Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 6/28/2017 5:59:01 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Parinello, Chris [Chris.Parinello@valero.com]; Zelermyer, Salo [Salo.Zelermyer@valero.com]; Kime, Robin [Kime.Robin@epa.gov]

Subject: EPA / Valero (re: RINs)
Location: Location: 1200 Pennsylvania Avenue, NW (North) - Room 3528 WJCN

Start: 6/30/2017 5:15:00 PM
End: 6/30/2017 5:45:00 PM
Show Time As: Busy

2016 U.S. ETHANOL EXPORTS AND IMPORTS

STATISTICAL SUMMARY

RFA RENEWABLE FUELS ASSOCIATION

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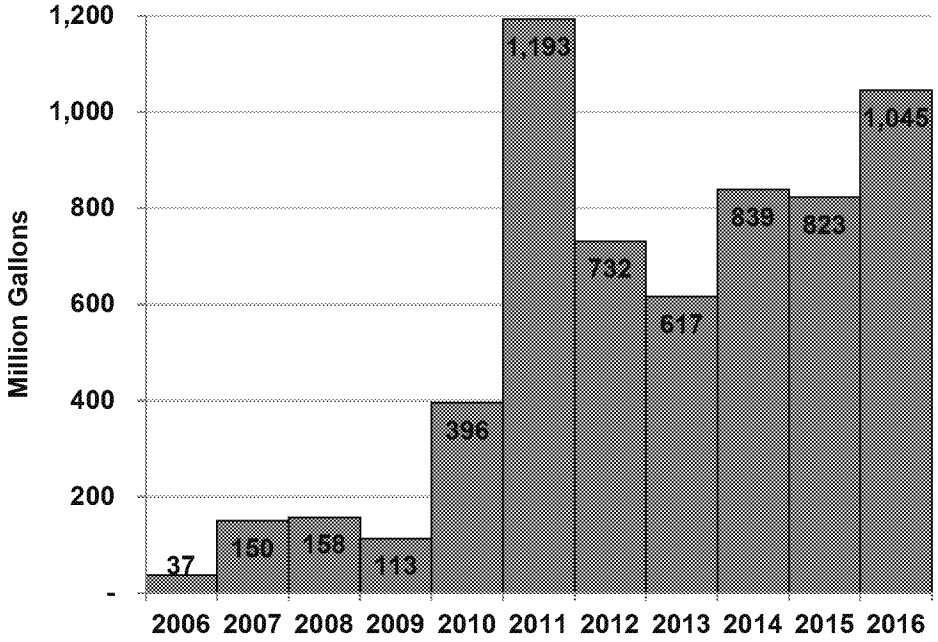
2016 U.S. ETHANOL EXPORTS

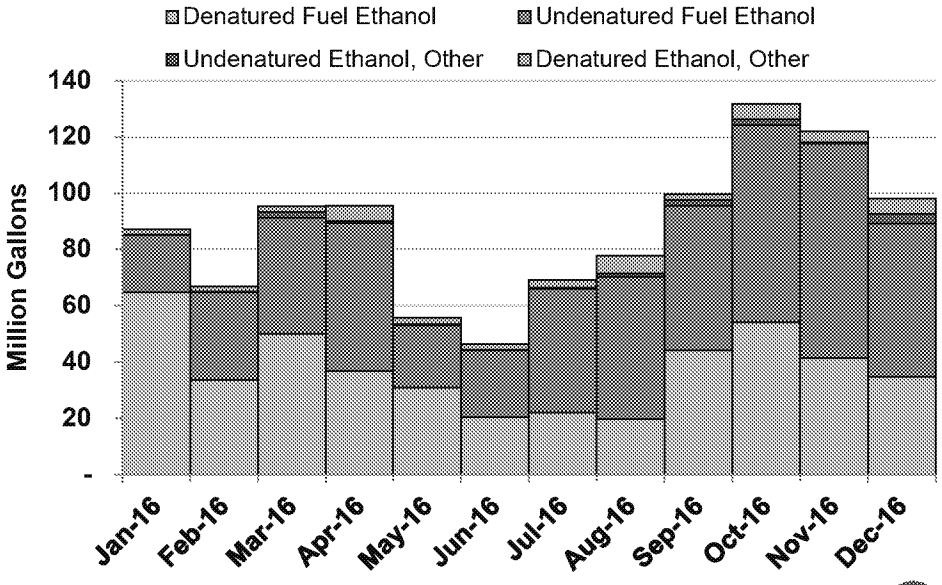
RFA RENEWABLE FUELS ASSOCIATION

U.S. Ethanol Exports, 2006-2016



In 2016, the U.S. exported **1.05 billion gallons** of ethanol—the second-highest annual total on record. In 2016, American-made ethanol was exported to **more than 50 countries** on all six inhabited continents around the world.

2016 Monthly Ethanol Exports, by Type



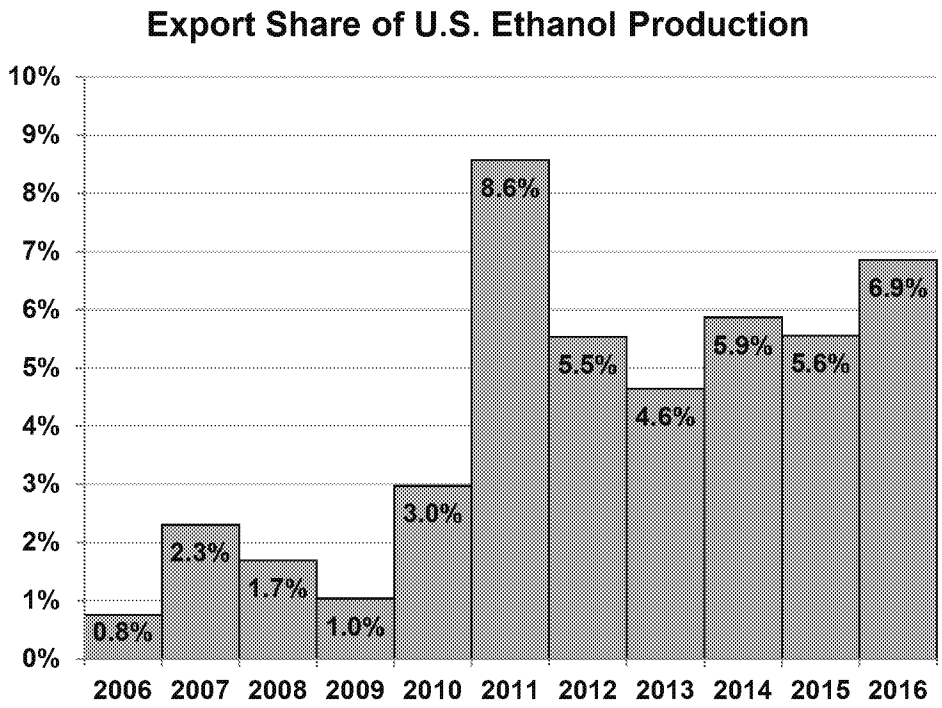
Undenatured ethanol for fuel use accounted for **51%** of total exports in 2016, overtaking denatured fuel ethanol as the leading ethanol export product for the first time ever. Meanwhile, denatured ethanol for fuel use made up **43%**. Denatured and undenatured ethanol for industrial uses totaled **5%**.

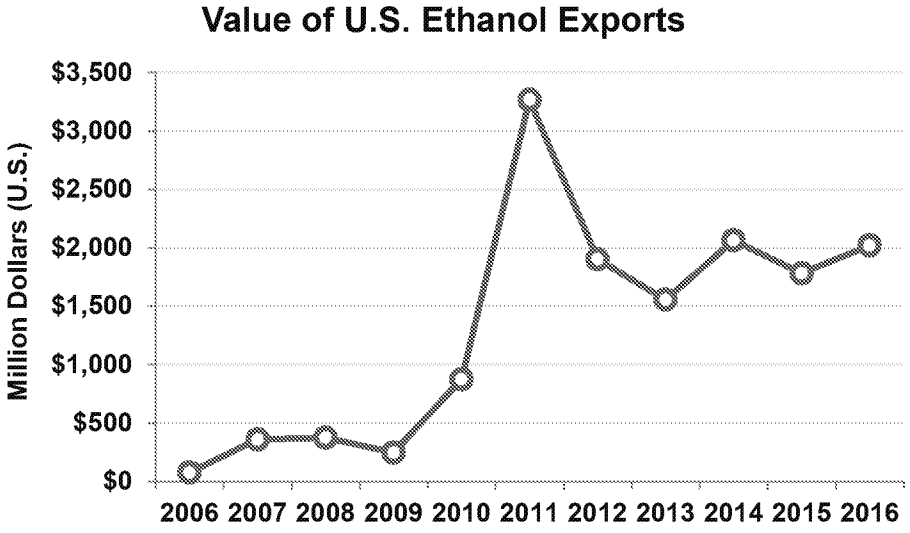
Sources: U.S. Census Bureau, Department of Commerce, and Department of Agriculture

2016 U.S. ETHANOL EXPORTS

RFA RENEWABLE FUELS ASSOCIATION

An estimated **6.9%** of total U.S. ethanol production was exported in 2016, the second-highest share in history and highest in five years.





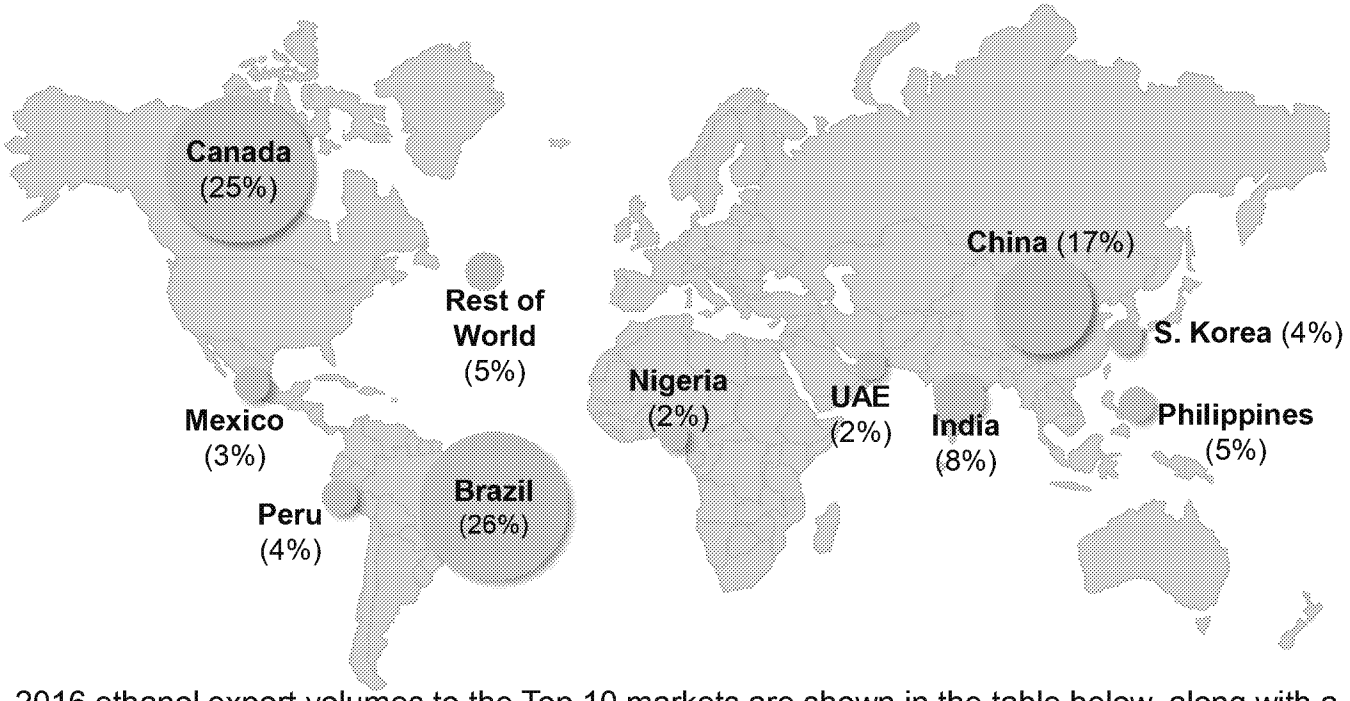
U.S. ethanol exports were valued at **$2.02 billion** in 2016, up 13% from 2015 and the third-highest on record.

Sources: U.S. Census Bureau, Department of Commerce, and Department of Agriculture

2016 ETHANOL EXPORTS: TOP MARKETS

RFA RENEWABLE FUELS ASSOCIATION

Top markets for U.S. ethanol exports in 2016



2016 ethanol export volumes to the Top 10 markets are shown in the table below, along with a comparison to 2015 volumes. All figures shown in millions of gallons, unless otherwise noted.

Country	Den. Fuel	Und. Fuel	Den. Other	Und. Other	2016 Total	2015 Total	Change
Brazil	21.2	245.8	-	0.1	**267.0**	**112.6**	**+137%**
Canada	235.5	-	23.6	0.2	**259.3**	**251.3**	**+3%**
China	144.2	34.8	-	0.1	**179.1**	**73.9**	**+142%**
India	-	83.2	-	0.4	**83.6**	**37.2**	**+125%**
Philippines	-	54.1	-	0.2	**54.3**	**73.0**	**-26%**
Peru	21.6	20.5	-	-	**42.1**	**27.5**	**+53%**
South Korea	7.2	25.5	0.1	6.7	**39.5**	**55.1**	**-28%**
Mexico	-	26.3	0.5	2.2	**29.0**	**33.7**	**-14%**
Nigeria	3.6	2.7	15.8	-	**22.1**	**6.7**	**+230%**
U. Arab Emir	8.1	12.0	-	-	**20.2**	**28.6**	**-29%**

Sources: U.S. Census Bureau, Department of Commerce, and Department of Agriculture

U.S. ETHANOL EXPORTS: SHIFTING MARKETS

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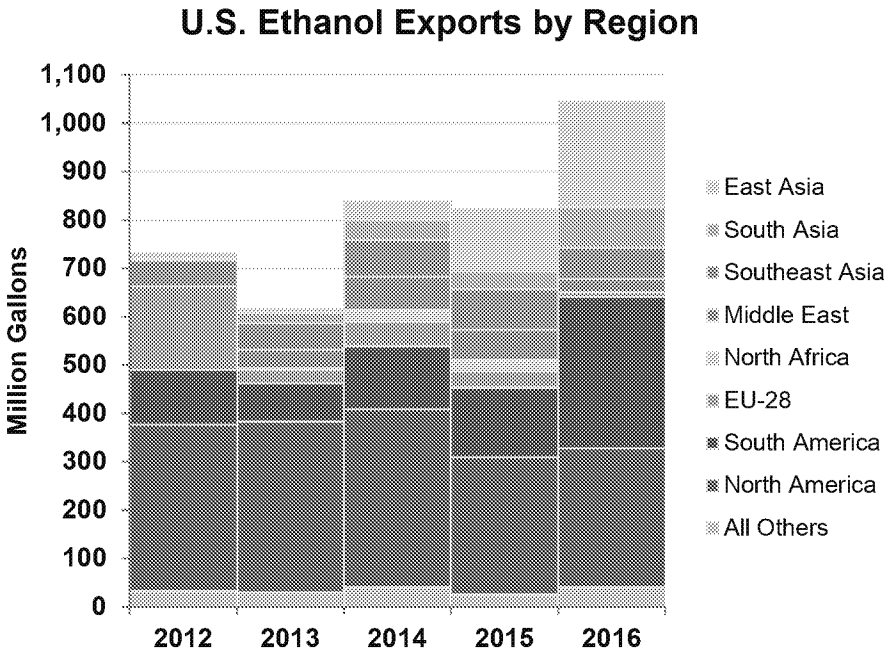
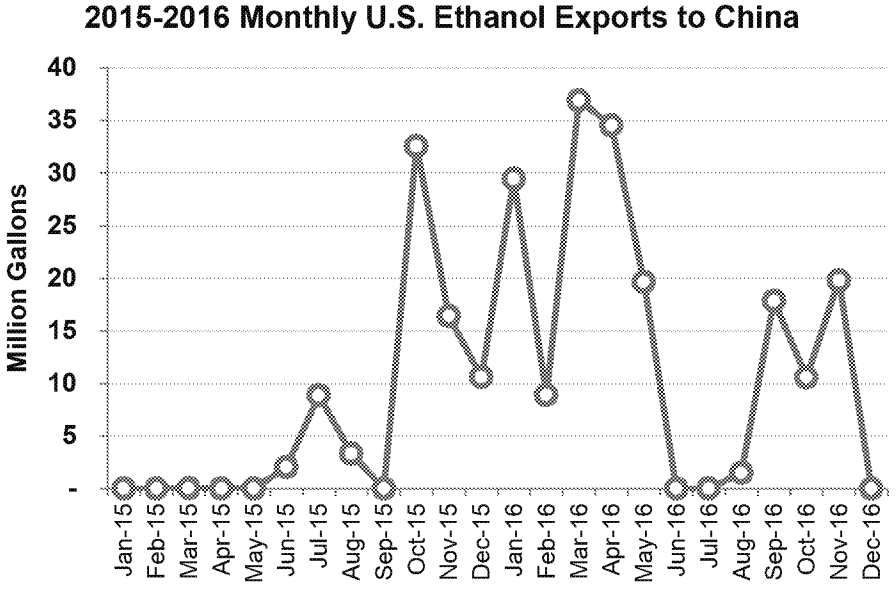
Exports to **South America** and **East Asia** boomed in 2016, growing 118% and 69%, respectively, over 2015 levels. Meanwhile, exports to **Southeast Asia**, the **Middle East**, and **North Africa** slumped. After importing 174 million gallons in 2012, the **EU-28** brought in just 10 million gallons in 2016.





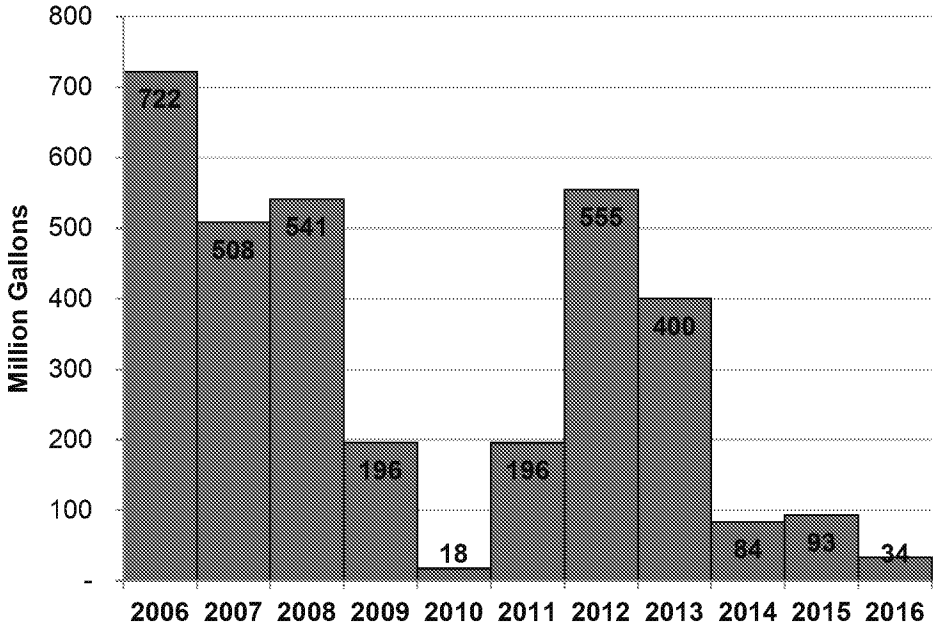
U.S. ethanol exports to China remained **highly volatile** in 2016. China imported 110 million gallons in the first four months of the year, dropped out of the market in June and July, returned in the fall, then exited again in December.

Sources: U.S. Census Bureau, Department of Commerce, and Department of Agriculture

2016 U.S. ETHANOL IMPORTS

RFA RENEWABLE FUELS ASSOCIATION

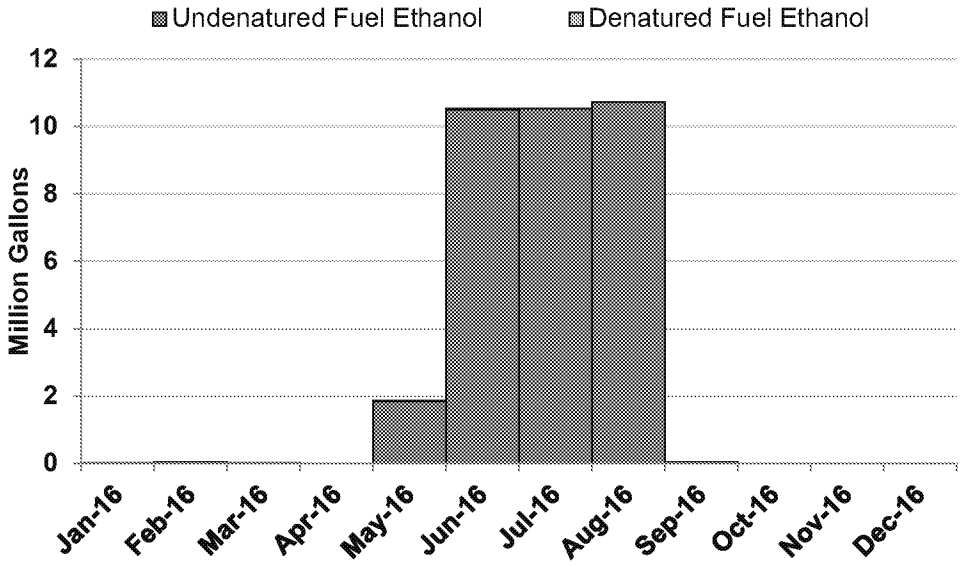
U.S. Fuel Ethanol Imports, 2006-2016



In 2016, the U.S. imported just **34 million gallons** of fuel ethanol, down **64%** from 2015 and the lowest annual total in six years. U.S. ethanol imports have averaged just **70 million gallons** annually over the past three years.

2016 Monthly Ethanol Imports, by Type

Undenatured ethanol for fuel use accounted for **more than 99%** of total imports in 2016, while denatured ethanol for fuel use made up less than **1%**. More than 99% of 2016 imports were received in the May-August period.



Sources: U.S. Census Bureau, Department of Commerce, and Department of Agriculture

2016 U.S. ETHANOL IMPORTS

RFA RENEWABLE FUELS ASSOCIATION

Top Suppliers of U.S. Ethanol Imports
(million gallons)

Country	2016 Total	2015 Total
Brazil	31.8	85.4
Netherlands	-	3.2
Spain	-	1.9
Guatemala	1.8	1.8
All Others	0.1	0.9
TOTAL	**33.7**	**93.2**

Brazil saw its shipments to the U.S. **fall by 63%** in 2016, but it remained as the leading source of U.S. fuel ethanol imports. Guatemala was the only other supplier to register meaningful volumes in 2016. Top suppliers of U.S. fuel ethanol imports are shown in the table at left, along with a comparison to 2015 volumes.

California ports received **99.7%** of U.S. fuel ethanol imports in 2016, compared to just **38%** in 2015. The share of imports received through the port of New York fell from 13% in 2015 to less than 1% in 2016. Historical import hubs like Miami, Tampa, and Houston recorded no fuel ethanol imports in 2016.

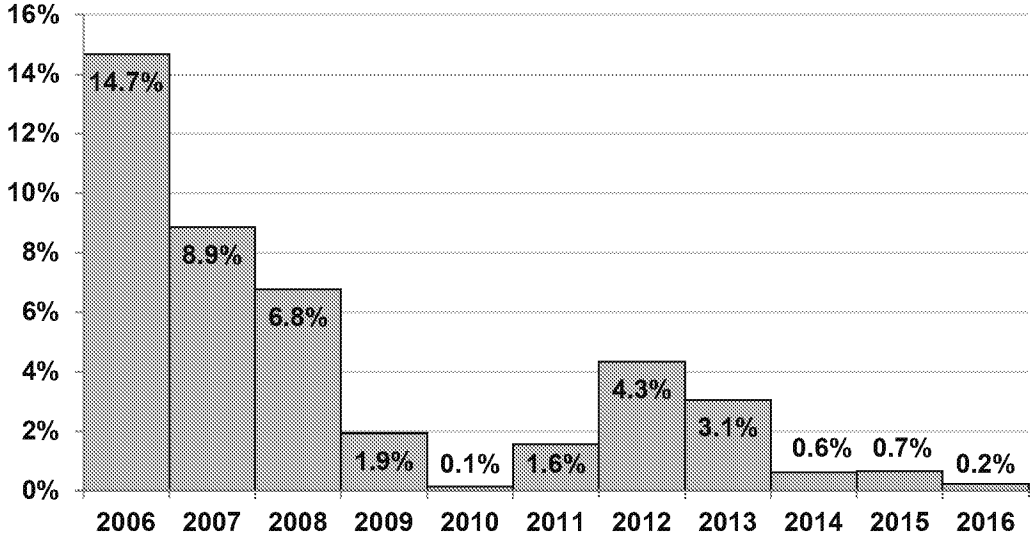
Top Ports of Entry for 2016 U.S. Ethanol Imports

Sources: U.S. Census Bureau, Department of Commerce, Department of Agriculture, and U.S. International Trade Commission

IMPORTS RELATIVE TO USE & NET EXPORTS

RFA RENEWABLE FUELS ASSOCIATION

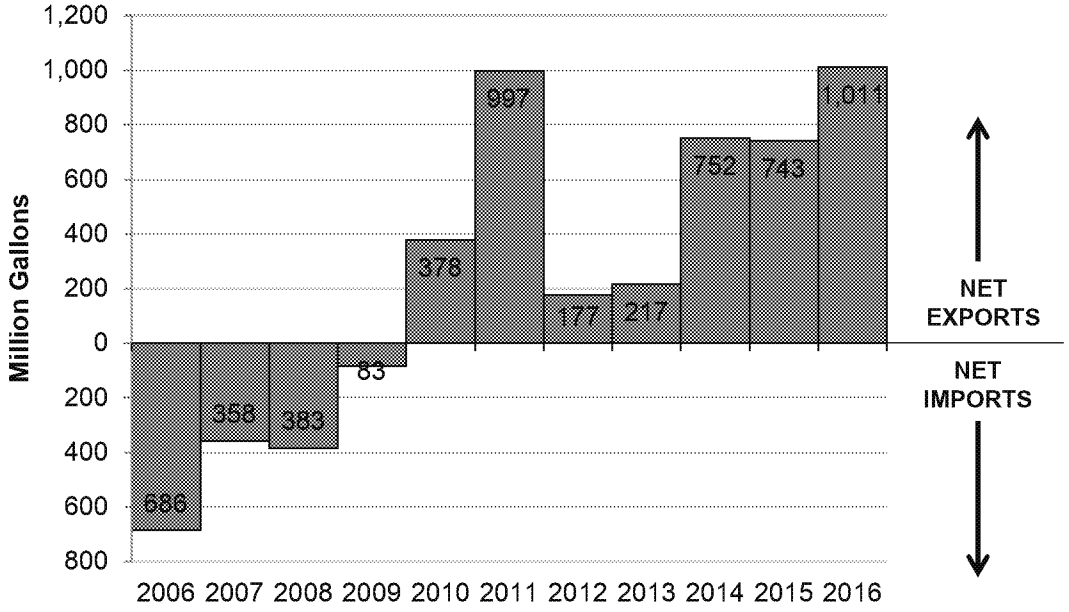
U.S. Ethanol Imports: Share of Total U.S. Ethanol Consumption



Imports accounted for **far less than 1%** of U.S. ethanol consumption in for the third year in a row. Ethanol import reliance is down dramatically from the 2005-2008 timeframe.

