mar. 2018), *available at* http://www.ethanolrfa.org/wp-content/uploads/2018/03/EPA-Demand-Destruction_.pdf.

[18] 82 Fed. Reg. at 58,393 n.28, 58,494. Reuters reported that Andeavor sold some 100 million RINs to its competitors in recent weeks that could have been used to meet these obligations. *See supra* n.1.

[19] API Feb. 12, 2018 Letter, *available at* http://www.api.org/~/media/Files/News/Letters-Comments/2017/API-Letter-2-12-18.pdf.

[20] While acknowledging its obligation to ensure the applicable volumes, EPA declined to consider comments on its process and the impacts of granting the small refinery exemptions after it sets the standards. EPA, *Renewable Fuel Standard Program Standards for 2018 and Biomass-Based Diesel Volume for 2019: Response to Comments*, EPA-420-R-17-007, at 217 (Dec. 2017).

statute requires public notice and comment for waivers under the statute, but EPA is granting these exemptions (and therefore waivers) without any public input.

This Administration has provided little, if any, information on small refinery exemptions, which is causing speculation and market disruptions that you have indicated needs to be addressed.[21] NFU supports the request submitted by the Renewable Fuels Association in January of this year for more information on the small refinery exemptions, and greater transparency and public input on the process.[22]

In short, NFU asks that EPA cease granting these waivers or act to adjust for these additional waivers and comply with its obligations under the statute. EPA should also adjust its process in the future to ensure that these exemptions do not reduce the applicable volumes required under the RFS. We look forward to working with you to address this important issue.

Sincerely,

Roger Johnson

President

---

[21] The prior Administration provided some guidance on how it handles small refinery exemptions, but EPA has not updated its small refinery exemption webpage since May 2017. https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-exemptions-small-refineries (last updated May 16, 2017).

[22] EPA has already indicated that it did not deem all information regarding the requests constituted confidential business information. 81 Fed. Reg. 80,828, 80,909 (Nov. 16, 2017) (proposing to "codify a *determination* that basic information related to EPA actions on petitions for RFS small refinery and small refiner exemptions may not be claimed as confidential business information") (emphasis added). This would also provide more information on RIN availability and provide greater transparency in the RIN market. Thus, it is unclear why EPA has declined to provide more information to the public, even in light of Freedom of Information Act requests. *See supra* n.1.

Message

From: Dennis Boesiger Ex. 6
Sent: 5/9/2018 6:09:02 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
Subject: Please keep your RFS promise

Dear Administrator Pruitt,

As a farmer, I am concerned by the waivers the EPA has granted to refiners to avoid meeting their RFS obligations. The actions of the EPA conflict with your pledge to back the RFS and undermine the trust farmers have placed in you to uphold your commitment.

Nebraska is our nation's second largest ethanol producer with 25 ethanol plants. These plants produce 2.1 billion gallons of ethanol each year and employ 1,300 people in rural Nebraska. Nebraska's ethanol industry is responsible for providing our state with over $5 billion in capital investments.

From ignoring a court-mandate to fix an Obama-EPA legal violation, to providing a sweetheart deal to the investors who drove the Philadelphia Energy Solutions refinery into bankruptcy protection, to arbitrarily granting small refinery waivers-Administrator Pruitt has reduced ethanol blend volumes by millions of gallons. The EPA continues to checkoff items on Big Oil's wish list, including gutting corn and ethanol demand and undermining the President's RFS commitments. Rather than abuse the law to satisfy refiner concerns, we have a simple solution - fix the Reid Vapor Pressure (RVP) regulation that limits our ability to sell higher blends of ethanol year-round.

EPA reportedly has more than 30 refiner exemption petitions under consideration, and up to 25 waivers may have been handed out in secrecy last year. Granting this number of exemptions would remove a significant amount of renewable fuel gallons from the RFS. This would have a direct impact on corn demand and corn prices when net farm income has already decreased more than 50 percent over the past four years.

Roughly every 1 billion gallons of ethanol production ties back to 2.1 million harvested corn acres. That 1 billion gallons of ethanol production translates to the loss of the annual harvested corn acres in Michigan.

We urge you to protect the RFS to accelerate the RVP waiver, allowing the sale of a 15% ethanol blend year-round. That would restore growth in rural communities. Don't let EPA Administrator Scott Pruitt violate your commitment to the farmers of our state and our country.

Please tell EPA to continue your work to expedite the RVP rule making process and to stop taking actions to arbitrarily destroy ethanol demand. Mr. President, enough is enough. We are counting on you to restore prosperity to America's heartland.

Sincerely,

Dennis Boesiger

Ex. 6

Message

From: Chuck Emanuel [Ex. 6
Sent: 5/9/2018 12:45:03 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
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Ex. 6

Message

From: Personal email / Ex. 6
Sent: 5/7/2018 5:13:02 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
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Sincerely,

Ex. 6
Personal address / Ex. 6
Personal Email / Ex. 6

Message

From: Gibbon Friesen Personal Email / Ex. 6
Sent: 5/7/2018 1:18:02 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
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Gibbon Friesen

Personal Email / Ex. 6

Message

From: Bruce Tiedeman Personal email / Ex. 6
Sent: 5/7/2018 1:00:04 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
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Sincerely,

Bruce Tiedeman
Personal address / Ex. 6
Personal email / Ex. 6

Message

From: Paul Kuchar Personal Email / Ex. 6
Sent: 5/7/2018 2:10:02 AM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
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Paul Kuchar

Personal Email / Ex. 6

Table of Contents

U.S. Senate Date: Wednesday, August 1, 2018

Committee on Environment
and Public Works Washington, D.C.

STATEMENT OF: PAGE:

THE HONORABLE JOHN BARRASSO, A UNITED STATES SENATOR FROM THE STATE OF WYOMING 3

THE HONORABLE THOMAS CARPER, A UNITED STATES SENATOR FROM THE STATE OF DELAWARE 8

THE HONORABLE ANDREW WHEELER, ACTING ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 15

EXAMINING EPA'S AGENDA: PROTECTING THE ENVIRONMENT AND ALLOWING AMERICA'S ECONOMY TO GROW

Wednesday, August 1, 2018

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:24 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Boozman, Wicker, Fischer, Moran, Rounds, Ernst, Sullivan, Cardin, Whitehouse, Merkley, Gillibrand, Booker, Markey, Duckworth, and Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Before we begin today's hearing, I want to thank Acting EPA Administrator Andrew Wheeler for making it a priority to come to testify before the Committee today. I have been very impressed with how he has started his tenure as head of the Agency.

As Acting Administrator, Mr. Wheeler has emphasized transparency, while implementing policies that protect the environment and allow America's economy to grow.

I would encourage President Trump to nominate Andrew Wheeler to be Administrator of the Environmental Protection Agency. Mr. Wheeler is very qualified for that position. He spent over 25 years working in environmental policy, and in that time he has served as a career employee at the Agency, as a staffer here on Capitol Hill, as a consultant in the private sector, and now in a leadership role of the EPA.

I believe Andrew Wheeler would make an excellent administrator of the Environmental Protection Agency.

With that, I call this hearing to order.

Today, the Committee will hear testimony on the Environmental Protection Agency's work to protect the water we drink, the air we breathe, and the communities we call home. It is my pleasure to welcome back to the Committee Andrew Wheeler

in his new role as Acting Administrator of the EPA.

First, Mr. Wheeler, as you know, the way that this Committee works, sometimes there are roll call votes. I understand there are five roll call votes starting at 11:00 this morning, so there will be members coming and going during the hearing process, so I appreciate your indulgence as we come in and out.

Mr. Wheeler has served on this Committee in a number of capacities, most recently as Staff Director. It is only fitting that our Committee be the first that you testify before in your new role.

Since President Trump has come to office, his Administration has made it a priority to pursue policies that both protect the Nation's environment and allow the economy to grow. Just last week, we saw how the Administration's pro-growth and pro-jobs policies are leading to incredible economic growth. America's economy grew at an impressive 4.1 percent.

Over the past year and a half, the Environmental Protection Agency has been busy rolling back punishing regulations that hurt the economy in my home State of Wyoming and communities across the Country.

Under the previous Administration, the Agency created broad and legally questionable regulation that punished the very communities EPA claimed to be protecting. The so-called Clean

Power Plan would have cost Wyoming energy workers their jobs and closed power plants across the Country. The Obama Administration openly declared war on American coal and the workers who produce this critically important resource.

The so-called Clean Power Plan wasn't just bad policy; it was illegal. Twenty-four States, including Wyoming, filed suit to block this regulation. The Supreme Court has put the rule on hold because of the challenges.

Under the leadership of President Trump, the EPA is now taking steps to undo this damaging rule. The Agency held listening sessions in several different communities to hear feedback on how the regulation should be changed or withdrawn.

One of those listening sessions took place in Campbell County, Wyoming, in the City of Gillette. Wyoming is the leading coal producing State in the Nation. The vast majority of the coal from the Nation comes from Campbell County. America can't afford to leave its energy resources stranded in the ground.

I am thankful the EPA took the time to listen to all stakeholders and reexamined the Agency's deeply flawed rule. It was an important example of Washington listening to the people of Wyoming.

The Administration has also taken major steps to revise the Waters of the United States, or the WOTUS, rule. This

outrageous Obama era rule would have put backyard ponds, puddles, and farm fields under Washington's control. Under that rule, the EPA told farmers and ranchers their irrigation ditches were considered navigable waters and would be regulated by the Federal Government.

The consequences were staggering. The EPA threatened to fine one private landowner in Wyoming $75,000 a day. The crime he committed was digging a stock pond in his backyard.

This past January, the EPA delayed the implementation date of this devastating rule. This delay gives the Agency time to revise it.

EPA should not punish our ranchers or farmers for managing their land. It must replace the WOTUS Rule with commonsense policy that protects America's waters and respects States and local authorities.

The Agency has also taken important steps to protect small refineries in Wyoming and across the Country. I applaud the Trump Administration for rejecting efforts to undermine the ability of small refineries to obtain hardship relief under the Renewable Fuel Standards, or the RFS.

During the Obama Administration, EPA frequently ignored the law, which requires EPA to grant relief to small refineries suffering economic hardship under RFS. Since then, two Federal appeals courts have rebuked the Agency for decisions denying

hardship relief to small refineries.

EPA must not take any action that would limit the ability of small refineries to obtain hardship relief, restrict when small refineries can apply for hardship relief, disclose the confidential business information of small refineries, or increase the burdens on other refineries. Taking any of these steps would only compound the problems that this broken program has created for American refineries and their workers.

I look forward to hearing more about what the Agency is doing to protect the people of Wyoming and America, to keep our environment clean, and to support the Nation's growing economy.

Acting Administrator Wheeler, thank you for taking the time to come testify today. Thank you for making the Senate Environment and Public Works Committee your first stop on Capitol Hill.

I would now like to turn to Ranking Member Carper for his remarks.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thank you very much, Mr. Chairman.

As my colleagues know on this Committee and outside of the Committee, I have been asking for an oversight hearing with the EPA Administrator for many months, and I am pleased that our Committee is holding that hearing today. I have to be honest with you, I am even more pleased that the person sitting at the witness table is our Acting Administrator and not his predecessor.

When Mr. Wheeler took the helm of this Agency, all 25 days ago -- it probably seems like 25 months ago -- the Washington Post noted that we were trading an administrator who is known for "sipping organic juice infused with kale" for an acting administrator who collects Coca-Cola memorabilia.

With that said, Mr. Wheeler, I have something to present to you today, as we begin this hearing, to add to your collection, something that my staff found for sale in, of all places, the Senate cafeteria. I thought you might like to have it. It is a bottle of Coca-Cola that actually has the word "Wheeler" on it.

[Laughter.]

Senator Carper. I don't know if you have some special deal, something in your life we don't know about, Andrew. This is very interesting, but this is your bottle. You will probably

need something stronger before you are finished.

[Laughter.]

Senator Carper. But I am encouraged that there will be a number of differences between Mr. Wheeler and Mr. Pruitt in the way that they approach this important leadership role. For example, I don't expect to hear as much as a peep from Mr. Wheeler today about used mattress shopping or Chick-fil-A or fancy moisturizers.

What we do need to hear from Mr. Wheeler today is how he plans to differentiate himself from Mr. Pruitt across a range of environmental policies that are far more consequential; how we repair the significant damage that Mr. Pruitt has done to the EPA. Will the American public once again be able to trust the EPA to carry out its mission of protecting public health and our environment?

Now, I believe in giving credit where credit is due. In the few weeks that Mr. Wheeler has been the Acting Administrator, he has published his calendars on a daily basis. He has opened up EPA events to the media, as well as began to work to ensure that EPA's beleaguered career staff once again feel valued, respected, and included. He withdrew Mr. Pruitt's parting act to stop enforcing air emission standards for some of the dirtiest heavy-duty trucks on the road under the Clean Air Act, granting one company permission to continue building high-

polluting glider trucks for two years. Thank you for that.

There is a whole lot to be done. Mr. Wheeler has told me repeatedly that he shares my goal of striking a deal between auto makers and the State of California and other States on fuel economy and greenhouse gas tailpipe standards. Unfortunately, the Administration's proposal could not be further from the win-win outcome that many of us on this Committee and outside this Committee believe is within reach.

Instead of providing near-term flexibility and predictability for the auto industry in exchange for more rigorous standards and clean vehicle incentives going forward, the Trump Administration is proposing to free standards for seven straight model years. We can do better than that, and we need to.

The Administration would remove all credits for air conditioning and other improvements and argue that California should be preempted. Such a proposal is not the win-win outcome that stakeholders are asking for, one that keeps the American auto industry competitive, creates more good paying jobs right here at home, and protects our environment well into the future.

Instead, this Administration has, once again, ignored common sense, turned its back on a solution that would allow for States like California to enforce its own clean standards, and decided to listen to the most extreme voices as it pushes

through a plan no one is interested in.

Mr. Pruitt's EPA also had a warped sense of cooperative federalism, especially when it came to protecting downwind States from harmful air pollution. Under Mr. Pruitt, EPA failed to meet the deadlines to designate who was living in unhealthy ozone areas and delayed emission reductions critical to downwind States.

At the same time, Mr. Pruitt's EPA rejected requests from downwind States to require upwind polluters to install or operate existing pollution controls, tried to cut State air program funding, and weakened enforcement efforts. All of these actions were a disaster for the people, like those in my own home State of Delaware, and States like Maryland, New Jersey, New York, Rhode Island, Massachusetts, and others on the East Coast who live at the end of what we call America's tailpipe.

Instead of prioritizing and protecting the polluters, I hope Mr. Wheeler will prioritize and protect the people who are being harmed from those emissions. Under Mr. Pruitt, EPA has also acted to roll back clean water protections by, I think, dishonestly inflating the costs of those rules to industry, while minimizing the health and environmental benefits to the public.

Mr. Wheeler needs to describe how he plans to ensure that clean water and other rules are based on credible data, how they

comply with the law.

Mr. Pruitt misguidedly banned any scientist who had received EPA grant funding from serving on EPA's scientific advisory committees. He proposed to have EPA ignore and not consider some of the best scientific studies in the world. It is my sincere hope that Mr. Wheeler will share with us his plans for ending EPA's war on science.

Disappointedly, too, there is probably no aspect of EPA's implementation of the new Toxic Substances Control Act that will not be litigated. Mr. Pruitt's EPA chose to blatantly disregard the clear and unambiguous law that we largely wrote right here in this Committee and Congress passed with near unanimous support. This kind of blatant disregard for the rule of law needs to end, and it needs to end here.

Mr. Wheeler needs to describe how he plans to stop wasting taxpayer funds and EPA's lawyers' time defending proposals that are clearly illegal, and restore the Agency to one that respects the rule of law and is guided by science.

The day after Mr. Pruitt resigned, I sent Mr. Wheeler a letter. I told him, "You have been granted an enormous challenge and responsibility, but an even greater opportunity. The damage that Scott Pruitt has done to this Agency will not be easily undone. While you and I have not always agreed, and will not always agree, on every environmental policy matter, it is my

hope and expectation that you will carefully consider the lessons of the past as you prepare to chart the Agency's future." We look forward to a continued dialogue and to today's hearing.

Welcome.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Thank you so much, Senator Carper.

We will now hear from our witness in a few seconds, and that is the Honorable Andrew Wheeler, the Acting Administrator of the U.S. Environmental Protection Agency.

I want to remind Mr. Wheeler that your full written testimony will be made part of the official hearing record, so please keep your comments and your statement to about five minutes so we will have time for questions from the members of the Committee.

I look forward to hearing your testimony.

Mr. Wheeler.

STATEMENT OF THE HONORABLE ANDREW WHEELER, ACTING ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. Wheeler. Good morning, Mr. Chairman, Ranking Member Carper, and members of the Committee.

When Chairman Barrasso called me to ask me if this would be my first hearing, I jumped at the opportunity because I couldn't think of another Committee that I would want to testify in front of first.

When President Trump appointed me Acting Administrator, he asked me to focus on three things: clean up the air, clean up the water, and provide regulatory relief to help the economy thrive and create more jobs for American workers. I believe we can accomplish all three at the same time. In fact, we have already made progress on all three fronts in just the past few weeks. We haven't slowed down and we haven't missed a step.

Yesterday, we released EPA's annual report on air quality and we have great news to share. From 1970 to 2017, the combined emissions of the six key pollutants regulated under the NAAQS dropped by 73 percent, while the U.S. economy grew more than 260 percent. This is a remarkable achievement that should be recognized and celebrated. The U.S. leads the world in terms of clean air and air quality progress.

On my first day as Acting Administrator, we sent to OMB for interagency review a proposed rule to set State guidelines for

greenhouse gas emissions from power plants.

We recently finalized the first set of revisions to the 2015 regulations for the disposal of coal ash. These actions will provide States and utilities much needed flexibility in the management of their waste.

Last week, we issued a final rule that codifies the animal waste reporting exemptions which were signed into law in the Fair Agricultural Reporting Method, the FARM Act, Senator Fischer's legislation. We also approved pathways for biodiesel derived from sorghum. This action lays the groundwork for more homegrown fuels under the Renewable Fuels Standard and adds diversity to the Nation's biofuels mix.

Finally, we recently commemorated the one-year anniversary of the Superfund Task Force Report and highlighted the extraordinary progress we have made cleaning up sites and returning them for productive use.

Just this week, we reached a framework to address the outstanding issues of the Anaconda Smelter site in Montana. This framework will allow us to meet our goal of delisting the site by 2025, and this site has been on the list for decades.

As you can see, we are continuing the President's agenda posthaste. The combination of regulatory relief and the President's historic tax cuts continues to spur economic growth across the Country, particularly in communities that were

previously, and wrongly, ignored or forgotten.

One way we can fulfill the President's agenda is providing more certainty to the American people. A lack of certainty from EPA hinders the environmental protections and creates paralysis in the marketplace. We will prioritize certainty in three areas: certainty to the States and local governments, including Tribes; certainty within EPA programs, such as permitting and enforcement actions; and certainty in risk communication.

First, we need to provide more certainty to the States, who are the primary implementers and enforcers of many of our environmental laws and programs. We will work closely with the States to ensure our mutual responsibilities under the law are fulfilled.

Second, we need to provide more certainty within EPA programs. For example, we need to improve our permitting processes. Our goal is to make all permit decisions, up or down, in six months. I am not suggesting that we approve all permits within a set amount of time.

On a similar front, we must provide more certainty in our enforcement actions. When EPA's enforcement actions linger for years, it hurts the competitiveness of American businesses.

Let me be clear, I am not advocating for letting people off the hook or reducing fines. Rather, I am advocating for making enforcement decisions in a timely and consistent manner.

Third, and finally, we need to provide more certainty in risk communication. As an agency, we must be able to speak with one voice and clearly explain to the American people the environmental and health risks that they face in their daily lives. We have fallen short in this area from our response to 9-11 to recent events surrounding the Gold King Mine in Colorado, and most recently in Flint, Michigan. We owe it to the American public to ensure that this does not happen again.