U.S. Net Ethanol Imports/Exports, 2005-2015

The U.S. set a **new record for net exports in 2016**, barely edging out 2011's total. The U.S. extended its streak as a net exporter of ethanol to seven years.



Sources: U.S. Census Bureau, Department of Commerce, Department of Agriculture, and U.S. Energy Information Administration

ABOUT THE DATA IN THIS REPORT

RFA RENEWABLE FUELS ASSOCIATION

U.S. Ethanol Export Data

- The export data in this report includes exports classified under the following Harmonized Tariff Schedule (HTS) codes:
    - **2207200010**: Ethyl alcohol and other spirits, denatured, of any strength: For fuel use
    - **2207106010**: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For non-beverage purposes: For fuel use
    - **2207200090**: Ethyl alcohol and other spirits, denatured, of any strength: Other
    - **2207106090**: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For non-beverage purposes: Other
- 2207200090 and 2207106090 are included in this report because there is some anecdotal evidence that exports of ethanol intended for fuel use are sometimes classified under these codes. In any case, ethanol classified under these codes represented just 5% of the 2016 U.S. exports discussed in this report.

U.S. Ethanol Import Data

- The import data in this report includes imports classified under the following Harmonized Tariff Schedule (HTS) codes:
    - **2207200010**: Ethyl alcohol and other spirits, denatured, of any strength: For fuel use
    - **2207106010**: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For non-beverage purposes: For fuel use

Sources

- All data in this report comes from the U.S. Census Bureau, U.S. Department of Commerce, U.S. Department of Agriculture, U.S. International Trade Commission, and U.S. Energy Information Administration

The Renewable Fuels Association publishes **monthly** summaries of export and import data for ethanol and distillers dried grains on its award-winning E-Blog.

This report was prepared by Geoff Cooper, who may be contacted at gcooper@ethanolrfa.org or 636.594.2284.

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Washington, D.C. 20024
202.289.3835
www.EthanolRFA.org

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Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/17/2018 3:26:02 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]

Subject: FW: Meeting: Valero
Attachments: RE: Meeting with Valero
Location: 5415 WJCN

Start: 4/18/2018 3:30:00 PM
End: 4/18/2018 4:30:00 PM
Show Time As: Tentative

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/13/2018 5:18:12 PM
To: Parinello, Chris [Chris.Parinello@valero.com]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Meeting with Valero

Perfect -confirmed for Wednesday, April 18th at 11:30AM. Just give me a call when you are at security and I'll come down.

Directions and procedures to 1200 Pennsylvania Avenue NW:
Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn right. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, North Entrance.

Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left – that is the North Lobby of the William Jefferson Clinton building.

Security Procedures: A government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared and arrive at the meeting room on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. If you are a foreign national entering on a non-US passport, please let us know in advance, as there is a separate clearance process.

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Friday, April 13, 2018 12:30 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Re: Meeting with Valero

Could we do 11:30 Wednesday for 45 mins?

Sent from my iPhone

On Apr 13, 2018, at 12:11 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

> Hey Chris,
>
> Happy to set something up. If you only need thirty minutes Mandy could do Monday at 5:00PM; Tuesday at 12:00PM or 5:00PM. Wednesday 8:30-9:15 and then currently wide open 11:30 – 3:00 if you are looking for 45 or an hour. Just let me know what works or if easier to discuss by phone feel free to give me a call.
>
> Alex
>
> **Alex Dominguez**
> Policy Analyst to the Principal Deputy

Office of Air and Radiation
U.S. Environmental Protection Agency
D: 202-564-3164
C: 202-578-5985

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Thursday, April 12, 2018 8:09 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Meeting with Valero

Hi Mandy and Alex—Do you all have time to meet with Salo and me next week on the ongoing RFS discussions? We are free anytime Monday and Tuesday, and Wednesday morning. Please let me know if that works. Thank you!—Chris

Sent from my iPhone

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/17/2018 3:26:04 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [dominguez.alexander@epa.gov]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]
CC: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]

Subject: Meeting: Valero
Attachments: RE: Meeting with Valero
Location: 5415 WJCN

Start: 4/18/2018 3:30:00 PM
End: 4/18/2018 4:30:00 PM
Show Time As: Busy

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/17/2018 3:26:04 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [dominguez.alexander@epa.gov]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]
CC: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]

Subject: Meeting: Valero
Attachments: RE: Meeting with Valero
Location: 5415 WJCN

Start: 4/18/2018 3:30:00 PM
End: 4/18/2018 4:30:00 PM
Show Time As: Busy

From: Gunasekara, Mandy
Sent: Friday, April 13, 2018 5:20:57 PM UTC
To: Gunasekara, Mandy; Dominguez, Alexander; Baptist, Erik
Subject: Meeting: Valero
When: Wednesday, April 18, 2018 3:30 PM-4:30 PM.
Where: 5415 WJCN

To: Mandy Gunasekara, Alexander Dominguez, Erik Baptist

Outside Attendees:
Salo Zelermyer
Chris Parinello

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 4/18/2018 6:58:09 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,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: Follow Up Materials on Potential RINs Trading Reforms
Attachments: ValeroRINMarketComments.pdf

Importance: High

Hi Mandy, Alex, David—Thank you again for taking the time to meet today. As promised, attached you'll find the section of Valero's 2018 RVO comments outlining potential RINs trading reforms. Also below is a more detailed list (based on our previously sent document) of actions EPA could take. Happy to discuss further. Thanks!—Chris

RINs Trading Reforms

- EPA will require that, by November 1, 2018, any obligated party and any RIN generating/separating party that has RINs inventory greater than 120% of its 2017 obligation to sell such excess RINs to an obligated party whose RIN inventory is less than 120% of its 2017 obligation, and will not exceed such volumes resulting from the transaction, within 30 days. Unobligated parties would also be required to sell RINs to an obligated party within 30 days of RIN acquisition.

- For the 2019 compliance year and beyond, EPA will require that, in a given compliance year, any obligated party and any RIN generating/separating party that has RINs inventory greater than 120% of its prior year's obligation to sell to an obligated party whose RIN inventory is less than 120% of its 2017 obligation, and will not exceed such volumes resulting from the transaction within 30 days (exception: EPA may issue a waiver on this requirement for asset purchases or other one-time transactions that would impact the party's obligation). Unobligated parties would not be allowed to maintain a RIN position beyond 30 days following RIN acquisition.

- By January 1, 2019, EPA will issue a final rule barring market manipulation in the RIN market. Market manipulation will be defined to include activities such as: spoofing, setting artificial price floors, reporting false transaction data, round trip trades, etc.

Chris Parinello
Director, Federal Government Affairs
Valero Energy Corporation
Phone: (202) 560-5451
Email: chris.parinello@valero.com

VII. RIN market operational problems.

In the proposal, EPA expressed interest "in further assessing whether and how the current trading structure provides an opportunity for market manipulation. To that effect, EPA seeks comment and input on potential changes to the RIN trading system that might help address these concerns."[56] EPA also said it "has continued to explore additional ways to increase program transparency in order to support the program and share data with all stakeholders."[57] EPA is "interested in providing more information, to the extent consistent with our obligations to protect confidential business information. EPA seeks comment on specific data elements and posting frequency that stakeholders believe would be useful to help with market transparency and liquidity."[58]

Understanding the nature of the RIN market requires realization that the RIN market is virtually unregulated. This stands in stark contrast to trading markets for commodities and securities. A RIN is simply a representation of fuel that is blended; a RIN has no value outside of the RFS market. However, due to the structure of the RFS, obligated parties—particularly RIN-short parties—are a captive market for RINs. They must purchase a government mandated and publicly known quantity of RINs every year regardless of the price. Thus, RIN-short obligated parties are captive buyers while sellers can dictate trade terms.

A fundamental characteristic of the RIN market is that a very small number of companies control the vast majority of unobligated RINs. Until 2013, the RIN market was relatively stable—RIN prices were low.[59] After 2013, when the RVO approached the level that would begin to breach the blendwall, the market became vulnerable to price volatility[60] and structural deficiencies became apparent.[61] The structural deficiencies include:

- The RIN market is unregulated.
- The market is easily moved—by speculation, news, purchasing or selling efforts—causing price volatility.
- There is a small number of sophisticated market participants that control a large number of the surplus RINs—making the market extremely "thin" and illiquid.
- Among RIN-long parties, there is an ability to actively drive the market.
- There is not a centralized or uniform platform for trading.
- There are no limitations on who can participate in the market, resulting in pure speculatory participants in the market.

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[56] 82 Fed. Reg. at 34,211.
[57] *Id.*
[58] *Id.*
[59] Minsk 2015 Comments, *supra* note 20 at 2.
[60] Numerous media outlets reported on this "RINsanity." *See e.g.,* Gretchen Morgenson, *Wall St. Exploits Ethanol Credits, and Prices Spike*, Wall St. Journal (Sept. 14, 2013), http://www.nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike.html?pagewanted=all&_r=0 ("For now, companies like Valero say that they are eating the cost of high RIN prices, which are still eight times more expensive than they were in January.").
[61] Paul Bernstein, NERA Economic Consulting, *Effects of Moving the Compliance Obligation under RFS2 to Suppliers of Finished Products* (July 27, 2015), ["NERA Report"], previously submitted to EPA with Valero's Petition for Rulemaking and provided here as Attachment 7.

- The market is not transparent—prices are not disclosed and there is no obligation to accurately report prices.
- As an environmental trading mechanism, the market fails to provide the option to comply through blending rather than through purchasing of RINs. This is due to the placement of the obligation separate from the place of compliance and other market structure issues.

A. RIN market manipulation.

i. Types of market manipulation.

Manipulation in the RIN market is possible due to the lack of market controls, lack of market regulation and the lack of a centralized clearinghouse. The unregulated RIN market allows for disruptive trading practices. RIN market trading takes place largely on Yahoo Instant Messenger not through a clearinghouse. Thus, records of trading practices are not preserved and activity in the market occurs over very short periods of time—via instant messaging.

Disruptive trading practices include:

- Violation of bids or offers: Traders put offers to sell RINs at a specific price and when a buyer takes the offer, the seller refuses to sell. Because the market is unregulated, this practice is not illegal but it is disruptive and it is manipulative.

- Spoofing: Traders place bids or offers with intent to cancel before the orders are filled. The flurry of activity around the buy or sell orders is intended to attract other high-frequency traders to induce a particular market price.

- Setting artificial price floors: RIN-long dominant parties post blanket offers to purchase RINs below a certain target price. This message/offer is sent to all known large sellers of RIN and is used to set an artificial pricing floor.

The practices listed above fall into three types of market manipulation described by the Brattle Group: uneconomic trades, outright fraud, or the exercise of market power. The Brattle Group identifies each as illegal market manipulation for securities but describes the difficulty in identifying and enforcement particularly for uneconomic trades. "Uneconomic trading has also provided the basis for several enforcement actions brought by the agencies empowered with anti-manipulation authority."[62] They define uneconomic trading as "loss-based manipulative behavior: intentionally losing money on anomalous price-making trades to benefit the value of the trader's related price-taking positions, where losses are measured relative to the trader's opportunity costs."[63] But where the Brattle Group makes recommendations for identifying and

[62] Shaun D. Ledgerwood, The Brattle Group, *A Framework for the Analysis of Market Manipulation* at 256 (2012) ["Brattle Group Report"], provided here as Attachment 8.
[63] *Id.*

enforcing against market manipulation that occurs in the regulated markets, the RIN market cannot be fixed by the framework recommended because the RIN market is unregulated.

ii. The RIN market is vulnerable to manipulation.

First, because there is no centralized clearinghouse or exchange for RINs and no requirement for accurately reporting RIN trading information, information is spread thin and across many brokers contributing to chaotic trading with no natural order to trade flow. The lack of a centralized clearinghouse means also that there is no centralized validation of RIN volumes or RIN prices and no trader accountability. Because of the lack of a centralized trading exchange, RIN trading requires bilateral agreements between traders; this is a transactional barrier to acquiring or trading RINs. A RIN purchaser acquiring RINs from one party could have no way to verify RINs that have come through a third party and no ability to directly purchase RINs from that third party because agreements are not in place with the third party. Similarly, some RIN sellers may be forced to sell RINs to a RIN-long party because they lack direct contractual agreements with enough other RIN purchasers.

Second, the market is not regulated. Due to the lack of transparency of information and the lack of regulation, RIN traders face no repercussions for doing things that are illegal in other markets or that might be considered manipulative. Some actions by traders might constitute collusion or market manipulation under other existing law, but EPA has taken no action to investigate.

Third, the volume of RIN trading, due to the disparity between those who need RINs and those who have RINs, contributes to the profitability of manipulative practices.

Fourth, misalignment of the point of obligation with the natural compliance point creates the fundamental market flaw that is the existence of RIN-long parties controlling large numbers of RINs.

This thin and unregulated environment together with high volatility in RIN prices makes the RIN market prone to manipulation. Participants that control large numbers of RINs can hold RINs to short the market. The dominance of these parties makes the RIN market far less liquid. As explained in a report by the Brattle Group,[64] liquidity in the market plays a critical role in the success or failure of manipulations. Manipulation in thin markets is more likely to be profitable.

> Inelastic demand or supply is symptomatic of illiquid bids or offers, respectively, thus making a manipulation more likely to be profitable if price movements are directionally aimed at the thin side of the market. If an agent's private information set gives it the ability to predict times when such thinness is likely to occur, it can coordinate its price-making efforts accordingly to trigger a manipulation. If markets are efficient, other market participants will perceive the opportunity and arbitrage away future efforts. Conversely, if the pattern of thinness is irregular or, more likely, if the manipulator can influence when and whether such illiquidity emerges (by the exercise of market power,

[64] *See generally* Brattle Group Report, *supra* note 62.

> the execution of uneconomic trades, or the commission of outright fraud), the ability to successfully repeat the manipulation over time increases. This possibility may support the logic of investigating and bringing enforcement actions against attempted manipulations, for the failure of such attempts might only reflect that the would-be manipulator misjudged or was testing the depth of market liquidity it faced at particular moments in time.[65]

A paper by Ramon Benavides, a RIN trader and biofuel professional, describes how speculation and manipulation takes place in the RIN market at the expense of RIN-short obligated parties and to the advantage of investors, large retailers, and RIN-long refiners.[66] Mr. Benavides describes how speculators benefit even as RIN prices increase without any corresponding increase in renewable fuels. Charles River Associates ("CRA"),[67] a global economic consulting firm; Doug Parker,[68] a federal enforcement expert; and Joe Jobe,[69] the former director of the National Biodiesel Board; and others agree that the RFS program is vulnerable to market manipulation, speculation and fraud.

B. Other RIN market operational problems.

EPA acknowledges other concerns about the RIN market, stating that EPA is working with appropriate market regulators to analyze targeted concerns of some stakeholders.

Several comments were submitted in EPA RFS rulemaking dockets addressing RIN market problems. Valero indicated that potential RIN speculation and fraud might undermine the RFS program.[70] Valero included references to experts who described the failure of the RIN system to function as intended. In February 2017 comments, Valero described harms under the current RFS arising from RIN fraud, RIN speculation and volatility and the impacts on small and independent refiners and small retailers and the harm to the program, renewable producers, and ultimately consumers.[71]

C. Recommendations.

The Brattle Group report demonstrates that identifying and preventing market manipulation is very difficult. Thus, EPA's priority should be to fix any part of the RFS structure that makes it susceptible to manipulation, including by moving the point of obligation or

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[65] *Id.* at 279.
[66] Ramon M. Benavides, Global Renewable Strategies and Consulting, LLC, *The US Renewable Identification Number: RINs Trading Market* at 8, 13-14 (Mar. 6, 2017), Docket No. EPA-HQ-OAR-2016-0544-0412, provided here as Attachment 9.
[67] Charles River Associates, *Market Frictions and the RINs Point of Obligation* (Feb. 2017), provided here as Attachment 10.
[68] Doug Parker, E&W Strategies, *Update to: September 4, 2016 White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* (Feb. 3, 2017), provided here as Attachment 11.
[69] Letter from Joe Jobe, Rock House Advisors, LLC to EPA, Office of Air and Radiation at 7 (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0271, provided here as Attachment 12.
[70] Valero Petition for Rulemaking, *supra* note 18 at 24.
[71] *See* Valero Point of Obligation Comments, *supra* note 19 at 9, 15, 26.

lowering the RVO. Valero firmly believes that EPA can only truly resolve the problems with the RIN market by (1) restructuring the obligation, as Valero petitioned, to align it with the point of compliance, (2) adjusting the RVO to limit the mandates to correspond with the blend wall and domestic biofuel supply, (3) provide greater liquidity to the RIN market and lowering RIN prices, or (4) changing the program to provide greater RIN liability to limit manipulation. Absent these fundamental changes, EPA may help curb hoarding, speculation and manipulation that artificially raises RIN prices by implementing at least some of the following measures:

- Mandate accurate reporting of prices and volumes of RINs to EPA.
- Limit RIN purchasing to obligated parties and in relative proportions to their obligations.
- Impose position limits, trading limits, or require position/trading disclosures.
- Prohibit parties from taking actions to set artificial price floors (as described in A.i. above).
- Provide for market price surveillance and investigate manipulation.
- Set limitations on holding carry-over RINs by unobligated parties and RIN-long parties.
- Set a target RIN price and provide EPA-issued RINs when that target is exceeded.

VIII. EPA should adjust its treatment of biofuel exports under the RFS.

EPA requested comments regarding the treatment of imported biofuels relative to domestically produced biofuels and the statutory goals. We have included above our thoughts on the treatment of imported biofuels. A logical outgrowth of treatment of imported biofuels for the purposes of meeting statutory goals is the treatment of domestically produced exported biofuels and the same statutory goals. EPA should revise the RFS to allow all domestically produced biofuel to be used for compliance under the RFS, including ethanol exported for use as transportation fuel and exported biodiesel. EPA should eliminate the export RVO, eliminate the denaturant prerequisite for RINs for renewable fuel, and allow RINs for all exported biofuels. These revisions will increase available RINs for compliance and will promote the purposes of the RFS by supporting domestic renewable fuel production.

A. EPA should eliminate the export RVO and allow RINs generated by all domestically produced renewable fuel to be used for compliance with the RFS.

EPA devised a system under which exports of renewable fuel are burdened with a separate export RVO ("ERVO") that requires exporters to retire the RINs attached to the exported renewable fuels.[72] This ERVO penalizes domestically-produced, exported renewable fuel in comparison to foreign-produced, imported renewable fuel. It is well within EPA's discretion to eliminate the ERVO—thereby allowing RINs generated from all renewable fuels produced in the U.S. to be used for compliance. Critically, its elimination would support several important national goals. It would support job creation by expanding the market for domestically produced renewable fuels, improve our trade balance by increasing exports, enhance our energy and economic security by reducing net fuel imports and reinforcing our growing role as an

[72] 40 CFR §§ 80.1427(c), 80.1430.

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/17/2018 3:26:02 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]

Subject: FW: Meeting: Valero
Attachments: RE: Meeting with Valero
Location: 5415 WJCN

Start: 4/18/2018 3:30:00 PM
End: 4/18/2018 4:30:00 PM
Show Time As: Tentative

From: Gunasekara, Mandy
Sent: Friday, April 13, 2018 5:20:57 PM UTC
To: Gunasekara, Mandy; Dominguez, Alexander; Baptist, Erik
Subject: Meeting: Valero
When: Wednesday, April 18, 2018 3:30 PM-4:30 PM.
Where: 5415 WJCN

To: Mandy Gunasekara, Alexander Dominguez, Erik Baptist

Outside Attendees:
Salo Zelermyer
Chris Parinello

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 5/9/2018 5:13:47 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: RE: Conversation with David Harlow

Copy. Will get back to David now. You'll see it reflected on your calendar when confirmed.

From: Harlow, David
Sent: Wednesday, May 9, 2018 11:54 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Conversation with David Harlow

Alex,

I'm happy to talk to him this week, but it'll have to Friday. I'm in a meeting (with Valero; Mandy might be in that one, too, I don't recall) from 10:30 a.m. – 11:30 a.m.; and then we're supposed to have our weekly scheduling meeting from 2:00 p.m. – 2:45 p.m. Bill won't be here, of course, but I haven't seen that that's been canceled as of yet.

In other time on Friday works okay for me for a call.

Thanks.

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: Dominguez, Alexander
Sent: Wednesday, May 9, 2018 11:33 AM
To: Harlow, David <harlow.david@epa.gov>
Subject: FW: Conversation with David Harlow

Would you like to talk with David this week? And if so any preferred day/time?

From: David Friedman [mailto:DFriedman@afpm.org]
Sent: Wednesday, May 9, 2018 11:28 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Conversation with David Harlow

Alex- Hope all is well with you. I wanted to schedule a brief call with David Harlow regarding NSR RMRR. Will he have 10-15 minutes this week for a chat?

David N. Friedman
Vice President
Regulatory Affairs

American
Fuel & Petrochemical
Manufacturers
1800 M Street NW
Suite 900 North
Washington, DC 20036
202.457.0480 office
202.844.5508 direct
202.457.0486 fax

dfriedman@afpm.org

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Message

From: Braniff, Mimi P [mimi.braniff@delta.com]
Sent: 7/2/2018 2:02:39 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Monroe participation in industry meeting
Attachments: ATT00001.txt

Bill- Thanks again for the time last week. We appreciate your advice, and will be following up with Ray Starling.

Please do keep us informed on the proposed industry meeting. At the last meeting, Jeff Warmann (CEO of Monroe) and Joe Gorder (CEO of Valero) represented the merchant refiners. They were a good combination because of Valero's dual industry position as a refiner and a participant in the ethanol industry. As for Monroe, we are the other PA refiner that can represent the plight of the East Coast refiner. In 2016 the cost of compliance with the RFS ($220 million) was more than what we paid for the refinery ($150 million). Clearly this is not sustainable... We are willing to engage and would love to participate in a future meeting.

Please let us know if you need any additional information from our end.

Best, Mimi

Mimi Braniff | [redacted] | Managing Director–Government Affairs
P: 202.243.3580 | 1212 New York Ave NW Ste 200 Washington, DC 20005

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/15/2018 5:43:59 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: CPP Meeting

I'm calling into this one.

Sent from my iPhone

> On Aug 15, 2018, at 12:43 PM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:
>
> Yes. I'll go find him now. It's right after the Valero meeting so he can just stay w/ Andrew for it
>
> -----Original Message-----
> From: Wehrum, Bill
> Sent: Wednesday, August 15, 2018 1:38 PM
> To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> Cc: Lewis, Josh <Lewis.Josh@epa.gov>
> Subject: Re: CPP Meeting
>
> Will you please ask Clint to attend? It will be hard for me to break away from things here.
>
> _____
> Bill Wehrum
> Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency
> (202) 564-7404
>
>> On Aug 15, 2018, at 12:24 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>>
>> Yes- it's a discussion of the comms plan.
>>
>> Sent from my iPhone
>>
>>> On Aug 15, 2018, at 12:16 PM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:
>>>
>>> My understanding is it's focused mainly on the rollout (OPA and OCIR will be there). Mandy, is that right?
>>>
>>> -----Original Message-----
>>> From: Wehrum, Bill
>>> Sent: Wednesday, August 15, 2018 12:57 PM
>>> To: Lewis, Josh <Lewis.Josh@epa.gov>
>>> Subject: CPP Meeting
>>>
>>> Josh - Do you know what this afternoon's CPP meeting is about?
>>>
>>> _____
>>> Bill Wehrum
>>> Assistant Administrator
>>> Office of Air and Radiation
>>> U.S. Environmental Protection Agency
>>> (202) 564-7404

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 5/9/2019 6:19:15 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: FW: Materials for Thursday 10:30am Fuels Weekly
Attachments: 2019.05.09 agenda, Fuels Weekly with OAR.docx; Comment Summary E15.docx; 0864 - RFA.pdf; D27495 - Clean Air Task Force.pdf; D29789 - Growth Energy.pdf; RIN Market Reform_comments highlights.docx; Valero comments on RIN Market Reform.pdf; BP comments on RIN Market Reform.pdf

Re-sending this email with some of the attachments removed. In the event you're going back to re-read any of this material, please use this email and delete the one I sent last evening.

Valero

Submitted Via eRulemaking Portal

Administrator Andrew Wheeler
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 28221T
Washington, D.C. 20460

Attn: Docket ID No. EPA-HQ-OAR-2018-0775

RE: Proposed Rule: Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations

Dear Administrator Wheeler:

The Valero Energy Corporation and its subsidiaries (collectively, "Valero") submit these comments on EPA's proposed rule for Modifications to Fuel Regulations to Provide Flexibility for E15 and Modifications to RFS RIN Market Regulations. Valero's unique position as a refiner, importer, exporter, marketer and biodiesel and ethanol producer means that Valero views the RFS program from several perspectives that can be helpful to the U.S. Environmental Protection Agency ("EPA") on the RIN market issues raised in the proposal. Valero urges EPA to consider its unique frame of reference in evaluating the views and recommendations presented in these comments.

As the world's largest independent refiner, Valero employs approximately 10,000 employees and operates 15 petroleum refineries in the United States, Canada and the United Kingdom. Valero has a large RFS obligation but also provides the perspective of a merchant refiner. In addition, Valero is also a fuel importer, exporter, and a major fuel wholesaler. Important also is Valero's experience as a biofuel producer. Valero was the first traditional petroleum refiner to enter the large-scale ethanol production market and has 14 state-of-the-art plants, making Valero one of the two largest ethanol producers in the United States. Finally, Valero's investment in Diamond Green Diesel also makes Valero the largest renewable diesel producer in the country.

In response to EPA's requests for comment throughout the preamble, Valero provides its views on several of EPA's assessments and presumptions. Valero's silence on any specific description in the background or other assessments should not be interpreted as agreement. In addition, in accordance with Valero's diverse business interests described above, Valero is a member of several different trade associations that represent different aspects of the fuels sector. Any comments these associations submit on this proposal do not necessarily reflect Valero's views, particularly to the extent that such comments conflict with the statements in this letter. However, Valero agrees with and incorporates as its own the comments submitted by American Fuel & Petrochemical Manufacturers in response to EPA's proposal to adjust the volatility

requirements for E15 during the summer season. Valero submits its own comments regarding the RIN market and EPA's proposed reforms intended to address problems with that market.

I. Introduction and Summary

Valero has direct exposure to the structural issues with RIN trading and supports EPA's initiative to enhance the efficiency and integrity of the RIN market. While EPA has prioritized finalizing the E15 rule revisions, EPA must not delay adequately addressing the RIN market issues that have plagued the RFS program since 2013. EPA has been aware of RIN price volatility since 2013 and has received comments in annual rulemakings regarding RIN market dysfunction since 2015.[1] Furthermore, EPA requested comment on RIN market issues in annual rulemakings in 2017 and 2018. Valero and many parties submitted comments expressing concern about and analyzing the harms from the RIN market.[2]

EPA's proposed reforms fall short of effectively advancing the goals of enhancing the efficiency and integrity of the RIN market, most importantly because the proposals do not purport to address the market distortions demonstrated in numerous reports and comments. Valero engaged NERA Economic Consulting ("NERA") to study the RIN market to determine whether there are signs of market manipulation, hoarding, and market inefficiencies. NERA's report shows that, contrary to EPA's description in the preamble, there are conditions present in the RIN market that are not reflective of the fundamental forces of supply and demand.[3] As further evidence of RIN hoarding, Valero observes that EPA's own database of RINs shows that a significant volume of RINs have been allowed to expire instead of being used for compliance.[4] EPA acknowledges receipt of the NERA report through references in the docket for this rulemaking (see EPA-HQ-OAR-2018-0775-0024 and EPA-HQ-OAR-2018-0775-0054).[5]

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[1] *See, e.g.,* Valero Energy Corp. Comments on the Proposed 2014, 2015, and 2016 RFS Program Standards 6-7, 9-19, 25-31 (July 27, 2015), EPA-HQ-OAR-2015-0111-2765.

[2] *See, e.g.,* Valero Energy Corp. Comments on the Proposed 2018 RFS Program Standards 14-18 (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-3988 (provided as Attachment 1 to these comments); Valero Energy Corp. Comments on Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation at 9, 15, 26 (Feb. 22, 2017), EPA-HQ-OAR-2016-0544-0274; Valero Energy Corp. Comments on the Proposed 2019 RFS Program Standards 1-3, 30-40 (Aug. 17, 2018), EPA-HQ-OAR-2018-0167-1041 (provided as Attachment 2 to these comments); Brattle Group, *A Framework for the Analysis of Market Manipulation* (2012), *available at* https://brattlefiles.blob.core.windows.net/files/6998_a_framework_for_the_analysis_of_market_manipulation_ledgerwood_carpenter_rev_law__econ_sep_2012.pdf.

[3] NERA Econ. Consulting, *Ethanol RIN Market Analysis and Potential Reforms*, Prepared for Valero Services, Inc. (Oct. 18, 2018) (provided as Attachment 3 to these comments) (the "NERA Report").

[4] Using EMTS data publicly available at https://www.epa.gov/fuels-registration-reporting-and-compliance-help/available-rins, Valero calculated the number of RINs that have expired without being used for compliance from 2010-2017. *See* Attachment 4, Expired RINs Spreadsheet (compiled based on data available as of April 23, 2019).

[5] Valero notes that the report is not yet publicly available. Attached to Valero's comments is a new version of the report from which NERA has removed the copyright markings. No other changes have been made to this report since its completion October 18, 2018.

NERA's analysis indicates that RINs

> (1) are generally five to ten times more volatile than similar energy commodities like oil, ethanol, and natural gas futures;
> (2) are generally only about one tenth as liquid as comparable commodity futures;
> (3) have estimated economic transaction costs that peak five times higher than oil, ethanol, and natural gas futures; and
> (4) frequently transact at prices that defy rational pricing expectations.[6]

EPA, by contrast, states that it "ha[s] yet to see data-based evidence" of RIN market manipulation, and concludes that "historical RIN price data demonstrates that RIN prices generally follow expected market principles." 84 Fed. Reg. 10584, 10586, 10606 (Mar. 21, 2019). However, EPA has not given full consideration to all facts material to its market reform proposals. EPA's description of RIN market behavior does not acknowledge the NERA report, let alone contest its conclusions or evince any awareness of the market aberrations detailed by NERA. EPA's analysis appears to rest on broad price trend data, in contrast to the more granular data assessed by NERA that reflects unusually high price volatility, low liquidity, high peak transaction costs or frequent periods of pricing at odds with rational pricing expectations. Unfortunately, EPA's view that the RIN market has performed broadly in accordance with market fundamentals has led to a set of proposed reforms that fall short of an effective response to RIN market conditions.

Valero requests that EPA make the NERA report, attached to these comments, publically available in the docket. Valero asks that EPA address the findings and recommendations in the report as it finalizes RIN market reforms. In the proposed rule preamble, EPA directly refers to concerns raised by the American Petroleum Institute in response to the NERA paper without directly discussing or evaluating NERA's work. *See* 84 Fed. Reg. at 10608. EPA must actively consider NERA's analysis and the reforms suggested in the report. Of particular importance are the following findings:

> NERA analyzed RIN market data to determine whether there is evidence of market frictions, inefficiencies, or potential hoarding, and found evidence consistent with all three being present in the market. All three major price sources in the RIN market (EPA, Argus, and OPIS) show that RIN markets violated a fundamental economic expectation over dozens of weeks by pricing RINs closer to expiration above RINs with longer useful lives.
> ....
> NERA's analysis of the supply curve fundamentals and observed price changes in the RIN market is consistent with a supply curve step function such that small amounts of hoarding could shift the supply curve leftward enough to cause prices to jump up to much higher levels, creating a potential incentive for longs[7] in the market to withhold supply. This too harms the natural forces of supply and demand that are the bedrock of a well-functioning market.
> ....

[6] NERA Report at i.
[7] The NERA Report refers to "shorts" as obligated parties that lack sufficient RIN origination capabilities to satisfy their yearly Renewable Volume Obligation ("RVO"), whereas "longs" are obligated parties, RIN originators, or other market participants that produce an excess supply of RINs relative to their RVO (which is zero for non-obligated parties).

> Absent data collection on forward transactions, the EPA may not have an accurate view of available supply in the RIN market, and may be unable to detect hoarding or attempted manipulation.[8]

EPA's proposed actions to increase data on the market are important steps but EPA has avoided taking on the issues that are most important to address, such as ensuring that RIN markets receive much-needed oversight (such as that provided to other commodity and futures markets by the U.S. Commodity Futures Trading Commission ("CFTC"), which creates structural issues and the potential for manipulation.

As described further in these comments, Valero requests that EPA set properly-sized position limits with hedge exemptions proportionate to each party's RVO on RIN holdings for all RIN types, for both obligated and non-obligated parties and for RINs held by corporate and contractual affiliates. This will prevent market participants from leveraging excessive market power for all RIN types. Properly-sized holding limits for aggregated RIN holdings should mitigate the need for non-obligated party purchase prohibitions and holding duration limits for separated RINs. Limits for holding separated RINs should apply to all RIN types not just D6 RINs.

Position limits of this sort should not present difficulties for members of the regulated community. Similar mechanisms are widely in use in diverse regulated commodity trading markets. Indeed, the most prominent feedstocks for biofuel production—including both corn and soybeans—are traded on futures markets governed by position limits.

Valero supports EPA's proposal to require obligated parties to demonstrate compliance with the RVO on a quarterly basis and the ways in which EPA proposes to increase transparency in the RIN market through improved and increased RIN data reporting. These reforms are necessary to discourage hoarding and encourage liquidity in the RIN market but it is not enough. More frequent RIN retirement obligations and increased reporting would increase information to regulators and to market participants. Yet without more timely reporting of large trader positions, it will be hard to effect market surveillance. In order for market surveillance to be effective, more current, comprehensive and standardized position information is critical.

Although quarterly compliance retirements, holding limits, position reporting/publication, and other regulations on the RIN market are important pieces of RFS reform, it is critical to recognize that such reforms do not address underlying problems with the RFS program. EPA can provide relief to independent refiners, small retailers, consumers, and others routinely harmed by the RFS by redefining "obligated party" in 40 C.F.R. § 80.1401 to mean "rack seller" or "position holder"—those parties that own gasoline or diesel immediately prior to the sale or removal from an IRS-registered terminal or refinery rack.[9] EPA can also increase the supply of RINs in the market and provide additional RIN liquidity and RIN price stability if EPA changes the RFS to ensure that all renewable fuel produced in the United States for transportation fuel is available for compliance—including domestically produced renewable fuel that is exported.[10]

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[8] *Id.* at i-ii.
[9] Valero Point of Obligation Comments 2.
[10] *See, e.g.,* Attachment 1, Valero Comments on Proposed 2018 RFS Program Standards 18-28; Attachment 2, Valero Comments on Proposed 2019 RFS Standards 19-27.

These changes would have a positive impact on the RIN market because they would address structural problems with the RFS.

II. RIN Market Reforms

As background to the proposed reforms and request for comment, EPA describes its view of the RIN market and how it performs, including whether the market causes harm to any parties and whether there is evidence of market manipulation. 84 Fed. Reg. at 10604-07. Valero does not agree with EPA's description of how the market functions; EPA's conclusion that there is no evidence of market manipulation; EPA's assessment that no parties are harmed nor disadvantaged by the RIN market; nor EPA's presumption that EPA must protect expectations of parties under the current structure of the RFS program. RIN market issues are not new to EPA and in rulemakings over the past two years EPA has sought comment on RIN market performance and issues. Concerns about RIN market manipulation have been raised in numerous letters and papers submitted for EPA consideration including:

- Senators Ron Wyden (D-OR) and Lisa Murkowski (R-AK) (then chairman and ranking member of the Senate Energy and Natural Resources Subcommittee, respectively) exercised their oversight and asked EPA to provide information about RIN market volatility and trading irregularities observed in 2013.[11]
- Senator Chuck Grassley (R-IA)—an original author of the RFS—also called upon EPA in 2013 "to modify the RIN credit market to eliminate manipulation and abusive trading practices like hoarding[.]"[12]
- Doug Parker, the former Director of EPA's Criminal Investigation Division, reported the costs that RIN fraud imposes on the RFS program in a white paper published in September 2016 and updated in February 2017.[13]
- In 2016, the Renewable Fuels Association asked the CFTC and EPA to investigate potential manipulation in the RIN market.[14]
- The head of the Renewable Fuels Association himself testified before EPA on August 1, 2017, that "market manipulation" is a "significant factor" driving up RIN prices. He

[11] Letter from Sens. Wyden and Murkowski to Robert Perciasepe, Acting EPA Administrator (Mar. 22, 2013), *available at* https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=C983BDE3-BEDF-4A6D-B97B-4CB00FF4FB19.

[12] *Grassley Presses EPA to Increase Transparency and Address Reports that RIN Market is Being Exploited by Wall Street*, (Sept. 25, 2013), https://www.grassley.senate.gov/news/news-releases/grassley-presses-epa-increase-transparency-and-address-reports-rin-market-being.

[13] 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."); Doug Parker, E&W Strategies, *Update to: September 4, 2016 White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* 2 (Feb. 3, 2017), previously attached to Valero Point of Obligation Comments.

[14] Letter from Bob Dineen, Pres. & CEO, Renewable Fuels Association, to Hon. Timothy G. Massad, Chairman, CFTC and Gina McCarthy, EPA Administrator (Aug. 1, 2016), *available at* https://ethanolrfa.org/wp-content/uploads/2016/08/RFA-Letter-to-CFTC-and-EPA_re_RIN-volatility.pdf.

agreed with refiners that "high prices of RINs" is proof that "we are dealing with a manipulated and contrived market."[15]

Valero and many others provided comments in response to EPA request for comments on the RIN market in annual rulemakings. Valero's comments[16] in response to EPA's request for comment on the RIN market in 2017 provided a description of market issues, evidence and expert opinions regarding RIN market problems and the harm from such problems; comments included the following:

RIN market operational problems

In the proposal, EPA expressed interest "in further assessing whether and how the current trading structure provides an opportunity for market manipulation. To that effect, EPA seeks comment and input on potential changes to the RIN trading system that might help address these concerns."[17] EPA also said it "has continued to explore additional ways to increase program transparency in order to support the program and share data with all stakeholders."[18] EPA is "interested in providing more information, to the extent consistent with our obligations to protect confidential business information. EPA seeks comment on specific data elements and posting frequency that stakeholders believe would be useful to help with market transparency and liquidity."[19]

Understanding the nature of the RIN market requires realization that the RIN market is virtually unregulated. This stands in stark contrast to trading markets for commodities and securities. A RIN is simply a representation of fuel that is blended; a RIN has no value outside of the RFS market. However, due to the structure of the RFS, obligated parties—particularly RIN short parties—are a captive market for RINs. They must purchase a government mandated and publicly known quantity of RINs every year regardless of the price. Thus, RIN-short obligated parties are captive buyers while sellers can dictate trade terms.

A fundamental characteristic of the RIN market is that a very small number of companies control the vast majority of unobligated RINs. Until 2013, the RIN market was relatively stable—RIN prices were low.[20] After 2013, when the RVO approached the level

[15] Testimony of Bob Dineen, Pres. & CEO, Renewable Fuels Association, EPA Public Hearing on the Proposed 2018 RFS Program Standards (Aug. 1, 2017), *available at* https://ethanolrfa.org/wp-content/uploads/2017/08/2018-RVO-Proposed-Rule-Comments.pdf.
[16] Attachment 1, Valero Comments on Proposed 2018 RFS Program Standards 14-18.
[17] 82 Fed. Reg. 34206, 34211 (July 21, 2017).
[18] *Id.*
[19] *Id.*
[20] Ronald E. Minsk, Comments on the Proposed 2014, 2015, and 2016 RFS Program Standards 2 (July 24, 2015), EPA-HQ-OAR-2015-0111-1307.

that would begin to breach the blendwall, the market became vulnerable to price volatility[21] and structural deficiencies became apparent.[22] The structural deficiencies include:

- The RIN market is unregulated.
- The market is easily moved—by speculation, news, purchasing or selling efforts—causing price volatility.
- There are a small number of sophisticated market participants that control a large number of the surplus RINs—making the market extremely "thin" and illiquid.
- Among RIN-long parties, there is an ability to actively drive the market.
- There is not a centralized or uniform platform for trading.
- There are no limitations on who can participate in the market, resulting in pure speculatory participants in the market.
- The market is not transparent—prices are not disclosed and there is no obligation to accurately report prices.
- As an environmental compliance trading mechanism, the market fails to provide the option to comply through blending rather than through purchasing of RINs. This is due to the placement of the obligation separate from the place of compliance and other market structure issues.[23]

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These issues continue unabated in the RIN market today. Valero urges EPA to consider (1) NERA's conclusions regarding market manipulation; and (2) evidence of and assessments regarding harm related to structural disadvantages in the RIN market submitted in prior rulemakings, including those submitted to EPA in 2017 and in 2018 in response to EPA's specific requests for comment.

One example of EPA's apparent presumption of how the market functions is reflected in EPA's request for comment on "the degree to which the reforms provide, or detract from symmetry in the marketplace, so that one set of actors is not advantaged at the expense of another set operating in the same market." 84 Fed. Reg. at 10609. Consistent with EPA's prior statements, EPA asserts again in this proposal that obligated parties recover RIN costs and thus, even if there was price manipulation of RINs, such manipulation would not cause harm because obligated parties are unaffected by RIN prices. *Id.* at 10607. Based on a wealth of real-world experience, and sophisticated analysis, Valero continues to disagree with EPA's theory that RIN costs are equally recovered by all obligated parties.[24] Valero finds it difficult to believe that EPA

[21] Numerous media outlets reported on this "RINsanity." *See e.g.,* Gretchen Morgenson, *Wall St. Exploits Ethanol Credits, and Prices Spike*, Wall St. Journal (Sept. 14, 2013), https://www nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike html ("For now, companies like Valero say that they are eating the cost of high RIN prices, which are still eight times more expensive than they were in January.").

[22] NERA Economic Consulting, *Effects of Moving the Compliance Obligation under RFS2 to Suppliers of Finished Products* (July 27, 2015), previously submitted to EPA with Valero's 2016 Petition for Rulemaking on the RFS Point of Obligation, EPA-HQ-OAR-2016-0544-0008.

[23] Unlike other trading programs administered by EPA for purposes of compliance, the *generation* of RINs falls to a different universe of actors than those parties obligated to *surrender* RINs.

[24] Valero Point of Obligation Comments 10-12, 39-42 (discussing pass-through of RINs); Valero Comments on the Proposed 2014, 2015, and 2016 RFS Program Standards 12-13, 18-19. In addition, Valero and others have provided multiple economic studies de-bunking EPA's theory of pass-through. *See, e.g., generally,* Bernard L. Weinstein, Southern Methodist Univ., *Renewable Identification Numbers Trading Under the Renewable Fuels Program:*

takes "claims of market manipulation seriously" and has fully investigated for market manipulation when EPA insists that there is no harm to any party subject to the RFS program. Furthermore, NERA's assessment that "the RIN market in practice has an asymmetric position limit assessed at commercial end use (when demonstrating RVO compliance) that constrains only" obligated parties that must purchase RINs for compliance—i.e., RIN short parties—contradicts EPA's assumption that there is "symmetry" in the market place.[25]

EPA's refusal to acknowledge the harms Valero, AFPM, other independent and small refiners, and small retailers have repeatedly reported is also apparent in the agency's cost-benefit analysis of the proposal. In a short description of "RIN Market Reform Economic Impacts," EPA provides only two brief paragraphs on benefits and costs and characterizes costs of the reforms to include harm to non-obligated parties, as follows:

> We also anticipate some costs associated with prohibiting certain non-obligated parties from purchasing separated D6 RINs. Many of these parties have developed business models and entered into contracts that may require them to leverage the ability to purchase separated D6 RINs on spot markets. Prohibiting this practice would require that these parties adjust their business models. (84 Fed. Reg. at 10623)

When evaluating the potential impact of proposed RIN market reforms, Valero urges EPA not to assume that the current RFS program does not harm some obligated parties or to put undue weight on changes to the "symmetry" in the market that could result from such reforms. 84 Fed. Reg. at 10609. In previously submitted comments, Valero and others have informed

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Continued Unintended Consequences for Small Fuel Retailers (Updated Report) (Feb. 2017) (discussing the harm to small retailers from the RFS); Charles River Associates ("CRA"), *Re-examining the Pass-through of RIN Prices to the Prices of Obligated Fuels* (Oct. 2016), EPA-HQ-OAR-2016-0544-0067 (finding incomplete RIN pass-through); CRA, *Review of Updated Pass-Through Analysis of Knittel, Meiselman and Stock* (Feb. 2017), previously attached to Valero Point of Obligation Comments (finding that pass-through is failing by 30% in gasoline, which equates to doubling the federal income tax on merchant refiners and giving the extra "tax" proceeds to their competitors); CRA, *Review of CARD Policy Brief 16-PB 20: Impact on Merchant Refiners and Blenders from Changing the RFS Point of Obligation* (Dec. 2016), previously attached to Valero Point of Obligation Comments (reviewing Iowa State Studies on the RIN market and determining that the studies relied on faulty premises and unsubstantiated assumptions); Alex Holcomb, *Market Analysis of the Proposed Change to the RFS Point of Obligation* (Feb. 21, 2017), previously attached to Valero Point of Obligation Comments (describing the limited pass-through of RINs and the economic impacts of EPA's failure to ensure that the point of obligation is appropriately placed); CRA, *Evaluating the Response of Blender Margins to RIN Price Changes* (Feb. 2017), previously attached to Valero Point of Obligation Comments ("[I]f the RFS construct is working as intended, blenders would not see their margins change as RIN prices change, because all changes would be reflected in prices they pay the refiners for wholesale fuels."); Christopher R. Knittel, Ben S. Meiselman, and James H. Stock, *The Pass-Through of RIN Prices to Wholesale and Retail Fuels under the Renewable Fuel Standard*, National Bureau of Economic Research (June 2015), EPA-HQ-OAR-2016-0544-0280 (describing the near absence of pass-through of RIN prices to retail E85 prices); Minsk Comments on the Proposed 2014, 2015, and 2016 RFS Program Standards ("without pump-on-pump pricing competition for E85 at the retail level, the value of the RIN is on average, not being passed through to the retail consumer, undermining the operation of the program by failing to use the value of RINs to lower the retail price of E85 [to make] it more attractive to consumers and build demand for the fuel"); Ronald E. Minsk, Comments on the Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation (Feb. 22, 2017) (reiterating that the RIN does not pass through to the retail price of E85).

[25] NERA Report at 31.

EPA of harm under the current program to both obligated and non-obligated parties.[26] EPA has before it recent evidence that RINs cause harm and distort the fuel market in the form of filings in the Philadelphia Energy Services ("PES") bankruptcy proceeding,[27] severe economic waiver requests by four governors,[28] analysis by Charles River Associates,[29] comments filed by small retailers,[30] comments filed by merchant refiners,[31] exemptions granted to small refineries,[32] and

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[26] *See, e.g.,* Attachment 1, Valero Comments on the Proposed 2018 RFS Program Standards 28-35; Valero Comments on Notice of Availability of Supplemental Information 8-11 (Oct. 19, 2017), EPA-HQ-OAR-2017-0091-4885.

[27] Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization of PES Holdings, LLC and Its Debtor Affiliates at 1, 24-25, *In re PES Holdings, LLC*, No. 18-10122-KG (Bankr. D. Del. Jan. 22, 2018), ECF #10. Within two months after the disclosure statement was filed, EPA formally agreed to excuse PES from RFS requirements, waiving hundreds of millions of gallons of renewable-fuel obligations. Consent Decree and Environmental Settlement Agreement, *In re PES Holdings, LLC*, No. 18-10122-KG (Bankr. D. Del. Mar. 21, 2018), ECF #244-1. In that agreement, EPA tacitly acknowledged the severe harm imposed by the RFS obligations described in PES's comments. Settlement Agreement 5 ("[T]he United States has reviewed financial information submitted by Debtors and determined that PESRM has limited ability to comply with its pre-Effective Date RVOs ...."). The bankruptcy and settlement were intended to "resolve [PES's] obligations under the Clean Air Act Renewable Fuel Standard (RFS) program," EPA, *PES Holdings, LLC, et al.* Bankruptcy Renewable

[28] *See* Letters from Gov. Tom Wolf (Pennsylvania) (Nov. 2, 2017), Gov. Susana Martinez (New Mexico) (Nov. 22, 2017), Gov. Greg Abbott (Texas) (Dec. 1, 2017), Gov. John Carney (Delaware) (Jan. 30, 2018), *available at* https://www.epa.gov/renewable-fuel-standard-program/learn-more-about-letters-seeking-additional-information-related.

[29] *See generally,* the CRA reports listed in note 24 above.

[30] Comments of the Small Retailers Coalition on the Proposed 2017 RFS Program Standards (July 28, 2016), EPA-HQ-OAR-2016-0004-3574; Comments of the Small Retailers Coalition on the Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation (Feb. 20, 2017), EPA-HQ-OAR-2016-0544-0570; Comments of the Small Retailers Coalition on the Notice of Availability of Supplemental Information (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4687; *see also* Weinstein report, *supra* note 24 (discussing harm to small retailers).

[31] Attachment 1, Valero Comments on the Proposed 2018 RFS Program Standards 4-5, 13, 24, 28-35; Valero Comments on the Notice of Supplemental Information 3, 7-11; PES Comments on the Proposed 2018 RFS Program Standards 3-5, 7-8, 20-23 (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-3887; PES Comments on the Notice of Availability of Supplemental Information 1-6 (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4884; HollyFrontier Comments on the Proposed 2018 RFS Program Standards 1, 8-11, 13-14, 16 (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-2547; HollyFrontier Comments on the Notice of Availability of Supplemental Information 1, 11-16 (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4713; Monroe Energy Comments on the Proposed 2018 RFS Program Standards v-vi, 13, 17-23 (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-3649; Monroe Energy Comments on the Notice of Availability of Supplemental Information 17-22 (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4645; Small Refiners Coalition Comments 4-5, (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-3105; Small Refiners Coalition Comments on the Notice of Availability of Supplemental Information 1-5 (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4709; AFPM Comments on the Notice of Availability of Supplemental Information 9, 14-19 (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4703; PBF Energy Comments on the Proposed 2018 RFS Program Standards 1-7, 11-12 (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-3429; PBF Energy Comments on the Notice of Availability of Supplemental Information 1, 5-10 (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4702; AFPM & API Joint Comments on the Proposed 2018 RFS Program Standards 1, 15, 20, 26, 29-31 (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-3645; Coffeyville Resources Refining & Marketing, LLC Comments on the Proposed 2018 RFS Program Standards 1, 4-5 (Aug. 31, 2017), EPA-HQ-OAR-2017-0091-3106; Coffeyville Resources Refining & Marketing, LLC Comments on the Notice of Availability of Supplemental Information 1-8, 10 (Oct. 20, 2017), EPA-HQ-OAR-2017-0091-4888.

[32] EPA has granted these exemptions on the basis of each small refinery demonstrating that compliance with the RFS causes it "disproportionate economic hardship." A total of 54 exemptions were issued for 2016 and 2017. *See* https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.

other expert reports.[33] Creating and supporting this kind of distortion—competitive advantages to some refining businesses—in the fuel market provides no benefit to renewable fuels and serves no statutory goal.

EPA notes in the proposal "that simply making a profit on the RIN market is not manipulative or anti-competitive behavior." 84 Fed. Reg. at 10619. However, EPA should consider that the ability for some obligated parties to profit on the RIN market at the expense of other obligated parties demonstrates that RIN costs are not simply passed through and that the RIN market as structured reduces competition. In weighing the costs and benefits of RIN market reforms, EPA places a thumb on the scale in favor of business models designed to take advantage of flaws in the RFS program at the expense of other regulated entities in the fuel sector. EPA should instead weigh the benefits of reducing the harms described in comments and reports and the benefits of eliminating the market distortion and unfair competitive advantage created by the RFS program.