We are also prioritizing our efforts to assist State and local governments in preparing for and responding to natural disasters and extreme weather events. Readiness is all, to quote my favorite author, Shakespeare.

There is no doubt in my mind that we will make improvements in all of these areas. I believe in this Agency; I believe in its mission and I believe in its personnel.

I would like to take a minute to talk about my fellow EPA employees. I know how dedicated and passionate they are, and it is a privilege to work alongside them.

Senator Barrasso. If I could have the witness suspend, please, and ask the officers to remove the disturbance.

[Pause.]

Senator Barrasso. Apologize for the delay. Thank you.

Mr. Wheeler. Quite all right.

I would like to take a minute to talk about my fellow EPA

employees. I know how dedicated and passionate they are, and it is a privilege to work alongside them. I have told them that my instinct will be to defend their work, and I will seek the facts from them before drawing conclusions.

We exist to serve the public. As such, we should conduct our business in a manner fully deserving of the public's trust and confidence. Earlier this week, I issued my own fishbowl memo which lays out the principles and protocols that will guide our efforts to be transparent, open, and accountable to the American public. Our success as an Agency depends on it.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Wheeler follows:]

Senator Barrasso. Well, thank you very much for your testimony.

We will start with some questioning, if I may, and I wanted to start by mentioning what I see happening right now in the State of Washington.

The State of Washington is abusing Section 401 of the Clean Water Act in order to block the development of the coal export terminal in that State. The terminal would ship coal from Wyoming, Montana, Utah, and Colorado to markets in Asia. The State of Washington has cited reasons for objecting to the terminal that had nothing to do with water quality, yet they are using Section 401 of the Clean Water Act.

I introduced a bill this week to address this problem. We can't allow States to block the export of American energy.

Will you commit to working with me to identify both legislative and regulatory solutions to stop these abuses?

Mr. Wheeler. Yes, Senator, I will.

Senator Barrasso. Recently, there have been some stories in the press discussing some of your recusals from former clients that you took in terms of meetings you have taken as Deputy Administrator, so I would like to give you the opportunity to address the stories and, if necessary, clarify the record. Visit with us about that and maybe tell the Committee how you are going to honor your recusals from former

clients.

Mr. Wheeler. Absolutely. I have committed, under both the Trump ethics pledge and the ethics regulations, to follow all the guidelines. I have worked with our career ethics official at the EPA. I met with her for the first time before I was actually nominated to go over what the requirements would be, and I have not met with any of my clients that I represented for the two years prior to joining the Agency.

There is one article that mentioned that there was a former client that was in a couple of meetings that I attended. I want to clarify that those weren't meetings; they were actually speeches. I gave speeches at two trade associations, and the client was in the audience in those speeches. And according to ethics, as long as there are more than five people, and there were five times as many people as that in the audience, and I can't control the people that attend a public speech.

Senator Barrasso. Thank you.

The Clean Air Act requires that EPA grant relief to small refineries which suffer disproportionate economic hardship under the Renewable Fuel Standards, the RFS. The law explicitly states that a small refinery may petition the EPA for hardship relief "at any time."

Do you agree that EPA doesn't have the authority to limit when small refineries can apply for hardship relief?

Mr. Wheeler. Absolutely. We cannot limit when they apply for the relief, no.

Senator Barrasso. The law further states the EPA must act within 90 days upon receiving a petition from a small refinery.

Do you agree the EPA doesn't have the authority to delay decisions on a small refinery's petition beyond 90 days?

Mr. Wheeler. I am not sure, to the extent that we have met the 90-day requirements, but we certainly try to meet all the requirements under all of our statutes.

Senator Barrasso. In December of 2017, I sent Administrator Pruitt a letter encouraging the EPA to withdraw its proposed rule on in situ uranium recovery, ISR. The Obama Administration proposed the rule on January 19th, 2017, the final day before President Obama left office. Since then, the Nuclear Regulatory Commission, our Nation's principal nuclear regulator, has stated that there is "no health or safety jurisdiction for EPA's rulemaking."

Uranium production is vital to our Country's national security, our energy security. Wyoming produces more uranium than any other State. When can we expect the EPA to scrap this unnecessary regulation that came out kind of a midnight regulation, came out by the Obama Administration on the final day of that eight-year administration?

Mr. Wheeler. Senator, I have not had the opportunity to be

briefed on that in the last four weeks, but I know that the Nuclear Regulatory Commission also has concerns about that, and we will try to work forward on that expeditiously.

Senator Barrasso. During the first year of the Trump Administration, it is my understanding that EPA finalized 22 deregulatory actions. According to your Agency, these actions could save over $1 billion in regulatory costs to Americans. Just last July it was announced that the American economy grew 4.1 percent. This continues the trend of strong economic growth under the Trump Administration.

In your opinion, is the Administration's approach to environmental deregulation at the EPA protecting the environment, while also helping our economy? Essentially can we have both a strong economy and a healthy environment at the same time?

Mr. Wheeler. Yes, we can, and I think the data shows that. Thank you.

Senator Barrasso. Senator Carper.

Senator Carper. Again, welcome today, and thank you for --

Mr. Wheeler. Thank you, and thank you for the Coke. I need to clear that through our ethics in-house, but I do appreciate that. Thank you.

Senator Carper. If it doesn't clear, I am sure you will have some takers here. I would be happy to bring out the ice.

Mr. Wheeler. I would be happy to buy it from you.

Senator Carper. Mr. Wheeler, you have told me more than once that you share my goal, I think our goal, of striking a deal between automakers in the State of California and other States on fuel economy and greenhouse gas tailpipe standards. A win-win is what we are looking for.

The auto industry and the State of California also repeatedly told me that they want a deal. Unfortunately, the Administration's proposal that is being released this week is reported to freeze standards at model year 2020 levels, eliminate technology incentives, and preempt California and the 12 States that have followed California's lead, which I believe would be a lose-lose-lose situation; a loss for an industry that needs certainty and predictability, a loss for consumers, and a loss for our environment.

The largest source of air pollution in our Country today is not coal-fired utilities, it is not manufacturing, it is not cement plants; it is mobile sources. That is number one. So, I have a couple of questions to pursue in this regard.

First, if you were presented with a proposal that both the auto industry and the State of California, and 12 States aligned with them, could support, would you welcome such a compromise?

Mr. Wheeler. I would certainly welcome such a compromise. The proposal that is coming out this week, first, it is a

proposal, and we are taking a range of comments from a flatline approach all the way to the numbers that President Obama's proposal had, and a number of steps in between. So, we are taking comments on all of those levels, and we would welcome any comments or proposals from any of the impacted groups, absolutely.

Senator Carper. To follow up on that, could we assume on this Committee that if there was such a deal, essentially a 50-State deal, there would be no effort to preempt California?

Mr. Wheeler. I mean, it is my goal, it is the Administration's goal to come up with a 50-State solution, and we want to have a 50-State solution that does not necessitate preempting California. However, there are a number of goals in the proposal and there are important goals on highway safety, so we would have to make sure that those are met. The proposal will save 1,000 lives per year, which I think is very important, and make sure that we maintain that in any final regulation that goes forward.

Senator Carper. I do a lot of customer calls, and I know my colleagues do as well, businesses large and small. Delaware used to build more cars, trucks, and vans per capita than any State in America. We had a GM plant, Chrysler plant that employed 8,000 people, and those two plants, lost them both at the bottom of the great recession.

I still do customer calls with the auto industry and I ask them three questions: How are you doing? How are we doing? And what can we do to help? Unanimously, they say, with respect to this, what you can do is give us predictability and certainty. They say we don't want to have to build one Chevrolet Malibu for California and 12 other States, and then a different model for the other 37 States.

They say we want to have more near-term flexibility on these standards, but we are happy to have more rigorous standard going forward. We don't want to be in court for the next five or six or seven years with California and other States. Give us the certainty and predictability and enable us to really compete with the rest of the world when we get to 2025 and 2030.

I just ask that we keep that in mind.

Mr. Wheeler. Yes, Senator.

Senator Carper. Second, cross-State pollution. Delaware and other States have made great strides in cleaning up our State's ozone pollution; yet, northern Delaware, where my family and I live, where two-thirds of our citizens live, still does not meet ozone health standards due to emissions not from within our State, but from other States' dirty cars and power plants drifting in to our State.

Ninety-four percent of our air pollution in Delaware comes from sources outside of us, largely from the West and the North.

In 2016, Delaware filed four clean air petitions with EPA, four, showing that four fossil fuel plants, three in Pennsylvania and one in West Virginia, are contributing to our unhealthy ozone days.

The cleanup solutions are easy. The three facilities in Pennsylvania have clean air pollution technology installed. They don't use it. They don't use it. The coal facility over in West Virginia, my native West Virginia, they could go to natural gas and help not only their air quality, but ours as well. We thought Delaware's case was a slam dunk, and I was shocked when EPA proposed to reject these petitions.

Just a couple yes or no questions, if I could.

Before making a final decision, would you commit to reviewing Delaware's rebuttal to EPA's proposed rejections, which were sent to you July 23rd, 2018? I am asking for you just to commit to review our rebuttal.

Mr. Wheeler. I would be happy to review that, Senator, yes.

Senator Carper. Thank you.

Since EPA has refused to have a hearing on this issue in Delaware, would you commit to meet personally with State of Delaware officials before making a final decision on this matter at the place and time of your convenience?

Mr. Wheeler. I would be happy to talk to the officials in

Delaware, yes.

Senator Carper. Thank you.

I don't usually ask yes or no questions, so bear with me, please.

When making final decisions on any Section 126 petition from some of the other States on the end of America's tailpipe, our neighboring States, will you follow the spirit and letter of the law, which requires EPA to prioritize the residents of the State which receive the pollution?

Mr. Wheeler. Yes, Senator, we will follow the letter and spirit of the law. I would add, also, that on the cross-border side, we are working with States to develop new technical tools to help them facilitate the Good Neighbor State plans. On the ozone, at this point, we are showing that all the areas, except for a few areas that have been longstanding in non-attainment, should be in attainment by the early 2020s.

Senator Carper. All right.

Mr. Wheeler. We are very positive about the data that is coming in on that.

Senator Carper. I would just say, Mr. Chairman, if I could, in closing, I think everybody on this Committee, I know the folks here pretty well, and we are Golden Rule people; we treat other people the way we want to be treated, and the idea that folks in States to our west put up pollution, keep their

air clean, their health care costs low, and we end up with dirty air and higher healthcare costs, it is just not fair. It is not the way to treat our neighbors.

Thank you.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. Thank you, Senator Carper.

Before turning to Senator Inhofe, Andrew, I would say that we are going to start voting shortly, and I will go vote and turn the chair over to Senator Inhofe at the time, who will be chairing the Committee until I return.

Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

First of all, I liked your opening statement. It is certainty that we want and that we deserve, which we have not been historically given.

I want to elaborate a little bit with a question asked a little bit differently than the comment by the Ranking Member.

Last year, the EPA, along with the Department of Energy, granted 33 of 34 hardship exemptions to refineries due to high RIN costs. The EPA was sued on one petition it denied and ended up losing in court. Opponents of these exemptions say that the refineries are not under a hardship, even though they are actually paying more than their payroll to comply with these mandates that are out there.

If you look at the fact that the EPA has now lost twice in court for not approving exemptions, the EPA is simply applying the law when it does grant them and they should be approving more of them.

How does the EPA thread this needle?

Mr. Wheeler. It is a very difficult needle to thread. We are following the statute and we now have had two court cases that have ruled against the Agency on the granting of the exemptions. We also have appropriations language to remind us to grant the small refinery exemptions.

One area we are trying to do is to provide more transparency around the decisions that we are making on the small refinery exemptions, and I think that will help clear up a lot of the concerns around the issue.

Senator Inhofe. Yes, I think it will.

Now, President Trump and you have committee to returning EPA to cooperative federalism, which I applaud. Unfortunately, some have confused that principle with coercive federalism, where one State dictates their standard to all others. When it comes to the auto industry, and we talked about this a minute ago, the last Administration handed over car emission standards to California, but other States didn't get to weigh in. Because of this, Oklahomans, my State of Oklahoma, are paying more for their SUVs and trucks to subsidize electric cars so California

drivers can afford them, which I find personally a little offensive.

I applaud the EPA and NHTSA for revisiting the midterm review done at the last minute by the Obama Administration.

Now, EPA doesn't have any statutory direction for its auto regulations, but NHTSA does. Do you think EPA and NHTSA should harmonize their regulations so technological feasibility and consumer costs are considered?

Mr. Wheeler. Yes, Senator, I do, and that is what we have done.

Senator Inhofe. All right.

Lastly, I had the honor of attending your opening statement. It was a very good statement. You had all the employees, I don't know how many hundred were there, but you got a very fine response from them. In your opening remarks to the EPA employees, you mentioned the fact that the United States is the gold standard worldwide for the environmental protection and that pollution regulated under NAAQS has dropped 73 percent. You mentioned this again in your opening statement. Nobody ever talks about the success that we have, that we are riding on.

Meanwhile, our economy has expanded three times over and, yet, the pollutions regulated dropped some 73 percent.

The problem that we had in the eight years of the Obama Administration was the use of regulations to punish industries

and States to reshape our economy with little to no benefit for the environment.

Can you elaborate on how you have both a clean environment without handcuffing our economy? How do you plan to do that?

Mr. Wheeler. Absolutely. I think that goes to my comments on certainty. I think if we provide more certainty not just to the regulated community, but to the American people, so that everyone understands the decisions that we are making and why we are making them, we will continue to improve the environment and provide that certainty that businesses are looking for.

Senator Inhofe. That is good.

Aren't there instances where regulations such as the New Source Review can actually get in the way of reducing pollution?

Mr. Wheeler. It can. It can be a disincentive for installing cleaner technologies. And we are trying to stop that.

Senator Inhofe. Good. Good. Thank you very much. You did a great job.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. Thank you, Senator Inhofe.

Senator Cardin.

Senator Cardin. Mr. Wheeler, welcome. It is a pleasure to have you here.

Mr. Wheeler. Thank you, Senator.

Senator Cardin. I noticed your comments about the improvements in air over the last 40, 50 years. I might tell you we have seen remarkable improvement in the Chesapeake Bay during that period of time, and I say that because the Chesapeake Bay also has been a program that was developed with State flexibility. It is State blueprints that are agreed to by the six surrounding States of the Chesapeake Bay Watershed, as well as the District of Columbia, and it has had the strong support from Congress, including this Committee recently, as well as from the Environmental Protection Agency.

My first question, recognizing the importance of the Chesapeake Bay not just to the surrounding States, but to our region, it is the largest estuary in our hemisphere, will you continue the traditional Environmental Protection Agency support for a strong Federal role in coordinating the work that is done on the Chesapeake Bay?

Mr. Wheeler. Absolutely. In my first week as the Deputy Administrator, I attended the Chesapeake Bay Commission, and next week I will be attending the Chesapeake Bay Leadership Council in Baltimore. It is a high priority for us. I actually live in the Chesapeake Resource Protection Area, and it is a high priority for the Agency.

Senator Cardin. I don't consider that to be a conflict, so you can do whatever you want to to protect our Bay. I would

just ask you also to work closely with the members of this Committee and Congress that have a deep interest in the Chesapeake Bay.

Mr. Wheeler. Yes, I will.

Senator Cardin. Thank you.

The EPA Inspector General recently released a report analyzing the Federal Government's role in the lead contamination crisis in Flint, Michigan, with the hopes of avoiding another crisis in another city.

Will you accept and implement the recommendations of the Inspector General?

Mr. Wheeler. I know that our staff has reviewed the recommendations and we are in the process of planning an implementation program to make sure that we implement them. I haven't been fully briefed on how we are going to implement them yet, but it is a high priority for the Agency and we are moving forward to make sure that something like Flint, Michigan does not happen again.

Senator Cardin. I guess that is the strongest commitment I am going to get here today, but I would just urge you, the Inspector General gives an independent view.

Mr. Wheeler. Yes.

Senator Cardin. It is important that their report receives the respect from the Agency.

Mr. Wheeler. It is.

Senator Cardin. Thank you.

I also appreciate what you said about the workforce, the people that work at the EPA. The first question I have, I recognize the struggle that every cabinet person has with OMB, but are you going to be an advocate for the funds necessary for the EPA in order to be able to carry out its work and be there fighting for the resources you need to carry out your mission?

Mr. Wheeler. Yes, I am an advocate for the resources that we need, and we will fully implement the appropriations that Congress gives us.

Senator Cardin. That was the second question I was going to ask; you already anticipated it. The former staffer here understands the questions that are coming; that is good.

Let me just follow up on that. You said that you wanted to respect the recommendations given to you by your scientists and your professional staff. I assume that also means the Science Advisory Board. That is a resource that you have and it has been called into challenge in the last two years.

Are you committed to allowing the experts to give you unfettered information for you to make decisions that need to be made? Will you also commit to allow them to participate in policy conferences so that you can have the interaction which we have seen over the long period of time with EPA?

Mr. Wheeler. Yes, Senator, I would commit to both of those.

Senator Cardin. Thank you.

Lastly, let me just ask you about your vision as to what you need in support in order to carry out your mission. The EPA is responsible for clean air, clean water, and for our clean environment. You have a new toxic chemical law that has been working on. There is concern that chemicals are not being treated as intended by Congress.

Do you pledge to work with us and outside interest groups to make sure that we do get an independent evaluation of issues such as toxic chemicals to make sure that they are given the independent evaluation as to whether they need to be regulated?

Mr. Wheeler. Yes, Senator, I do. I started my career in the toxics chemical program at EPA in 1991. I worked there for four years and I am excited to be part of the implementation of the new Lautenberg Chemical law, and we want to make sure that we are implementing it in the same manner in which Congress intended it when they passed it.

Senator Cardin. And if we have information, you will consider the information we send to you?

Mr. Wheeler. Yes, Senator, I will.

Senator Cardin. Thank you.

Senator Barrasso. Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman.

Thank you for being here today to testify.

Senator Inhofe mentioned earlier the importance of certainty, and one of the things I would like to ask you about is the fact that on June 27th, then EPA Administrator Pruitt issued a memo reorienting the Agency's approach to when and how it would veto Clean Water Act Section 404 permits issued by the U.S. Army Corps of Engineers.

Recognizing the Agency has not acted on the authority often, only 13 times since 1980, the threat remains that the EPA could stop an infrastructure project that has already gone through a lengthy and expensive permitting process and already received approval to proceed. Threat adds uncertainty to permitting and jeopardizes support for infrastructure projects.

Will EPA, under your direction, proceed with the rulemaking to align the 404(c) process with the June 27th memo?

Mr. Wheeler. We are looking into that and, as we move forward, I think it is very important to provide that certainty, and I agree that, even though it has been rarely used by the Agency, it has created a lot of uncertainty even when it wasn't used.

Senator Boozman. Good. We would appreciate your looking at that.

As Acting Administrator, you will have a highly influential

role in advising the President on how to implement or modify the regulatory footprint of environmental policy in our Nation. How do you anticipate your past experiences will help in improving the way the EPA engages with all stakeholders?

Mr. Wheeler. First of all, having started my career at the Agency as a career employee, I think that has helped me a lot in understanding the processes and the people of the Agency. But I think my 14 years working here at this Committee and meeting with a wide variety of stakeholders from a number of States all across the Country, international as well, has given me appreciation for the different conflicting policy areas that we have at the Agency and that we need to make sure that we are talking to all interested groups as we move forward with any regulation.

Senator Boozman. Very good.

A criticism of EPA during the previous Administration was the Agency's disconnect with rural America. Rural America is having a difficult time right now. Many hardworking Americans in rural States felt they did not have a voice and their opinions did not matter.

What have you done, what do you feel, in other words, what is your planning in the future to facilitate a stronger level of trust between EPA and rural America?

Mr. Wheeler. I think it is very important to make sure

that all of our regulatory actions, our guidance documents, everything takes into account the impact on rural America. The announcement that we made last week on the sorghum pathway for the renewable fuels, that is going to help a lot of rural communities across the upper Midwest. I think making sure that we take actions like that to help grow the economy in rural areas is very important.