In addition to NERA's analysis of the indicators of likely market power abuse, EPA's own data includes evidence indicating RIN hoarding and an increasing level of RIN hoarding. EMTS data shows that over 82 million 2017 D6 RINs and nearly 29 million 2017 D4 RINs were generated, but not retired, suggesting they were allowed to expire by parties holding those positions. In total, 112 million total 2017 RINs were generated, but not used for compliance. This is over four times greater than the number of 2016 RINs that were allowed to expire, and

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[33] *See, e.g.,* Comments of the National Black Caucus of State Legislators on the Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation (Feb. 21, 2017), EPA-HQ-OAR-2016-0544-0166 (explaining that the RFS impacts small and mid-size minority-owned gas station owners, consumers, and communities nationwide); Weinstein report, *supra* note 24 (discussing the RIN market's serious implications for the long-term survival of small retailers); Bernard L. Weinstein, Southern Methodist Univ., *Renewable Identification Numbers Trading Under the Renewable Fuels Program: Continued Unintended Consequences for Small Fuel Retailers* (Aug. 2016) (describing how small retailers do not have the capital or the market leverage to "game" the system under the RFS the way large retailers do); Alex Holcomb, *Market Analysis of the Proposed Change to the RFS Point of Obligation* (Feb. 21, 2017) (describing the limited pass-through of RINs and the economic impacts of EPA's failure to ensure that the point of obligation is appropriately placed); Ramon M. Benavides, Global Renewable Strategies and Consulting, LLC, *The U.S. Renewable Identification Number: RINs Trading Market* (Aug. 2016) (describing how RIN speculation and volatility increase competitive disadvantages for small and independent refiners and small retailers); Ramon M. Benavides, Global Renewable Strategies and Consulting, LLC, *Renewable Fuel Incentives: Estimation of Large Retailers' Margins* (Feb. 2017) (demonstrating that small retailers do not have the ability to enjoy the same excess margins); Daryl Bassett, Chair., Empower Consumers, *EPA, Please Fix the Renewable Fuel Standard!* (Nov. 22, 2016) ("Eliminating that gap between refineries and fuel blenders" by having "fuel blenders abide by the RFS and turn in RINs they generate" would "knock out the middle-man market for RINs, which has given rise to an alarming number of cases of fraud and speculation by opportunists attracted to the high prices those pieces of paper fetch on the market.") CRA, *RINs Market Frictions and the RFS Point of Obligation* (Feb. 2017) (explaining that placing the point of obligation at the rack will mean far fewer RIN transactions in the RINs market and substantially reduced administrative costs related to the RFS program); Acadian Consulting, *Economic Impact and Re-employment Assessment of PES Philadelphia Refining Complex* (Aug. 31, 2017) (quantifying the substantial economic impact to the Philadelphia area and to Pennsylvania if PES's refinery were to close); NERA, *Analysis of RFS2 RIN Market* (Oct. 15, 2013) (concluding that an inadequate supply of RINs hurts refiners relative to speculators and Merchant Refiners relative to other refiners); Center for Workforce Information and Analysis, *Analysis of Impact of ConocoPhillips and Sonoco Closing* (Jan. 9, 2012) (describing the effects of refinery layoffs effecting 400 hundred workers); James Stock, *The Renewable Fuel Standard - A Path Forward* (Apr. 2015) (advocating for changing the point of obligation to improve pass-through and avoid net RIN deficits that cause merchant refiners to go to the market.).

six times greater than the number of 2015 RINs that were allowed to expire.[34] EPA should look more objectively at the evidence or engage a third party to provide a more objective analysis of the RIN market to determine whether and to what extent there is market power abuse in the RIN market.

Valero provides comments on each separate proposed reform and also responds to EPA's request for comment regarding "how the various reforms might work in combination." 84 Fed. Reg. at 10609.

A. Public Disclosure if RIN Holdings Exceed Certain Threshold

Valero appreciates EPA's effort in evaluating other programs to identify mechanisms used to prevent excessive market power. However, EPA proposes only a public disclosure threshold which EPA admits is not as effective as a holding limit. The proposed quarterly disclosure requirement would provide information concerning RIN holding (position) concentrations that is backward-looking and would be readily circumvented by any intelligent market manipulator. And this proposal does not provide adequate protection to market participants or sufficiently timely information to regulators and the public. Moreover, it is unclear that EPA would have sufficient tools to identify any reporting failure or impose any significant consequence to the non-reporting party. EPA states that if a party reports that it has exceeded a threshold, "public disclosure would alert market participants and where appropriate prompt a closer review of the circumstances by EPA," and EPA "could then consider further actions to investigate for anti-competitive behavior and help prevent similar behavior in the future." 84 Fed. Reg. at 10609. To provide these benefits, EPA should require public disclosure *at the time the threshold is exceeded*, rather than at quarter-end, and EPA should employ a penalty system to further disincentivize such behavior.

EPA proposes that parties would report at the end of each quarter whether the party exceeded the proposed thresholds on any day in the quarter. Although EPA also proposes quarterly reporting of additional information regarding the number of RINs separated, purchased, sold and retired by each party in a quarter, EPA does not propose reporting of information specific to the amounts or dates when a party exceeds the holding thresholds. Without specific information and more timely reporting of large trader positions, it will be hard to effect market surveillance. Without effective market surveillance, EPA will not be able to act to prevent or respond to market power abuse. In order for market surveillance to be effective, more current, comprehensive and standardized position information is critical.

According to EPA, the purpose of the public disclosures is to provide transparency in the market regarding how often certain RIN position thresholds are reached or exceeded. EPA suggests that public disclosure "could disincentivize parties from gaining market power, signal potentially harmful behavior to competitors, regulators, and policy makers and be used to justify stronger preventative actions." 84 Fed. Reg. at 10610. However, EPA has made no effort to assess the effectiveness of public disclosure as a disincentive. Nor will the yes/no reporting

[34] *See* Attachment 4.

obligation provide sufficient transparency regarding how often RIN position thresholds are reached or exceeded.

EPA claims that there is insufficient evidence of harm from excessive market power and suggests that it could follow up with more restrictive measures later if warranted. 84 Fed. Reg. at 10610. Before EPA can do so, however, it must define "excessive market power," which it admits it has not done. Neither has EPA proposed any action that would be triggered by a party exceeding a public disclosure threshold, nor committed to investigate holdings that exceed any threshold.

EPA requests comment on what further actions might entail, "including actions to address concerns within the broader RIN market generally." 84 Fed. Reg. at 10609. If EPA chooses not to implement properly-sized position limits with RVO-based hedge exemptions, Valero recommends that EPA incorporate a "trigger" that automatically establishes position limits for parties that exceed public disclosure limits. In other words, the public disclosure threshold could apply as the trigger threshold. If a party exceeds the public disclosure threshold in one quarter, a holding threshold applies to that party for the next two quarters.

1. Properly-sized position limits with hedge exemptions proportionate to each party's RVO will deter excessive market power; public disclosure will not.

Because public disclosure will not effectively deter hoarding, a more effective solution is to adopt a RIN holdings limit. A holdings limit, breach of which subjects the market participant to significant penalties, would create substantial incentive for compliance and could draw on other position limit regimes to define the scope of position limit duties, including exemptions for hedging and other commercially legitimate arrangements. Valero urges EPA to set holding limits on all RIN types at levels appropriate to limit excessive market share.

EPA's reluctance to set holding limits is based on the assumptions that such a reform could "have detrimental effects" and "unnecessarily compromise market efficiency and liquidity and interfere with obligated parties' ability to comply with regulations by disincentivizing them from holding the necessary quantity of RINs to meet their RVO." 84 Fed. Reg. at 10610. EPA is wrong. According to NERA, "concerns about position limits affecting trader flexibility and market liquidity" are

> less relevant in the RIN market due to RINs' distinguishing features as regulatory compliance instruments, particularly (1) RINs' single commercial end use as a means to demonstrate compliance and (2) the RIN market's structure resulting in a number of long entities producing substantially more RINs than they can possibly use to meet their RVOs.[35]

EPA's concerns are unfounded. NERA concludes that position limits or holding limits "have the potential to increase RIN market liquidity rather than decrease it."[36] Furthermore,

> the CFTC has indicated that "position limits would help to diminish or prevent unreasonable fluctuations or unwarranted changes in the price of a commodity" by limiting "the market power that often typifies excessive speculation," since properly-designed position limits

[35] NERA Report at 30.
[36] *Id.*

> would prevent any market participant from accumulating "an unusually large speculative position [that] could exert unreasonable market power."[37]

EPA has numerous options on how to implement holding limits including modeling those limits on regulations in similar environmental trading regimes that include appropriate exemptions. As noted above, biofuel feedstocks are already subject to holding limits. As EPA acknowledges in the proposal, other environmental trading programs (such as those administered by the California Air Resources Board, Regional Greenhouse Gas Initiative and Canada's Federal Renewable Fuels Regulations) have holding limits. As NERA's analysis shows, the RIN Market is directly analogous to the California Greenhouse Gas Emissions Cap-and-Trade Market.[38] The California Greenhouse Gas Emissions Cap-and-Trade Market maintains holding limits that were modeled in part on CFTC position limits and was designed to "prevent market participants from taking unilateral actions to move" prices and profit from price changes.[39] Based on EPA's calculations, California's Cap-and-Trade program has a holding limit of approximately three percent.[40] However, a more restrictive limit of one percent, proportional to the harm many obligated parties experience as a result of the RIN market, is appropriate here.

While establishing properly-sized position limits and hedge exemptions is the most effective method of addressing structural issues in RIN markets, an alternative, as suggested above, is to establish holding limits that are automatically triggered if a party exceeds a disclosure threshold for a specified period of time. For example, a party that exceeds disclosure thresholds for more than three (3) consecutive trading days in one quarter would be subject to a holding limit in the next two quarters. Such alternatives could be more complicated than setting holding limits with appropriate exemptions but they would be far more effective than a disclosure requirement alone. This would apply to both obligated parties and non-obligated parties. An obligated party that exceeds both thresholds (percent of the total RVO and percent of the party's obligation) for three consecutive trading days in one quarter would be subject to a holding limit equal to those thresholds for the next two quarters; a non-obligated party would become subject to the holding limit if it exceeds the initial threshold for three consecutive trading days in a quarter.

2. Setting a properly-sized holding limit

In determining the level of the disclosure threshold, EPA stated that an obligated party may have legitimate RIN holdings even at levels close to or exceeding the thresholds being considered. EPA said also that "non-obligated parties have no RVO and require a different threshold methodology…so we believe their threshold should generally be set lower." 84 Fed. Reg. at 10610. Thus, EPA set one threshold that covers everyone and a second that is adjusted for obligated parties based on compliance needs. According to EPA, 13 out of 126 obligated parties and none of the 280 non-obligated parties held separated D6 RINs exceeding the three percent threshold. *Id.* at 10611. However, EPA's analysis does not account for possible

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[37] *Id.* at 31.
[38] *Id.* at 33.
[39] *Id.*
[40] Barbora Master, EPA Office of Transportation & Air Quality (Mar. 6, 2019), *California and Quebec Holding Limit Percentages*, EPA-HQ-OAR-2018-0775-0039.

corporate affiliations of non-obligated parties that might show higher levels of aggregated holdings.[41] Nor does the analysis account for contractual affiliations that might indicate higher levels of market share by obligated parties. As a result, EPA cannot presume that its analysis of RIN holdings accurately reflects whether any parties held an excessive market share in the past. To be an effective limit or indicator of market power, the threshold must apply to RINs held by a party's corporate and contractual affiliates.

EPA must determine the level of the disclosure or holding limit on the basis of the compliance obligations. Some obligated parties have annual RVO obligations exceeding 450 million RINs; thus, they would certainly hold at least 450 million RINs in order to comply with the annual RVO. If EPA finalizes the quarterly retirement requirements as proposed, obligated parties would not need to hold as much as 130% of their annual RVO after the first quarter retirements. And non-obligated parties should have no reason to hold large volumes of RINs for extended periods in any quarter.

EPA must set RIN holding limits or public disclosure thresholds below the level at which hoarding can change prices. As NERA found, even "small amounts of hoarding can…cause prices to jump."[42] And, if EPA finalizes quarterly compliance and thus, quarterly RIN retirement, EPA must consider what threshold or limit would be meaningful under such a requirement. EPA recognized this in the preamble: "a smaller stockpile of RINs in a party's account relative to a smaller pool of available RINs can still result in market power." 84 Fed. Reg. at 10615.

The CFTC regulations applicable to limits on positions, 17 C.F.R. § 150.5, prescribe how to set the level for position limits and includes specific exemptions for *bona fide* hedging transactions. Under these rules, traders must apply for exemptions but an exemption for *bona fide* hedging is available. EPA should use these rules as a guide for setting holding limits and relevant regulations for holding limits. Valero recommends EPA implement properly-sized position limits and hedge exemptions, following the methodology that CFTC currently employs in commodities markets. EPA has already identified some of the obligated parties who are likely to exceed disclosure thresholds and can already consider what type of exemptions might apply if the thresholds were set as holding limits. With quarterly retirement requirements for obligated parties and RIN holdings aggregated for corporate and contractual affiliates, independent non-obligated parties should have no reason for holding limit exemptions.

However, if EPA chooses not to follow the CFTC methodology, Valero recommends that EPA set initial holding limits for all RIN types at one percent (1%) of the annual RVO, and for obligated parties that exceed that threshold, a secondary holding limit of 130% of the parties'

[41] "Since we do not currently require parties to report affiliations or to aggregate RIN holdings based on affiliations, we currently have no way of knowing whether these parties are affiliated with other parties that hold D6 RINs, nor are we able to conduct such an analysis. Due to this limitation, some non-obligated parties could exceed the proposed primary threshold when affiliate RIN holdings are considered." Robert Anderson, Office of Transportation and Air Quality, EPA, *Threshold Calculations for D6 RIN Holding Parties* 4 (Mar. 7, 2019), EPA-HQ-OAR-2018-0775-0069.

[42] NERA Report at i.

obligation. Valero explains further below why EPA should set the initial threshold at one percent.

3. Holding Limits for Non-obligated Parties

EPA requests comments on whether to propose a lower threshold for non-obligated parties. EPA suggests that a lower holding threshold "could potentially meet the objectives [described for the other proposed reforms] in a simplified and more streamlined way than the various reforms proposed." 84 Fed. Reg. at 10612. Valero agrees. EPA's proposed initial disclosure threshold of 3 percent is the only threshold EPA proposes to apply to non-obligated parties. EPA already proposes a higher threshold for obligated parties with the secondary threshold of 130% of the party's RVO.

Valero generally agrees that EPA should set more stringent or lower holding limits or public disclosure thresholds for non-obligated parties. Differentiating between obligated and non-obligated parties is rational because a non-blending non-obligated party need not hold high volumes of RINs. A non-obligated party that blends fuel might have a legitimate need to hold more than 450 million RINs (that would-be three percent threshold based on the volumes set by EPA for 2019) as they acquire RINs through separation and place the RINs into the market but they have no compliance reason to retain such holdings for extended periods of time. Non-obligated parties who are under contract with obligated parties might also hold high volumes of RINs at times but have no reason to hold such high volumes for long periods of time. However, if RINs will be retired on a quarterly basis, non-obligated parties might not have a legitimate need to hold high volumes of RINs for more time than it takes to sell them.

It is important that EPA limit the holdings of non-obligated parties to levels that are unlikely to impact RIN prices. Since non-obligated parties acquire RINs only to provide RINs to obligated parties, non-obligated parties need not retain large volumes of RINs for long periods of time. NERA's analysis concluded that even with holdings just over five percent of total RIN supply, "it is possible for non-obligated parties to withhold and release RINs in a manner which moves supply across hypothesized supply curve steps, resulting in jumps in price disproportionate to the change in available RINs."[43]

If approximately one-quarter of the RVO is retired every quarter, for conventional ethanol, that equates to approximately 3.75 billion D6 RINs. A quarterly holding threshold of three percent of the *annual* D6 RVO means that a party can hold nearly 450 million D6 RINs before triggering the proposed reporting obligation. However, those same 450 million RINs represent control over 12% of the possible RIN retirement obligation for the *quarter* on any given day without being required to report its holdings to EPA. Thus, the proposed 3 percent threshold RVO provides an opportunity for market manipulation without any check by EPA.

Three percent is too high as a holding threshold for non-obligated parties, since holdings of 450 million RINs are likely to equate to sufficient market share to affect RIN prices, under the right market conditions. Based on NERA's assessment that holdings even just over five percent of total RIN supply—or 185 million RINs—on a given day can affect the market, a holding limit

[43] NERA Report at 26.

of one percent (or 150 million) D6 RINs is more appropriate for non-obligated parties. If EPA does not impose any other reforms for non-obligated parties, Valero urges EPA to set a holding limit for non-obligated parties equal to one percent of the applicable RVO for April 1 to December 31 and equal to one percent of 125 percent of the applicable RVO for January 1 to March 31.

If EPA finalizes the quarterly compliance reform for obligated parties, RINs will be needed for compliance on a quarterly basis and non-obligated parties can sell RINs and reduce holdings as they acquire RINs. A holding limit of one percent of the RVO should not impose any burden on non-obligated parties when obligated parties are required to retire RINs on a quarterly basis.

As previously stated, properly-sized holding limits for non-obligated parties might be more easily implemented than a duration limit or a prohibition on purchasing separated RINs. At a minimum, to forgo the duration limit and the purchasing prohibition, Valero recommends that EPA set a holding limit that is triggered by a non-obligated party that exceeds the disclosure threshold for more than three consecutive trading days during a given quarter. The holding limit should apply for two quarters following the quarter in which the disclosure threshold is exceeded.

EPA requests comment on potential gaming by parties becoming obligated to avoid the prohibitions. Properly-sized position limits and hedge exemptions, for all RIN market participants, would reduce any potential for parties to profit by gaming EPA's trading restrictions. EPA can also minimize gaming by requiring RIN holding aggregation for corporate and contractual affiliates. If EPA finalizes the quarterly compliance obligation or holding limits for all participants, a party that becomes obligated merely to increase RIN holdings will become subject to additional requirements, including RIN retirement for compliance, that should serve as a disincentive for becoming an obligated party just to hold greater volumes of RINs. In any case, such actions should not harm the RFS program or the RIN market.

Valero urges EPA to monitor the RIN market, evaluate how the market responds to initial thresholds, and consider adjusting, as appropriate, holding thresholds for all RIN types. However, EPA must not delay setting initial thresholds for all RIN types while EPA undertakes the evaluation to adjust the thresholds as appropriate for the market. Given the different nature of each RIN type (the different volumes, generators, and RIN holders), EPA might find it appropriate to set different holding thresholds or limits for each RIN type.

4. Aggregate RIN holdings

EPA proposes to require calculating RIN holdings for all corporate affiliates of a party. EPA considered including RIN holdings of all contractual affiliates but believes that it would be too complicated and result in double counting of RINs. EPA's proposed approach for aggregation of RIN holdings for comparison to the threshold would enable ready evasion of the disclosure requirement because it would not require aggregation of holdings among parties with a contractual relationship. If an obligated party wished to avoid disclosure, it could make use of a contractual relationship to park RINs with another party while still maintaining control over the

RINs. Valero urges EPA to require RIN holdings be aggregated based on both corporate and contractual affiliation and such aggregated holdings would be subject to the holding limits.

5. Deficits

EPA proposes "that an obligated party that fell short of its quarterly RIN retirement requirement in the current year would not be able to incur a deficit in its next year annual RVO." 84 Fed. Reg. at 10586. While Valero understands that the rules should not allow obligated parties to run a deficit year after year, Valero urges EPA not to change the current rules as they apply for annual RVO compliance and annual deficits. The annual deficit rules should remain the same; the deficit rules for quarterly retirement requirements should not impact the annual RVO deficit rules.

B. RFS Compliance Frequency

EPA proposes to require obligated parties to retire RINs for each calendar quarter equal to 80 percent of an obligated party's RVO for the party's cumulative gasoline and diesel production and import volume. 84 Fed. Reg. at 10617. EPA seeks comment on whether this reform should be a holding requirement rather than a retirement requirement. If properly-sized position limits and hedge exemptions are not established for all RIN market participants, Valero recommends that this reform should be a retirement requirement. EPA proposes to require retirements of RINs for all nested RVOs. Valero recommends that quarterly retirement requirements should be limited to conventional (D6) RINs only, as there are seasonal variances in production of other RIN types.

C. Limiting Who Can Purchase Separated RINs

Valero supports EPA's proposal to allow only obligated parties and exporters to purchase separated D6 RINs. 84 Fed. Reg. at 10618. However, EPA proposes to exempt non-obligated parties from this prohibition if they are a corporate affiliate or a contractual affiliate of an obligated party. *Id.* This exemption would swallow the general rule.

By permitting non-obligated parties who are corporate affiliates or contractual affiliates to purchase separated RINs, the proposed rule would in fact permit non-obligated parties to purchase separated RINs on behalf of another party. As drafted, the proposed rule would not even specify that contractual affiliates must be affiliated with an obligated party. *See* proposed 40 C.F.R. § 80.1401 definition of "contractual affiliate" and proposed 40 C.F.R. § 80.1428(b)(2). However, even if this drafting error were corrected, the definitional requirement that a contractual affiliate have "an explicit or implicit agreement in place" to purchase or hold RINs on behalf of the other or to deliver RINs to the other would permit large concentrations of RIN holdings through loose contractual relationships with otherwise unconnected parties.

EPA proposes, as an alternative approach, imposing a D6 holding limit on non-obligated parties that can be lower than the three percent threshold proposed for obligated parties. 84 Fed. Reg. at 10620. As described above, Valero agrees that a properly-sized holding limit, not simply a reporting threshold, is more effective and easier to implement than implementing a purchase prohibition with exceptions that could swallow the rule. Valero requests that EPA set holding limits for all RIN types for non-obligated parties.

EPA requests comment on potential gaming by parties becoming obligated to avoid the prohibitions. Properly-sized holding limits for all RIN types, for both obligated and non-obligated parties, with appropriate aggregation rules and hedge exemptions should minimize gaming opportunities and any benefit from changing obligation status.

D. Limiting Duration of RIN Holdings by Non-obligated Parties

EPA proposes to require non-obligated parties to sell or retire as many RINs as it obtained in a quarter by the quarter's end. 84 Fed. Reg. at 10620. Valero agrees with EPA that this reform is unnecessary if EPA sets a properly-sized holding limit for non-obligated parties. Quarterly compliance obligations would encourage non-obligated parties to sell RINs to obligated parties more regularly and not hold RINs for long periods. However, if EPA does not finalize a properly-sized holding limit for non-obligated parties but instead sets a duration limit for holding RINs, the limit should apply to all RIN types.

E. Enhancing EPA's Market Monitoring Capabilities

NERA recommends that EPA increase the amount of data reported to EPA regarding the RIN market so that EPA can better understand the RIN market.[44] Valero agrees that EPA needs more information to better understand the RIN market.

> EPA has no reliable way of determining whether any market participants are engaging in hoarding or potentially manipulative behaviors through such transactions. This is a significant regulatory blind spot: although transfers of title may be transparent to the EPA and may display indicia of efficient markets, problematic indicia in forwards and other derivatives may go undetected by the EPA in the absence of relevant regulatory data collection. Moreover, the data that the EPA does collect is made available to the public only in broad aggregates, and private data vendors offer little more than the daily range of prices and volumes volunteered by a subset of the market.[45]

Valero recommends that EPA finalize the proposed changes to gather additional data on the RIN market.

1. Annual attest engagements to include corporate and contractual affiliates in the compliance year.

EPA says "given the complexity of contracts and RIN transactions, it is very challenging for EPA to confirm whether parties have common ownership and whether any group of corporate affiliates reached a level of aggregated D6 RIN holdings in a compliance year that would trigger the thresholds" proposed. 84 Fed. Reg. at 10622. EPA also acknowledges that parties may control additional market share through contractual affiliations. *Id.* Thus, EPA's proposal to collect corporate and contractual affiliate information is important to better understanding the RIN market. EPA should collect corporate and contractual affiliates information involved in purchases and holdings of all RIN types, not just D6 RINs. However, annual reporting is not sufficient to allow for effective market surveillance and would not be effective in preventing abuse of market power. Without more timely reporting of large trader positions, it will be hard to

[44] NERA Report at 27-29.
[45] *Id.* at 27.

effect market surveillance. In order for market surveillance to be effective, more current, comprehensive and standardized position information is critical.

2. Rule changes for RIN prices entered into EMTS

EPA proposes a rule change to require reporting true RIN price and limit when $0.00 can be entered as the price. 84 Fed. Reg. at 10623. EPA proposes a rule change to require reporting whether the transaction is a spot trade or from a term contract. 84 Fed. Reg. at 10623. Valero applauds EPA's efforts to improve capabilities to provide effective oversight of the RIN market and reduce the potential for market manipulation.

3. Third-party market monitoring

EPA requests comment on whether EPA should employ third-party monitoring of the RIN market. 84 Fed. Reg. at 10623. In 2018 comments, Valero provided EPA recommendations to improve transparency including additional data reporting to allow EPA to monitor large trader activity like the CFTC does.[46] Engaging a third-party market monitor may be an efficient and effective way to utilize the additional data that EPA is a gathering as well as to determine what additional data is needed to adequately monitor the market and reduce risks for market manipulation or excess market power.

F. Combining Reforms

As EPA acknowledged, properly-sized holding limits and hedge exemptions might meet the goals EPA has set for the RIN market reforms. However, if EPA does not set holding limits or if EPA does not require obligated parties to demonstrate compliance quarterly, EPA should limit the duration that unobligated parties can hold RINs. EPA should also monitor closely who is buying and selling separated RINs. Without appropriately stringent holding limits, EPA should employ a third-party monitor to objectively evaluate the market and report to EPA and to the public.

EPA proposes for all the reforms that a non-obligated party would be allowed to "maintain the RIN holdings it would have on the day before the effective date of th[e] reform[s]." 84 Fed. Reg. at 10622. Valero recommends that all parties should be expected to fully comply with the regulations governing RIN markets on the date reforms become effective. Market participants will have the ability to adjust holding positions, if required, prior to new reforms going into effect.

G. Additional Market Reforms

EPA requests comment on "actions to address concerns within the broader RIN market generally." 84 Fed. Reg. at 10609.

Valero requests that EPA consider additional reforms that can improve the RIN market. Valero urges EPA to consider means to keep RIN costs low since the original intent of the program was keeping RFS compliance costs low. In several rulemakings, EPA acknowledged

[46] *See* Attachment 2, Valero Comments on the Proposed 2019 RFS Program Standards 30-40.

that a well-functioning RFS market should mean low RIN prices.[47] As Valero has previously argued, low RIN costs are likely the best solution for controlling market manipulation/hoarding behavior by removing incentives for that behavior.[48]

NERA recommends a central repository for RINs that holds periodic auctions could help improve liquidity, mitigate market fragmentation, and provide a centralized forum for periodic price discovery.[49] In 2018 comments, Valero also recommended a central RIN repository for excess carryover RINs.[50] A central repository for periodic auctions for all RINs or for excess RINs held by obligated parties are options to keep RINs available for purchase and to keep RIN prices low.

Another option that would help meet the RFS's policy goals while keeping RIN prices low is a well-designed price containment mechanism, such as a D6 waiver credit. Price containment mechanisms have proven effective in a variety of other compliance credit markets, such as the Renewable Portfolio Standards and carbon emissions policies in many states and regions. As Charles River Associates has explained, "[a] price containment mechanism in the RFS could lead to greater ethanol consumption in the long term if it includes redirecting the new government revenue stream to expanding higher ethanol blend fuel consumption."[51] Waiver credits could be offered for sale by the EPA as an alternative compliance mechanism for obligated parties. Like the cellulosic waiver credit, this would be effective at providing RIN-short parties cost certainty and it would help to contain hoarding behavior.

Finally, Valero must remind EPA that two significant structural flaws in the RFS program contribute to RIN market distortions as well as unnecessary constraints on the supply of RINs for compliance purposes. The first structural flaw is the separation of the point of obligation from the point of compliance. As Valero and others have argued in several rulemakings, EPA can reduce the opportunities for abuse of excessive market power in the RIN market and provide relief to independent refiners, small retailers, consumers, and others routinely harmed by the RFS by redefining "obligated party" in 40 C.F.R. § 80.1401 to mean "rack seller" or "position holder"—those parties that own gasoline or diesel immediately prior to the sale or removal from an IRS-registered terminal or refinery rack.

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[47] For example, when EPA in 2007 defined obligated parties as refiners and importers, but not blenders, it did so "based on an expectation that there would be an excess of RINs at low cost, and they would be freely traded between parties needing them such that obligated parties would have ample opportunity to acquire them." Denial of Petitions for Rulemaking to Change the RFS Point of Obligation, EPA, Office of Transportation & Air Quality, EPA-420-R-17-008, at 12-13; *see also* 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010) ("We will continue to evaluate the functionality of the RIN market. Should we determine that the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers, we will consider revisiting this provision in future regulatory efforts.").

[48] *See* Attachment 1, Valero Comments on the Proposed 2018 RFS Program Standards 14-18.

[49] NERA Report at 35-36.

[50] *See* Attachment 2, Valero Comments on the Proposed 2019 RFS Program Standards 33.

[51] CRA, *Ethanol RIN Waiver Credits: Improving Outcomes of the Renewable Fuels Standard through a Price Containment Mechanism* 1 (Mar. 2018), *available at* http://www fuelingusjobs.com/library/public/CRA_RIN_PriceContainment_March_2018.pdf.

The second structural flaw is the unavailability of compliance credit for exported renewable fuel. As explained in comments submitted by Valero,[52] the regulations conflict with the statutory mandate to credit for compliance all renewable fuel produced in the United States. The statutory mandate is for increasing volumes of renewable fuel in transportation fuel entered into commerce in the United States. Since renewable fuel produced for sale as transportation fuel in the United States, even if exported, enters into commerce, the RFS conflicts with the statute by denying compliance credit for renewable fuel exports. By changing the RFS to ensure that all renewable fuel produced in the U.S. for transportation fuel is available for compliance, EPA would also increase the supply of RINs in the market and provide additional RIN liquidity and RIN price stability. These changes would have a positive impact on the RIN market because they would address structural problems with the RFS.

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 recommendations. Please contact me at (202) 560-5858 should you have any questions.

Sincerely,

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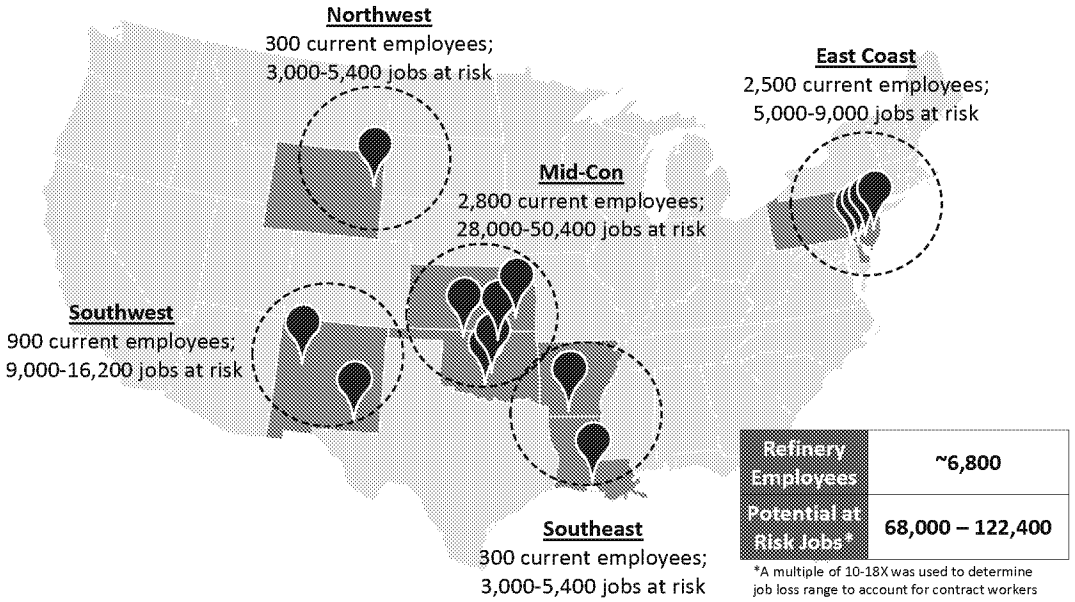
[52] *See, e.g.,* Attachment 1, Valero Energy Corp. Comments on Proposed 2019 RFS Standards 19-27; Attachment 4, Valero Comments on Proposed 2018 RFS Program Standards 18-28.

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 2/27/2018 3:02:38 PM
To: 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]
Attachments: At-Risk Refiners.pptx

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

The current structure of the RFS could cause significant economic harm to merchant refiners



Refinery Employees	~6,800
Potential at Risk Jobs*	68,000 – 122,400

*A multiple of 10-18X was used to determine job loss range to account for contract workers

The RIN mandate may push refiners into financial distress; employees are likely to suffer

Source: Company websites, Holcomb 2017
At Risk Refiners include – Northwest: Wyoming Newcastle; Southwest: HollyFrontier Navajo, Western Gallup; Mid-Con: CVR Wynnewood, HollyFrontier Tulsa, P66 Ponca City, Valero Ardmore; Southeast: Delek El Dorado, Alon Krotz Springs; East Coast: PBF Delaware City, PBF Paulsboro, Monroe Trainer, PES Philadelphia

Detail view of at-risk refiners and their employees

Refinery	Location	Employees	Direct and Indirect Jobs*
Delek El Dorado	AR	100	1,000 – 1,800
CVR – Coffeyville	KS	600	6,000 – 10,800
Alon Krotz Springs	LA	200	2,000 – 3,600
HollyFrontier – Navajo	NM	600	6,000 – 10,800
Western – Gallup	NM	300	3,000 – 5,400
P66 – Ponca City	OK	1,000	10,000 – 18,000
HollyFrontier – Tulsa	OK	600	6,000 – 10,800
CVR – Wynnewood	OK	300	3,000 – 5,400
VLO – Ardmore	OK	300	3,000 – 5,400
Wyoming Newcastle	WY	300	3,000 – 5,400
PBF – Delaware City	DE	600	6,000 – 10,800
PBF – Paulsboro	NJ	500	5,000 – 9,000
Monroe Energy -Trainer	PA	500	5,000 – 9,000
PES - Philadelphia	PA	900	9,000 – 16,200
	Total	**6,800**	**68,000 – 122,400**

Message

Sent: 10/3/2019 5:55:04 PM

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wmurray@rstreet.org; Woodard@epchc.org; Woods, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=556f31dbf41f4f95a5bf1b816c447327-Woods, Andr]; Wright, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=11616a3db06f4eceb13ea26c7e6dc1f0-Wright, Pet]; Wright, Wesley (Toomey [Wesley_Wright@toomey.senate.gov]; Wydler, Chris [Chris.Wydler@mail.house.gov]; WYeatman@cei.org; Young, Joby - OSEC, Washington, DC [joby.young@usda.gov]; Yunaska, Kyle [Kyle.Yunaska@hq.doe.gov]; Zach, Andrew (EPW [Andrew_Zach@epw.senate.gov]; lschaaff@hess.com; jonathan.brightbill@usdoj.gov; marccone Personal Email / Ex. 6 ryan.modlin@o-i.com; dadkins@csg.org; ebaptist@wileyrein.com; rich.alonso@huskyenergy.com; karen.winters@squirepb.com; whufford@repsol.com; whufford@talismanusa.com; Michael Honeycutt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=usere10b9f5f]

Subject: Moving On

All,

I hope all is well! As you may have heard, today is my last day with the U.S. Environmental Protection Agency. It has been a tremendous honor and privilege to serve in this Administration and in EPA's Office of Air and Radiation. I have had the chance to work with the most professional, committed, and fun team in government, and I am exceedingly proud of the accomplishments that team has achieved toward environmental progress and regulatory reform in the last couple years. Thank you to Administrator Wheeler, Bill Wehrum, and Anne Idsal for the opportunity to serve and to learn from their steadfast leadership.

It has been a great pleasure to work with you during my time with EPA and prior, and I look forward to being in touch in the near future.

Next week, my family will be relocating to central Ohio. In mid-October, I will be starting a new position with The Ohio State University, working as Director of Strategic Partnerships at the College of Food, Agriculture, and Environmental Sciences. Please let me know if you happen to get to the Columbus area (or need an excuse to do so). Starting October 14, my new email address will be woods.922@osu.edu, but in the meantime, you can reach me at Personal Email / Ex. 6 or Personal Phone / Ex. 6

Thanks, and have a great weekend!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 4/29/2019 7:27:04 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Apr 29 PRG Energy Update: KY DERBY Preview, Congress Returns to Action

Friends,

It is Derby Week with the Annual Run for the Roses set for Saturday. I love this year's field but I don't see any real Triple Crown prospects. Post time for the big race is 6:48 pm on Saturday. Seriously, there are 12 that really could win Saturday's race. That makes it a little harder to pick, but we can help you in the field and betting breakdown in a special section below. I am telling you that I love **Omaha Beach** especially if the track gets messy on Saturday – which is a possibility given the forecast. I'm also watching ***Maximum Security, Roadster, By My Standards*** and ***Game Winner.*** If you want a surprise, you might look at ***Code of Honor, Tax* or *Haikal.*** See below for the full details and predictions.

Congress returns this week from Easter/Passover with a full load of action, including movement on the House legislation to force the US back into Paris (House Rules moves it tomorrow). Biggest hearing hits are tomorrow when the House Climate Committee holds a hearing featuring the Chamber's Christopher Guith and former Energy Secretary Moniz. Senate Energy Committee also looks at US leadership in nuclear energy and the new NELA legislation with former NRC Commissioner (and ClearPath board member) Jeff Merrifield. Also tomorrow afternoon, a House Science panel looks at plastic recycling. On Wednesday, House Energy tackles pipeline safety featuring folks from AGA and others.

As well, the Permitting Council holds is first annual stakeholder engagement forum tomorrow at 9:30 a.m. at the GSA Auditorium. EPA's Andrew Wheeler and Army Corps head RD James join Permitting Council head Alex Herrgott to discuss the tailored and predictable roadmap for the infrastructure project permitting process.

Off the Hill, ACCF hosts Neil Chatterjee tomorrow and Cato looks at the Jones Act and it impacts on disaster recovery. Also, AGA is holding its operations conference in Nashville and NRECA has rural co-ops in town talking policy and visiting Capitol Hill. Finally, the American Climate Leadership Summit 2019 will be held on Wednesday and Thursday at the Reagan Building and will feature ClearPath's Jay Faison and many others.

You all know I am a Hillsdale College alum and my fellow alums are spreading around Washington's political and media elite circles. And I just wanted to share some fun news with you from yesterday: Pat Sajak has been named Chairman of Hillsdale's Board of Trustees. The *Wheel of Fortune* legend (and well-known conservative) has long supported the college and will be a great addition. I have a few Sajak stories (his daughter also attended Severn School with Hannah) but I will save those for another time.

Sadly, we also lost two great leaders over the weekend when Sen. Richard Lugar and former Rep/Interior Sect Manuel Luján Jr. who both passed away. Lugar was my first boss on Capitol Hill and I knew him well given the time he gave to staff on Team Lugar runs, while Luján was the picture of a statesman devoting a lifetime to public service over the course of 10 Congressional terms and four years as secretary of the Interior.

Finally, don't forget to mark your calendar for **NEXT MONDAY** at 10:00 a.m. when SEIA will issue a Diversity Challenge at the National Press Club where they will release a new Diversity Study — which provides the latest information on career paths for women, people of color and veterans in solar — and the Diversity Best Practices Guide for the Solar Industry, a tool to help solar companies and all companies with the practical implementation of diversity initiatives.

Happy birthday to our friend Scott Segal who hits 55 today. See you on the Hill this week and call with questions, especially if they are about horse racing!!!!

Best,

Frank Maisano
(202) 828-5864
C. (202) 997-5932

THE DERBY PREVIEW

The annual Run for the Roses is back again for another edition of one of horse racing's biggest events. The first Triple Crown race of the year, the Kentucky Derby features a field of 20 horses vying for a purse of $2 million. Here's a quick look at the basic information you need to know ahead of time so you don't miss out on any of the festivities:

The **145th Kentucky Derby** is the most exciting two minutes in sports. It looks like we are in for a great and competitive race on Saturday.

Triple Crown, again? – The field this year is deep. Last year, Bob Baffert won his 5th Kentucky Derby with *Justify*, who went on to give horse racing its second Triple Crown winner in four years after a 37-year drought. Baffert also trained the previous Triple Crown winner, *American Pharoah*, who won the Kentucky Derby, Preakness, and Belmont in 2015.

With this year's broad field, no one has really established themselves like *Justify* did last year. Baffert has three horses in this year's race, with *Roadster*, *Improbable* and *Game Winner* among the top favorites along with Richard Mandella's *Omaha Beach* and Jason Servis' *Maximum Security*. But this field is as diverse as I have ever seen and has no real clear favorite or horse that would be considered a Triple Crown threat.

Post time — 6:48 p.m.

Purse — $2 million, with $1.4 to the winner.

Attendance — More than 170,000

Weather — Mostly cloudy, a couple of thunderstorms possible, 77° Precipitation: 35%. The forecast is probably the single most important factor behind a good Kentucky Derby. It affects everything from track conditions, where wet weather can lead to a sloppy afternoon, to the infield, where wet weather can lead to a completely different kind of sloppy afternoon.

Bookmark willitrainonderbyday.com now and be sure to check back as we get closer to Derby Day.

TV — NBC's coverage features host **Mike Tirico**; analysts **Randy Moss** and **Jerry Bailey**, the Hall of Fame jockey and two-time Kentucky Derby winner; NBCSN host **Krista Voda**; analysts/handicappers **Bob Neumeier** and **Eddie Olczyk**; reporters **Donna Brothers, Carolyn Manno, Laffit Pincay, III,** and **Kenny Rice**; and race caller **Larry Collmus**. New to the team is soccer analyst **Rebecca Lowe**, who will serve as co-host for the Kentucky Derby as well as NBCSN's coverage of the Kentucky Oaks on Friday, May 3. Lowe will handle a variety of subjects on the telecasts from Churchill Downs, including an interview with Hall of Fame trainer **Bob Baffert**, as well as a cooking segment with celebrity chef and longtime horse racing fan **Bobby Flay**, who will be on-site to create the perfect southern-themed dish for a Kentucky Derby party.

The Distance — The Derby is 1 ¼ miles, or 10 furlongs.

Derby Track Record — *Secretariat* 1973 (1:59 2/5). The only other horse ever under 2:00 minutes was *Monarchos* in 2001 at 1:59.97.

The Draw — Post positions will be drawn tomorrow morning at 11:00 a.m. in the Aristides Lounge on the second floor of Churchill Downs' Clubhouse. The Derby post-position draw is a traditional "pill pull" in which horses' entry blanks are pulled simultaneously with a numbered pill to determine what stall a horse will break from the starting gate. Preference

is given to the top point-earners on the "Road to the Kentucky Derby." Up to 24 three-year-olds may enter the 1 1/4-mile race and four horses can be listed as "also eligible." Those on the outside would be ranked in order accordingly and could draw into the field should any horse(s) be scratched before scratch time on at 9 a.m. ET Friday.

- Draw Host: Churchill Downs Track Announcer Travis Stone
- Pill Pull: Vice President of Racing Ben Huffman and Assistant Racing Secretary Dan Bork
- Kentucky Horse Racing Commission Chief Steward: Barbara Borden

How to Watch: The Kentucky Derby Post-Position Draw will be streamed live on www.KentuckyDerby.com.

Draw Facts — Since racing began using a starting gate in 1930, the #5 post has the highest win percent at 11.4%. Interestingly, the #10 spot that has the highest in-the-money percentage of runners at 29.6%. Conventional wisdom has it that the inside post positions are not as good for horses these days due to the size of the field and the risk of being squeezed out as the race progresses. Post positions 1, 2 and 3 have been in a drought without a winner since 1986, 1978 and 1998 respectively. The official Kentucky Derby website has a convenient list of complete post position records for every Kentucky Derby over the years.

Churchill Downs — Known as the home of the Kentucky Derby and the Kentucky Oaks, Churchill Downs Racetrack is in Louisville, Kentucky and occupies 147 acres, featuring a one-mile dirt, oval racetrack and a seven furlong turf race course. Thoroughbred racing, the Kentucky Derby, and the Kentucky Oaks have run continuously at Churchill Downs since 1875. It features the Twin Spires — built in 1895 — that sit atop the grandstands, which remain among the most recognizable architectural features in the world.

What to Wear — The Kentucky Derby has been synonymous with style and glamour from the beginning. Today, it's one of the only places in the world where people still dress to the hilt for a sporting event and where men's fashion is just as important as women's. From fantastic hats and colorful spring dresses to dashing bow ties and seersucker suits, Derby's display of American style and tradition simply doesn't exist anywhere else.

> *Men* — The modern Derby man possesses an unparalleled color palette. Sun-drenched, tropical colors in bold stripes or busy plaid and bright pastels steal the limelight. Although, if you want a more polished look, a classic navy or pinstripe blazer is always in style. But remember, gentlemen: The secret to looking great is confidence.
>
> *Women* — The Derby is a chance for every woman to express her inner Southern Belle. The race's founder, Colonel M. Lewis Clark, Jr., had a vision for an experience that felt both comfortable and luxurious. Today, a myriad of fashions can be found at Derby – from cool sundresses to simple cocktail dresses and even more formal attire. But all these styles have one thing in common: the big Derby hat. The extravagant hats that have become associated with the Derby did not really come around until the 1960s, when social fashion norms loosened up and the presence of television gave women a reason to stand out. The hats became larger, brighter, and more extravagant. Hats at the Kentucky Derby have become even more popular after the royal wedding in 2011, an event that showcased many elaborate hats and fascinators. See a tutorial on Derby hats here.

Other Traditions — The Mint Julep, made with Kentucky bourbon, is the signature drink of the Derby, and Kentucky's state song "My Old Kentucky Home" is played during the pre-race post parade.

THE FIELD of 20

Here are some horses in the field that I would look out for:

***Omaha Beach* (Richard Mandella; Mike Smith)** Arkansas Derby Winner OB is fast... He is coming off a fast win in the Arkansas Derby in which his performance earned a Beyer Speed Figure of 101 despite a muddy, wet track. That figure is tied for the second best in the 2019 Derby field and one of just three figures of 100 or above and it was in the slop. He is a major contender, especially in a fast or wet/sloppy race and will have Mike Smith on board who took *Justify* to glory last year. He is expected to be the favorite and six-straight post-time favorites have entered the winners circle.

***Roadster* (Baffert; Florent Geroux)** Santa Anita Derby winner. *Roadster* closed masterfully down the stretch, running down four horses late and surging past *Game Winner* by half-a-length. Arguably Baffert's best chance to win a 6th Derby. California has the richest crop of Derby contenders, and *Roadster* is at the top of the Class. HoF jockey, Baffert favorite and *Justify* rider Mike Smith has been main rider for both *Roadster* and *Omaha* and he is on *OB* for the Derby. That says something.

***Game Winner* (Baffert; Joel Rosario)** Was top California dog until he managed to take second place in the Santa Anita Derby after being run down by Roadster. He was also the champ out of the 2-year old Breeders' Cup last fall and may be the most talented horse in the field. But he is 0-for-2 in 2019, even though the 2018 2-year-old champion hasn't ran poorly in either race. He cannot be counted out.

***Tacitus* (Bill Mott; Jose Ortiz)** Rank: #1, Earnings: $610,000 – *Tacitus* is a gray homebred of Juddmonte Farms. His running style covets going longer distances based on his pedigree (*Tapit, Close Hatches, Seattle Slew, Secretariat*). Tacitus' pedigree suggests minimal concerns with the ability to hit the Kentucky Derby distance of 1 1/4 miles and his racing record shows he is on a roll in putting pieces together, improving speed figures each time. With wins in two Derby prep races, the Wood Memorial and Tampa Bay Derby and three straight overall, he demonstrates a lot of upside. Likely to run from the middle or back early.

***Maximum Security* (Jason Servis; Luis Saez)** The winner of the Florida Derby went into his final prep with zero Derby qualifying points. He exited as one of the top contenders after he easily took and held the lead in the most important race of his career. He remains the only undefeated horse in the field. Skeptics say he faced a most favorable race scenario getting out to the early lead, but he has the highest Beyer Speed Figure (101) heading into the Derby and has yet to really be challenged.

***Vekoma* (George Weaver; Javier Castellano)** *Vekoma* pushed his way into the top group with a decisive win in the Blue Grass Stakes despite his awkward running style. That race featured one of the least glamorous fields of the Derby preps he had the perfect trip. He also has won at Keeneland, Belmont and Aqueduct so tracks don't seem to matter. Advanced analytics say he's been one of the fastest horses in his class since last fall, despite his unusual stride. And Javier Castellano hasn't finished lower than third in North American earnings since 2010.

***By My Standards* (Bret Calhoun; Gabriel Saez)** *BMS* wasn't in the inner circle of leaders until surging to victory as a 22-1 underdog in the March 23 Louisiana Derby. His 97 Beyer speed figure he earned suggests his potential is up there with the best in this 3-year-old class. He's been in the money in all five career starts, and by all accounts he's been as impressive as any horse during workouts at Churchill over the past couple of weeks. The main factors working against him are his pedigree, stamina and the perceived weakness of the Louisiana fields compared with those in California, Florida and Arkansas.

***Plus Que Parfait* (Brendan Walsh; Ricardo Santana Jr.)** *PQP* is the first US-based horse to win the UAE Derby winner and has been strong with a Place and Show at Churchill. Unfortunately, none of those who triumphed in the Dubai-based prep and made the journey to Louisville have managed to hit the board, much less win.

***Code of Honor* (Shug McGaughey; John Velazques)** McGaughey doesn't show up at the Derby unless he thinks he has a solid chance to win, and he hasn't had a Derby horse since *Orb's* victory in 2013. *CoH* finished 3rd in the Florida Derby but was bumped early and failed to make a concerted charge down the stretch. Most think he may just not have enough speed and Florida echoes that. But he could be dangerous in Louisville if he's handed a fast early pace to set up his late move.

***Improbable* (Baffert; Irad Ortiz Jr)** While a number of folks are high on *Improbable*, I question whether he has the stamina to stay with such a fast field at 1-1/4 miles. Both his Derby prelims were at Oaklawn and despite a wide trip throughout, he seized command in the stretch and looked destined for the winner's circle, but *Long Range Toddy* collared him in the closing strides. He also finished second in a sloppy, fast Arkansas Derby after drawing alongside

Omaha Beach on the final turn as the duo separated from the rest of the field, but he could not get past his game opponent and settled for second. I can't see him pulling this off but he is a good bet for the Super box.

***Haikal* (Kiaran McLaughlin; Rajiv Maragh)** Has two strong wins this year in the Winkfield Stakes (where he came from far off the pace to win, then took the Gotham Stakes closing strong again for a convincing victory. Finally, he again closed hard to take third place in the Wood Memorial. If the pace is slow, watch out for this colt's hard charge.

***War of Will* (Mark Casse; Tyler Gaffalione**) *WoW* finished 5th in the Breeders' Cup Juvenile Turf before picking up his first career victory with a five-length runaway on a sloppy main track at Churchill Downs in a 1 1/16-mile maiden special weight race. He started the year strong with big wins at the Lecomte Stakes. He stalked the pace from third early, moved up to take command on the far turn, and surged away to a dominant four-length victory. He followed that race with another runaway victory using his high cruising speed to gain ideal position early from post-position 14 in the Risen Star Stakes. Has good speed and could surprise, but was running strongest earlier this year and really bombed in the Louisiana Derby fading to 9th when he strained a muscle.

***Cutting Humor* (Todd Pletcher; TBD)** *CH* bombed in the Southwest Stakes at his first race this year, but he was rested for five weeks before returning in New Mexico for the Sunland Park Derby where with John Velazquez aboard, he took the lead in early stretch and was all out to win by a neck. Only one horse won the Derby from the Sunland (Mine that Bird) and did it at 50-1. He is a fast closer and with Pletcher and Velasquez, he could be a sleeper.

***Tax* (Danny Gargan; Junior Alvarado)** In his first race as a 3-year-old, *Tax* took the Withers Stakes at Aqueduct rallying through an opening on the inside in the stretch to win. He then ran the Wood Memorial Stakes gamely battling Tampa Bay Derby winner *Tacitus* through deep stretch before setting for second. He is fast and has been over 100 on Beyer in his last three races. He likes to go to the front and so far has been able to hang on making him another potential sleeper.

Win Win Win (Michael Trombetta; Julian Pimentel): *Win* opened his career with back-to-back victories in November and December at Laurel Park before finishing second there in the Heft Stakes on Dec. 29 in his final race as a 2-year-old. He kicked off this season with a 7+ length romp in Tampa at the Pasco Stakes. He also rallied from off the pace to run third at Tampa Bay Derby and managed second place run in the Blue Grass Stakes, charging hard down the stretch but never really challenging Vekoma. He has never finished out of the money in his six career starts so he should be on you radar if he is at high odds.

***Country House* (Bill Mott; Flavian Prat)** After losing a sprint to WoW in the Risen Star, he managed a 4th place finish in Louisiana and a 3rd place in the Arkansas Derby. He is a young three-year-old though and has shown his green in stretch runs. He is the type of horse that will benefit from a fast pace that roughs up the field.

***Long Range Toddy* (Steve Asmussen; Jon Court)** He showed poise and great acceleration in the stretch when he chased down *Improbable* in the Rebel Stakes. But he's divisive because nothing in his previous results suggested he was capable of such an effort and his 6th place in the Arkansas Derby won't quiet the concerns.

***Spinoff* (Todd Pletcher; Manny Franco)** After a six-month break, *Spinoff* returned at Tampa Bay Downs on Feb. 22 and looked strong winning by a widening 11 ¾ lengths. That was his first start around two turns, and it immediately made him one of Pletcher's leading Derby contenders. He followed with a hard-fought runner-up finish by three-quarters of a length in Louisiana Derby. He figures to be near the front early and could have something left in the tank if the early fractions aren't too fast.