Senator Boozman. Very good.

EPA, during the Obama Administration, encroached into other agencies' jurisdictions, resulting in EPA making decisions on issues where they lack the expertise.

Can we count on you to work with other agencies and take their expertise into careful consideration when developing and implementing rules and regulations?

Mr. Wheeler. Yes, we will. We are taking those into consideration, Senator.

Senator Boozman. It seems to me that our air permitting system is in desperate need of updating. The current system we have in place sometimes overstates the air quality impacts of new projects, which can lead to delays or cancelled investments and lost opportunities.

What does the Agency plan to do to fix the broken permitting and New Source Review programs?

Mr. Wheeler. We have implemented several guidance

documents, new guidance to the States and to the community on New Source Review, and we are looking at those now to see which ones of those we need to move forward on regulatory actions to make sure that we provide that certainty.

As Senator Inhofe said on New Source Review, oftentimes it can be counterproductive on cleaning up the environment when it is a disincentive for installing cleaner, more efficient technologies.

Senator Boozman. Very good.

Companies have made billions of dollars in investments complying with the 2013 Boiler Maximum Achievable Control Technology rule. While the rule was expensive, it was generally achievable. Unfortunately, regulatory uncertainty remains, given recent court decisions sending a couple of issues back to EPA to address.

When will EPA complete this rulemaking so facilities can know they have met all of their boiler obligations?

Mr. Wheeler. Senator, I am not positive on the timeline for that, but I would be happy to look into that and get back to your office.

Senator Boozman. Thank you very much.

Thank you, Mr. Chairman.

Mr. Wheeler. Thank you, Senator.

Senator Inhofe. [Presiding.] Thank you, Senator Boozman.

Senator Booker.

Senator Booker. Thank you very much, Mr. Chairman.

Thank you very much, sir. It is good to see you here. Mr. Wheeler, I want to focus on EPA's TSCA implementation, if I can, and I would like to start by saying that I am pleased with the strategic plan that the EPA released to reduce animal testing. I was really grateful for that and I hope that this is an issue that we can work together on moving forward.

But, overall, I am concerned about how the EPA is choosing to implement the changes to TSCA that my colleagues and I on this Committee, in a bipartisan way, worked so hard on last Congress. I know you are probably aware of that.

One area I am concerned about is EPA's failure to consider all the sources of exposure that people have to the toxic chemicals that EPA has started to review. In our amended TSCA law, EPA was told by Congress to examine the safety of all known, intended, and reasonably foreseeable uses of a chemical, and the combined impacts of all exposures to a particular chemical, when making their determination about whether a chemical presents an unreasonable risk of harm.

But EPA's problem formulations have dramatically narrowed the conditions that the Agency will use to evaluate the safety of the first 10 chemicals under TSCA. EPA is now indicating that it will ignore known exposures to those first 10 toxic

chemicals, including for the known carcinogen TCE. EPA has warned since 2011 that TCE causes cancer, and in 2017 proposed to band specific uses of TCE. But, under Scott Pruitt's leadership, EPA proposed to indefinitely postpone the ban on this deadly chemical.

In New Jersey, we have many communities that have been harmed by TCE, but there is one community outside of New Jersey, in Franklin, Indiana, that I want to focus on. In Franklin, they discovered that the community has high levels of TCE in their groundwater and in the air outside many homes, and the children in Franklin are getting cancer at inordinately high rates.

Carrie and Matt Rhinehart, who are in the audience right now, their daughter Emma Grace died four years ago from brain cancer when she was 13 years old. Stacy and Matt Davidson, who are also here, their son Zane has leukemia, but, thank God, it is currently in recession.

High level exposure of TCE makes these families partly vulnerably subpopulation under the TSCA law, but EPA is now saying that it will ignore exposures that come from land, air, and water, meaning it will ignore the types of TCE exposures that these and other families have so painfully endured in deciding whether or not TCE is safe.

The scaling back of our bipartisan chemical safety law, one

of the prouder moments I have had as a Senator, was set in motion by Scott Pruitt, and I am really hopeful that you are going to reverse course on what I think is a bad decision, and the families here agree with me.

So, Mr. Wheeler, as part of the evaluation process, would you commit to comprehensively reviewing the risks of chemicals like TCE by including known releases of chemicals into our air, water, and land, releases that threaten communities across the Country?

Mr. Wheeler. Senator, I am trying to keep track of all the parts of your question. On the last, let me start with that. It is tragic for any chemical to cause the death of a child, and my heart goes out to those families impacted by that. Absolutely, we need to be moving forward to do something on TCE and the other chemicals, which is why we included TCE on the list of the first 10 chemicals for review.

Senator Booker. Well, I guess a yes or no is what I was asking. Would you commit to comprehensively reviewing the risks of chemicals by including known releases into our air, land, and water, released like TCE?

Mr. Wheeler. It is my understanding that we are looking at those pathways as we look at the chemicals on the list. I will need to double-check with our chemical office on that, but it is my understanding it is part of the 10 chemicals, as TCE being

one of the first 10 chemicals that we are examining, that we are examining the different pathways.

Senator Booker. What I worry about, it was Scott Pruitt's decision to move forward within 30 days to finalize the ban on specific uses of TCE. I am worried that that is something that is moving forward. We need to reverse that decision. Do you understand?

Mr. Wheeler. I think I understand what you are saying, but let me check on the status of that.

Senator Booker. And then let me very quickly, methylene chloride. In January 2017, EPA proposed banning all consumer and commercial uses of methylene chloride in paint strippers. The ban, though, was never finalized.

In May, your predecessor agreed to meet with mothers whose sons died suddenly from using paint strippers containing this toxic chemical, and a few days later, Scott Pruitt, today, we are going to finalize the proposed rule and send it out shortly, but since then we have seen nothing. It has been several months, and the mothers who were hoping to prevent other families from experiencing the loss of loved ones, people are really disheartened.

So, my simple question, and I conclude with it, is will you commit to sending the proposed ban of consumer chemicals uses to OMB for the final review in the next two weeks?

Mr. Wheeler. Well, we are continuing to work with OMB and the other agencies and departments that have equity on that chemical issue, and we are trying to move that forward as quickly as we can. I can't commit to a specific time frame, but we are trying to move that forward.

Senator Booker. All right. There are a lot of families from the paint stripping chemicals sitting behind you right now that are really relying on you to save lives. There are extraordinary injustices going on with this kind of inaction by your Agency, and I hope that you will move with all deliberate speed to address these concerns.

Mr. Wheeler. Thank you, Senator.

Senator Booker. Thank you.

Senator Inhofe. Thank you, Senator Booker.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chair.

And thank you, Mr. Wheeler, for being here today. I appreciate it. I know there has been a lot of talk about the small refinery exemptions, so I am going to dive in right with you.

Over the past year and a half, EPA has taken actions that benefit refiners at the expense of farmers, and by retroactively granting an unprecedented number of small refinery exemptions, EPA effectively waived 2.25 billion gallons from refiners' 2016

and 2017 RFS obligations.

Not only do these actions contradict President Trump's pledge to uphold congressionally mandated volumes, but they have also destroyed corn and ethanol demand, leading to lost income for Iowa's farmers, at a time when farm income is already at its lowest level since 2006.

Yes or no, Mr. Wheeler, do you believe the RFS should be implemented in a manner consistent with the original intent of Congress?

Mr. Wheeler. Yes, I do.

Senator Ernst. Thank you. So, let's distill this even further, then. For compliance year 2017, the EPA granted 29 small refinery exemptions, totaling 1.45 billion gallons, which removes that many gallons from obligated parties' compliance requirement, which is the 15 billion gallons, that is the implied corn ethanol requirement, minus the 1.45 billion gallons is 13.55 billion gallons.

So, you just take the 15 that is implied, that is the requirement, minus the 1.45, and it gives you 13.55 billion gallons. So, that is about 10 percent below the statutory requirement, is that correct? It would be about 10 percent.

Mr. Wheeler. I will trust your math, Senator, yes.

Senator Ernst. Okay. So, yes, it is about 10 percent below the statutory requirement. So, if these gallons aren't

reallocated somewhere, then you are not implementing the RFS in a manner that is consistent with the original intent of Congress, correct?

Mr. Wheeler. Well, part of the original intent of Congress was also to grant the waivers, and there is not a provision for reallocating that. We are taking a look at that issue, but we are trying to be much more clear and transparent as we grant any small refinery waivers. As you are aware, we have been sued twice on this for not granting enough, and we have lost both times.

Senator Ernst. I understand that. There is also an obligation, though, of 15 billion gallons, so those gallons that have been granted waivers for, we have to figure out a real allocation strategy.

Mr. Wheeler. I agree we have to figure out a real allocation strategy, but we are confined by the law.

Senator Ernst. Thank you. The law does require 15 billion gallons.

So, last November, before this Committee, you were committed to issuing a determination on whether or not the EPA can grant the Reid Vapor Pressure waiver, and just last week, in Iowa, President Trump again expressed support for removing the outdated regulatory barrier preventing the sale of E15 year-round and indicated his Administration is "very close to

implementing the RVP waiver."

Can you state for the record that EPA has the authority to begin a rulemaking process to provide RVP relief for ethanol blends of E15 and higher?

Mr. Wheeler. We can certainly start that process. As you know, Senator, there are certainly people that don't believe we have that authority. The legislation that this Committee considered last year would have been very clear in giving EPA that authority, but we are looking at that issue, as you and I have discussed a few times and am happy to discuss with you further, on moving forward on an RVP issue.

Senator Ernst. And we find that that is very important and something that the President has committed to.

I will say, in closing, that RVP parity and the sale of E15 year-round is a no-cost solution that will expand a domestic market for farmers who have been adversely impacted by retaliatory tariffs. RVP parity would not only boost commodity prices, but also be viewed across rural America as the Trump Administration taking concrete action to help during a time of economic hardship.

Acting Administration Wheeler, I do encourage you to follow through on the President's directive and remove this unnecessary and ridiculous restriction. I look forward to working with you on these issues. I know we will have many, many discussions to

follow. Thank you very much.

Mr. Wheeler. Yes, Senator. I look forward to those.

Senator Ernst. Thank you.

Thank you, Mr. Chair.

Senator Inhofe. Thank you, Senator Ernst.

Taking the prerogative of the Chairman, I want to recognize myself for a unanimous consent request.

Last week, Platts ran a story entitled "U.S. Small Refinery Waivers Not Likely Lowering Biofuel Blending." The article cites Sandra Dunphy, an independent analyst who testified last week before the House Energy and Commerce Committee, and I ask unanimous consent to enter this article into the record at this point.

Without objection, so ordered.

[The referenced information follows:]

Senator Inhofe. Senator Whitehouse.

Senator Whitehouse. Thank you, Chairman.

Welcome, Administrator Wheeler.

Mr. Wheeler. Thank you, Senator.

Senator Whitehouse. As you know, I viewed your predecessor's tenure as one characterized by tawdry personal behavior in office, a desire to do damage to the Agency that he led, a flagrant absence of transactional integrity and horrible environmental policies, and I see you as a remedy to three of those four, so in that sense I welcome you.

Mr. Wheeler. Thank you, Senator, three out of four.

Senator Whitehouse. My visit to you, I appreciated very much your courtesy in having me in, and I very much hope that you follow through on putting Teddy Roosevelt's picture up on your wall. I think that would be a good reminder and a good signal.

A lot of what needed to be repaired at EPA had to do with process stuff, rather than the substantive disagreement you and I may have on environmental issues, and some of the process stuff had to do with enforcement. In the first nine months of the Trump Administration which we have data for, enforcement actions declined by 30 percent compared to the first nine months of the Bush Administration, and more than 35 percent compared to the first nine months of the Obama Administration.

In that same period, EPA sought 50 percent less in fines and money for environmental cleanup than in the Bush Administration and almost 90 percent less than under the Obama Administration. Some of that appears to have been a decision made by the EPA Office of Compliance and Enforcement to seek headquarters' approval before beginning certain investigatory actions, and I have the memo here: "Effective immediately OECA Headquarters review is required prior to issuance of information requests under the Clean Air Act, RCRA, and the Clean Water Act."

I would ask that memo be made an exhibit.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Whitehouse. What is your intention regarding that headquarters review stymying of what had always been the prerogative of the different regional agencies in getting information about potential environmental violations?

Mr. Wheeler. Senator, I haven't seen that memo. Is there a date?

Senator Whitehouse. This memo was dated May 31.

Mr. Wheeler. Of this year or last year?

Senator Whitehouse. Of 2017. So it has been in place for a while. Obviously, if you have to run the ability to even ask information requests through headquarters, that gives headquarters the chance to either just create massive institutional delay or even put the kibosh on an investigation from its very beginning, and that doesn't seem like the right role for headquarters.

Mr. Wheeler. I was not aware of that memo. I would point out, though, that we did not have a Senate-confirmed person and head of OECA until December of last year. I believe that is the longest time that the Agency had ever gone without a Senate-confirmed enforcement person. I think the numbers have gone up significantly since Susan Bodine took over the office, and I think the program itself has improved quite a bit.

Senator Whitehouse. Well, I would like to ask you to get back to me on whether this memo is still in place.

Additionally, one of the problems that bedeviled people trying to get information out of EPA was that FOIA requests were customarily provided extremely slowly, and often only after litigation to force the issue; and members of Congress, myself included, were told we will get you the information you ask for when we get around to it through the FOIA process.

I don't think either of those is good practice for a public agency. Could you let me know what you are doing with respect to FOIA compliance and with respect to Committee requests for information?

Mr. Wheeler. Absolutely. First of all, on FOIA, I know at the beginning of this Administration we had a 700 FOIA case backlog, some cases going back to 2008. We have cleared up the entire backlog.

I would also just point out, for the Administrator's Office at EPA, we saw a 415 percent increase in the number of FOIA requests. What we are doing is we consolidated the FOIA program into one office under our General Counsel's Office, and we are in the process of hiring additional FOIA people.

On the requests to the Committee, as Senator Carper could tell you, when I worked here on staff, I worked very hard to make sure that the Minority received information from the Agency, and I will continue to do that as the Acting Administrator at EPA. I know that we have responded to 54 of 67

requests from the Minority members of this Committee over the last year and a half.

Senator Whitehouse. Thank you. I will send you a list of the ones that remain outstanding, and you can plow through those as well.

Let me just close by saying that I know you have worked very closely with industry for a long time, and I hope that you will give your very serious and earnest consideration to the concerns of people like me from coastal States. We are seeing climate change-driven sea level rise that is going to require us to redraw the map of my damn State. If that is not something to make a Senator serious about protecting it, I don't know what is.

So, I hope that in this position you will take into account not only the concerns of industry and the concerns of the square States in the middle of the Country that don't have coasts, but those of us who are looking at actually having to redraw the maps because of what is happening.

Thanks very much.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. [Presiding.] Thank you, Senator Whitehouse.

Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Mr. Wheeler, first of all, welcome to the Committee; it is good to see you once again, sir.

Mr. Wheeler. Thank you.

Senator Rounds. I appreciate your interest in your opening statement regarding certainty and the desire to move forward with certainty and transparency. I do think what Senator Ernst was trying to get at with regard to the Renewable Fuel Standard and the small refinery limitation, or at least an exemption for them, and how those two fit together, I would like to explore that with you a little bit. Because it is critical that the Renewable Fuel Standard remain in effect and that it be honored and that it be something that producers in the central part of the Country can count on. They have invested billions of dollars in creating an ethanol industry, and one that they had expected to be in until at least the year 2022.

Now, if we read this correctly, there clearly was the intent of Congress that there be, for traditional ethanol production, a 15 billion gallon per year allowance. We also understand that within that same legislation that there was an allowance that you could make exceptions for hardship for small refineries. There was nothing that we can find that indicates that that would limit or reduce the 15 billion gallon minimum for traditional ethanol production.

Can you share with me where you would come up with or where

there would be logic in taking or in reducing the Renewable Fuel Standard from the 15 billion to follow what was already included in the original law? In other words, when we wrote the law, when Congress wrote the law, they clearly understood that 15 billion was there and made clear. They also understood that we would take into account that small refineries may have a hardship. There was nothing that indicated that that 15 billion would be reduced.

Can you share with me a little bit your thought process on why you would not continue to push and to reallocate for the 15 billion gallons?

Mr. Wheeler. Well, as one of the former congressional staffers who helped write that section of the law, I wish we had spent a little bit more time on some of the details of it now that I am helping to implement it. I could start by saying that we are working to provide more transparency around the small refinery program, the exemption program.

We are creating a dashboard where we will publicize all the information about when we grant a waiver and the circumstances around the waiver. We have to balance that with the confidential business information of the impacted companies, but we are working to try to be more transparent on that side of the program and we are looking to see what we can do as far as making up the difference when we have to grant a waiver from the

15 billion gallons.

But it is not a clear-cut --

Senator Rounds. If I could, I don't think, and I don't find any place where it says it is a waiver from the 15 billion. I think it says an individual refinery may get from their responsibility, but that doesn't absolve us from meeting the 15 billion gallon limit.

Mr. Wheeler. I agree. But then you have the problem, though, that the waivers are being requested and granted after the numbers have already been set, and we are talking about whether we can go back retroactively to change the numbers and change the compliance numbers for the other people in the industry.

Senator Rounds. Well, I like the fact that you are looking at transparency within this process, and, in fact, I think you are moving in the right direction. I actually sent a letter to your predecessor, dated April 13th of this year, requesting that the EPA provide more information on the factors that go into the granting of small refinery exemptions.

Mr. Chairman, I would ask unanimous consent that the copy of the letter be entered into the record.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Rounds. I have yet to receive a substantive response to the letter, as requested, and this is an issue which is of serious consequence to my constituents in South Dakota and throughout the upper Midwest.

Would you commit to reviewing this request and responding to it in a substantive manner?

Mr. Wheeler. Yes, Senator, I will do that.

Senator Rounds. I understand that information that is designated as confidential business information has reportedly been a factor in granting small refinery exemptions, but there must be aspects of the EPA's decision-making process that do not strictly fall under this definition, and I just hope that you would continue, in an open and transparent process, to share with us the process that you are using in granting these.

Mr. Wheeler. Yes.

Senator Rounds. The other piece of this, sir, the RVP across the United States, as the President has indicated his interest in doing it, I would hope that we would expedite that process so that we can actually start marketing this product across the United States year-round. And, if that happens, I think a lot of the issues surrounding meeting that RFP would be handled, because with those markets available year-round, it means people would actually buy the equipment, have the equipment available if they could use it throughout the year.

Those pumps are expensive, and they don't want to use it if the EPA is going to come in and say you can use it six months out of the year, but not year-round.

Would you commit to trying to expedite that part of this process to see if we can't get this behind us and help this industry to succeed?

Mr. Wheeler. Senator, as I am sure you know, that was part of a broader package of a deal trying to address concerns of the oil refining industry, along with the concerns of the ethanol producers, and I am looking actively to try to figure out how we go forward --

Senator Rounds. I appreciate that.

Mr. Chairman, I know my time has passed, but you have taken care of the small refineries. What about the small farmers? What about the folks that are producing on a year-to-year basis enough to get buy in a time in which we have trade issues in front of us, at a time in which they expected that an RFP would be honored by the Federal Government that we made several years ago?

You have taken care of the small refineries, but you haven't taken care of the small farmers. I think we should look at that.

Mr. Wheeler. The RVO number for 2019 is, I believe, 500 million gallons more than what it was the previous year. We

also added the sorghum pathway to help farmers in finding another biofuel feedstock for the RFS program.

We are looking very actively to see what we can do to provide more not just flexibility in the program, but more assistance to the agricultural community.

Senator Rounds. Look forward to working with you, sir.

Mr. Wheeler. Thank you.

Senator Rounds. Thank you.

Senator Barrasso. Thank you, Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Senator Barrasso. Senator Van Hollen.

Senator Van Hollen. Thank you, Mr. Chairman.