***Gray Magician* (Peter Miller; Drayden Van Dyke)** Based in Santa Anita, the gray colt was then shipped east for the Miracle Wood Stakes, earning a runner-up finish at Laurel Park in Maryland, and then traveled much further east, to Dubai. He didn't let them down, racing without blinkers for the first time and running well in the stretch to finish second.

***Master Fencer* (Koichi Tsunoda; Julien Leparoux)** *Master Fencer* is a Japanese-bred colt owned by his breeder, Katsumi Yoshizawa and won his first race in his third career start and followed that up with a weight for age victory at Kyoto Racecourse. While they always get Attention, Japanese horses have traditionally struggled to succeed in Louisville.

THE PACE

Pace makes the race, and the Kentucky Derby is no exception. There doesn't appear to be a lot of early speed in this race, which doesn't set up well for closers who likes to come from way off the pace. It is impossible to get a read on this until we see the draw Wednesday morning. Post positions affect jockey strategies and will definitely change outlooks. It is likely *Gray Magician* (who has early speed), *Spinoff* (who would like to control the pace), *Tax* and *Roadster* (both like to run to the front) will likely be the initial pacesetters provided they break well. Again, see below, but weather and track conditions could make this pace fast early among these four. That will definitely help hard chargers but it could completely blow up the field as well.

WET TRACK RUNNERS

We'll know more with the draw on Wednesday and with track conditions on Saturday, but should it be wet, we do know a few things already. In his final start as a 2-year-old, *Plus Que Parfait* turned in an effort that should stick in the mind should it be another soggy Derby day. In the Kentucky Jockey Club Stakes at Churchill Downs on a sloppy track, Plus Que Parfait engaged in a lively stretch duel only to finish second by a neck, giving *PQP* experience on a wet track at Churchill Downs, something only two other horses in the field have. As a result, while other horses have been tested on wet tracks and might like the surface at Churchill Downs, it's a known fact that Plus Que Parfait can handle it. For the others who competed on a wet surface at different tracks, there's a chance that the composition of the dirt track at Churchill Downs may not be to their liking, even if they handled the mud just fine at Santa Anita or Oaklawn Park.

Aside from *PQP*, *War of Will* raced on a sloppy track at Churchill Downs in his first start on dirt and breezed to a five-length victory, making him another to watch on a rainy day. *By My Standards* was second in his career debut at Churchill Downs, but lost by four lengths. He was also third in a Fair Grounds maiden race on a track rated good, losing by four lengths. Looking at both of those races, it would seem By My Standards neither moves up nor flounders on a wet track.

Only one of the 20 starters owns two victories on sloppy tracks and that distinction belongs to probable favorite *Omaha Beach* — and he claimed those wins at two different racetracks. He broke his maiden by nine lengths in the slop at Santa Anita and prevailed by a length over *Improbable* in the Arkansas Derby.

Omaha Beach is the only probable starter with a wet-track victory in a stakes, but there are five other runners with a wet track win to their credit. Four of them are 1-for-1 on "off" going, including *Tacitus* (maiden race at Aqueduct), *Maximum Security* (starter race at Gulfstream Park), and *Spinoff* (maiden race at Gulfstream Park). The Japanese starter, *Master Fencer*, also posted a win on a "good" track in a maiden race. Finally, *Improbable* (Arkansas Derby), *Win Win Win* (Heft Stakes at Laurel Park), and *Cutting Humor* (maiden race at Belmont Park) and *Country House* we all on the board on sloppy tracks so something to watch.

Five horses are inexperienced on wet tracks: *Vekoma, Roadster, Game Winner, Code of Honor*, and *Tax*.

ODDS

Odds to win 2018 Kentucky Derby (5/4/19) - per Sportsbook.ag as of today (4/29/19):

Omaha Beach	7-2
Roadster	7-2
Improbable	5-1
Maximum Security	6-1
Game Winner	7-1
Tacitus	14-1
By My Standards	14-1
War of Will	16-1
Code of Honor	18-1

Vekoma	20-1
Spinoff	25-1
Win Win Win	25-1
Haikal	50-1
Long Range Toddy	50-1
Cutting Humor	60-1
Tax	60-1
Country House	100-1
Gray Magician	100-1
Master Fencer	100-1
Plus Que Parfait	100-1

Watch the numbers throughout the week and that will tell you where the money is going. Right now, I am dropping cash on *Plus* at 100-1, *Tax* at 60-1 and *Win WIn Win* at 25-1. The first official odds arrive tomorrow at 11:23-11:26 a.m. after the draw when Mike Battaglia delivers the first post draw morning odds.

2018 Kentucky Derby Prediction

I don't like to pick favorites, but my gut says

Win: *Omaha Beach*

Trifecta Box: *Omaha, Tacitus, Max Security*

Superfecta Box: *Omaha, Maximum Security, Roadster, Tacitus and/or Game Winner*

Sleepers: *Vekoma*; *By My Standards; Win Win Win*

Long Shots: *Tax* or *Haikal* (50-1), each worth the $2 bet

FRANKLY SPOKEN

"The NERA report provides a comprehensive basis to conclude that trading patterns in the RINs market reflect dysfunction and inadequate market oversight and regulation. Based on my substantial experience at the CFTC and the SEC dealing with regulation of trading and markets, the market reforms proposed by EPA for the RINs market represent a good first step in addressing persistent market flaws based on a reasonable interpretation of the data. By contrast, critiques offered by interested parties holding long RINs positions seem to be predicated on fundamental mischaracterization of the RINs market and its operations."

Former CFTC/SEC official Susan Ervin weighing in on the EPA's RIN market reforms.

GOOD DATA

Chamber GEI Energy Tracker Updated – Here is the latest updates to the Global Energy Institute Energy Tracker with President Trump's trio of recent executive actions on energy infrastructure and permit streamlining as the headliner. The Tracker interface below provides a comprehensive, filterable and sortable list of more than 130 energy-related federal actions tracked by date, agency, high-level topic area, and specific issue. The default view displays entries in reverse chronological order of the most recent substantive action by the relevant agency or court.

FUN OPINIONS

***Erie Times-News*: Harness Lake Erie's Wind Energy** – Lake Erie is home to strong wind resources and could help Pennsylvania increase its access to clean energy via offshore wind projects such as Lake Erie Energy Development Corp.'s Icebreaker Wind project, the *Erie Times-News* editorial board writes in an editorial last week. "The potential to extract clean energy from a relatively short stretch of shoreline, generate revenues for Erie County and the state, and create new manufacturing opportunities should merit bipartisan support from lawmakers."

IN THE NEWS

CFTC/SEC Expert Weighs in on RIN Market Reforms – Susan Ervin, the former Chief Counsel and Deputy Director of the Commodity Futures Trading Commission's (CFTC) Division of Trading and Markets from 1988 to 1997, and a Senior Derivatives Adviser and Attorney Fellow at the Securities and Exchange Commission from 2009 to 2011 sent a letter to EPA Administrator Andrew Wheeler addressing itself specifically to matters related to proposed reforms of the RINs market. At Valero's request, Ervin took a look at the RINs market and the EPA proposal, and she may be the most qualified person yet to do so. Ervin summarizes, reviews and attaches the NERA assessment of the quality of the current RIN market. She finds that: "NERA's analysis of D6 RIN market quality and dynamics identified multiple indicia of an inefficient, fragmented market, susceptible to manipulation and other breaches of market integrity, and creating undue cost to market participants. These circumstances strongly support the need for market reforms." Ervin reviews in detail the American Petroleum Institute response to NERA and its general opposition to market reforms, and finds them wanting. She notes that API has mischaracterized the testimony of CFTC Chair Christopher Giancarlo with respect to evidence of manipulation. She further notes that the API report misunderstands the NERA methodology and findings, finding the latter to be "the most comprehensive and granular analysis to date." Ervin also finds that API has misstated how position limits operate, the ample precedent for them and what effect they have on a market.

Tariffs Still Hitting Solar Jobs – A new report from the Energy Futures Initiative found U.S. solar manufacturing jobs fell 9.5%, largely caused by the Trump administration's imposition of a 30% tariff on imported products, which was intended to give jobs a boost. The group found manufacturing jobs fell to 46,539 in 2018, from 51,410 a year earlier, said David Foster of EFI, which is headed by former Energy Secretary Ernest Moniz. The figures come from EFI's analysis of data from the Bureau of Labor Statistics and EFI and the National Association of State Energy Officials' 2019 energy and employment report. Manufacturers have been wary to invest in new facilities amid a global oversupply of solar panels, driven in part by reduced demand from China.

RFS Waivers Spur Another Frivolous Biofuels Lawsuit – The Advanced Biofuels Association last week filed another frivolous lawsuit trying to prevent EPA from granting any further waivers under the Renewable Fuel Standard. The price of compliance credits has collapsed, raising questions in the biofuels industry about why economic hardship waivers are required. The answer is simple...the program is broken and has never worked for small refineries. In reality, no domestic biofuel producer has seen any harm due to small refiner waivers. EIA data and ag-friendly economists show there has been no backtracking on domestic ethanol consumption and exports set yet another record last year. Those same ag-friendly economists and EIA data also show there is NO backtracking in consumption of domestically produced biodiesel, the production and consumption of which continues to increase, but still falls short of the domestically mandated numbers. Now, the majority of ABFA members are foreign biodiesel producers. Consumption of their product has decreased, but as a University of Illinois economist highlighted, this has more to do with the Administration's tariffs on our largest foreign sources of biodiesel rather than anything to do with the RFS. And the fact that domestic biodiesel production and consumption is gaining at the expense of ABFA members is due solely to the tariffs and exactly the purpose of the RFS. It was never meant to be a foreign biodiesel mandate, which is what it has become.

ON THE SCHEDULE THIS WEEK

EPA E15, RIN Market Reforms Comments Due – TODAY

AHAM Meeting Set – The Association of Home Appliance Manufacturers (AHAM) holds its 2019 Annual Meeting today and tomorrow at the Ritz-Carlton in Washington DC. Speakers will include DOE's Dan Simmons former CBO head Doug Holtz-Eakin, Matt Eggers of the Chamber, NAM's Linda Dempsey and many others.

Forum Look at Global Energy Challenges – The Milken Institute holds its 22nd Global Policy Conference today and tomorrow to bring together the leading minds in business, technology, government, media, philanthropy, health care, and entertainment to deliver novel, collaborative responses to these great questions of our time. Speakers include a crazy good list of celebs, deep thinkers and policy experts. See the List here.

Forum to Look at Building Design – The Environmental and Energy Study Institute (EESI) holds a briefing today at 2:00 p.m. in 485 Russell to explore how the quality of buildings contributes to the national economy and promotes healthier environments, and to learn how Congress can support such benefits. Because Americans spend over 90 percent of their time indoors, the design, construction, and operation of buildings greatly influence the health, productivity, and safety of their occupants. Speakers for this forum are William Fisk of the Lawrence Berkeley National Laboratory, Executive Director of the Alliance for National and Community Resilience Ryan Colker and lighting designer Randy Burkett.

AGA Operations Biennial Exhibition Kicks off in Nashville – The 2019 AGA Operations Conference & Biennial Exhibition begins tomorrow in Nashville, TN and runs through Friday. The annual conference is the natural gas industry's premier gathering of utility and transmission company operations management across the U.S. and the world. An exhibition is held every two years in conjunction with the conference. The Operations Conference is AGA's largest forum, with more than 1,800 natural gas utility, operations management professionals sharing technical knowledge, ideas and practices to promote the safe, reliable, and cost-effective delivery of natural gas to the end-user. The exhibition celebrates the innovation, ingenuity and persistence of our service provider and manufacturing community.

CFR Hosts Conversation with Markey on GND – The Council on Foreign Relations hosts Senator Edward J. Markey to discuss the Green New Deal, a congressional resolution aimed at addressing the issue of climate change tomorrow morning at 8:00 a.m.

Gov. Cooper Headlines NC Energy Conference – The NC Clean Energy Technology Center hosts the 2019 State Energy Conference of North Carolina tomorrow and Wednesday at NC State. The State Energy Conference provides actionable insight into the business of energy, connecting technical innovation, diverse resources and industry opportunity to help drive North Carolina's regional energy economy forward with national impact. Speakers will include Gov. Roy Cooper, several speakers from Duke Power and our friends Kristi Swartz from E&E News.

FERC Holds NatGas Enviro Review Seminar – FERC is hosting a three day interactive seminar starting tomorrow on how to successfully navigate the FERC environmental review process and to prepare an Environmental Report, a brief introduction to pipeline construction for industry newcomers, a discussion of pre-construction preparation considerations, and a review of baseline mitigation measures for pipeline construction and restoration.

Wheeler, James, Herrgott Talk FAST-41 – The Permitting Council holds is first annual stakeholder engagement forum tomorrow at 9:30 a.m. at the GSA Auditorium. EPA's Andrew Wheeler, Army Corps head RD James and Ad Council on Historic Preservation Executive John Fowler join Permitting Council head Alex Herrgott to discuss the tailored and predictable roadmap for the infrastructure project permitting process.

House Climate Hearing to Look at Zero Emissions – The House Climate Crisis Committee holds a hearing tomorrow at 10:00 a.m. to look at ways to reach net-zero carbon emissions by 2050. Witnesses include Diana Liverman, a lead Intergovernmental Panel on Climate Change report author; Hal Harvey, CEO of Energy Innovation; David Foster, formerly a senior adviser to Energy Secretary Ernest Moniz; and Christopher Guith, acting president of the Chamber of Commerce's Global Energy Institute.

Senate Energy Look at Nuke Legislation – The Senate Energy and Natural Resources Committee holds a hearing tomorrow at 10:00 a.m. on U.S. leadership in nuclear energy and to receive testimony on NELA. Witnesses include former NRC Commissioner ClearPath board member Jeff Merrifield, Idaho National Laboratory Director Mark Peters, Ashley Finan of the Nuclear Innovation Alliance, NEI's Maria Korsnick and Mark McManus, who serves as General President of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

House Resources Looks at Interior Re-Org – The House Natural Resources Oversight and Investigations Subcommittee holds a hearing tomorrow at 10:00 a.m. looking at the implementation and impacts of the reorganization of the Department of the Interior. Interior Budget chief Scott Cameron, former Clinton Interior official Jamie Rappaport Clark (Defenders of Wildlife CEO) and former director of BOEM/BSEE Michael Bromwich will all speak.

House Resources to Look at Clean Energy – The House Resources Energy and Mineral Resources Subcommittee holds a hearing tomorrow at 10:00 a.m. on public lands and our clean energy future.

House Science to Host NOAA on Budget – The House Science Environment Subcommittee holds a hearing tomorrow at 10:00 a.m. on the NOAA FY2020 budget request featuring Dr. Neil Jacobs.

POSTPONED – USEA to Host Microgrid Discussion – The US Energy Assn's presentation tomorrow is POSTPONED to a later date. It will highlight the ongoing DOE microgrid activities for enhanced grid reliability and resilience. The speaker is Dan Ton, Program Manager at DOE's Office of Electricity Advanced Grid Research and Development Division. He is responsible for developing and implementing R&D activities in microgrids, resilient electric distribution systems, and international smart grid collaboration.

Wilson forum to Look at China GHGs – The Wilson Center's China Environmental Forum (CEF) holds a forum tomorrow at 9:30 a.m. where speakers will provide stories of China's energy engagement in Southeast Asia, highlighting the opportunities for China to play a bigger role in supporting the region's clean energy transition. Courtney Weatherby (Stimson Center) will review China's role as an energy investor in Southeast Asia and explore the growing interest for solar and other renewables to meet region's future energy demand. She also will share stories of new clean energy targets and policy shifts in Vietnam, Thailand and Cambodia. Sam Geall (chinadialogue) will discuss the Chinese government's ambitious plan to add over 10 GW capacity of solar photovoltaic power to benefit over 2 million rural households across China by 2020. He will talk about how these solar initiatives in China could inform the government's efforts to increase clean energy investments in the Belt and Road Initiative. Darrin Magee (Hobart and William Smith Colleges) will delve into how an interconnected smart grid linking solar power plants in Cambodia with hydropower plants in China's Yunnan Province could balance energy supplies and reduce the need for more hydropower in the region.

SEIA Hosts Federal, State Policy Meeting on Hill – The Solar Energy Industries Association (SEIA) and the bipartisan Congressional Solar Caucus will hold a forum tomorrow at 10:30 a.m. in 303 Cannon that will be an overview of the solar industry, key opportunities for achieving SEIA's goal that solar energy comprises at least 20% of total U.S. energy generation by 2030, and the most important opportunities solar industry faces at the state and federal levels. Reps Raja Krishnamoorthi (D-IL) and Ralph Norman (R-SC) will speak.

ACCF to Host Chatterjee – The American Council for Capital Formation and the ACCF Center for Policy Research hosts a special event tomorrow at noon in the Chinese Ballroom of the Mayflower Hotel discussing the 2019 FERC Agenda that features a conversation with Chairman Neil Chatterjee.

Webinar Looks at Financial Impacts of Disasters – The Urban Institute holds a presentation tomorrow at noon featuring new research about natural disasters and residents' financial health. This webinar will share new Urban Institute estimates of the impact of recent natural disasters on residents' financial outcomes including credit scores, delinquent debt, bankruptcies, credit card debt, foreclosures, and auto debt. The discussion will explore how effects differ by a disaster's severity and size and demographic and economic characteristics of residents and communities. This webinar will also highlight implications for government leaders (local, state, federal), philanthropy, nonprofit leaders focused on financial health, and regulators, so they can advance strategies that help build residents' resilience before a disaster hits and help them better cope afterward.

Cato to Look at *Jones Act* – The Cato Institute holds a discussion tomorrow at Noon on assessing the *Jones Act's* impact on Puerto Rico. At this event, panelists will assess the law's impact on Puerto Rico, highlighting the findings of two recent reports that evaluate the law's economic cost, and will discuss the implications of Puerto Rico's recent application

for a temporary Jones Act waiver to allow liquefied natural gas to be imported aboard foreign-flagged ships. The event features Puerto Rico Secretary of State Luis Rivera Marín, JHU's Anne Krueger and experts Vicente Feliciano and John Dunham.

House Science Panel to Look at Recycling – The House Science Research and Technology Subcommittee holds a hearing tomorrow at 2:00 p.m. on emerging technologies in plastics recycling. Witnesses will include Plymouth, Michigan City Manager Paul Sincock, Troy University's Govind Menon, NREL's Gregg Beckham and Dow's Recycling Commercial Director Tim Boven.

House Oversight to Look at Public Health, Climate – The House Oversight Committee is hold a hearing tomorrow at 2:00 p.m. on the public health impacts of climate change. Why? Who knows... Witnesses will be Harvard's Aaron Bernstein, UT-Austin's Karen DeSalvo, Pitt's Bernard Goldstein, FIU's Cheryl Holder and Caleb Rossiter of the C02 Coalition.

Group to Look at Asian Carp – The Northeast-Midwest Institute and the Asian Carp Regional Coordination Committee are hosting a briefing tomorrow to discuss Asian Carp mitigation in the Great Lakes region. EPA's Bill Bolen is among the speakers.

Forum to Look at Business Impacts of Flooding – Pew Charitable Trusts and the U.S. Chamber of Commerce hold a briefing tomorrow at 3:30 p.m. in 2261 Rayburn on the business case for flood-ready infrastructure. Since 2000, flood disasters have caused over $800 billion in losses stemming from business interruptions and damage to infrastructure, such as roads, hospitals, and schools. Research indicates that following a disaster, roughly 40 to 60 percent of small businesses never reopen their doors, and 90 percent fail within a year unless they can resume operations within 5 days. This briefing will bring together local officials and organizations representing small and large businesses. Discussions will focus on how Congress and the Administration can make resilient investments and forward-thinking policy decisions that ensure communities and businesses are better able to thrive in the face of increasing flood-disasters.

Faison, Others Discussion American Climate Leadership – The American Climate Leadership Summit 2019 will be held on Wednesday and Thursday at the Reagan Building and will feature discussions on climate science and strategies for community engagement and policy solutions. Sen Whitehouse, former EPA heads Lisa Jackson and Gina McCarthy, ClearPath founder Jay Faison, AWEA's Tom Kiernan and former Rep Phil Sharp are among the speakers.

Biodiesel Rally On Tax Credit – The National Biodiesel Board holds a rally Wednesday morning for the biodiesel tax incentive extension at the U.S. Capitol East Front. Be prepared to hear a lot of incorrect bluster about small refinery exemptions.

House Energy Panels Tackle Pipelines, Waste – The House Energy & Commerce Committee holds two hearings on Wednesday. The first hearing, set for will be held by the Energy Subcommittee on reauthorization of the Pipeline Safety Act. Half an hour later, the Oversight and Investigations Subcommittee will hold a hearing to examine the Energy Department's cleanup of nuclear and hazardous waste sites.

House Energy Panel Looks at Enviro Liability – The House Energy and Commerce Oversight and Investigations Subcommittee holds a hearing Wednesday at 10:00 a.m. on DOE environmental liability of DOE cleanups.

Forum to Look at Electric Vehicles, Infrastructure – The Electric Drive Transportation Association holds an event on Wednesday at 1:30 p.m. at the National Press Club looking at building e-mobility into 21st Century infrastructure. A keynote speaker will share an integrated view of electric transportation in the 21st century and two moderated panels will include representatives of the entire value chain of e-mobility.

Senate Approps Panel Looks at NRC – The Senate Appropriations Energy-Water Development Subcommittee holds a hearing in 138 Dirksen at 2:30 p.m. on the proposed budget estimates and justification for the U.S. Nuclear Regulatory Commission. Commissioner will testify.

Midwest Solar Expo Set – The 2019 Midwest Solar Expo starts Wednesday in the heart of Downtown Minneapolis. The event brings together almost 500 solar, clean energy and utility executives for two action-packed days of networking, deal-making, interactive sessions, all-star speakers, exhibitions and parties. This year's conference will cover the latest developments in the Midwest's residential, commercial and utility solar markets, including topics ranging from project finance, community solar, and policy to emerging opportunities in energy storage, electric vehicle charging infrastructure, fuel cells and beyond.

House Resources Looking at 3 Years of Puerto Rico Lessons – On Thursday at 10:00 a.m., the House Committee on Natural Resources will hold an oversight hearing on the status of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) looking at lessons learned three years later. PR Gov Ricardo Rosselló and others testify.

Senate Energy to Host Interior Nominees – The Senate Energy and Natural Resources Committee holds a nomination hearing on Thursday at 10:00 a.m. to consider the nominations of Daniel Jorjani to be Solicitor of the Department of the Interior and Mark Lee Greenblatt to be Inspector General, Department of the Interior.

WCEE to Look at CyberSecurity – The Women's Council on Energy and the Environment (WCEE) holds a Lunch & Learn Thursday at noon on cybersecurity, which is becoming an increasing concern in every facet of our lives. At this interactive lunch and learn presentation, Deloitte's Shari Gribbin will focus on critical aspects of the energy industry cybersecurity landscape including the regulatory and legal outlook, governance and compliance trends within utilities, and the intersection with privacy requirements for customer information, CEII and other data.

Moniz to Give Carey Lecture – On Thursday at 6:00 p.m., AAAS hosts the 2019 William D. Carey Lecture. This year, the lecture will be presented by Dr. Ernest J. Moniz, the president and chief executive officer of the Energy Futures Initiative and former Energy Secretary.

NYU Forum to Look at Climate Regulation – On Thursday at 6:30 p.m., NYU Law's Guarini Center hosts a group of distinguished energy industry experts for a discussion on climate change regulation. Panelists will provide their thoughts on the pros and cons of a number of proposed or implemented policies to reduce greenhouse gas emissions including federal carbon taxes, carbon adders to be administered by independent system operators, renewable energy mandates and more.

House Science Looks at Nuclear – The House Science, Space and Technology Energy Subcommittee holds a field hearing in Shippingport, PA at 10:00 a.m. on the domestic nuclear industry's role in local economies, emissions and national security. Witnesses include former DOE Assistant Secretary for Nuclear Energy and NRC Commissioner Pete Lyons, retired Navy Admiral William Fallon, EPRI's Tina Taylor and Jay Apt of the Carnegie Mellon Electricity Industry Center.

JHU Hosts Climate Seminar – On Friday, the Johns Hopkins University Advanced Academic Programs and the National Academy of Sciences will host a one-day symposium on approaches to climate change. In 1991, the U.S. Office of Technology Assessment (now defunct) issued a path-breaking report at the request of Congress, Changing by Degrees: Steps to Reduce Greenhouse Gases. Twenty-eight years later, the effects of climate change are ever more evident—and the need to combat them more urgent. We honor the 1991 report by adopting its title, and we will build on it to discuss climate change in today's multi-faceted environment. The symposium will address the current and future impacts of climate change and examine how leaders in diverse fields, from environmental science and public policy to finance and communications, can influence our current climate trajectory.

Forum to Look at Air Issue Successes – Life:Powered and States Trust host a Congressional staff briefing at Noon in 188 Russell to learn the data behind America's air quality successes. Contrary to the popular narrative that our modern economy is leading us to environmental disaster, we are proving that abundant energy, prosperity, and lasting environmental quality go hand in hand. Featured panelists include Kathleen Hartnett White.

Former UN Climate Chief Headlines Forum – The Center for Global Development holds a discussion Friday at 2:30 p.m. on fiscal policy tools that can protect the planet. A new IMF paper provides country-level guidance on the role, design and economic impact of fiscal policies for implementing these strategies, using a unique and transparent tool laying out

the trade-offs among policy options. The IMF will also be releasing updated estimates of energy subsidies at the global and national level. Christine Lagarde, the IMF's Managing Director and former UN Climate chief, will be joined by Ngozi Okonjo-Iweala, former Minister of Finance of Nigeria and Andrew Steer, President and CEO of WRI, in a session moderated by CGD President, Masood Ahmed to discuss fiscal policy options to achieve the Paris commitments.

IN THE FUTURE

Offshore Tech Conference Hits 50 – The Offshore Technology Conference hits its 50th anniversary on May 6th through 9th in Houston. The event aims at advancing scientific and technical knowledge for offshore resources and environmental matters. Celebrating 50 years since 1969, OTC's flagship conference is held annually at NRG Park (formerly Reliant Park). Speakers will include Equinor COO Jannicke Nilsson, Total President Arnaud Breuillac, Chamber Global Energy Institute head Christopher Guith, Murphy Oil CEO Roger Jenkins, Baker Hughes Oilfield Services head Maria Claudia Borras and BP America President Susan Dio.