Mr. Wheeler, welcome.

Mr. Wheeler. Thank you, Senator.

Senator Van Hollen. I had a question along the lines that Senator Carper asked you. He asked you about the Delaware filing under the Good Neighbor Petition provisions of the Clean Air Act. Maryland also filed a petition back in November 2016. EPA did not respond to it until just a few months ago, at which time they said they proposed to deny the petition.

This is an issue that has united all Marylanders, Republicans and Democrats alike. All of our members of the congressional delegation sent a letter to EPA asking EPA to take another look at this. Governor Hogan, a Republican governor,

has asked the same thing.

So, the first ask I would have is the same that Senator Carper made of you. Would you commit to meet with our Maryland Department of Environment Secretary, Ben Grumbles, to go over Maryland's position on the Good Neighbor Petition?

Mr. Wheeler. I would be happy to meet with Mr. Grumbles. I have known him for years and worked with him briefly.

Senator Van Hollen. I appreciate it.

The letter we got back from EPA said that there was not enough information. I think Ben Grumbles, if you know him, is very diligent. I looked at it; he provided a lot of information. And that it was too costly, even though what we are asking for is plants in these other States to just apply already existing technology.

Do you have any details on why EPA proposed to deny the Maryland petition?

Mr. Wheeler. I don't, and I have not looked at the Maryland petition in the four weeks that I have been Acting Administrator.

Senator Van Hollen. I understand. I appreciate your willingness to do that and meet with Secretary Grumbles. I think it is important because it is simply unfair and the Clean Air Act envisioned this, its amendments envisioned this, that some States are doing their job to clean up their air, but their

air gets polluted by States that are not doing their job. So, I hope we can resolve this issue.

I think you live in the Chesapeake Bay Watershed in Virginia, is that right?

Mr. Wheeler. I do, Senator, yes.

Senator Van Hollen. The Bay agreements over a long period of time have been one of the great environmental success stories. You always feel like you are running in place with the Bay because there is such a drainage basin from so many States and so much development. But the good news is, as a result of these agreements, and most recently the 2014 agreement, we appear to be making progress. Long way to go, but progress.

The most recent agreement included a provision with respect to the TMDL, total maximum daily load. Can you commit that you, as the Acting Head of the EPA, will continue to enforce EPA's role within that agreement?

Mr. Wheeler. Absolutely. I also want to point out it is good news on the Bay. We have a lot of work to do, but just over the last 10 years the seagrass in the Bay have gone from 34,000 acres up to 100,000 acres, and that is one of the first indicators of a healthy bay. So, I think we have made a lot of progress and we continue to make progress.

Senator Van Hollen. I appreciate that.

In the House, our House colleagues attached a provision to

the environmental appropriations bill, a rider to eliminate EPA's enforcement authority under that agreement. I am assuming that you would oppose that limitation on your enforcement authority, is that right?

Mr. Wheeler. We would certainly like to keep all the enforcement authorities that we can, yes.

Senator Van Hollen. Thank you.

Now, just last week EPA released a 2016-2017 milestone at midpoint progress report on the Bay, and again, as you indicated, I indicated, there has been some progress. It did note that the State of Pennsylvania is not meeting its targets for agriculture and urban-suburban runoff. Actually, as part of the Farm Bill I have worked on a bipartisan basis to increase the funds available under the Regional Conservation Partnership Program, so hoping that will go forward as part of the ag bill.

But, what actions can EPA take? As you know, a lot of the pollution in the Bay does come down the Susquehanna River, major tributary to the Bay. This has been an ongoing challenge. What can EPA do to help all of us improve Pennsylvania's performance?

Mr. Wheeler. We are trying to work more cooperatively with all the States in the Chesapeake Bay region. I mentioned to Senator Cardin that in my first week as a Deputy Administrator I attended the Chesapeake Bay Commission, and next week I will be attending the Chesapeake Bay Leadership Council meeting in

Baltimore, and that will be my first meeting on the Chesapeake Bay since I have assumed the duties of Acting Administrator.

I need to look a little bit more into what we can do to work with Pennsylvania, but we are trying to work cooperatively with all the States in the Chesapeake Bay.

Senator Van Hollen. No, I appreciate that and EPA has played a vital role, so I appreciate your commitment there.

I will say, as your own EPA report indicated, the pollution coming down the Susquehanna River from Pennsylvania remains a major challenge, so we want to work cooperatively with Pennsylvania as well, but we really do need your help. So, thank you.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. Senator Capito.

Senator Capito. Thank you, Mr. Chairman.

Thank you, Mr. Wheeler, for being here with us today. I would first like to take a moment to express my appreciation for your emphasis on improving transparency and increasing good governance practices at the EPA. From what I have heard in the testimony thus far, very cooperative spirit on both sides of the aisle to help not just with our national issues, but with our State issues as well, and certainly appreciate that.

As you well know, West Virginia bore the brunt of the last eight years of bureaucratic red tape coming out of Washington, a

lot of it from the EPA. We are climbing out of that. Our unemployment rate is near its lowest since 2008; our growth rate is tracking the national average, and maybe in some has even exceeded the national rate, which is great. And this is in anticipation of things that are going on now, the regulatory relief that you have been a part of at the EPA, the tax reform and infrastructure investments.

So, we are encouraged by what we see, but we still have a labor participation rate that is lower, and we need to use our skilled workforce deployed in responsible and innovative utilization of our natural resources, which we have in abundance in my State.

My first question is on the Clean Power Plan. As you know, I think you know, I am sure you know, that Appalachia was essentially ignored when the Clean Power Plan first rule was proposed. We couldn't get the EPA to come. Subsequently, this EPA held its first hearing in West Virginia and heard opinions from all sides about the Clean Power Plan.

I have talked about our growing economy in West Virginia and being led by our energy sector. I would like to know from you how do you plan to address the failings that were in the previous Clean Power Plan? Where are you on this and do you expect your rule will return to an inside-the-fence approach and use technologies that are actually commercially available? That

was another sticking point, requiring technologies that were never commercially viable and touting them as being a panacea, I think, which we knew did not really exist.

Your comments on the Clean Power Plan.

Mr. Wheeler. Thank you, Senator. On my first day as Acting Administrator, we sent a new proposal to OMB for interagency review for replacement for the Clean Power Plan. The difference, I would say, between this approach and the approach of the Obama Administration is that we are following the four corners of the Clean Air Act in what we are proposing.

The 2015 proposal had the dubious distinction of being the first environmental regulation to have a stay issue by the Supreme Court, and I believe that was done because it was outside of what the law directed us to do. So, we are going to follow the law and hopefully the proposal will be coming out for public comment sometime in the next 30 to 60 days.

Senator Capito. Okay. Thank you.

I want to talk about chemical safety thresholds. I would encourage a particular emphasis on the PFOS. This is a chemical that has been found in waters particularly in the Parkersburg and Martinsburg area of our State. I had previously urged transparency with the former Administrator when it came to release of the toxicological report that came out that was very long and very complicated, so I can't really interpret that for

you. I am hoping that you will do that as well.

So, would you agree that the PFOS issue is a serious concern and is a high priority within the EPA?

Mr. Wheeler. Absolutely, it is a serious concern and it is a high priority. It was actually one of the first briefings that I requested from the career staff at the Agency when I first started as the Deputy Administrator, and it remains a priority for me and for the Agency as we move forward.

Senator Capito. Well, thank you for that. I think that was obviously the intent of the law that we all worked on, bipartisan, but I am concerned that we still don't have a leveling of the appropriate levels both in safety levels either in the soil or in the water, and it is causing a lot of concern for me as a representative of our State.

Let me just talk a little bit about coal because we know coal has come back. It has come back to a reasonable level. Could you, just in the brief time we have left, say from your perspective, I know you have a lot of experience with coal, how do you see this in terms of a more robust coal industry and the environment, and where you are planning to move with that?

That is a big question.

Mr. Wheeler. It is. Let me address it this way. I have always believed in an all-of-the-above on energy sources, and I don't believe that it is the EPA's job to pick winners or

losers. It is our responsibility to enact the laws that Congress passes. Under my leadership, we will not pick winners and losers between the different fuel sources. That is something that the market will have to decide. But I think it is very important that we don't enact regulations that penalize one energy source over another or emphasize one energy source over another.

Last week, I visited a solar panel facility in Massachusetts. For the first time, two weeks ago, I had never been to the Marcellus Shale to see the drilling that is going on there.

We are trying very hard to be straight down the road and not pick winners or losers on energy sources. I don't believe that is the EPA's responsibility.

Senator Capito. Thank you very much.

Senator Barrasso. Thank you, Senator Capito.

Senator Markey.

Senator Markey. Thank you, Mr. Chairman.

Mr. Wheeler, since 2010, the new fuel economy emission standards have saved consumers more than $63 billion at the pump, kept 540 million barrels of oil in the ground, reduced carbon pollution by 250 metric tons. Over the lifetime of the current fuel economy standards, consumers will save $1 trillion on gasoline and will keep 12 billion barrels of oil in the

ground.

That is the simple formula for fuel economy, you save consumers money and you save the planet at the same time, and that is why big oil is attacking these standards. The oil industry is scared to death that the billions of barrels of reserves they are currently claiming on their balance sheets to the Securities and Exchange Commission will end up as so-called stranded assets. They are scared to death that $1 trillion will stay stranded in the pockets of consumers, and that is why the Trump Administration is moving to roll back these standards.

There has been a lot of news recently about a rift between President Trump and the Koch brothers. President Trump and the Koch brothers might disagree these days on politics, but they are always in agreement on petroleum, and that is why this rollback of fuel economy standards is really all about petroleum. It is oil above all.

According to a leaked draft of the proposed rule, the Trump rollback of fuel economy standards, the number one option that the Trump Administration is considering is freezing the standards at 2020 level, that we don't increase the fuel economy standards after 2020.

Mr. Wheeler, yes or no, do you agree that freezing the fuel economy emissions standards at 2020 levels would lead to more oil being consumed than if we kept the standards at their

current trajectory?

Mr. Wheeler. Senator, I am not sure on that, and I want to be on the record as saying that I have not talked to anybody in the oil industry or received any information from them.

Senator Markey. I didn't ask you that question. I asked you would more oil be consumed if we froze the standards at 2020. That is my question, yes or no.

Mr. Wheeler. I believe the analysis shows that more oil would be consumed.

Senator Markey. That is correct. Even the Trump Administration --

Mr. Wheeler. But it also would save 12,000 lives at $500 billion.

Senator Markey. Even the Trump Administration's draft report acknowledges we will consume 500,000 more barrels of oil per day if we freeze these standards.

And, by the way, by 2030 we back out under existing standards, if they continued, 2.5 million barrels of oil per day being imported into the United States from Saudi Arabia, from other OPEC countries. That is the number, 2.5 million barrels of oil a day.

Yes or no, Mr. Wheeler, do you agree that freezing the standards at 2020 levels would mean consumers would pay more to fill up their gas tanks than under the current standards?

Mr. Wheeler. That, I do not know. I know that we have $500 billion in savings to the American consumers under the proposal.

Senator Markey. Well, according to the Union of Concerned Scientists, freezing the standards would cost American drivers an additional $20 billion alone in 2025 due to higher spending on gasoline. That is money that is transferred right out of the pockets of consumers into the big oil coffers.

Yes or no, do you agree that a freeze on increasing the fuel economy standards would lead to more climate pollution than if we maintained the current standards?

Mr. Wheeler. I believe our data shows it would be negligible between the Obama proposal and our proposal.

Senator Markey. Well, you are wrong. Freezing the standards would mean an additional 2.2 billion metric tons of global warming pollution by 2040, equal to 43 coal-fired power plants.

There is a famous line, Mr. Wheeler, in the movie "All the President's Men": follow the money. When you look at the $1 trillion that big oil will never receive from American consumers and the 12 billion barrels of oil that they will never produce under the current standards, it becomes pretty clear why big oil would want to attack these standards; and all the auto industry has to do is sit back and drive the getaway car.

So, let me just ask you one final question, Mr. Wheeler. Administrator Pruitt committed to release the EPA scientific report on the carcinogen formaldehyde, but never did so. Will you commit to releasing this report?

Mr. Wheeler. Are you referring to the IRIS report on formaldehyde?

Senator Markey. Yes.

Mr. Wheeler. I have not been briefed specifically on the IRIS formaldehyde report, but I have sat down with our IRIS staff, and what I am trying to do is to provide more certainty to that process to make sure we know how the different assessments will be used in the regulatory programs. It is my understanding that we still have a number of steps to complete on the formaldehyde assessment.

Senator Markey. When will you release it?

Mr. Wheeler. The question that I have to our IRIS staff is what is the purpose of the assessment at this point and whether or not the data that they have used in the assessment is still current, because I know they started that before 2010.

Senator Markey. Will you commit to releasing that report?

Mr. Wheeler. I am sure we will release it, but I need to make sure that the science in the report is still accurate. What I have asked not just for that report, but for everything that we are doing on the IRIS program, to make sure that we know

the purpose of the assessment, because we have a lot of chemicals that we should and could be assessing under the IRIS program, and I want to make sure that they are being used in a regulatory process, because we have other chemicals that need to be assessed as well. So that is one of the questions that I have asked our program staff.

Senator Markey. Well, Pruitt committed to releasing it, and I hope that you put it at the top of your list. I expect you to and get it released so that the public can understand what those dangers are. Thank you.

Mr. Wheeler. And, Senator, on the different reports that you mentioned under the CAFE, we should be going out in the Federal Register in the next day or two with the CAFE proposal, and I would hope that all those organizations will submit those reports for the record.

Senator Barrasso. We are now into the second vote and about halfway through. I wanted to get to the additional.

Thank you so much for your comments.

Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

And thank you, Administrator Wheeler, for being here today.

Mr. Wheeler. Thank you.

Senator Fischer. Many of my colleagues have already discussed this issue, but I would also like to visit with you

about small refinery exemptions to the RFS.

As you know, the law allows refineries that produce 75,000 barrels or less per day to seek an exemption from the RFS for the reason of disproportionate economic hardship. The EPA, in consultation with Department of Energy, must consider the findings from a 2011 DOE study and "other economic factors" when analyzing these requests.

So, this disproportionate economic hardship is the critical factor in determining whether a small refinery is awarded an exemption. How is that calculated? That is what is of great interest to small refineries, because it could decide whether they have to comply with the RFS or whether they get a free pass.

My constituents in Nebraska, and others for whom the RFS is a very important item, would be interested in how you interpret that process for purposes of making sure that the law is being upheld; and, for Congress, who wrote the law, understanding how you calculate disproportionate economic hardship is vital for purposes of making sure that you are carrying out that law as we intended. So, for these reasons, I would like to discuss how you are doing that analysis.

It is my understanding that the law does not define disproportionate economic hardship. It is also my understanding that EPA regulations do not define disproportionate economic

hardship. By its definition, disproportionate means you are comparing the impact on the petitioner to the impact on one or more others. Is that correct?

Mr. Wheeler. I believe that is correct, Senator.

If I could say, on the small refinery process, we work closely with Department of Energy. They do the initial analysis and then we work with them on providing additional analysis as well.

What I have committed to do and what we are going to do is provide more transparency on how we make these decisions. We are in the process of developing a dashboard so we can put all the information out publicly so people know when we are issuing a small refinery waiver and the circumstances around that. We have to make sure that we take into account any confidential business information of the company applying for the small business refinery exemption, but we want to try to be as transparent as we can and put all that information, including our process, out for the public to see.

Senator Fischer. Just to confirm, are you saying that the EPA compares the high cost of compliance relative to the entire refinery industry? So, all you basically have to prove, Mr. Administrator, is that you are a small refinery and produce less than 75,000 barrels a day, and that is your ticket in the door?

Mr. Wheeler. Senator, if I could respond back to you in

writing on that, because I want to be very careful because this issue is being looked at very carefully --

Senator Fischer. It is.

Mr. Wheeler. -- not only by us, by everybody else, and I want to make sure that I am giving you the correct information. If I could respond back to you in writing, I would appreciate that.

Senator Fischer. I would appreciate it. Thank you, sir.

What about the disproportionate economic hardship? The court, in 2017, said the EPA can't go so far as to require that a refinery be at risk of going out of business to exempt them from the RFS. But I believe it is equally unacceptable for the EPA to merely exempt a refinery because they fit the definition of a small refinery. And I would think you would agree that there is space between those two options. Would you?

Mr. Wheeler. I would agree there is space between those two options. I think just because a company is a small refinery does not mean it should be entitled to a small refinery exemption; there are other market and business concerns to go into that analysis.

Senator Fischer. When the Agency awarded those 48 small refinery waivers retroactively for 2016 and 2017, I think that it effectively established a de facto RIN cap. Do you agree with that?

Mr. Wheeler. A de facto RIN cap? We take that into account, we take into account the available RINs as we move forward in setting the RVO numbers for the next year, so I am not sure that I would say it was a de facto RIN cap, because we do look at the RIN numbers available before we set the next RVO, and try to factor that into our analysis.

Senator Fischer. Okay. If I could get you questions on this pretty complex issue, I would appreciate answers in a timely manner.

Mr. Wheeler. Absolutely, Senator.

Senator Fischer. Thank you, Administrator.

Mr. Wheeler. Thank you.

Senator Fischer. Thank you, Mr. Chair.

Senator Inhofe. [Presiding.] Having just voted, I assume that we have gone all the way through and that you have a request, Senator Carper, for one last question.

Senator Carper. Yes, I do, please.

Senator Duckworth has not asked her first round. She was here, but other people came in ahead of her, so she is going to try to get back. Hopefully she does, and, if she does, I will yield to her. But thanks, Mr. Chairman.

I want to follow up, if I could, Mr. Wheeler, on your previous answer on cross-State pollution. In your answer, you may recall you stated that most areas will be in attainment for

ozone in the early 2020s. So, with that having been said, here is my question. EPA has not modeled the effects of all of its planned clean air rollbacks on cross-State ozone pollution. Given that, can EPA be certain that Delaware, Maryland, New Jersey, and all these other States on the East Coast will be in attainment? How can EPA be certain that all of us are going to be in attainment in 2023, as EPA has claimed it would be, because you have not modeled the effects of all its planned Clean Air Act rollbacks on cross-State ozone pollution? It seems like we are getting ahead of the horse.

Mr. Wheeler. I can't predict with certainty on that, but what I am told by the career staff at the Agency in the Air Office is that our analysis shows that most areas of the Country will be able to reach attainment in the early 2020s. There are, of course, factors that could change between now and then, but on the current pathway that we are with the emissions that we forecast in the different States in the areas of the Country, we anticipate that most areas of the Country will be in attainment in the early 2020s.

Senator Carper. Maybe most areas, but a bunch of the areas that are not in attainment now, again, it just seems counterintuitive that EPA has not modeled the effects of all of its planned clean air rollbacks on cross-State pollution; yet, EPA feels like Delaware and other States are going to be in

attainment in 2023. It just doesn't add up. We will be following up with questions for the record, and maybe we can get some clarification on this. Thank you.

Mr. Wheeler. Thank you, Senator.

Senator Inhofe. Thank you, Senator Carper.

Senator Whitehouse, did you want to?

Senator Whitehouse. Thank you, I would like to, Mr. Chairman.

I wanted to follow up with Administrator Wheeler on something that he said in response to a question to another Senator, and it had to do, Mr. Wheeler, with not picking winners and losers in the energy industry, and that you would treat all energy sources equally.

If you are presented with a polluting energy source on the one hand and a non-polluting energy source on the other, how do you treat them equally, when it is EPA's duty to protect against pollution?

Mr. Wheeler. Senator, if one energy source has emissions of a criteria pollutant or any of the other pollutants that we regulate, we would, of course, regulate the pollutants for that industry. I am not suggesting that every single environmental law would apply to ever single industry and we would treat it across the board. The coal combustion residual would only apply to coal-fired power plants; we wouldn't apply something like

that, of course, to solar or wind. My point is that we shouldn't be enacting regulations that favor one energy source over the other. We will implement all of the laws passed by Congress.

Senator Whitehouse. How would a regulation that protected against pollution not advantage a non-polluting energy source over a polluting energy source?

Mr. Wheeler. I believe some of the criticisms of the Obama Clean Power Plan, for example, is that it gave preferential treatment to some energy sources on the way that they calculated emissions. My point in saying that is that it is not the EPA's role. We are trying to be very even-handed and not pick winners and losers between the different energy sources and equally promote all of them at the same time.

Senator Whitehouse. I get that, but I just want to make sure that your view of what is preferential among energy sources isn't driven by whether or not they are polluters. Because if you are not going to prefer, in the sense of putting regulatory protections up against polluting versus non-polluting sources, we have a problem on our hands.

Mr. Wheeler. Senator, we are regulating sources that pollute, that release, that have emissions.

Senator Whitehouse. Great. So, if a polluting source has to bear a regulatory burden to protect against its pollution,

that is not what you mean by picking winners and losers.

Mr. Wheeler. That is not what I mean, no.

Senator Whitehouse. Thank you.

Senator Inhofe. Thank you, Senator Whitehouse.

We were going to come to an abrupt stop after this vote, but we are going to make an exception because Senator Duckworth wants to be heard, but she will be the last one to ask questions, and then we will close the meeting.

Senator Duckworth.

Senator Duckworth. Thank you, Mr. Chairman. You are very generous and quite a gentleman.

Senator Inhofe. Well, thank you. That is because you cosponsored my aviation bill.

[Laughter.]

Senator Duckworth. Exactly. Exactly. And I just talked to the airline pilots this morning and they are big fans of yours.

Mr. Wheeler, although we don't see eye to eye on most environmental issues, I believe that you are making a good faith effort to reverse the course at EPA and operate in a transparent manner. For example, I support your recent memo calling on your colleagues to be open and accessible, and committing to leading by example on open government efforts, so I thank you for that. I think this is a critical first step towards restoring the

public's trust in the EPA.

Acting Administrator Wheeler, as you know, Congress provided you with an incredibly broad authority under the Safe Drinking Water Act to hire up to 30 individuals without regard to civil service laws. For years, under Republican and Democratic administrations, Congress has trusted EPA administrators to responsibly exercise this special hiring authority; however, your predecessor violated this trust in using the authority to give personal aides lavish pay raises after the White House denied such requests.

To make sure you and future administrators use this special hiring authority in an ethical and transparent manner, Ranking Member Carper and I introduced the EPA Special Hiring Authority Transparency Act. Our bill simply requires that EPA report to Congress whenever it makes an appointment.

To restore confidence in the use of this authority, will you commit to supporting our legislation that will improve transparency and make sure this Committee is notified in regard to who is being appointed under the special hiring authority and why?

Mr. Wheeler. Senator, I would be happy to work with you on your legislation, and I would be happy to provide a list of the people that we have hired under that authority as well.

Senator Duckworth. Thank you.

One area I believe we can work together on, in addition, is reducing lead exposure. Lead is a dangerous neurotoxin for vulnerable populations like young children, pregnant mothers, and the elderly. Exposure to lead can be life-threatening.

Under your predecessor, an interagency task force on lead was convened; however, Congress has not been briefed on the work of this agency. It is unclear whether the Administration fully understands the urgency of this problem and whether they are genuinely compelled to address this issue.

Will you support reporting to Congress on the finding of this task force?

Mr. Wheeler. Yes, Senator, I will.

Senator Duckworth. Thank you.

On a similar note, will you commit to releasing all the records on the Superfund Task Force?

Mr. Wheeler. I thought we had already done that, but I will certainly look into that and have to get back to you on that.

Senator Duckworth. Thank you. I appreciate that.

Mr. Wheeler. That predated my time at the Agency.

Senator Duckworth. Okay, thank you.

And, finally, before I close, I want to address a critical program, the bipartisan Renewable Fuel Standards program, the RFS, that has already been discussed at length in this hearing.

Mr. Wheeler. A few times.

Senator Duckworth. A few times, yes. Well, we are all out there to support our farmers. I am alarmed by this Administration's efforts to undermine this program. Even Brett Kavanaugh, the nominee to serve on the Supreme Court, has sided with the oil industry in several RFS-related cases. Mr. Kavanaugh went as far as to argue that the oil and food industries were palpably and negatively affected by EPA's allegedly illegal E15 waiver and had standing to directly challenge the E15 waiver in court.

As you discussed with my colleagues, Senator Ernst and Senator Rounds and Senator Fischer, EPA has been undermining the RFS on abusing the small refinery exemptions. We need to understand how EPA is making decisions on granting these exemptions. Will you promise to report to Congress on how these decisions are being made, provide public notice on these decisions, and bring greater transparency to this work?

Mr. Wheeler. Absolutely. In fact, we are developing a dashboard so that the whole public can see what we are doing on the issue and when and how we are granting the waivers. We have to be careful that there are confidential business information claims by some of the refiners when they apply for it, so we have to guard that, but we want to make sure that we release as much information as we can to be very transparent and let

everybody know what we are doing and why we are doing it.

Senator Duckworth. Thank you. I need to stress again that ethanol is an American-grown, American-produced product, as opposed to foreign oil that we have sent troops for a decade to fight over. I would rather be supporting American farmers growing American produce to put in American gas tanks.

I understand that the EPA may be constrained by law, as you have testified, and I look forward to working with my colleagues, Senators Rounds and Ernst, on a legislative fix, and I very much thank you for being here and I certainly enjoyed our discussion, and I very much appreciate the return to transparency that you are pledging to bring to the EPA. Thank you.

Mr. Wheeler. Thank you, Senator. I appreciate that.

Senator Inhofe. Thank you, Senator Duckworth. I appreciate you being here very much.

I have two unanimous consent requests to get into the record. There will be no other questioners.

First of all, I would note that, last week, 21 Senators sent a letter to EPA opposing the reallocation of small refinery obligations to other refineries under the RFS, and I ask unanimous consent that this letter be made a part of the record.

Without objection, so ordered.

[The referenced information follows:]

Senator Inhofe. Secondly, I have a chart I think is important. I understand while I was down voting that something came up, some complaints were there in terms of responses, and I want to just compliment you and the EPA for the way you have done that.

The chart is just one example of the huge increase in co-respondents EPA has seen over the last Administration. For the Administrator's office, it is over 400 percent increase in fiscal year 2017 over the previous two fiscal years. Again, it is just for the Administrator's office; it does not include other programs like air, water, land, general counsel, research and development, chemicals, and all that.

In total, the EPA has so far responded to 84 percent of the inquiries elected offices have sent in. That is Federal, State, and local. EPA has responded to 81 percent of the Minority members' oversight letters, 65.5 percent of all their inquiries, and it is not doing so. 23,430 pages of documents have been delivered to the Minority members. I don't know whether Minority has had time to read all of these; I suggest probably they haven't.

It doesn't sound like an agency that is ignoring anyone.

I want to commend you and get this on the record so that people are aware of the great job that we are doing with the EPA. All right?

Mr. Wheeler. Thank you, Senator.

Senator Inhofe. You are very welcome.

[The referenced information follows:]

Senator Inhofe. If there are no more questions for today, members may also submit follow-up questions for the record. The hearing record will be open for two weeks.

I want to thank the witnesses for their time and testimony today, and we are adjourned.

[Whereupon, at 12:11 p.m. the committee was adjourned.]

Appointment

From: Rakosnik, Delaney [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=274573739A9F446883072599086EDEDD-RAKOSNIK, D]
Sent: 6/21/2018 5:35:47 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Call with Doug Sparkman, COO of BP Fuels re: RFS issues
Attachments: RE: Doug Sparkman Request for phone call
Location: WJC - N - 5400 + Conference phone and code/Ex.6

Start: 6/22/2018 5:15:00 PM
End: 6/22/2018 5:30:00 PM
Show Time As: Busy

TO: Bill Wehrum, Mandy Gunasekara

RE: Doug Sparkman Requ...

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 5/30/2018 4:37:40 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]; Michaels, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a44e1a5c23404801bd12621455cde517-Reid, Laure]

Subject: Meet with Coalition of Small Refinery Owners (Confirmed)
Attachments: FW: Small Refinery Hardship -- Renewable Fuel Standard; Confirmed 6/8 at 4pm: Small Refinery Hardship -- Renewable Fuel Standard
Location: WJC-N 5400 + Video with AA + **Conference phone and code/Ex.6**

Start: 6/8/2018 8:00:00 PM
End: 6/8/2018 8:45:00 PM
Show Time As: Busy

Re: small refinery hardship relief under the Renewable Fuel Standard, specifically, (1) streamlining the petition process; (2) correct scoring of small refineries by DOE (or EPA rejecting incorrect scoring); (3) why granting relief does not cause "demand destruction"; and (4) impending octane cost implications for small refineries.
To: Bill Wehrum, Mandy Gunasekara, Chris Grundler, Ben Hengst
Outside Attendees (in person): TBD

FW: Small Refinery Hardshi...

Confirmed 6/8 at 4pm: Small Refin...

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 11/30/2017 9:09:39 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Burkholder, Dallas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=667ef175292d4784997e454a9985b3b3-Burkholder, Dallas]; Parsons, Nick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ba9a64331b0449a93ccc46f74d5d1f0-Parsons, Nick]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Li, Ryland (Shengzhi) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf0eac9d34b446f88e03f8ec48274f1-Li, Shengzh]

Subject: RFS Small Refinery Hardship Program
Attachments: RE: Meeting request
Location: WJC-N 5400 + **Conference phone and code/Ex.6**

Start: 12/1/2017 4:30:00 PM
End: 12/1/2017 5:15:00 PM
Show Time As: Busy

To: Bill Wehrum, Mandy Gunasekara, David Harlow, Chris Grundler, Ben Hengst, Byron Bunker, Janet Cohen, Sue Stahle, David Orlin, Dallas Burkholder, Nick Parsons

RE: Meeting request

Appointment

From: Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]
Sent: 11/16/2017 10:28:44 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]

Subject: RFS Small Refinery Exemptions
Location: WJC-N 5400

Start: 11/17/2017 6:30:00 PM
End: 11/17/2017 7:15:00 PM
Show Time As: Busy

To: Gunasekara, Mandy; Harlow, David; Lewis, Josh; Dominguez, Alexander

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 4/2/2018 2:39:53 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; John Millett [Millett.John@epa.gov]

Subject: Renewable Fuels Association (RFA) Board Meeting (Confirmed)
Attachments: Renewable Fuels Association Request to Meet with Bill Wehrum; RE: Renewable Fuels Association Request to Meet with Bill Wehrum; Confirmed 4/18 at 10am: Renewable Fuels Association Request to Meet with Bill Wehrum; Bill Wehrum Event Form AA 4824-7326-9600 v.3.docx
Location: Willard Hotel, Room: TBD

Start: 4/18/2018 2:00:00 PM
End: 4/18/2018 3:00:00 PM
Show Time As: Busy

Re: RFS program
To: Bill Wehrum and Mandy Gunasekara

Renewable Fuels Association Req... | RE: Renewable Fuels Associatio... | Confirmed 4/18 at 10am: Renewabl... | Bill Wehrum Event Form AA 4824-7...

Message

From: Clay Rios [crios@salsalabs.com]
Sent: 9/18/2018 1:11:51 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Help Protect Refiners Jobs- Fix The RFS

Dear Assistant Administrator William Wehrum,

The time is now to help prevent a massive loss of good-paying American jobs. Press reports indicated you may act to change the Renewable Fuel Standard (RFS) to allow year round sale of fuel containing 15 percent ethanol, called E15. We write urging you to ensure than any changes to the RFS include measures to permanently control the cost of the programs compliance credits, called Renewable Identification Numbers or RINs.

Refinery workers across the country are potentially at risk if U.S. independent refiners go out of business due to the skyrocketing RIN costs. The EPA currently implements the RFS in a way that makes all U.S. refiners responsible for ensuring that certain levels of renewable fuels are blended into gasoline, even if they do not have the capabilities to do such blending.

This nonsensical set-up gives large integrated oil companies that blend more fuel than they refine, coupled with big convenience store gasoline chains (who actually do much of the blending), a competitive market advantage. These companies gather valuable credits from the U.S. government for each gallon of renewable fuel they blend into gasoline produced by independent refiners, who do little or no blending themselves. Independent refiners are then forced to purchase those credits, often at astronomical prices, to comply with the RFS. Runaway RIN prices contributed to the bankruptcy of Philadelphia Energy Solutions earlier this year.

While some small refiner exemptions and simply talk about potential RIN reforms have brought the cost of credits down significantly, the past has proven that RIN prices can more than quadruple on simple news headlines. A return to the prices refiners faced last year could once again put refining jobs and consumer fuel supplies at risk, with 75,000 - 150,000 U.S. workers potentially impacted.

Please help protect our jobs and make this right. We ask that any action to allow for year round sale of E15 or any other RFS changes include policies that more permanently keep RIN prices low and stable. Such a policy is necessary to preserve the viability of America's refining sector.

Thank you

Sincerely,
Clay Rios

Personal Email / Ex. 6

Message

From: Stoker, Michael B. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DCB64B4E7EDF48AABE8EF43996A4652E-STOKER, MIC]
Sent: 9/17/2018 8:01:13 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Wagner, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=048236ab99bc4d5ea16c139b1b67719c-Wagner, Ken]; Darwin, Henry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ae8e9d24eeb4132b25982e358efbd9d-Darwin, Hen]
CC: Miller, Amy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=40bb39f199a74c5cb3956d35d6f468df-AMILLE06]; Strauss, Alexis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=848eb244e96a4f04a105967ea264320b-ASTRAUSS]; Jordan, Deborah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3dbf2d18ec74d249d23ef5b7791e02b-DJORDAN]; Hage, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c7f93b4b156044a3a5cee68acf1f1d80-Hage, Chris]; Adams, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c233ad208944f04b9b3eb86474db808-EADAMS]
Subject: FW: Farm, Ethanol Groups Urge President Trump to Restore Integrity to RFS, Allow Year-Round E15 Sales
Attachments: Farm-and-Ethanol-Group-Letter-to-President-Trump_091218.pdf; ATT00001.htm

Bill,
I wanted to share this email I received from Bill Jones re E15 sales. Bill is a former Majority Leader in the CA State Senate and is a former CA Secretary of State. I promised him I would forward his email to HQ. Please feel free to call me if you have any questions.

Best regards,
Mike

From: Bill Jones [mailto:BJones@jjfarms.com]
Sent: Monday, September 17, 2018 10:44 AM
To: Stoker, Michael B. <stoker.michael@epa.gov>
Subject: Fwd: Farm, Ethanol Groups Urge President Trump to Restore Integrity to RFS, Allow Year-Round E15 Sales

This is what I spoke with you about. Hope you had a great trip
Sent from my iPhone

Begin forwarded message:

> **From:** Neil Koehler <neilk@pacificethanol.com>
> **Date:** September 13, 2018 at 11:15:42 AM PDT
> **To:** Bill Jones <bjones@pacificethanol.com>
> **Subject: FW: Farm, Ethanol Groups Urge President Trump to Restore Integrity to RFS, Allow Year-Round E15 Sales**
>
> Bill, here is the press release on the letter with the complete letter attached asking for year round market access for E15. Specifically, the industry is asking for a rulemaking to be initiated immediately by the EPA to provide the same RVP treatment for E15 that is currently extended to E10 . This would greatly expand the opportunity for E15 sales year round. This is tantamount to a technical fix as the

environmental benefits of E15 are greater than E10. EPA has indicated they have the legal authority to do this and the President has promised that they would do this so the time is now.

From: Rachel Gantz [mailto:rgantz@ethanolrfa.org]
Sent: Wednesday, September 12, 2018 6:01 AM
To: Neil Koehler <neilk@pacificethanol.com>
Subject: Farm, Ethanol Groups Urge President Trump to Restore Integrity to RFS, Allow Year-Round E15 Sales

FOR IMMEDIATE RELEASE
September 12, 2018

Farm, Ethanol Groups Urge President Trump to Restore Integrity to RFS, Allow Year-Round E15 Sales

WASHINGTON- In a letter to President Trump today, the American Farm Bureau Federation, National Corn Growers Association, National Farmers Union, National Sorghum Producers, American Coalition for Ethanol, Growth Energy, and Renewable Fuels Association urged the administration to act immediately to restore the integrity of the Renewable Fuel Standard (RFS) and allow year-round sales of E15 and other mid-level ethanol blends. The groups also expressed concern that any benefit from year-round E15 sales and proper implementation of the RFS could be nullified if refiners are given further regulatory bailouts that undercut the spirit and intent of the law.

The letter follows comments made by Secretary of Agriculture Sonny Perdue on Aug. 29 that an announcement on the RFS and E15 would be coming soon. "With ethanol prices hitting a 13-year low and net farm income plummeting to half of the record $123 billion achieved in 2013, such an announcement could not come at a more critical juncture for rural America," the groups wrote.

"Mr. President, the circumstances have changed since you first began considering these issues, and biofuel producers and farmers are suffering. Thousands of biofuel manufacturing and farming jobs in America's Heartland are now at risk due to the EPA's recent mismanagement of the RFS and inexplicable delay in removing the de facto summertime ban on E15," according to the letter.

The letter notes that ethanol prices, RIN credit prices, and ethanol profit margins are falling, as small refiner exemptions issued by EPA have reduced ethanol demand and inflated stocks.

"The situation is even more dire in the grain markets, where prices received by farmers are sagging below the cost of production. With a near-record corn crop expected this fall and tariffs putting a damper on trade opportunities, farmers desperately need expanded access to markets and new sources of demand," the groups explained.

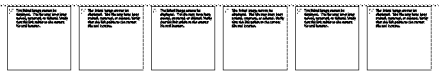
"Former EPA Administrator Scott Pruitt already gave refiners far more than their end of a deal in the form of 2.25 billion gallons of biofuels demand destruction, and they are reaping the rewards of that windfall today," the letter continued. "Now, with the corn and ethanol industries hurting, it's rural America's turn to get its end of the deal."

The full letter is available here.

###

About the Renewable Fuels Association
The Renewable Fuels Association 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. RFA's members are working to help America become cleaner, safer, more energy independent and economically secure. For more information, visit EthanolRFA.org.

Contact:
Rachel Gantz
Communications Director
Renewable Fuels Association
(202) 289-3835
rgantz@ethanolrfa.org



Visit our website

Renewable Fuels Association | 425 Third St. SW, Suite 1150, Washington, DC 20024

Unsubscribe neilk@pacificethanol.net

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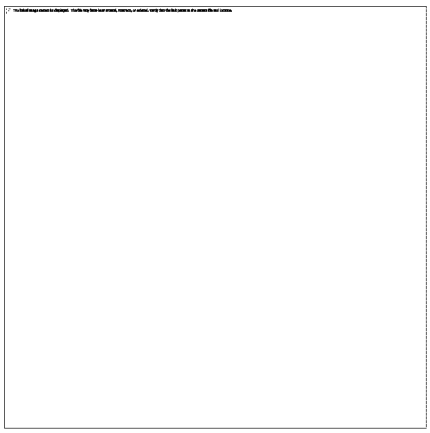
Sent by rgantz@ethanolrfa.org in collaboration with



Try it free today

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 12/21/2018 8:29:54 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: AW SEPW QFR Updates - OAR
Attachments: 2018.10.04 - EPA MANAGEMENT REVIEW - FINAL OMB REVIEW - ALL Wheeler QFRs 08.01.2018 BH+jl.docx

Here's a file that combines my and Ben's edits to the responses that Andrew wanted revised. I trust one of you will send along to Aaron after you review.

Deliberative Process / Ex. 5

From: Harlow, David
Sent: Thursday, December 20, 2018 11:19 AM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Fwd: AW SEPW QFR Updates - OAR

Not sure who can do/manage this, with Mandy away for the duration. The putative deadline is next Friday, and while I'm planning to be here next Thursday and Friday (the 27th and 28th), I'm not in a position to do the substantive work involved because I don't really know anything about these issues (which are almost all RFS).