SEIA to Host Diversity Challenge – On May 6th, the Solar Energy Industries Association will be issuing a Diversity Challenge in concert with the broader energy industry. The purpose of the challenge is to start a conversation about what our sector is doing to address diversity and inclusion. It's intended to be a constructive way to bring the energy world forward to talk about an issue that is of critical importance to its collective businesses. For example, organizations and businesses with diverse workforces are more innovative and more successful. To launch this challenge, SEIA will be hosting an event at the National Press Club with the Solar Foundation to release an updated Solar Diversity Study and Diversity Best Practice Guide. They will also launch a #DiversityChallenge that can be shared on social media regarding what companies/organizations have done, what they are working on, and what has been successful in increasing diversity and inclusion. Other Components of the Challenge Include:

- SEIA is recruiting dozens of solar companies to sign on to the PWC CEO Action Pledge
- Hosting ancillary events around the country after May 6th to ensure this important topic is discussed outside of DC with solar companies
- Planning a workshop at the Press Club event to learn about and share components of a successful diversity campaign.

Forum to Look at NatGas on Europe – The Atlantic Council hosts an event next Monday at 2:00 p.m. looking at Gazprom as a Geopolitical Instrument. The event will look at the strategic challenge for the EU and the US. At a pivotal moment in the pipeline's development, the Atlantic Council will host a conference bringing together American and European energy experts and government officials to discuss how the United States and the EU should approach Gazprom's relationship with the Kremlin and to offer their thoughts on the ongoing debate surrounding the Nord Stream II pipeline and its potential impact on American and European interests. The event will feature two panels regarding Gazprom's political utility for the Kremlin and the challenges that the Nord Stream II pipeline presents to European energy security.

NRECA Conference Set For Houston – NRECA Connect will be held in Houston on May 7th through 9th to bring together more than 600 co-op communications, marketing and member services professionals. Current communications and local challenges will be on the agenda.

USAEE to Talk LNG – On Wednesday, May 8th at noon at Chinatown Gardens, the National Capital Area Chapter of the United States Association for Energy Economics is hosting a presentation on U.S. LNG and European Energy Security featuring Keith Martin, Chief Commercial Officer (CCO) and as a board member for Uniper, an international energy company active in more than 40 countries that owns and manages power plants throughout Europe and Russia.

BPC to Host Air Capture Report – The Bipartisan Policy Center hosts a forum on May 9th at 9:30 a.m. to take a first look at a Rhodium Group report focused on direct air carbon capture. The event includes a presentation from lead author John Larsen and a discussion on the policy opportunities and barriers to direct air capture technology advancement with leading experts, businesses, and policymakers to learn how direct air capture can build a cleaner and more efficient economy, bolster our technology leadership, and reduce carbon pollution.

Chamber Travel Forum Set – The U.S. Chamber Foundation holds TRAVEL FORWARD on May 9th. The event will discuss the future of travel and the people, ideas, and innovations moving the industry forward. Entrepreneurs, business

leaders, and tech experts will discuss the innovations and emerging technologies making travel more efficient, personalized, accessible, interactive, affordable, and safe. Topics will include high-tech transportation, space tourism, micro hotels, customer service robots, AI, personalized travel, and more.

CSIS to Hold Poneman Book Event – On Thursday, May 9th at 5:30 p.m., the Center for Strategic & International Studies hosts a book event featuring "Double Jeopardy: Combating Nuclear Terror and Climate Change" by Daniel B. Poneman. In the book, Poneman argues that the world needs an "all-of-the-above" energy policy, one that advances the goal of decarbonizing the environment through all available means—including nuclear power. Poneman makes a compelling case that we can enhance the ability of nuclear power to combat climate change even as we reduce the risks of nuclear terror. Doing so will require well-crafted laws and policies, implemented with an ethos of constant vigilance and embedded in a culture that weaves safety and security goals into the fabric of our nuclear programs. This will enable government and industry to work together to maximize energy and climate benefits while minimizing safety and security risks. He sits down with IHS's Dan Yergin.

Report to Look at India Rural Electrification – The Rockefeller Foundation, Smart Power India, and the Johns Hopkins SAIS Initiative for Sustainable Energy Policy (ISEP) release a report on Thursday May 9th that will look at rural electrification in India. The groups spear-headed a project to answer questions about rural electrification, collecting primary research from over 10,000 households and 2,000 rural micro-enterprises across four Indian states. The resulting report titled - 'Rural Electrification in India: Consumer Behaviour and Demand' – furthers the discussion around India's rural electricity access, customer demand behaviour and service satisfaction.

Forum Looks at Latin American Energy – Inter-American Dialogue hosts a forum on Friday, May 10th at 9:30 a.m. looking at prospects for energy resource development in Latin America

Forum Looks at Clean Innovation – The Information Technology and Innovation Foundation hosts a forum on Monday, May 13th at 2:30 p.m. in 2103 Rayburn looking innovation opportunities and the federal role to advance clean industry in the United States, with a focus on issues currently before the 116th Congress. Speakers include Ryan Fitzpatrick of Third Way and Doug Vine of Center for Climate Energy Solutions (C2ES).

GND Groups End Tour in DC – On Monday May 13th, the Sunrise Movement returns to Washington DC for its final special stop of the *Road to a Green New Deal*. At this Tour Stop, they'll explore the climate crisis and what it looks like here in DC and for the country, and what the promise of the Green New Deal means. Speakers include Sen. Ed Markey.

McCarthy to Headline Global Cooling Prize Announcement – On May 14th at 2:00 p.m., the CSIS Energy & National Security Program, Rocky Mountain Institute, Conservation X Labs, and the Institute for Governance & Sustainable Development is launching the Global Cooling Prize will a forum at CSIS in DC. Announced in November 2018, the Prize is a global competition to develop breakthrough residential cooling technology. The Global Cooling Prize seeks to create a global cooling revolution by spurring the development of a radically more energy-efficient cooling technology. This event will feature discussions of this important global challenge and emerging opportunities to find scalable solutions. Speakers will include a Keynote Speech from former EPA head Gina McCarthy, as well as discussions with DOE official David Nemtzow and former DOE Deputy Sect Bill Martin and several others.

GTM Solar Summit Set – Greentech Media hosts it 12th annual Solar Summit in Scottsdale, AZ on May 14-15th. It will cover the latest developments in global solar markets, module technology, how the ITC stepdown will impact project finance, distributed solar emerging markets and much more.

Wheeler to Address Infrastructure Questions at BPC – The Bipartisan Policy Center will host EPA Administrator Andrew Wheeler on May 16th at 10:00 a.m. to discuss EPA's role in building critical infrastructure, followed by a panel discussion on water infrastructure and affordability.

Houston Hosts Wind Industry's Biggest Conference – AWEA returns to Houston on May 20-23, for the WINDPOWER Conference and Exhibition, the Western Hemisphere's largest gathering of the people and technology driving wind

power trends. WINDPOWER is where the vision and business deals that will drive the future of the wind industry happen. More on this as we get closer.

USEA Policy Forum Set – The US Energy Assn holds its annual public policy forum on May 23rd from 11:00 a.m. to 5:00 p.m. at the Reagan Building. The event will feature a distinguished group of speakers with over 150 energy stakeholders, journalists, diplomats, and government agency officials expected to attend. USEA will also recognize and honor recipients of the 2019 United States Energy Award and its Volunteer Awards.

National Press Club Hosts EPA's Wheeler – The National Press Club will host a luncheon speech with EPA head Andrew Wheeler on June 3rd.

Cruz to Headline Oil, Gas Forum – The 5th Washington Oil & Gas Forum 2019 will be held on June 5th and 6th at the Cosmos Club. Sen. Ted Cruz will be Keynote Speaker. The Washington Oil & Gas Forum has been established as the prime international industry event in Washington, DC. The Forum is a unique opportunity for American and international oil/gas senior executives to meet with Congressional and Government leaders. This year's topic is "Critical Oil and Gas Infrastructure and the role of U.S. LNG and Pipeline Gas in the Global Markets." Other Speakers include Garret Graves, Eni Chair Gianni di Giovanni, State's Frank Fannon, DOE's Shawn Bennett and ATR's Grover Norquist.

Clean Energy Expo Set – The 21st Annual Congressional Renewable Energy and Energy Efficiency EXPO and Policy Forum is set for Thursday July 11th to showcase renewable energy and energy efficiency technologies. In every state across the country, these technologies are having a significant impact in business development and job creation in the manufacturing, transmission, power, transportation, and building sectors. The bipartisan House Renewable Energy & Energy Efficiency Caucus is the Expo's honorary co-host.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 5/15/2019 5:59:51 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]
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]; Jacks, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4a46ec26b7948ba8d890c8c93fecdff-Lucente, Su]
Subject: Re: Meeting with Valero Energy Corporation

Great thank you!

Sent from my iPhone

On May 15, 2019, at 1:55 PM, Idsal, Anne <idsal.anne@epa.gov> wrote:

> Hey Chris,
>
> I've CC'd Susan Jacks to help work out a time to meet. Looking forward to it.
>
> Anne
>
> Sent from my iPhone
>
> On May 15, 2019, at 1:40 PM, Parinello, Chris <Chris.Parinello@valero.com> wrote:
>
>> Hi Anne—I work in Valero's Washington D.C. office, and my colleague Salo Zelermyer and I wanted to come in to introduce ourselves and discuss some of our key policy issues (specifically the Renewable Fuel Standard). Do you have any time on the afternoons of the 22nd, 23rd, 24th, or 29th for a brief meeting? Thank you!—Chris
>>
>> Chris Parinello
>> Director, Federal Government Affairs
>> Valero Energy Corporation
>> Phone: (202) 560-5451
>> Email: chris.parinello@valero.com

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 8/15/2018 6:49:40 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Valero

Just heads up Mandy just called and asked I attend Valero with you. Wasn't given more details but hope that's alright

Alex Dominguez
Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency

Message

From: Dickerson, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D0440D9F06994021827E0D0119126799-DICKERSON,]
Sent: 8/14/2018 9:22:31 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: RE: For the 11 am meeting Wednesday with the Auto Alliance

Thanks Alex.

From: Dominguez, Alexander
Sent: Tuesday, August 14, 2018 5:21 PM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: RE: For the 11 am meeting Wednesday with the Auto Alliance

Aaron – see attached for Valero

From: Dickerson, Aaron
Sent: Tuesday, August 14, 2018 5:20 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: For the 11 am meeting Wednesday with the Auto Alliance

Thanks Josh.

Anything for the 3pm with Valero?

From: Lewis, Josh
Sent: Tuesday, August 14, 2018 4:35 PM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: For the 11 am meeting Wednesday with the Auto Alliance

Aaron,

Attached for the 11 am meeting Wed:

- August 2, 2018 Letters from the Auto Alliance & Global Automakers to President Trump and separately Governor Brown on the LD CAFE/GHG proposal
- Joint press release from the Alliance and Global Automakers (also from August 2)
- Overview fact sheet from the recent NHTSA/EPA SAFE Vehicle Rule proposal

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 8/14/2018 9:21:20 PM
To: Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: RE: For the 11 am meeting Wednesday with the Auto Alliance
Attachments: Valero_August 15 2018.docx

Aaron – see attached for Valero

From: Dickerson, Aaron
Sent: Tuesday, August 14, 2018 5:20 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: For the 11 am meeting Wednesday with the Auto Alliance

Thanks Josh.

Anything for the 3pm with Valero?

From: Lewis, Josh
Sent: Tuesday, August 14, 2018 4:35 PM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: For the 11 am meeting Wednesday with the Auto Alliance

Aaron,

Attached for the 11 am meeting Wed:

- August 2, 2018 Letters from the Auto Alliance & Global Automakers to President Trump and separately Governor Brown on the LD CAFE/GHG proposal
- Joint press release from the Alliance and Global Automakers (also from August 2)
- Overview fact sheet from the recent NHTSA/EPA SAFE Vehicle Rule proposal

Message

From: Hackett, Jonathan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=416AE3CD6A1C42FC84C8A6CC7DF3CF59-HACKETT, JO]
Sent: 8/22/2019 5:32:35 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RFA Request to Visit Ethanol Plant

The facility I had in mind was sold to Valero in late 2018 and is not an RFA member. That being said – it may be worthwhile (if ok w/ ethics, etc.) to visit if you want to see how ethanol (aka "moonshining") works. It is very close to Ann Arbor and could be a good side trip. Delaney is putting together Anne's calendar for the balance of the year and will it shoot it over so I can see where a side trip would be possible with an RFA member plant. Should have it sometime tomorrow so I get started.

J.W. Hackett
Renewable Fuels Advisor
Desk: 913-551-7025
Cell: 816-401-4240
hackett.jonathan@epa.gov

Valero Riga Ethanol Plant P.O. Box 12, Riga, MI 49276 7025 Silberhorn Highway Blissfield, MI (this facility was recently sold to Valero from Green Plains and is not an RFA member plant but it is only ~50-55 minutes south of Ann Arbor, MI)

Appointment

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 9/28/2018 6:31:54 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Accepted: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM
Show Time As: Busy

Appointment

From: DCRoomARN5415PolyPCTB/DC-ARN-OAR [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=USER2C066053]
Sent: 9/28/2018 6:08:43 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Accepted: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM

Recurrence: (none)

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 9/28/2018 6:08:41 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Accepted: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM

Recurrence: (none)

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 9/12/2017 8:13:30 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Valero Meeting Request

Ok no worries we'll make that work. Thanks!—Chris

From: Dominguez, Alexander [mailto:dominguez.alexander@epa.gov]
Sent: Tuesday, September 12, 2017 4:12 PM
To: Parinello, Chris
Cc: Zelermyer, Salo ; Gunasekara, Mandy
Subject: RE: Valero Meeting Request

Mandy is back-to-back Wednesday and traveling Thursday and Friday so it unfortunately needs to be Monday at 10:30 or looking at the week of 25th

Alex

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, September 12, 2017 3:45 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Re: Valero Meeting Request

Alex--Salo is now out Monday so sorry! Would one of those other days work?--Chris

Sent from my iPhone

On Sep 12, 2017, at 3:40 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

> Hey Chris – Let's do 10:30AM on Monday, September 18th.
>
> Location: 1200 Pennsylvania Avenue, NW.
>
> Directions: Please use the William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station.
> https://www.epa.gov/sites/production/files/2013-08/federaltrianglemap5.jpg
>
> EPA Contact: For an escort from Security to the meeting call me at 202-578-5985 or 202-564-3164
>
> **Alex Dominguez**
> *Policy Analyst to the Senior Advisors to*
> *the Administrator for Air and Water*
> U.S. Environmental Protection Agency

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, September 12, 2017 3:04 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Valero Meeting Request
Importance: High

Hi Mandy—Wanted to see if you had time to meet with us next week to follow up on our discussions related to RINs. Salo and I would like to bring in Jeff Holmstead and Lisa Jaeger from Bracewell as well. Would any of the below days/times work? Thank you!—Chris

Monday, September 18th—Any time
Wednesday, September 20th—Afternoon
Thursday, September 21st—Any time
Friday, September 22nd—Any time after 10am.

Chris Parinello
Senior Manager, Federal Government Affairs
Valero Energy Corporation
Phone: (202) 560-5451
Email: chris.parinello@valero.com

Appointment

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 10/2/2018 6:11:12 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Meeting Forward Notification: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM

Recurrence: (none)

Appointment

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 10/2/2018 7:44:35 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Meeting Forward Notification: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM

Recurrence: (none)

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 9/6/2018 3:42:56 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,]; OARINVITATIONS [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9706ba8d3d6413980dc908f0068e421-OARINVITATI]

Subject: Meet with Valero

Start: 10/15/2018 3:00:00 PM
End: 10/15/2018 7:00:00 PM
Show Time As: Busy

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 6/28/2017 5:59:00 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; 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]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Parinello, Chris [Chris.Parinello@valero.com]; Zelermyer, Salo [Salo.Zelermyer@valero.com]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]

Subject: EPA / Valero
Location: Location: 1200 Pennsylvania Avenue, NW (North) - Room 3528 WJCN

Start: 6/30/2017 5:15:00 PM
End: 6/30/2017 5:45:00 PM
Show Time As: Busy

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 9/28/2018 6:06:38 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,]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
CC: Master, Barbora [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2c813860457b42019078b33089aaeee5-bjemelko]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]
BCC: DCRoomARN5415PolyPCTB/DC-ARN-OAR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2c066053]

Subject: Meeting: Valero
Attachments: Meeting with Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM
Show Time As: Busy

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 9/27/2018 7:27:44 PM
To: Rakosnik, Delaney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=274573739a9f446883072599086ededd-Rakosnik, D]; 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,]; Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: Meeting with Valero

Importance: High

Hi Delaney—I am writing to request a meeting with Assistant Administrator Wehrum and Principal Deputy Assistant Administrator Mandy Gunasekara to discuss the Renewable Fuel Standard, particularly issues surrounding potential market reforms of RINs. We would like to bring in two outside commodities experts who have analyzed the RINs market and have identified potential reforms (they will be flying in from out of town). Is Assistant Administrator Wehrum available on Wednesday morning on the 3rd? The attendees from our side are listed below. Please let me know if you have any questions. Thank you!—Chris

Salo Zelermyer
Vice President & Counsel, Federal Government Affairs
Valero Energy Corporation

Chris Parinello
Director, Federal Government Affairs
Valero Energy Corporation

Stacie Hartman
Partner
Schiff Hardin LLP

Dr. Sharon Brown-Hruska
Managing Director, Securities and Finance
White Collar, Investigations & Enforcement
NERA Economic Consulting

Chris Parinello
Director, Federal Government Affairs
Valero Energy Corporation
Phone: (202) 560-5451
Email: chris.parinello@valero.com

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 1/31/2018 2:45:26 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: Meeting: Valero
Attachments: RE: Meeting Request
Location: 5426

Start: 2/2/2018 9:00:00 PM
End: 2/2/2018 10:00:00 PM
Show Time As: Busy

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 1/31/2018 2:45:06 PM
To: Parinello, Chris [Chris.Parinello@valero.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: RE: Meeting Request

Hey Chris - Confirmed for Friday at 4:00. Just give me a call when you are going through security and I'll come down. My work cell Ex. 6

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, January 30, 2018 8:53 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Re: Meeting Request

Friday at 4 works for us. If anything changes please let us know...we are flexible. Thanks!

Sent from my iPhone

On Jan 30, 2018, at 7:49 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

> I'm happy to meet. Looping in Alex to help firm up logistics. On first look-This Friday around 4 might work.
>
> Sent from my iPhone
>
> On Jan 30, 2018, at 2:53 PM, Parinello, Chris <Chris.Parinello@valero.com> wrote:
>
> > Hi Mandy—Are you free later this week or sometime next week to discuss some of the latest issues surrounding the RFS? Salo and I have a pretty open schedule tomorrow thru Friday, and we're also free Monday the 5th, Thursday the 8th or Friday the 9th. Please let us know if any of those days work for you. Thank you!—Chris
> >
> > Chris Parinello
> > Director, Federal Government Affairs
> > Valero Energy Corporation
> > Phone: (202) 560-5451
> > Email: chris.parinello@valero.com

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/13/2018 5:20:53 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,]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]
CC: Harlow, David [harlow.david@epa.gov]

Subject: Meeting: Valero
Attachments: RE: Meeting with Valero
Location: 5415 WJCN

Start: 4/18/2018 3:30:00 PM
End: 4/18/2018 4:30:00 PM
Show Time As: Busy

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 9/6/2018 3:42:56 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,]; OARINVITATIONS [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9706ba8d3d6413980dc908f0068e421-OARINVITATI]

Subject: Meet with Valero

Start: 10/15/2018 3:00:00 PM
End: 10/15/2018 7:00:00 PM
Show Time As: Busy

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 1/31/2018 2:45:26 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: Meeting: Valero
Attachments: RE: Meeting Request
Location: 5426

Start: 2/2/2018 9:00:00 PM
End: 2/2/2018 10:00:00 PM
Show Time As: Busy

To: Gunasekara, Mandy; Dominguez, Alexander
Subject: Meeting: Valero

Outside Attendees
Salo Zelermyer
Chris Parinello

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/13/2018 5:20:53 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,]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]
CC: Harlow, David [harlow.david@epa.gov]

Subject: Meeting: Valero
Attachments: RE: Meeting with Valero
Location: 5415 WJCN

Start: 4/18/2018 3:30:00 PM
End: 4/18/2018 4:30:00 PM
Show Time As: Busy

To: Mandy Gunasekara, Alexander Dominguez, Erik Baptist, David Harlow

Outside Attendees:
Salo Zelermyer
Chris Parinello

Appointment

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 9/28/2018 6:06:38 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,]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
CC: Master, Barbora [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2c813860457b42019078b33089aaeee5-bjemelko]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]
BCC: DCRoomARN5415PolyPCTB/DC-ARN-OAR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2c066053]

Subject: Meeting: Valero
Attachments: Meeting with Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM
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Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 3/5/2018 4:59:43 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: Charles River Associates Analysis
Attachments: CRA_RIN_PriceContainment_March_2018.pdf

Importance: High

Mandy—Please see the attached analysis from Charlie River Associates . Please let us know if you have any questions. Thanks.—Chris

Chris Parinello
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CRA Charles River Associates

Ethanol RIN Waiver Credits:

Improving Outcomes of the Renewable Fuels Standard through a Price Containment Mechanism

Prepared by:

Charles River Associates

Date: March 2018

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Disclaimer

The study was commissioned by Valero. The research, analysis, results and conclusions were all developed independently by the authors. The conclusions set forth herein are based on independent research and publicly available material.

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For questions about this paper, please contact Jeff Plewes at jplewes@crai.com

1. Executive Summary

Market-based policies that aim to increase a societal good, such as renewable energy, often employ quantity targets with associated credit markets that allow policy goals to be met at least cost. These credit markets, such as the RIN market under the Renewable Fuels Standard (RFS), can be subject to uncertain and volatile prices when the real world turns out different than policymakers expected. Unexpectedly high prices can lead to significant societal costs and ultimately a failure to meet policy goals.

Since 2013, the ethanol RIN market has experienced high and volatile prices, even though the average ethanol content of motor gasoline in the US has been higher than policymakers thought was necessary to meet their ethanol volume goals when the policy was devised. Actual US transportation fuel consumption has been substantially lower than forecasted when the RFS was written in 2007. This meant that even with the entire country consuming gasoline with approximately 10 percent ethanol, the RFS ethanol volume standards have not been met. Higher ethanol content fuels, such as E15 and E85, could help meet the target, but increasing use of these higher ethanol blends has been held back by infrastructure constraints.

Instead, the RIN deficiency has been met by expanding biodiesel consumption, based on an unintended result of the fuel-type nesting structure of the RFS. Ethanol (D6) RINs have therefore priced off the higher cost biodiesel (D4) RINs. Meanwhile, the US has increased its imports of biodiesel, often from sources with potentially negative environmental impacts. There has also been minimal appreciable increase in ethanol use past the "blend wall," despite RIN prices being many times greater than their levels prior to 2013.

The RFS policy goals could be met at a more reasonable RIN cost with the implementation of a well-designed price containment mechanism. National biofuel policy discussions have recently turned to such mechanisms. These concepts have proven effective in a variety of other compliance credit markets, such as the Renewable Portfolio Standards and carbon emissions policies in many states and regions. While they may have different names, such as price caps, alternative compliance payments (ACP), or safety valves, they have proven effective policy tools. Their application to the RFS is further supported in academic literature.

Many applications of price containment mechanisms include significant government revenue streams, which in many cases have been effectively targeted at breaking through policy and infrastructure constraints. A price containment mechanism in the RFS could lead to greater ethanol consumption in the long term if it includes redirecting the new government revenue stream to expanding higher ethanol blend fuel consumption.

An ideal mechanism for the RFS will minimize consumer costs while achieving long-term policy goals, such as the use of renewable fuels. Waiver credits could be offered for sale by the EPA as an alternative compliance mechanism for obligated parties. A waiver credit program could consider the following components:

A price that reflects ethanol RIN costs – To minimize compliance costs, the waiver credit price should be as low as possible, without causing displacement of ethanol volumes in normal compliance years. Historical ethanol RIN prices prior to the blend wall, in market conditions similar to current conditions, averaged only a few cents. This was due to oxygenate and octane demand for ethanol driving blending. These other demand drivers still exist, and therefore a waiver credit price of about $0.10 per RIN should effectively relieve the blend wall without displacing ethanol volumes.

A quantity that ensures blend wall relief – If there are not enough waiver credits to clear the blend wall, the program will not provide much value. Given the uncertainty

around the volume of credits needed, the program should provide a substantial numbers of credits. If priced above the natural ethanol RIN price, then there would only be demand for waiver credits to displace RIN volumes above the blend wall.

A revenue recycling program aimed at lowering long-term compliance costs – The EPA can expect tens of millions of dollars per year in waiver credit revenues. These could be re-invested in the renewable fuels industry, with the aim of reducing long term compliance costs. A strong candidate for investment is infrastructure for E15 and E85 fuels, which have faced constraints in availability to consumers. With adequate investment in E15 and E85 infrastructure, long term waiver credit demand could decrease, effectively sunsetting the program naturally.

A price containment mechanism for the RFS can benefit from lessons learned from other policies and markets. There are currently a variety of price containment mechanisms within markets that were formed by environmental and energy policies. While a revisiting of the fundamental RFS policy drivers is a reasonable long-term idea, adding a well-designed ethanol waiver credit program could alleviate several of the most pressing issues with the RFS.

2. Introduction

This paper considers the application of a price containment mechanism in the RFS. It covers the following topics, each addressed in separate sections:

- Issues with the Current RFS Policy Design – The RFS was designed with ethanol volume goals based on an expectation of ever-increasing motor gasoline consumption. That has not occurred. As a result, the ethanol blend wall has been dictating RIN economics.

  Ethanol RIN prices have been set by the cost to expand biodiesel consumption beyond its RFS-mandated levels. These higher costs have done little to expand ethanol consumption. Nearly the same ethanol volume outcome could have been achieved for a much lower RIN cost. The widespread sale of higher blend ethanol fuels has not increased fast enough despite the high RIN prices.

- Using a Price Containment Mechanism in the RFS – The concept of price controls or "safety valves" have existed for as long as there have been compliance markets. They first gained favor in environmental policy-derived markets in the 1980s. The main reasons cited for applying price containment include responding to uncertainty, reducing regulatory burden, decreasing price volatility, and creating a source of revenue that can be used to address policy constraints, thereby improving long-term cost and policy outcomes. All of these are reasons present in the RIN market. We provide an illustration and description of how a price control mechanism would alleviate several RFS issues.

- A Waiver Credit Solution for the RFS – An ideal mechanism for the RFS will minimize consumer costs while achieving long-term policy goals, such as the use of renewable fuels. Waiver credits could be offered for sale by the EPA as an alternative compliance mechanism for obligated parties. The waiver credit price should be kept low to minimize compliance costs, but should not lead to significant displacement of ethanol blending. Historical RIN prices suggest that such a price could be as low as a few cents. There should be substantial waiver credits available to ensure that the blend wall is not breached. To improve long-term outcomes, revenues from waiver credits can be invested in relieving infrastructure constraints to higher ethanol blend fuels.