Could you help us get this to the appropriate people, assuming anyone in the program offices are still around at this point in the week? Thanks!

Sent from my iPhone

Begin forwarded message:

> **From:** "Ringel, Aaron" <ringel.aaron@epa.gov>
> **Date:** December 20, 2018 at 10:49:48 AM EST
> **To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>
> **Cc:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>
> **Subject: AW SEPW QFR Updates - OAR**
>
> Team OAR,
>
> AA Wheeler went through the QFRs and had updates he needs made before we can get them submitted. I've pasted the relevant questions for your program office below that need edits and attached the doc for reference.
>
> We need to get these turned in by next Friday so we can move forward with his confirmation hearing. Considering there aren't many substantive changes required, if you can turn these

around in next couple days so we can do a final review and get sign off it would be greatly appreciated. Please let myself, Christian, or Tony know if you have any questions.

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 7/18/2018 11:23:51 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Automatic reply: RFS - Small Refiners

I am out of the office and will not be accessing my email.

If you need immeidate assistance, please contact the OAR Immediate Office at 202-564-7404 and ask for Josh Lewis (lewis.josh@epa.gov).

Emily Atkinson

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 12/20/2018 4:43:03 PM
To: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: AW SEPW QFR Updates - OAR

Josh,

I didn't know who in OTAQ would be the appropriate contact with respect to this sort of thing, so I appreciate your shepherding it along. So, thank you.

Sent from my iPhone

On Dec 20, 2018, at 11:23 AM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:

> Will do. I can answer the non-RFS ones based on other correspondence we've had w/ the Hill. I'll send the RFS ones to OTAQ for them to do the same.
>
> **From:** Harlow, David
> **Sent:** Thursday, December 20, 2018 11:19 AM
> **To:** Lewis, Josh <Lewis.Josh@epa.gov>
> **Cc:** Wehrum, Bill <Wehrum.Bill@epa.gov>
> **Subject:** Fwd: AW SEPW QFR Updates - OAR
>
> Not sure who can do/manage this, with Mandy away for the duration. The putative deadline is next Friday, and while I'm planning to be here next Thursday and Friday (the 27th and 28th), I'm not in a position to do the substantive work involved because I don't really know anything about these issues (which are almost all RFS).
>
> Could you help us get this to the appropriate people, assuming anyone in the program offices are still around at this point in the week? Thanks!
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Ringel, Aaron" <ringel.aaron@epa.gov>
> > **Date:** December 20, 2018 at 10:49:48 AM EST
> > **To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>
> > **Cc:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>
> > **Subject: AW SEPW QFR Updates - OAR**
> >
> > Team OAR,

AA Wheeler went through the QFRs and had updates he needs made before we can get them submitted. I've pasted the relevant questions for your program office below that need edits and attached the doc for reference.

We need to get these turned in by next Friday so we can move forward with his confirmation hearing. Considering there aren't many substantive changes required, if you can turn these around in next couple days so we can do a final review and get sign off it would be greatly appreciated. Please let myself, Christian, or Tony know if you have any questions.

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/18/2018 2:12:36 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: RFS Hearing: so far getting hammered on SRE from all sides

Not feeling the love in this room

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Personal Phone / Ex. 6
www.epa.gov/otaq

On Jul 18, 2018, at 9:37 AM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

> Gotta love this program …
>
> _____
> Bill Wehrum
> Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency
> (202) 564-7404
>
> ---
>
> **From:** Grundler, Christopher
> **Sent:** Wednesday, July 18, 2018 9:25 AM
> **To:** Wehrum, Bill <Wehrum.Bill@epa.gov>
> **Subject:** RFS Hearing: so far getting hammered on SRE from all sides
>
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> Washington DC: (202) 564-1682
> Ann Arbor MI: (734) 214-4207

Message

From: Wright, Rhonda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5D6D041A34EA466DAC1F7985308E35EA-RWRIGH04]
Sent: 6/27/2018 9:13:38 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: FW: Materials for 6/28 Bill Wehrum Ann Arbor visit
Attachments: RIN Economics Briefing for Bill W Final.pptx

Hi Bill,

Attached is a background document for your 1:15pm "RFS Economics/Trading Discussion." The actual briefing that will be used during this meeting is included in your folder.

****

Rhonda Wright
Special Assistant
U.S. Environmental Protection Agency
Office of Air and Radiation
Immediate Office of the Assistant Administrator
Room 5409G, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Office: (202) 564-5437
Cell: Personal Phone / Ex. 6

From: Sutton, Tia
Sent: Wednesday, June 27, 2018 5:01 PM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: Burch, Julia <Burch.Julia@epa.gov>
Subject: RE: Materials for 6/28 Bill Wehrum Ann Arbor visit

Hi all,
I'm sending this separately to let you decide how best to handle. In addition to the materials that I just sent for the 1:15pm "RFS Economics/Trading Discussion," which we will walk through tomorrow, we have one background document from a briefing that we gave Bill back in February (that we are NOT planning to actually walk through tomorrow) that we thought might be helpful for Bill to have. To keep the pile of paper that he has to travel with smaller, it's fine if you just want to email this to him separately, or we can have a copy available in Ann Arbor for him.

Thanks,
Tia

From: Sutton, Tia
Sent: Wednesday, June 27, 2018 4:38 PM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Cook, Leila <cook.leila@epa.gov>
Subject: Materials for 6/28 Bill Wehrum Ann Arbor visit

Hi all,

Attached are the following materials for Bill Wehrum's visit to Ann Arbor:

- Overall agenda for day
- Agenda for 10am OTAQ Fuels Weekly, plus—
    - Small refinery letters list
    - Corn Kernel Fiber (CKF) Briefing
- *NOTE: materials for 11-12 Light-duty GHG Rule Update will be coming later this evening/in the morning*
- Materials for 12:15pm HD NOx Outreach Discussion
- Materials for 1:15pm RFS Economics/Trading Discussion

Thank you!
-Tia

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/30/2018 10:00:02 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Fwd: Small Refinery FOIA Action
Attachments: Small Refinery FOIA Complaint AS FILED 4812-8658-4689 v.2.pdf; ATT00001.htm; Combined Exhibits for FOIA Complaint 4826-9115-2241 v.1.pdf; ATT00002.htm

---

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Personal Phone / Ex. 6
www.epa.gov/otaq

Begin forwarded message:

> **From:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
> **To:** "Grundler, Christopher" <grundler.christopher@epa.gov>
> **Subject: Fwd: Small Refinery FOIA Action**

Begin forwarded message:

> **From:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
> **To:** "Stahle, Susan" <Stahle.Susan@epa.gov>, "Nelson, Karen" <nelson.karen@epa.gov>, "Cohen, Janet" <cohen.janet@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Michaels, Lauren" <Michaels.Lauren@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Piotrowski, Greg" <piotrowski.greg@epa.gov>, "Li, Ryland (Shengzhi)" <Li.Ryland@epa.gov>, "Parsons, Nick" <Parsons.Nick@epa.gov>, "McKenna, Chris" <McKenna.Chris@epa.gov>, "Machiele, Paul" <machiele.paul@epa.gov>, "Burkholder, Dallas" <burkholder.dallas@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Cc:** "Bunker, Byron" <bunker.byron@epa.gov>
> **Subject: Fwd: Small Refinery FOIA Action**
>
> SRE FOIA lawsuit. Ben

Begin forwarded message:

> **From:** "Morrison, Matthew W." <matthew.morrison@pillsburylaw.com>
> **To:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Orlin, David"

<Orlin.David@epa.gov>
Subject: Small Refinery FOIA Action

Ben and David,

Attached are courtesy copies of a FOIA complaint filed in the D.C. District Court today by the Renewable Fuels Association and Growth Energy. The FOIA claims are based on information pertaining to small refinery exemption extensions granted by EPA.

You may have already received this from the court by electronic service, but I wanted to make sure you also had copies today.

Please let me know if you have any questions about these claims. I would be happy to speak with you at your convenience.

Best regards,

Matt

Matthew W. Morrison | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.8036 | f 202.663.8007 | m 571.253.3335
matthew.morrison@pillsburylaw.com | website bio

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Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 12/7/2018 2:27:46 PM
To: Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: CMS For Review - Maria Carroll - AL-18-000-9522

Control AL-18-000-9522 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AL-18-000-9522
Control Subject: RENEWABLE FUEL STANDARD (RFS) REALLOCATION TO SRE OBLIGATIONS
From: Inhofe, James M; Hatch, Orrin G; Enzi, Michael B; Barrasso, John; Risch, James E.; Boozman, John; Lee, Michael S; Cruz, Ted; Cassidy, Bill (william); Cotton, Tom; Perdue, David; Hyde-Smith, Cindy; Isakson, Johnny; Wicker, Roger; Manchin, Joe; Toomey, Patrick J; Flake, Jeff; Capito, Shelley Moore; Lankford, James; Daines, Steve; Kennedy, John

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/2/2018 5:17:20 PM
To: Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: CMS For Review - Maria Carroll - AL-18-000-6413

Control AL-18-000-6413 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AL-18-000-6413
Control Subject: RFS SMALL REFINERY WAIVER
From: Grassley, Charles E; McCaskill, Claire; Ernst, Joni; Fischer, Deb (Debra); Klobuchar, Amy; Stabenow, Debbie; Durbin, Richard J; Thune, John; Blunt, Roy; Duckworth, Tammy; Smith, Tina; Heitkamp, Heidi; DONNELLY, JOE (Joseph)

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 4/10/2018 8:59:34 PM
To: Wright, Rhonda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5d6d041a34ea466dac1f7985308e35ea-RWRIGH04]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: E-Folder for Wednesday, April 11, 2018
Attachments: Reset SBREFA Options 041018.pptx; LD Vehicle Oversight Briefing for AA April 2018 v1.pptx; working draft wehrum smartway V6.pdf; 2018_04_11 GHG Trends and Performance Reports briefing v2.pptx; Briefing for Bill Wehrum , Issue of Separate T2-T3 NPRM, Apr 2018.pptx

I couldn't open the attachments in the email below, so attaching here in case Bill has the same issue.

From: Wright, Rhonda
Sent: Tuesday, April 10, 2018 4:44 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>
Subject: E-Folder for Wednesday, April 11, 2018

Hi Bill,

Here's your eFolder for tomorrow. Briefing materials (hardcopies) will be provided for you in Ann Arbor, MI.

Personal Matters / Ex. 6

Reset SBREFA Options 041018.pptx

10:00 AM – 5:00 PM Ann Arbor Office
11:00 AM – 11:30 AM Tier 2/Tier 3 Test Fuel Draft NPRM: **Deliberative Process / Ex. 5**

Briefing for Bill Wehrum , Issue of Se

11:30 AM – 1:00 PM Working Lunch: LDGHG Rule & GM Visit Prep
1:00 PM – 3:00 PM Post VW LD Compliance Program

LD Vehicle Oversight Briefing for AA April 2

3:00 PM – 4:00 PM SmartWay Overview

working draft wehrum smartway V6

4:00 PM – 4:30 PM Trends Report

2018_04_11 GHG
Trends and Performa

Safe travels,

****

Rhonda Wright
Special Assistant
U.S. Environmental Protection Agency
Office of Air and Radiation
Immediate Office of the Assistant Administrator
Room 5406E, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Office: (202) 564-5437
Cell: Personal Phone / Ex. 6

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 3/13/2018 3:24:49 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]
Subject: Fwd: FYI - Coverage of PES settlement

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
Personal Phone / Ex. 6
www.epa.gov/otaq

Begin forwarded message:

From: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Date: March 13, 2018 at 10:59:06 AM EDT
To: "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: Fwd: FYI - Coverage of PES settlement

Begin forwarded message:

From: "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>
Date: March 13, 2018 at 10:52:58 AM EDT
To: "Orlin, David" <Orlin.David@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>, "Millett, John" <Millett.John@epa.gov>
Cc: "Mylan, Christopher" <Mylan.Christopher@epa.gov>
Subject: FYI - Coverage of PES settlement

Biofuel credits drop in wake of refiner settlement - traders

Reuters Staff
2 MIN READ

- <!--[if !supportLists]--><!--[endif]-->

- <!--[if !supportLists]--><!--[endif]-->

NEW YORK (Reuters) - Renewable fuel credits for 2018 slipped on Tuesday after the U.S. Environmental Protection Agency granted a bankrupt Philadelphia refiner significant relief from its biofuel obligations.

Prices for renewable fuel (D6) credits for 2018 traded at 35 cents on Tuesday morning, traders said, down from 38.5 cents on Monday and roughly 40 percent lower than just two weeks ago.

The EPA and the Carlyle Group-backed Philadelphia Energy Solutions refinery agreed on Monday that the refiner would have to satisfy only roughly half of its $350 million worth of outstanding compliance obligations under the U.S. Renewable Fuel Standard. The RFS requires refiners to blend biofuels like ethanol into their fuel or buy credits from those that do.

The settlement, which must be approved by a federal judge and faces a public comment period, says PES does not have to go into market and buy some 250 million compliance credits covering 2016, 2017 and portions of 2018. That has raised concerns among biofuels producers that other independent refiners may also seek relief.

The EPA has also signaled that it is willing to exempt a larger number of small refineries from the program, limiting the number of potential buyers and putting even more credits into the market.

PES, which lacks blending facilities, entered into bankruptcy owing 467 million credits from 2016 and 2017, with only 210 million credits in hand, the filing showed.

The EPA said PES could comply with the program by turning over its available credits and would be excused from any shortfall, a huge win for the refiner. It said the deal would cover the company up until the point it exits bankruptcy.

Reporting By Jarrett Renshaw; Editing by Chizu Nomiyama

Our Standards: The Thomson Reuters Trust Principles.

Bankrupt Philadelphia refiner settles biofuel obligation with EPA: court filing

Jarrett Renshaw
4 MIN READ

- <!--[if !supportLists]--><!--[endif]-->
- <!--[if !supportLists]--><!--[endif]-->

NEW YORK (Reuters) - The U.S. Environmental Protection Agency granted a bankrupt Philadelphia oil refining company a reprieve from complying with the nation's renewable fuel laws, according to a settlement agreement filed on Monday.

The refiner, Carlyle Group-backed Philadelphia Energy Solutions (PES), filed for bankruptcy protection in January and asked a judge to waive some $350 million in compliance costs under the U.S. Renewable Fuel Standard, or RFS.

The EPA and PES agreed on Monday that the refiner would only have to satisfy about half those costs, but would face more scrutiny moving forward, court documents showed. The settlement is facing early opposition from ethanol groups.

The settlement comes amid a fight between powerful corn and oil interests in Washington over the future of the RFS program. President Donald Trump has sought to bring the two sides together in recent weeks to come up with

reforms that can lower the cost for refiners without hurting demand for biofuels, wading into an issue that divides two important constituencies.

The PES bankruptcy - and the potential loss of 1,100 jobs in a key electoral state - had fueled calls for change.

The RFS requires refiners to blend biofuels like ethanol into their fuel or buy credits from those who do. PES, which lacks blending facilities, entered into bankruptcy owing 467 million credits from 2016 and 2017, with only 210 million credits in hand, the filing showed.

The EPA said PES could comply with the program by turning over its available credits and would be excused from any shortfall, a huge win for the refiner. It said the deal would cover the company up until the point it exits bankruptcy.

After exiting bankruptcy, PES would have to comply with the law on a semi-annual basis as opposed to annually and submit itself to more EPA scrutiny. It would face penalties for non-compliance with the agreement.

Neither EPA nor PES responded to requests for comment.

PES has blamed its financial woes on the cost of buying the credits.. But Reuters reported that other factors may also have played a role in the bankruptcy, including the withdrawal of more than $590 million in dividend-style payments from the company by its investor owners.

The private equity firm Carlyle Group rescued the refinery from shutting in 2012, putting up $175 million for majority control of the company. The majority of the dividends paid to the Carlyle-led investor group were backed by loans taken against the refinery's assets.

The deal will be open for public comment for 10 days before it is finalized, and biofuel groups are showing early opposition.

"Under this settlement, it looks like the Carlyle Group gets to keep that cash while avoiding investing in U.S. biofuels and long-term job security for Philadelphia workers. If that's the case, this is a massive handout," Brooke Coleman, head of the Advanced Biofuels Council, said.

Bob Dinneen, CEO of the Renewable Fuels Association, said the group was still evaluating the settlement,"but at first blush, this strikes us as rewarding bombast behavior and it sets an extraordinarily bad precedent."

The case is #18-10122 (KG), in the U.S. Bankruptcy Court for the District of Delaware.

Reporting by Jarrett Renshaw; Editing by Peter Cooney and Lisa Shumaker
Our Standards: The Thomson Reuters Trust Principles

Erin Birgfeld
Communications Director
Office of Transportation and Air Quality
U.S. EPA

202-564-6741 (work)
Personal Phone / Ex. 6

Message

From: Wright, Rhonda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5D6D041A34EA466DAC1F7985308E35EA-RWRIGH04]
Sent: 5/21/2018 10:09:14 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: E-Folder for Tuesday, May 22, 2018
Attachments: Household Energy Briefing for Bill Wehrum Final May 22 2018.pptx; ModelingBriefingWehrum5_21_18.pptx; PCC SOC 050318 - Kigali Final.pdf; Other Kigali Economic Impact Papers 5.17.2018.docx; Agenda.docx; AA Briefing_SNAP stakeholder meeting readout.docx; One-Pager on AHRI Alliance Analysis of Kigali Ratification 5.21.2018 (003).docx; Attendees.docx; Agenda for Fuels Weekly with OAR 05-14-18.docx; DRAFT 5_18_18 Small Refinery FOIAs and CBI.PPTX; SO2 Briefings appendix 05_22_18.docx; SO2 Round 1 SIP Score Card 05-22-18 final.docx; SO2 Briefing part 2 05_22_18.docx

Hi Bill,

Here's your eFolder for Tuesday, May 22, 2018. Materials are attached for those meetings in **bold**. I've also provided hard copies for you to have in the morning. Safe Travels.

8:30 AM – 9:00 AM	Call with the Auto Alliance
9:00 AM – 9:15 AM	Management Roundtable
9:00 AM – 4:00 PM	FYI: White House Conference for Senate Confirmed & NC-SES Appointees (9:00 AM)
***9:15 AM – 10:00 AM**	**Household Energy and Clean Indoor and Ambient Air**
***10:00 AM – 11:00 AM**	**SNAP Update & Alliance Data**
11:00 AM – 11:30 AM	OAR Senior Staff
11:30 AM – 12:15 PM	TO BE RESCHEDULED: Methane Update Meeting
***1:00 PM – 2:00 PM**	**Climate Science Overview Weekly**
***2:00 PM – 2:45 PM**	**SO2 Round 1 Attainment Plans (second briefing): Modeling**
2:30 PM – 3:00 PM	CAFE Standards Call
***3:30 PM – 4:30 PM**	**OTAQ Fuels Weekly**
4:30 PM – 5:00 PM	Meet with The National Biodiesel Board re: RFS (Confirmed)
5:00 PM – 5:30 PM	EPCA Preemption Continued

Thank you,

****

Rhonda Wright
Special Assistant
U.S. Environmental Protection Agency
Office of Air and Radiation
Immediate Office of the Assistant Administrator
Room 5406E, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Office: (202) 564-5437
Cell: Personal Phone / Ex. 6

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 12/4/2018 6:11:11 PM
To: Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: CMS For Review - Maria Carroll - AL-19-000-0454

Control AL-19-000-0454 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AL-19-000-0454
Control Subject: KERN OIL SRE REQUEST
From: Valadao, DavId G; Nunes, Devin; McCarthy, Kevin; Costa, Jim

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: Wright, Rhonda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5D6D041A34EA466DAC1F7985308E35EA-RWRIGH04]
Sent: 2/26/2018 10:58:16 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: Briefing Materials for Ann Arbor
Attachments: RFS 2019 Annual Rule for Wehrum part 2.pptx; RIN Economics Briefing for Bill W Final.pptx; Briefing for AA_Fuels Compliance 101_February 2018.pptx; Gasoline Sulfur Compliance Report_January 2018 (Final Draft).docx; Gasoline Sulfur Report Briefing for Bill Wehrum_Final_2-27-18.pptx; 2-27-18 Bill Wehrum Streamlining Briefing v4.pptx; Butamax Briefing for Bill Wehrum_Final_2-27-18.pptx; Butamax FR Notice_Final_8-18-17.docx; 2016 Remand with Wehrum Feb 27 FINAL.PPTX; One Pager on 2017 Waiver Implementation.docx

Hi Bill,

Attached are briefing materials for your meetings tomorrow in Ann Arbor:

- 10:15am: 2019 RVO Topics (PowerPoint slides); and 2017 Waiver Implementation (Word document "One Pager on 2017 Waiver Implementation")
- 11:00am: RFS RIN Economics, continued (PowerPoint slides)
- 12:00pm: Working lunch: Fuels Implementation and Compliance (non-RFS) 101 (PowerPoint slides); and Gasoline Sulfur Compliance Report (PowerPoint slides + draft of the Report itself, for your FYI)
- 1:30pm: Introduction to the Fuels Streamlining project (PowerPoint slides)
- 2:15pm: Butamax Fuel Registration (PowerPoint slides + draft of the FR Notice, for your FYI)
- 3:15pm: 2016 Remand Rule (PowerPoint slides)

Have safe travels.

****

Rhonda Wright
Special Assistant
U.S. Environmental Protection Agency
Office of Air and Radiation
Immediate Office of the Assistant Administrator
Room 5406E, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Office: (202) 564-5437
Cell: Personal Phone / Ex. 6

Appointment

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 12/4/2017 8:35:30 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Meeting Forward Notification: RFS Small Refinery Hardship Program - Cont'd
Location: WJC-N 5400 - Conference phone and code/Ex.6

Start: 12/8/2017 4:30:00 PM
End: 12/8/2017 5:15:00 PM

Recurrence: (none)

Your meeting was forwarded

Stahle, Susan has forwarded your meeting request to additional recipients.

Meeting

RFS Small Refinery Hardship Program - Cont'd

Meeting Time

Friday, 08 December 2017 11:30-12:15.

Recipients

Baptist, Erik

Schwab, Justin

Burke, Marcella

Srinivasan, Gautam

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Appointment

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 12/1/2017 3:52:22 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Meeting Forward Notification: RFS Small Refinery Hardship Program
Location: WJC-N 5400 + **Conference phone and code/Ex.6**

Start: 12/1/2017 4:30:00 PM
End: 12/1/2017 5:15:00 PM

Recurrence: (none)

Your meeting was forwarded

Cohen, Janet has forwarded your meeting request to additional recipients.

Meeting

RFS Small Refinery Hardship Program

Meeting Time

Friday, 01 December 2017 11:30-12:15.

Recipients

Li, Ryland (Shengzhi)

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Message

From: Cyran, Carissa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A903847A9424979B89400688B5C2F5E-CYRAN, CARISSA]
Sent: 11/29/2017 10:37:57 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: E-Folder for Thursday, November 30, 2017
Attachments: 11_29_17 draft Wehrum small refinery discussion.pptx; 11_27_17 RFS Small Refinery Grants and Denials_2013-2016.docx; 11_27_17 RFS Small Refinery Grants and Denials_2016 only.docx; Antibacksliding Sierra Club Deadline Suit for Bill Wehrum Nov 30.pptx; Deliberative Process / Ex. 5 11_30_17 rev.docx; Upcoming Title V Petition Dates 11_30_17.docx; AHAM Meeting with Wehrum SPD and CPPD points 11-28-17.docx; AHAM ES background 11-28-17.docx

Hi Bill,

Below is your calendar for tomorrow.

7:30 am - 8:30 am **Personal**

8:30am – 9:00 am **General Discussion with Debbie Jordan – 5400**

9:00 am – 9:30 am **Management Roundtable – 5400**

9:30am – 10:30am **OTAQ Fuels Weekly – 5400**

11_29_17 draft Wehrum small re... 11_27_17 RFS Small Refinery G... 11_27_17 RFS Small Refinery G...

11:00am – 12:00pm **Meeting to Discuss CAFÉ-GHG Standards – EEOB 208**

12:30pm – 1:00pm **Hold – Management Time**

1:00pm – 1:30pm **Prep for AHAM Meeting – 5400**

AHAM Meeting with Wehrum SP... AHAM ES background 11-2...

2:00pm – 3:00pm **EISA Section 209 Anti-backsliding study briefing – 5400**

Antibacksliding Sierra Club Dead...

3:00pm – 3:30pm **Follow-up with Erika Sasser – 5400**

3:30pm – 4:00pm **One-on-One with Jon Edwards – 5400**

4:00pm – 5:00pm **Title V Petitions Strategy for Texas Refineries**

Deliberative Process / Ex. 5 ... Upcoming Title V Petition Dates 11...

5:00pm – 6:00pm **RFS Meeting Call – WJC-N 4045**

Message

From: Cyran, Carissa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A903847A9424979B89400688B5C2F5E-CYRAN, CARISSA]
Sent: 11/27/2017 10:33:02 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: E-Folder for Tuesday, November 28, 2017
Attachments: 2017_11_28 AA GHG Trends and Performance Reports briefing.pptx; MTE Data and Modeling Briefing_AA_Wehrum_11202017_FINAL.PPTX; Agenda for October 25 2017 NHTSA-EPA Meeting_Final.docx; EPA-NHTSA Meeting on MTE-CAFE_102517_Final.pptx; 2018 FINAL RFS Vol Roll Out Plan.docx; RFS 2018 Final RVO Press Release - Draft 11.27.17.docx

Hi Bill,

Below is your calendar and material for review for tomorrow.

8:00 am - 9:00 am **Chief of Staff Meeting – Alm Room**

9:00 am – 9:30 am **Management Roundtable**

9:30am – 10:30am **RFS Briefing for the Administrator – Administrator's Office**

10:30am – 11:00am **Review Administrator Hearing Prep Fact Sheets – 5400**
Jim DeMocker and Jonathan Lubetsky will join the discussion.

11:00am – 11:30am **One-on-One with Steve Page – 5400**

11:30am – 12:30pm **Fuel Economy Trends Report – 5400**

2017_11_28 AA GHG Trends and...

12:30pm – 1:00pm **Hold – Management Time**

2:00pm – 3:00pm **MTE Briefing (continuation) – 5400**

MTE Data and Modeling Briefing...

3:00pm – 3:30pm **One-on-One with Jon Edwards – 5400**

3:30pm – 4:00pm **Request Motorpool**

4:00pm – 5:00pm **EPA/NHTSA Joint Rulemaking – 1200 New Jersey Ave., SE**
****Please note this is background material only. This material was used during a previous meeting with Heidi King of NHTSA.**

Agenda for October 25 2017 ... EPA-NHTSA Meeting on MTE-...

FOR REVIEW:
RFS Communication Material
The press release has a placeholder for the quote – for reference, here is a link to the press release for the proposal: https://www.epa.gov/newsreleases/epa-proposes-rfs-volumes-reflective-market-realities-2018

2018 FINAL RFS Vol Roll Out Plan...

RFS 2018 Final RVO Press Rele...

Message

From: Lynne Collins [COLLINS@api.org]
on behalf of Frank Macchiarola [MacchiarolaF@api.org]
Sent: 2/12/2018 5:18:17 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Shaw, Nena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ae00b27ec1544ef8331567ce532bdd3-Shaw, Nena]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: API Letter 2.12.18
Attachments: API Letter 2.12.18.pdf

Please see the attached letter to Mr. William Wehrum from Frank Macchiarola, Group Director Downstream and Industry Operations with the American Petroleum Institute. Thank you.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 10/10/2018 7:14:11 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: CMS Take Over Control - Cassaundra Eades - AL-18-000-9522

Control AL-18-000-9522 was taken over by Cassaundra Eades. The item has been removed from your CMS In Box, and does not currently require any action on your part.

Summary Information -
Control Number: AL-18-000-9522
Control Subject: RENEWABLE FUEL STANDARD (RFS) REALLOCATION TO SRE OBLIGATIONS
From: Inhofe, James M; Hatch, Orrin G; Enzi, Michael B; Barrasso, John; Risch, James E.; Boozman, John; Lee, Michael S; Cruz, Ted; Cassidy, Bill (william); Cotton, Tom; Perdue, David; Hyde-Smith, Cindy; Isakson, Johnny; Wicker, Roger; Manchin, Joe; Toomey, Patrick J; Flake, Jeff; Capito, Shelley Moore; Lankford, James; Daines, Steve; Kennedy, John

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 10/1/2018 2:19:40 PM
To: Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: CMS For Review - Maria Carroll - AL-18-000-9522

Control AL-18-000-9522 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AL-18-000-9522
Control Subject: RENEWABLE FUEL STANDARD (RFS) REALLOCATION TO SRE OBLIGATIONS
From: Inhofe, James M; Hatch, Orrin G; Enzi, Michael B; Barrasso, John; Risch, James E.; Boozman, John; Lee, Michael S; Cruz, Ted; Cassidy, Bill (william); Cotton, Tom; Perdue, David; Hyde-Smith, Cindy; Isakson, Johnny; Wicker, Roger; Manchin, Joe; Toomey, Patrick J; Flake, Jeff; Capito, Shelley Moore; Lankford, James; Daines, Steve; Kennedy, John

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Appointment

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 4/12/2018 6:44:55 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Update
Location: WJC-N 5400 + Video with AA + Dial: Conference phone and code/Ex.6

Start: 4/20/2018 2:00:00 PM
End: 4/20/2018 3:00:00 PM
Show Time As: Busy

Appointment

From: Nelson, Karen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3492ADEE9FAB4A02956FCF63F0DE048B-NELSON, KAR]
Sent: 4/12/2018 4:57:36 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Update
Location: WJC-N 5400 + Video with AA + Dial: Conference phone and code/Ex.6

Start: 4/20/2018 2:00:00 PM
End: 4/20/2018 3:00:00 PM
Show Time As: Busy

Appointment

From: Stahle, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B25318C6014D4FB985288E15143C8596-SSTAHLE]
Sent: 4/12/2018 4:32:31 PM
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Subject: Accepted: RFS Small Refinery Update
Location: WJC-N 5400 + Video with AA + Dial: Conference phone and code/Ex.6

Start: 4/20/2018 2:00:00 PM
End: 4/20/2018 3:00:00 PM
Show Time As: Busy

Appointment

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
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To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Update
Location: WJC-N 5400 + Video with AA + Dial: Conference phone and code/Ex.6

Start: 4/13/2018 1:30:00 PM
End: 4/13/2018 2:30:00 PM
Show Time As: Busy

Appointment

From: Stahle, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B25318C6014D4FB985288E15143C8596-SSTAHLE]
Sent: 12/1/2017 1:51:04 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/1/2017 4:30:00 PM
End: 12/1/2017 5:15:00 PM
Show Time As: Busy

Appointment

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 11/30/2017 9:19:16 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/1/2017 4:30:00 PM
End: 12/1/2017 5:15:00 PM

Recurrence: (none)

Appointment

From: Burkholder, Dallas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=667EF175292D4784997E454A9985B3B3-BURKHOLDER, DALLAS]
Sent: 11/30/2017 9:14:36 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/1/2017 4:30:00 PM
End: 12/1/2017 5:15:00 PM
Show Time As: Busy

Appointment

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 11/30/2017 9:08:36 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/1/2017 4:30:00 PM
End: 12/1/2017 5:15:00 PM
Show Time As: Busy

Appointment

From: Baptist, Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=10FC1B085EE14C6CB61DB378356A1EB9-BAPTIST, ER]
Sent: 12/5/2017 5:09:57 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program - Cont'd
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/11/2017 6:00:00 PM
End: 12/11/2017 6:45:00 PM
Show Time As: Busy

Appointment

From: Burke, Marcella [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5066626EC70846439B8D3F6C35D92BE8-BURKE, MARC]
Sent: 12/5/2017 4:28:37 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program - Cont'd
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/11/2017 6:00:00 PM
End: 12/11/2017 6:45:00 PM

Recurrence: (none)

Appointment

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 12/5/2017 3:44:24 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program - Cont'd
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/11/2017 6:00:00 PM
End: 12/11/2017 6:45:00 PM
Show Time As: Busy

Appointment

From: Burkholder, Dallas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=667EF175292D4784997E454A9985B3B3-BURKHOLDER, DALLAS]
Sent: 12/5/2017 3:44:20 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program - Cont'd
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/11/2017 6:00:00 PM
End: 12/11/2017 6:45:00 PM
Show Time As: Busy

Appointment

From: Stahle, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B25318C6014D4FB985288E15143C8596-SSTAHLE]
Sent: 12/5/2017 3:42:23 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program - Cont'd
Location: WJC-N 5400 + Conference phone and code/Ex.6

Start: 12/11/2017 6:00:00 PM
End: 12/11/2017 6:45:00 PM
Show Time As: Busy

Appointment

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 12/5/2017 3:39:24 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Hardship Program - Cont'd
Location: WJC-N 5400 - Conference phone and code/Ex.6

Start: 12/11/2017 6:00:00 PM
End: 12/11/2017 6:45:00 PM

Recurrence: (none)

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 11/17/2017 2:11:29 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]

Subject: Accepted: RFS Small Refinery Exemptions
Location: WJC-N 5400

Start: 11/17/2017 6:30:00 PM
End: 11/17/2017 7:15:00 PM
Show Time As: Busy

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 11/15/2017 5:26:48 PM
To: Loving, Shanita [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=439ce9c2d2104080a1b5908d3402bf20-Loving, Shanita]
Subject: FW: Next revision: RFS point of obligation, Deliberative Process / Ex. 5
Attachments: Deliberative Process / Ex. 5

Shanita – Will you please print the attached document for me. Please staple the top left corner. Thanks.

From: Hengst, Benjamin
Sent: Wednesday, November 15, 2017 11:41 AM
To: Baptist, Erik <baptist.erik@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Harlow, David <harlow.david@epa.gov>
Subject: Next revision: RFS point of obligation, Deliberative Process / Ex. 5

Erik, Bill, Mandy:

Thank you for your edits and review, Erik. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

In order to put this out Friday afternoon, we need to go pens-down on this by mid-day tomorrow. We have our fuels weekly meeting tomorrow morning and can walk through the topics above if needed.

Thanks,
Ben

From: Baptist, Erik
Sent: Tuesday, November 14, 2017 10:39 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Wehrum, William <wehrum.william@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>

Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Harlow, David <harlow.david@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: RFS point of obligation: Deliberative Process / Ex. 5

Attorney-Client Privilege
Deliberative

Bill, Sam, Mandy, and Ben:

Attorney Client - Deliberative Process / Ex. 5

Happy to discuss,

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsyvlania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Hengst, Benjamin
Sent: Wednesday, November 8, 2017 10:14 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Harlow, David <harlow.david@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RFS point of obligation: Deliberative Process / Ex. 5

Mandy, Erik:

The Deliberative Process / Ex. 5 document is attached for your review. If possible, please send any edits/comments back by Monday COB, so that we can incorporate them in time for issuance on Friday, November 17.

As a reminder, here is our working plan for the mechanics of issuing this.

Deliberative Process / Ex. 5

Thanks,
Ben

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 11/30/2017 12:38:07 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Tomorrow's Fuels Discussion

Thanks Chris.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Nov 29, 2017, at 7:01 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> Bill—
> Tomorrow at 9:30 we have our weekly fuels meeting. We plan to spend the first few minutes on RFS 2018 RVO rollout logistics, and the bulk of the time bringing you up to speed on RFS Small Refinery Hardship decisions, Deliberative Process / Ex. 5
>
> Deliberative Process / Ex. 5
>
> Thanks again for the time this evening
>
> Chris

Message

From: Wehrum, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 11/14/2017 5:56:26 PM
To: Loving, Shanita [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=439ce9c2d2104080a1b5908d3402bf20-Loving, Shanita]
Subject: FW: RFS point of obligation: Deliberative Process / Ex. 5
Attachments: Deliberative Process / Ex. 5

Hi Shanita. Will you print the attachment for me please? Thanks.

From: Baptist, Erik
Sent: Tuesday, November 14, 2017 10:39 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Wehrum, William <wehrum.william@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Harlow, David <harlow.david@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: RFS point of obligation: Deliberative Process / Ex. 5

Attorney-Client Privilege
Deliberative

Bill, Sam, Mandy, and Ben:

Attorney Client - Deliberative Process / Ex. 5

Happy to discuss,

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsyvlania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Hengst, Benjamin
Sent: Wednesday, November 8, 2017 10:14 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Harlow, David <harlow.david@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RFS point of obligation: Deliberative Process / Ex. 5

Mandy, Erik:

The Deliberative Process / Ex. 5 document is attached for your review. If possible, please send any edits/comments back by Monday COB, so that we can incorporate them in time for issuance on Friday, November 17.

As a reminder, here is our working plan for the mechanics of issuing this.

Deliberative Process / Ex. 5

Thanks,
Ben

Subject: Fw: draft note to Gina on the small refinery/Simpson issue
From: CN=Margo Oge/OU=DC/O=USEPA/C=US
Submit Time: 2/9/2012 19:49:23
To: CN=Christopher Grundler/OU=AA/O=USEPA/C=US

Lori Stewart

----- Original Message -----
From: Lori Stewart
Sent: 02/09/2012 09:57 AM EST
To: Margo Oge
Subject: draft note to Gina on the small refinery/Simpson issue

Deliberative Process / Ex. 5

Subject: Fw:
To: CN=Christopher Grundler/OU=AA/O=USEPA/C=US@EPA
Cc:
From: CN=Lori Stewart/OU=DC/O=USEPA/C=US
Submit Time: 2/9/2012 20:42:20

Just fyi, **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

----- Forwarded by Lori Stewart/DC/USEPA/US on 02/09/2012 03:40 PM -----

From: Margo Oge/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA
Cc: Lori Stewart/DC/USEPA/US, Lorie Schmidt/DC/USEPA/US@EPA
Date: 02/09/2012 03:34 PM
Subject: Re:

Gina. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Subject: Re: Sunoco document from Bob P's message
From: CN=Byron Bunker/OU=AA/O=USEPA/C=US
To: CN=Karl Simon/OU=DC/O=USEPA/C=US@EPA
Cc: bunker.byron@epa.gov CN=Christopher Grundler/OU=AA/O=USEPA/C=US@EPA
Submit Time: 4/24/2012 09:54:51

Karl,

I do not have the document. Can you forward? This is the first I am hearing RFS. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 I will know more before 8:00.

Thanks,

Byron

****
Byron Bunker
Acting Division Director
Compliance Division
Office of Transportation and Air Quality
US Environmental Protection Agency
2000 Traverwood Drive
Ann Arbor, MI 48105
(734) 214-4155
(734) 214-4053 (fax)
(734) 353-9623 (cell)
e-mail: bunker.byron@epa.gov
****

-----Karl Simon/DC/USEPA/US wrote: -----
To: bunker.byron@epa.gov, Christopher Grundler/AA/USEPA/US@EPA
From: Karl Simon/DC/USEPA/US
Date: 04/23/2012 09:51PM
Subject: Sunoco document from Bob P's message

Looking at the attachment, the parties are looking for RFS2 relief for two years. Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 I didn't see anything about sulfur credits or any other OTAQ-related issues.

Byron - give me a ring in the am and we can compare notes quickly.

Subject: Re: Sunoco document from Bob P's message
To: CN=Christopher Grundler/OU=AA/O=USEPA/C=US@EPA
Cc:
From: CN=Karl Simon/OU=DC/O=USEPA/C=US
Submit Time: 4/24/2012 11:53:31

in the office now

Christopher Grundler---04/23/2012 11:25:58 PM--- **Deliberative Process / Ex. 5**
Karl-when do you get in?

From: Christopher Grundler/AA/USEPA/US
To: Karl Simon/DC/USEPA/US@EPA, "Byron Bunker" <bunker.byron@epa.gov>
Date: 04/23/2012 11:25 PM
Subject: Re: Sunoco document from Bob P's message

Deliberative Process / Ex. 5

Karl-when do you get in?
Sent by EPA Wireless E-Mail Services
Karl Simon

----- Original Message -----
From: Karl Simon
Sent: 04/23/2012 09:51 PM EDT
To: bunker.byron@epa.gov; Christopher Grundler
Subject: Sunoco document from Bob P's message

Looking at the attachment, the parties are looking for RFS2 relief for two years. **Deliberative Process / Ex. 5** **Deliberative Process / Ex. 5** I didn't see anything about sulfur credits or any other OTAQ-related issues.

Byron - give me a ring in the am and we can compare notes quickly.

Subject: Fw: Small Refiners and Tier 3 vehicle and fuel rule follow-up
To: CN=Christopher Grundler/OU=AA/O=USEPA/C=US@EPA
Cc:
From: CN=Lori Stewart/OU=DC/O=USEPA/C=US
Submit Time: 10/1/2012 16:57:08

fyi
----- Forwarded by Lori Stewart/DC/USEPA/US on 10/01/2012 12:57 PM -----

From: "Gray, Jason" <Jason.Gray@mail.house.gov>
To: Lori Stewart/DC/USEPA/US@EPA
Date: 02/16/2012 09:32 AM
Subject: RE: Small Refiners and Tier 3 vehicle and fuel rule follow-up

---

Hi Lori - I had just wanted to check in with Clint Ensign and Co. last night to make sure this outcome met their needs. And as you said, they are quite pleased. Thank you very much for taking a look at the issue and working so expeditiously to find a resolution. It is very much appreciated. The Chairman's staff is very happy and we look forward to briefing the Chairman. Clint said it best -- I wish all government issues worked so well, and that's a credit to you and your staff.

Thanks again!
Jason

-----Original Message-----
From: Lori Stewart [mailto:Stewart.Lori@epamail.epa.gov]
Sent: Wednesday, February 15, 2012 5:56 PM
To: Gray, Jason
Subject: RE: Small Refiners and Tier 3 vehicle and fuel rule follow-up

Also, feel free to call with any other questions (564-1106). Thanks.

From: "Gray, Jason" <Jason.Gray@mail.house.gov>
To: Lori Stewart/DC/USEPA/US@EPA
Date: 02/15/2012 05:53 PM
Subject: RE: Small Refiners and Tier 3 vehicle and fuel rule follow-up

Great - thank you

-----Original Message-----
From: Lori Stewart [mailto:Stewart.Lori@epamail.epa.gov]
Sent: Wednesday, February 15, 2012 5:53 PM
To: Gray, Jason
Subject: RE: Small Refiners and Tier 3 vehicle and fuel rule follow-up

Yes that is right. The 1500 employee count does not apply to the small refineries (not "companies" but "refineries") that produce less that
75,000 barrels/day.

From: "Gray, Jason" <Jason.Gray@mail.house.gov>
To: Lori Stewart/DC/USEPA/US@EPA
Date: 02/15/2012 05:47 PM
Subject: RE: Small Refiners and Tier 3 vehicle and fuel rule follow-up

Hi Lori - Thank you very much for the update. To clarify, under the Tier 3 rulemaking EPA intends to extend relief to those companies producing fewer than 75,000 barrels per day or to those that meet the SBA definition? So simply having a high employee count will not exclude a refiner from the opportunity for relief?

And yes, I will definitely update the Chairman with the news. If my understanding is correct then he should be pleased as well. Thank you very much for working with the representatives. The response from both you and Gina on this issue has been exceptional, which Mr. Simpson has made note of on several occasions.

Thanks,
Jason

-----Original Message-----
From: Lori Stewart [mailto:Stewart.Lori@epamail.epa.gov]
Sent: Wednesday, February 15, 2012 5:36 PM
To: Gray, Jason
Subject: Small Refiners and Tier 3 vehicle and fuel rule follow-up

Jason, I wanted to circle back with you to let you know that we had a conference call today with the small refiner/refinery representatives who met with Congressman Simpson and Gina in late January. Five of the six companies participated in the call. We shared our plans for the Tier 3 proposal with them. We plan to take the same approach as in the Renewable Fuel Standards (RFS) program and extend relief (3 year delay on the lower sulfur requirement) to small refineries with production below 75,000 barrels/day, as well as to the refiners that meet the SBA small refinery definition. The refining representatives were very pleased with this news - you might recall they expressed support for the RFS approach during the Jan. 25 meeting. Paul Machiele also addressed a number of other clarifying questions for them.

In addition, we shared with them the feedback we had gotten from our conversations with an Assistant Chief Counsel in the SBA Office of Advocacy (David Rostker). The bottom-line on that is that the SBA applies that definition very broadly for procurement and assistance programs and they believed that augmenting the 1500 employee threshold "would result in treating large businesses as small." David thought it was highly unlikely they would revisit that criteria. However, we committed to working with this group early on in any future fuels rulemakings, simultaneous with discussions with small refiners in the SBREFA process. Overall, the discussion went very well and the participants expressed support for the Tier 3 approach. They appreciated the information we shared. Jason, will you have an opportunity to let Congressman Simpson know the status on this? Thanks very much.

Submit Time: 2/9/2012 23:59:31
From: CN=Gina McCarthy/OU=DC/O=USEPA/C=US
To: CN=Lori Stewart/OU=DC/O=USEPA/C=US@EPA Oge.Margo@EPA.GOV
Cc: CN=Don Zinger/OU=DC/O=USEPA/C=US@EPA
Subject: Re: Fw:

This is all great - thank you!

Lori Stewart---02/09/2012 05:09:53 PM---Just got Don's voicemail. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 - jus

From: Lori Stewart/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA
Date: 02/09/2012 05:09 PM
Subject: Fw:

Just got Don's voicemail. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

----- Forwarded by Lori Stewart/DC/USEPA/US on 02/09/2012 05:06 PM -----

From: Margo Oge/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA
Cc: Lori Stewart/DC/USEPA/US, Lorie Schmidt/DC/USEPA/US@EPA
Date: 02/09/2012 03:34 PM
Subject: Re:

Gina. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Subject: Fw: RFS2 Materials all in one place
To: CN=Gina McCarthy/OU=DC/O=USEPA/C=US@EPA CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA CN=Janet McCabe/OU=DC/O=USEPA/C=US@EPA CN=Beth Craig/OU=DC/O=USEPA/C=US@EPA rob brenner@EPA CN=Don Zinger/OU=DC/O=USEPA/C=US@EPA
Cc:
From: CN=John Millett/OU=DC/O=USEPA/C=US
Submit Time: 1/29/2010 13:25:55

fyi -- here's what we sent down to OPA to work with for an RFS 2 announcement.

~~~~~~~~~~~~~~~~~~~
John Millett
Office of Air and Radiation Communications
U.S. Environmental Protection Agency
5411 Ariel Rios Building North
Washington, DC 20460
Phone: 202/564-2903
Cell: 202/510-1822

----- Forwarded by John Millett/DC/USEPA/US on 01/29/2010 08:16 AM -----

From: John Millett/DC/USEPA/US

To: Brendan Gilfillan/DC/USEPA/US@EPA

Cc: Cohen.Justin@epamail.epa.gov, Julia Ortiz/DC/USEPA/US@EPA, John Millett <Millett.John@EPA.GOV>

Date: 01/27/2010 03:29 PM

Subject: RFS2 Materials all in one place

External Materials:

Press Release --

RFS2 final rule PR 01 26.doc RFS2 final rule PR 01 26.doc

General Fact Sheet

RFS2 final rule Gen FS 01-27-10 FINAL.doc RFS2 final rule Gen FS 01-27-10 FINAL.doc

Lifecycle Fact Sheet

LCA Factsheet 1-27-10.doc LCA Factsheet 1-27-10.doc
~~~~~~~~~~~~~~~~~~~

Internal Materials:

Key Messages --

RFS2 final rule key mess 01 22.doc RFS2 final rule key mess 01 22.doc

Q/As

Top 10 +1:

RFS2 final rule QsandAs short version 01 21.doc RFS2 final rule QsandAs short version 01 21.doc

Full set:

RFS2 final rule QsandAs 01 21.doc RFS2 final rule QsandAs 01 21.doc

~~~~~~~~~~~~~~~~~~~

John Millett
Office of Air and Radiation Communications
U.S. Environmental Protection Agency
5411 Ariel Rios Building North
Washington, DC 20460
Phone: 202/564-2903
Cell: 202/510-1822
~~~~~~~~~~~~~~~~~~~

Subject: Re:
From: CN=Gina McCarthy/OU=DC/O=USEPA/C=US
Submit Time: 5/2/2011 15:21:44
To: CN=Margo Oge/OU=DC/O=USEPA/C=US@EPA

Thx
Margo Oge

----- Original Message -----
From: Margo Oge
Sent: 05/02/2011 11:09 AM EDT
To: Gina McCarthy
Gina,

Small refineries were exempt under the RFS program through 2010. There was also an allowance to extend the exemptions if the RFS imposed economic hardships. DOE was required to study this issue. DOE sent its initial study and recommendations to EPA in February of 2009. The study concluded the exemptions should not be extended.
However, Congress directed DOE to re-visit the issue. DOE sent us their updated study last week.

Deliberative Process / Ex. 5

Subject: Fw: Our appreciation
To: CN=Gina McCarthy/OU=DC/O=USEPA/C=US@EPA
Cc:
From: CN=Don Zinger/OU=DC/O=USEPA/C=US
Submit Time: 10/14/2011 21:15:35

Gina,
You can ignore this. We've sent it out per Margo's request from your email.

----- Forwarded by Don Zinger/DC/USEPA/US on 10/14/2011 05:13 PM -----

From: Margo Oge/DC/USEPA/US
To: Don Zinger/DC/USEPA/US@EPA
Cc: Karen Orehowsky/DC/USEPA/US@EPA
Date: 10/13/2011 10:35 AM
Subject: Our appreciation

Don,

Deliberative Process / Ex. 5

Thanks -- Karen.

david.sandalow@hq.doe.gov, Carmen.Difiglio@hq.doe.gov

Deliberative Process / Ex. 5

Subject: MTG notes
To: CN=Bill Wehrum/OU=DC/O=USEPA/C=US@EPA
Cc:
From: CN=Robert Meyers/OU=DC/O=USEPA/C=US
Submit Time: 2/13/2007 00:19:00

This is the best of my recollection and notes -- will try and confirm with Sarah and Karl -- but think this is basically it. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Subject: AFS
To: CN=Charles Ingebretson/OU=DC/O=USEPA/C=US@EPA CN=Bill Wehrum/OU=DC/O=USEPA/C=US@EPA CN=Michael Catanzaro/OU=DC/O=USEPA/C=US@EPA
Cc:
From: CN=Robert Meyers/OU=DC/O=USEPA/C=US
Submit Time: 2/14/2007 22:00:01

This is our latest and greatest version. We did some further tweaking on the previous drafts -- and ended up with an amalgam between my draft of last night and the staff draft of yesterday afternoon. The

Deliberative Process / Ex. 5

Other than this change, we fixed a few other items that, in the light of day, showed that they needed some more work. In order to meet our commitment to the interagency process, we transmitted the draft to NEC about 3pm.

AFSdraftlegislation2_14_three_pm_clean.doc AFSdraftlegislation2_14_three_pm_clean.doc

Submit Time: 2/21/2007 08:17:58
From: robert meyers Personal Email / Ex. 6
Subject: AFS legislation and summary
To: Sarah Dunham/DC/USEPA/US@EPA Karl Simon/DC/USEPA/US@EPA Bill Wehrum/DC/USEPA/US@EPA Michael Catanzaro/DC/USEPA/US@EPA

Attached please find a copy of a new redline of the AFS as well as an attempt at putting together a section-by-section summary. We are expected to turn around both documents today -- with a preference to receive the summary of the legislation first.

Notwithstanding the fact that it might be logical to settle on leg language prior to finalizing the summary, I think this task is doable. The draft reflects changes that I previously outlined were requested by DOE. There was additional discussion today, but it resulted in relatively smaller changes to the draft than the DOE list. So altogether we have a manageable universe.

If anything looks odd, etc., there might be a reason for this so give me a call and i can indicate degree of flexibility we have. Hopefully the way this document should appear is in two sets of redline changes in blue and red layered on the 2.14 draft. The blue changes you should have seen before -- they constituted the 2.16 draft.

Would note some decisions --

(1)waivers are now fully joint DOE/DOA/EPA. Sale of IDs is EPA.
(2) there was a return to the $1/gallon concept in Option B, though now expressed as $1/gallon of gasoline equivalent.
(3) I added some language to the provision for adjusting compliance values based on DOE comment it was too open-ended. Take a look at approach. I am not wedded to it, but I tried to balance the concept of having flexibilty while preserving broad criteria. I think the only other way to go would be to get a lot more specific on criteria other than "new information" on which the Administrator could base his decision to adjust compliance values.

Again, any questions let me know.

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AFSSummary.doc AFSdraftlegislation2_21_07.doc

Subject: AFS
To: CN=Bill Wehrum/OU=DC/O=USEPA/C=US@EPA CN=Michael Catanzaro/OU=DC/O=USEPA/C=US@EPA CN=Stephanie Daigle/OU=DC/O=USEPA/C=US@EPA CN=Catherine Sulzer/OU=DC/O=USEPA/C=US@EPA CN=Charles Ingebretson/OU=DC/O=USEPA/C=US@EPA
Cc:
From: CN=Robert Meyers/OU=DC/O=USEPA/C=US
Submit Time: 3/13/2007 18:47:32

This is the most recent draft. Both redline (vs. 3-1-07 version) and clean version are included.
Remaining decisions are: **Deliberative Process / Ex. 5**

AFSLegislation3_13_07cleanversion.doc AFSLegislation3_13_07cleanversion.doc **AFSLegislation3_13_07.doc** AFSLegislation3_13_07.doc

Subject: Re: AFS
To: CN=Robert Meyers/OU=DC/O=USEPA/C=US@EPA
Cc: CN=Bill Wehrum/OU=DC/O=USEPA/C=US@EPA CN=Catherine Sulzer/OU=DC/O=USEPA/C=US@EPA CN=Charles Ingebretson/OU=DC/O=USEPA/C=US@EPA CN=Michael Catanzaro/OU=DC/O=USEPA/C=US@EPA CN=Josh Lewis/OU=DC/O=USEPA/C=US@EPA
From: CN=Stephanie Daigle/OU=DC/O=USEPA/C=US
Submit Time: 3/13/2007 19:04:26

Is this ready to be sent to OMB?
Robert Meyers/DC/USEPA/US

Robert Meyers/DC/USEPA/US

03/13/2007 02:47 PM

To Bill Wehrum/DC/USEPA/US@EPA, Michael Catanzaro/DC/USEPA/US@EPA, Stephanie Daigle/DC/USEPA/US@EPA, Catherine Sulzer/DC/USEPA/US@EPA, Charles Ingebretson/DC/USEPA/US@EPA

cc

Subject AFS

This is the most recent draft. Both redline (vs. 3-1-07 version) and clean version are included.
Remaining decisions are: **Deliberative Process / Ex. 5**

AFSLegislation3_13_07cleanversion.doc AFSLegislation3_13_07cleanversion.doc AFSLegislation3_13_07.doc AFSLegislation3_13_07.doc

Subject: Updated Summary of AFS Legislation
To: CN=Josh Lewis/OU=DC/O=USEPA/C=US@EPA
Cc: CN=Bill Wehrum/OU=DC/O=USEPA/C=US@EPA CN=Michael Catanzaro/OU=DC/O=USEPA/C=US@EPA CN=Charles Ingebretson/OU=DC/O=USEPA/C=US@EPA
From: CN=Robert Meyers/OU=DC/O=USEPA/C=US
Submit Time: 3/14/2007 17:59:31

AFSSummary31307.doc AFSSummary31307.doc

Submit Time: 3/17/2007 19:38:21
From: robert meyers Personal Email / Ex. 6
Subject: Fwd: AFS Legislation 3-17-07
To: Michael Catanzaro/DC/USEPA/US@EPA Bill Wehrum/DC/USEPA/US@EPA

Note: forwarded message attached.

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Received: from [68.33.147.212] by web52508.mail.re2.yahoo.com via HTTP; Sat, 17 Mar 2007 12:35:44 PDT
Date: Sat, 17 Mar 2007 12:35:43 -0700 (PDT)
From: robert meyers Personal Email / Ex. 6
Subject: AFS Legislation 3-17-07
To: daigle.stephanie@epa.gov, Lisa Epifani EOP / Ex. 6
Content-type: multipart/mixed;
boundary="Boundary_(ID_fZus+Pz1UxJA5cJNQwKsew)"
MIME-version: 1.0
Content-length: 57726

Attached please find a redline copy of the AFS legislation and a "clean copy" where I accepted changes and then just tried to make sure the spacing, etc., was o.k.

(1) The redline copy was produced by: (a) accepting all changes in the previous 3-16-07 version; (b) incorporating all notations from the discussion yesterday; (c) incorporating to the extent possible other emailed comments that were received by EPA OCIR Friday afternoon. After I incorporated the changes last night, I worked with EPA OGC today to refine some of the changes on a technical, not policy basis. In any event, all changes are in redline relative to the last draft that was circulated.

(2) I am not intending to separately circulate this draft to anyone, including Holly. I am leaving it in your hands -- stephanie and lisa -- to decide who and when this gets circulated.

(3) If you need to get a hold of me -- blackberry or home phone would probably be best Personal Phone / Ex. 6 Since I am using my home computer please remember not to just respond to this email -- but to use my work email when trying to get me by blackberry (sorry -- we will get my computer resychned with work someday).

(4) My plan is to write the one-page summary on Sunday night in case any other moving parts get moved. For example, I did not delete or bracket the language allowing subsequent changes to compliance values based on anything other than BTU content. Per yesterday's conversation, however, I did make some small technical changes to simplify the edit (i.e., we will just need to delete the last 2 sentences).

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AFSLegislation_3.17.07Redline.doc AFSLegislation_3.17.07CleanVersion.doc

Subject:
To: CN=Michael Catanzaro/OU=DC/O=USEPA/C=US@EPA CN=Stephanie Daigle/OU=DC/O=USEPA/C=US@EPA
Cc: CN=Bill Wehrum/OU=DC/O=USEPA/C=US@EPA
From: CN=Robert Meyers/OU=DC/O=USEPA/C=US
Submit Time: 3/19/2007 23:29:10

Looks like it is door # a or door #b. attached below most recent edits. outside of techncals, about only thing of note is some Deliberative Process / Ex. 5 pretty in the weeds. i can explain, if you want, but will understand if you take a pass

----- Forwarded by Robert Meyers/DC/USEPA/US on 03/19/2007 07:28 PM -----

Robert Meyers/DC/USEPA/US

03/19/2007 07:21 PM

To Lisa Eppifani

cc

Subject

Redline

3.19.07TechnicalEdits(3waiver).doc Redline 3.19.07TechnicalEdits(3waiver).doc RedlineAFSLegislation3.19.07TechEdits(EPAandAgWaiver).doc RedlineAFSLegislation3.19.07TechEdits(EPAandAgWaiver).doc

Subject: AFS/S.287 side-by-side
To: CN=Charles Ingebretson/OU=DC/O=USEPA/C=US@EPA CN=Michael Catanzaro/OU=DC/O=USEPA/C=US@EPA CN=Bill Wehrum/OU=DC/O=USEPA/C=US@EPA CN=Stephanie Daigle/OU=DC/O=USEPA/C=US@EPA
Cc:
From: CN=Robert Meyers/OU=DC/O=USEPA/C=US
Submit Time: 4/13/2007 22:13:11

This is quick side-by-side on the AFS vs. the Binghaman legislation on renewable fuels.**AFSS287sidebyside.doc** AFSS287sidebyside.doc