- Appendices: Case Studies – A price containment mechanism for the RFS can benefit from lessons learned from other policies and markets. There are currently a variety of price containment mechanisms within markets that were formed by environmental and energy policies. Examples include: many state-level renewable energy programs, the California Low Carbon Fuel Standard, and multiple regional carbon markets, such as that in the Northeast U.S. We examine a few in detail.

While some may point to EPA's waiver authority as an indirect price containment mechanism, it is not used as such and it is limited in its effectiveness. It has not prevented the market distortion caused by ethanol RIN pricing being stuck at biodiesel RIN levels for multiple years. Nor has it created any investment revenues that could be used for improving long-term policy outcomes and blending substantially more ethanol. While it is possible that the waiver authority could be tied to a price containment mechanism, in its current form it does not contain RIN prices.

A well-designed price containment mechanism in the RFS can improve the RIN market. It can deter unnecessary policy costs and can improve long-term outcomes, particularly if waiver credit revenues are used to break through constraints. Ethanol producers can benefit from long-term volume expansion as infrastructure constraints on higher blend fuels are reduced. Obligated parties can benefit from lower compliance costs in years where the price cap is binding. They would also experience reduced price volatility and a reduced risk of losing RIN

value to blenders. Finally, and most importantly, consumer costs would decrease as the long-term policy costs decrease.

3. Issues with the Current RFS Design

The RIN mechanism is a quantity-based compliance program, which uses a market mechanism (the RIN market mechanism) to require a certain quantity of ethanol to be used in each period. In simplified terms, the EPA sets the quantity of ethanol to be blended and the tradable RIN mechanism is designed to allow this to happen at least cost.

In the absence of perfect information in setting quantities in advance in such mechanisms, there is a substantial economic literature on the use of quantity versus price-based regulatory mechanisms.[1] If the marginal benefits of compliance greatly exceed the marginal costs, a quantity-based mechanism may be preferable.[2] Nevertheless, the RFS as implemented is a purely quantity-based system with a fixed target, with the inherent scope for unexpected price and policy outcomes if the future turns out differently than expected when the quantities were set.

As we show later in this paper, this is what has happened in the context of the RFS. Originally it was widely thought that, with ever increasing gasoline consumption, it would be relatively easy (and hence require a minimal subsidy, and thus reflecting a low RIN price) to meet the ethanol mandates. However, gasoline consumption has not grown as forecast (a good thing, from an environmental perspective), and infrastructure and other constraints have made it quite difficult to blend higher levels of ethanol to meet RFS requirements. In short, the current RIN market is the result of unintended consequences that a pure quantity-based mechanism lacks the flexibility to address.

This too is a known problem in the economic literature, and various changes to pure quantity-based mechanisms have been proposed in the economic literature (and often implemented in practice) to address the fundamental inflexibility of a pure quantity compliance target.[3] Later in this paper we discuss several case studies of price containment features which have been incorporated into other quantity-based compliance mechanisms to illustrate some practical implementations of these fundamental economic ideas.

We begin with an illustration of current ethanol RIN economics, showing how ethanol (D6) RIN prices have been pricing off of biodiesel (BBD, or D4) RINs. This unexpected outcome was created by the breaching of the ethanol blend wall, which we discuss after the RIN economics illustration. We then show how, despite high RIN prices, higher ethanol blend fuels have not entered the market to relieve the blend wall constraint.

---

1 Weitzman (1974). Prices versus Quantities. *Review of Economic Studies*, 41(4).

2 Newell, R., W. Pizer and J. Zhang (2003). *Managing Permit Prices to Stabilize Prices*. RFF Discussion Paper RFF DP-0-34

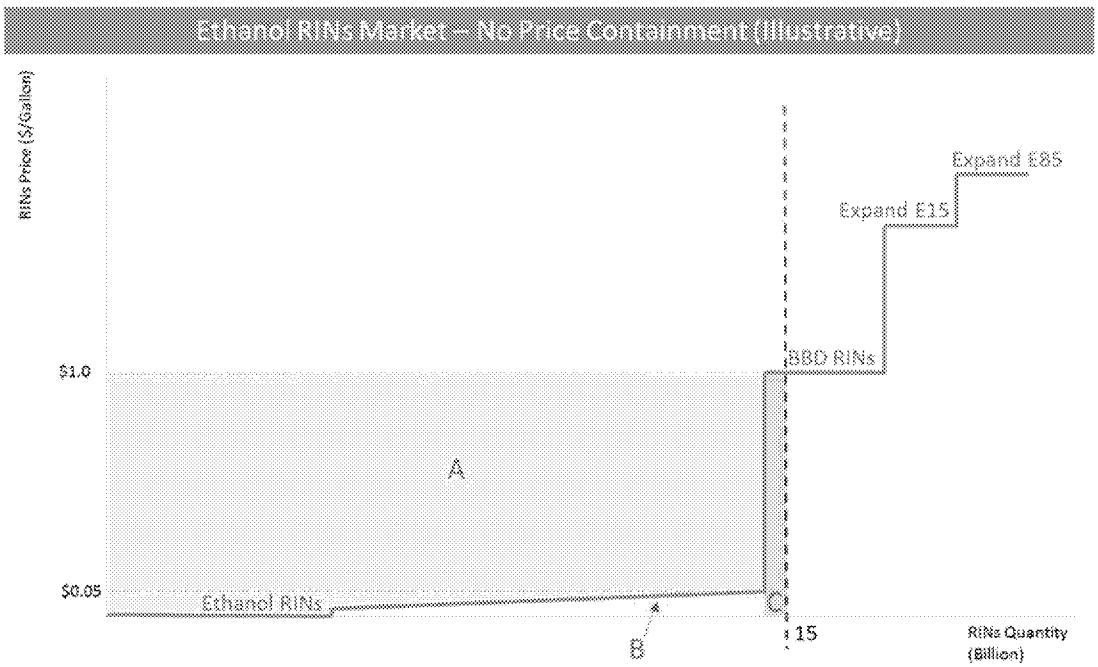
3 See for example, Jacoby, H. and D. Ellerman (2004). The Safety Valve and Climate Policy. *Energy Policy*, 32(4) and Kollenberg, S. and L. Taschimi (2016). Emissions Trading Systems with Cap Adjustments. *Journal of Environmental Economics and Management*, 80.

3.1. Illustration of current RIN economics

The main driver of RIN prices – at least in theory- is the price spread between the conventional fuel and the renewable fuel, adjusted for the lower energy content of the renewable fuel. While there are several constraints on this pricing dynamic being fully realized, historical movements in the conventional-to-renewable fuel spreads have been roughly correlated with RIN price changes.

The following chart is an illustration of the supply and demand curves in the RIN market as it is currently constructed. The prices and quantities roughly match actual outcomes in the past few years, including a RIN price set by BBD RINs. The chart is only meant to illustrate the market, not precisely replicate it.

Figure 1: D6 RIN market illustration, without price containment mechanism



The following describes each of the main elements of the above chart:

- Supply curve – While the illustrative supply curve in a generic market is often represented by a sloping line, the ethanol RINs supply curve is better characterized by a tiered set of steps. These represent the increasing compliance costs of supplying additional RINs, which see the greatest jumps in cost when moving to different fuels for compliance. For example, a significant amount of ethanol would be blended for its oxygenate and octane enhancement characteristics, regardless of the RFS. The associated RINS could be produced even at a zero RIN price, as there is another (non-RFS related) value to using ethanol. These low-cost or no-cost RINs represent the first tier in the supply curve.

  The next tier is the ethanol that requires a RIN price to be blended, which we assume is upward sloping due to different blending economics in different regions of the country and different costs for different producers. Both of the ethanol tiers are primarily driven by the price spread between petroleum feedstock and ethanol and the relative price of ethanol versus other octane enhancement options. In this example, all E10 ethanol RINs are available at under $0.05 per RIN, informed by

actual RIN market outcomes when ethanol blending set the RIN price prior to 2013. The ethanol tier ends at the "blend wall," which is the number of RINs that can be achieved by maximizing the amount of ethanol in motor fuels across the country, up to the E10 recommended standard.

RIN market outcomes have demonstrated that the next tier comes from biodiesel-based RINs, which are RINs generated by biodiesel use beyond the D4 volume standard set by the EPA.[4] The nested fuel structure of the RFS allows D4 RINs to count toward fulfilling D6 obligations. The price of these RINs is determined by comparative economics for biodiesel and diesel, with the RIN price theoretically covering the spread adjusted for energy content.

The last two tiers illustrated are for expanding higher ethanol blend fuels. These RIN prices represent the price needed to incentivize the infrastructure investments to expand distribution of the higher blend fuels. The price has not been realized by the market due to the BBD RINs setting a temporary ceiling on D6 RIN prices, so they remain unknown. It is possible that the price level required to incentivize infrastructure investment is extremely high, and therefore could bring high consumer costs if it were ever realized in the RIN market.

- Demand curve – The demand curve is illustrated as a vertical line at the mandated D6 RIN volume. This is a volume that must be met, nearly regardless of RIN price.[5]
- RIN price – The RIN price will be set at the intersection of the supply and demand curves. In the chart, the intersection is on the BBD RIN portion of the supply curve, making the BBD RINs the "marginal RINs" that set the price for all D6 RINs transacted.[6]
- Total market RIN value – In this illustration, the total value of all RINs is $15 billion. This is represented by the areas A, B, and C combined. Had the price been $0.05 per RIN and the quantity remained the same, the total value of all RINs would be $750 million, a difference of $14.25 billion.
- Producer surplus – Producer surplus is the amount that producers of RINs are paid over the amounts for which they would be willing to sell them. In the short term, they would be willing to sell RINs at their cost of producing them. In the long term, they would also include a rate of return. This surplus is achieved due to the concept of a marginal producer setting a single price in a market. In the illustration, it is represented by the area A.[7]

---

4 Other small tiers exist, such as a tier for banked RINs and tiers for E15 and E85 sold via the existing infrastructure. The banked RIN tier is only an annual phenomenon, and thus they have been excluded in this example. The existing E15 and E85 tiers are assumed to be in the sloping portion of the ethanol RIN tier.

5 At extremely high RIN prices there would be a decrease in demand for motor gasoline and therefore a lower RIN demand, but that extreme effect is not necessary to include in this illustrative example.

6 RINs transacted over a year will change in price based on expectations about the marginal RIN cost (either in the current year, or the next year due to banking). Prices may also vary for participants due to contracts and level of vertical integration. However, in the long term, the marginal supply tier sets the price for all RIN transactions.

7 These surpluses are not entirely held by the producers of RINs (the blenders that separate them). A significant portion is returned through the concept of pass-through in petroleum feedstock prices. Our previous research has shown this pass-through is incomplete, suggesting that some surplus remains with the blenders.

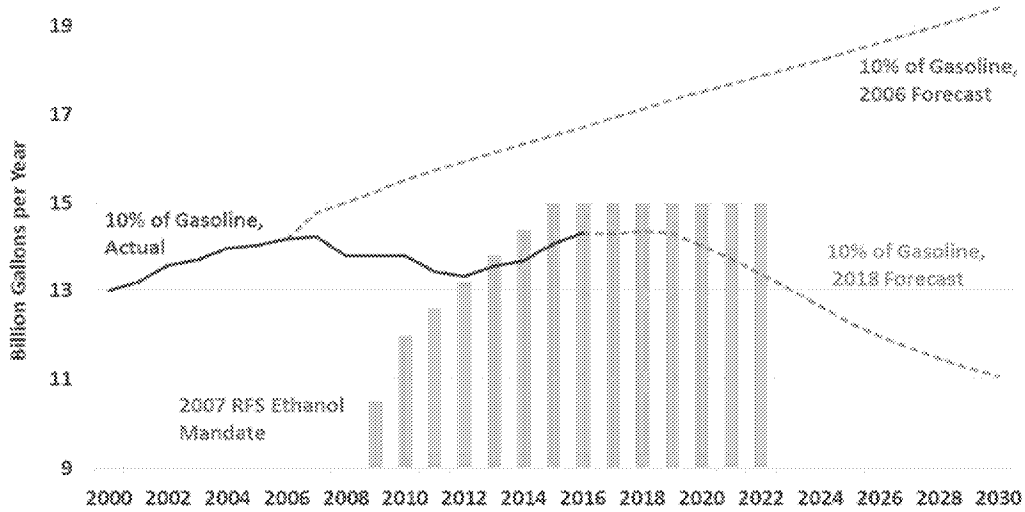
3.2. Issues with breaching the blend wall

The blend wall is breached when the RFS ethanol volume standard is higher than the quantity of ethanol that can be blended as E10, adjusted for higher and lower blend volumes. When the blend wall is exceeded, there is a deficiency of RINs for compliance. There are two main reasons that the blend wall was more easily reached than expected.

1. **Lower U.S. motor gasoline consumption than expected** – This led to a lower amount of ethanol consumed in E10 than expected. The following chart illustrates the discrepancy in forecasted vs. actual E10 ethanol volumes. The light blue line shows the amount of ethanol that would have been blended in E10 if gasoline consumption grew as expected as of 2007. This is well above the green bars, which represent the ethanol quantity mandates from the 2007 RFS2 regulations.

   The dark blue line represents actual ethanol volumes in E10, based on lower motor gasoline consumption. The orange line shows the amount of ethanol in E10 based on recent forecasts of gasoline consumption. Both of these lines are well below the mandated ethanol volumes, thus leaving a gap that must be filled by higher blend fuels or D4 RINs.

   Figure 2: Ethanol potential of E10, forecasted vs. actual vs. mandate (billion gallons)



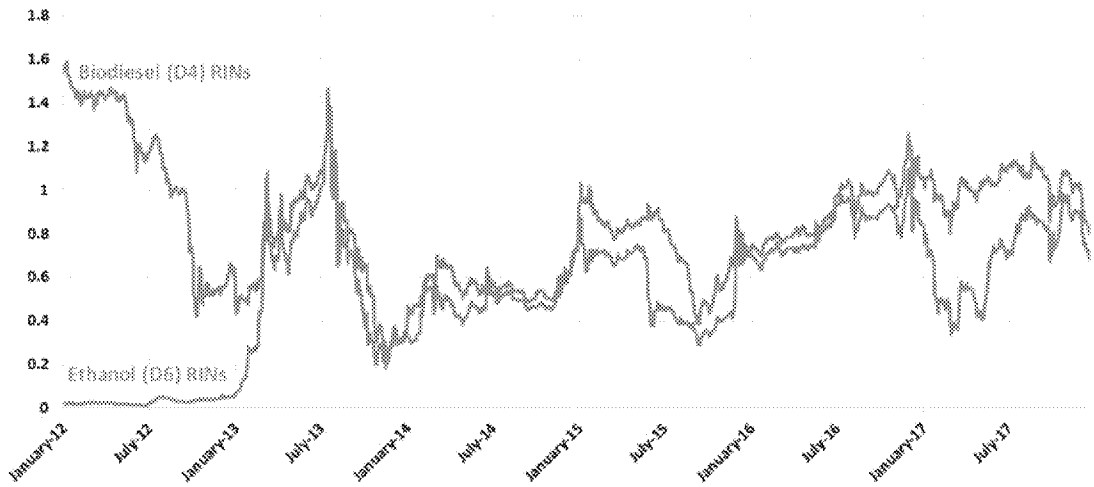
Sources: EIA AEO 2006, EIA AEO 2018, EPA RFS overview

2. **Lower penetration of higher ethanol blend fuels than expected** - This effectively capped ethanol volumes near 10% of motor gasoline consumption. This is discussed in detail in the next section (Section 3.3).

In the RIN market economics illustration in the previous section, the volume standard of 15 billion ethanol RINs caused a breach of the blend wall. This caused the RIN price to jump from about $0.05 to $1.00 per RIN. While these are illustrative prices, they reflect recent RIN price history. Before the blend wall was breached, RIN prices were far below current levels. In 2012, they averaged under $0.03 per RIN. After the breach in 2013, they priced off of D4 prices, reaching as high as $1.45 per RIN. While there was some price separation in early

2017, D4 and D6 RIN prices have since converged again. This is shown in the following chart.

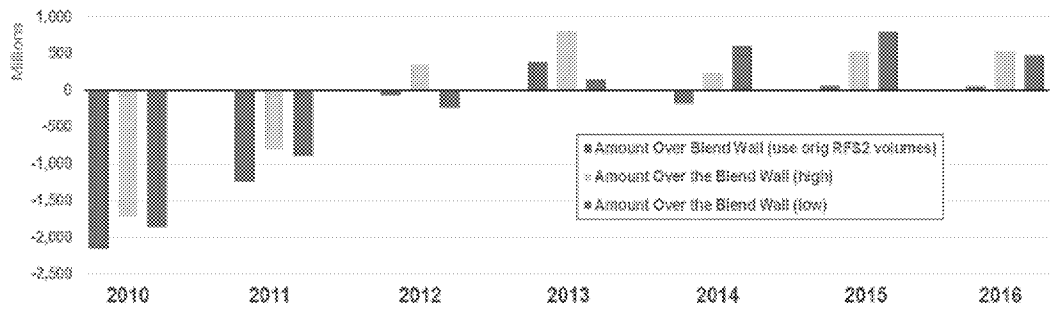
Figure 3: Historical RIN prices ($)



Source: RIN data from Oil Price Information Service (OPIS)

The D6 price jump occurred in the same year that the blend wall was breached for the first time. The following chart estimates the quantity, in millions of gallons, by which the blend wall was breached in each year from 2010 to 2016. The amount and timing of the breach is dependent on assumptions about volumes of E0, E15 and E85 consumed. The three bars for each year represent the blend wall breach calculated by various assumptions of higher blend volumes. The green bars represent the breach that would have occurred if the original RFS2 ethanol volume goals were not adjusted. The gray and yellow bars represent breach amounts with high or low assumptions, respectively, about E15 and E85 volumes. Regardless of which is most accurate, it is generally accepted that the blend wall was breached around 2013.

Figure 4: Blend wall "breach" by year



Sources: EPA data, CRA analysis

The blend wall breach occurred without a direct policy response to mitigate its impacts. As a result, there were several issues that arose that threatened the efficient achievement of RFS policy goals. The first set of issues centered on the unintended spike in biodiesel consumption. Because of the ethanol RIN demand for BBD RINs, volumes of biodiesel have significantly exceeded the RFS biodiesel volume standard. In the first year of blend wall

breaching, U.S. biodiesel consumption jumped from 21 million barrels (2012) to 34 million barrels (2013).[8]

This had two main consequences. First, D4 prices, which had been on a significant downward trend, jumped nearly 300% in one year. This had impacts on policy costs. Second, there was a significant increase in imported biodiesel and decrease in exports. In the year before the blend wall, the U.S. was a net exporter of biodiesel (2.2 million barrels in 2012). In the first year of the blend wall breach, the U.S. became a net importer (3.5 million barrels in 2013).[9] It also led to increased demand for biodiesel from foreign sources with potentially negative environmental impacts.[10] Given the environmental driver behind the RFS, this was not necessarily in line with policy goals.

The higher prices themselves are an issue. They add uncertainty and volatility as small changes in fuel market factors can have a large impact on RIN prices. The fact that prices can jump between biodiesel and ethanol pricing also impacts uncertainty. This was seen in the past 1.5 years as market participants tried to gauge whether the EPA would maintain volumes that breached the blend wall. The higher prices also increase the potential financial incentives for blenders to retain portions of the RIN value, rather than passing it all through to refiners as the policy intended.

3.3. Failure of high RIN prices to expand higher blend fuels

The blend wall has not been relieved by an expansion of higher blend fuels. There is market evidence that the main cause of the failure to expand E15 and E85 has been insufficient infrastructure investment. If infrastructure were expanded, it is likely that there would be significantly more ethanol blended in transportation fuels at a RIN price well below the RIN prices seen since 2013. These concepts are further explained in this section.

3.3.1. Insufficient penetration of high blend fuels

To drive an increase in higher blend fuels, the fuels must be cost competitive with E10 on an energy content basis,[11] readily available for purchase by final consumers, and have a market of vehicles that can use higher blend fuels. While the pricing issue has seen several challenges with the efficient pass-through of RIN value, the main constraint to all of the above conditions is the lack of adequate infrastructure, and in particular fueling stations that offer E15 and E85. As such, if a primary policy goal is to expand ethanol consumption in transportation fuels beyond the E10 blend wall, any policy options can be substantially judged by whether they effectively confront the E15 and E85 infrastructure challenges.

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8 U.S. Energy Information Administration. (2018). *Monthly Energy Review February 2018: Biodiesel and Other Renewable Fuels Overview.* Retrieved from https://www.eia.gov/totalenergy/data/monthly/pdf/sec10_8.pdf

9 Idem

10 AETS. (2013, February). Assessing the impact of biofuels production on developing countries from the point of view of Policy Coherence for Development. *The European Union's Framework Contract Commission 2011.* European Union. Retrieved from: https://ec.europa.eu/europeaid/sites/devco/files/study-impact-assesment-biofuels-production-on-development-pcd-201302_en_2.pdf

11 E15 has roughly 98% of the energy content of E10, while E85 has roughly 77% of the energy content of E10.

To date, the RFS has not met the challenge of expanding higher blend fuels. There are currently about 1,000 stations selling E15 and about 3,160 stations offering E85.[12] These stations represent 0.8% and 2.6%, respectively, of all public gas stations in the U.S.[13] While E15 and E85 sales volumes are not explicitly tracked, the EPA provided estimates of their volumes in their analysis supporting the 2017 RFS volume standards. They estimated annual sales of 728 million gallons of E15 and 275 million gallons of E85, which represent only 0.5% and 0.2% of all U.S. motor gasoline demand. In order to cover the deficiency of ethanol below the 15 billion gallon RFS goal, there would need to be tens of thousands more stations with either E15, E85 or both.[14]

3.3.2. Lack of infrastructure expansion

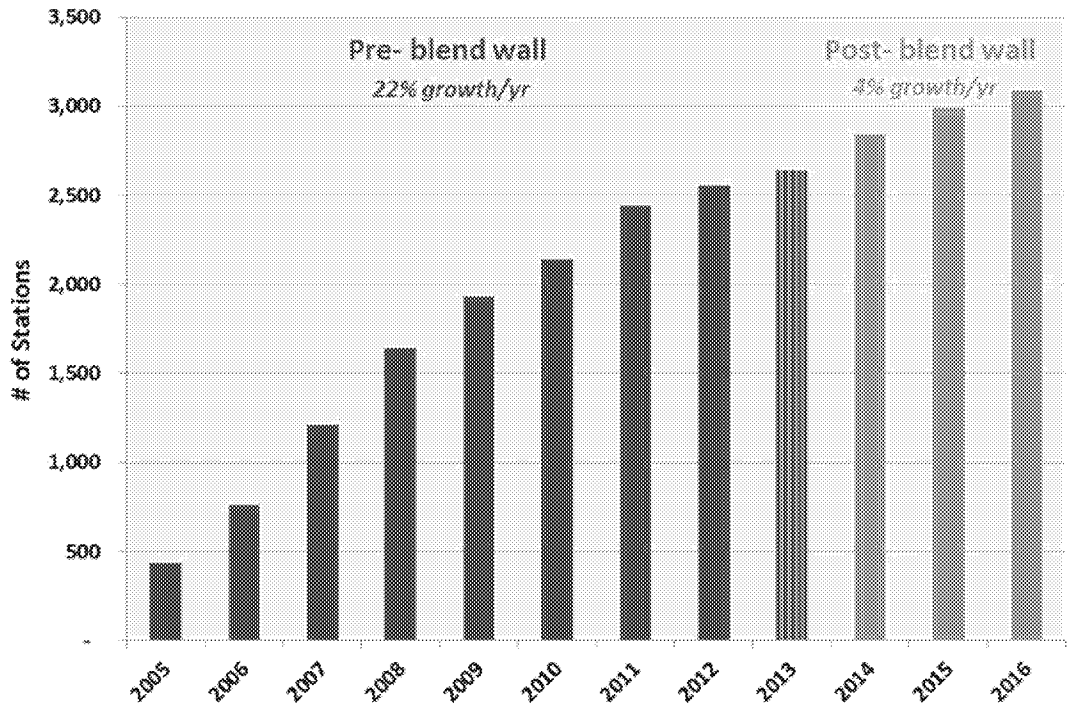
Higher RIN prices have clearly not been enough incentive for the significant infrastructure needed to manage the blend wall. As shown in the figure below, E85 stations were added at a much greater rate prior to the 2013 spike in RIN prices (in blue) versus after the spike (in green). The annual growth rate from 2005 through 2013 was over 22%, while the rate for 2013 through 2016 was only 4%. This plateau occurred despite much higher RIN prices.

12 E15 estimate from Growth Energy's website, as of October 2017. E85 estimate from U.S. DOE's Alternative Fuels Data Center, accessed 2/23/2018. Note that these are not necessarily unique stations, as many E85 stations offer E15 through blending at the station.

13 Total fueling stations from NACS Fuels Report 2016

14 The number of stations could be reduced if each station sold a higher amount of higher blend fuels than the current average.

Figure 5: E85 filling stations, 2005 - 2016



Source: U.S. DOE Alternative Fuels Data Center

3.3.3. The RIN price has been sufficient to blend ethanol

This stall out in infrastructure expansion occurred during a period in which RIN prices were significantly higher than what would theoretically be needed to incentivize the use of higher blend fuels. The needed RIN price is based on ethanol and petroleum feedstock pricing spreads, with adjustments for the energy content penalty for blending ethanol and the blending benefits of oxygenate and octane enhancement.

To understand the RIN price needed to blend ethanol, consider a simple example based on approximate versions of 2013 feedstock prices ($2.50 per gallon RBOB and $2.00 per gallon ethanol) and an assumption of perfectly rational and informed gasoline consumers. Without considering the oxygenate and octane benefits, the maximum RIN price needed for blending ethanol would be about $0.30 per RIN to make up for the energy content difference.[15] However, that is much higher than the needed RIN price since ethanol blending has oxygenate and octane benefits. As seen in 2012, those additional benefits can drive the RIN price near $0 during a period with similar feedstock price spreads.

15 This hypothetical RIN value was calculated based on reaching energy content price parity at the wholesale level. It does not account for the added costs associated with the higher blend fuel supply chains and distortions in retail pricing.

3.3.4. Relief of the infrastructure constraint would drive more ethanol use

The fact that in 2013 prices jumped to well over $1.00 per RIN for a substantial period is a clear indicator that there were infrastructure constraints to expanded ethanol blending. In fact, since the blend wall was breached, RIN prices have remained well over the theoretical amounts needed to incentivize blending E15 and E85 (up to any infrastructure constraints). Relieving these constraints could moderate RIN prices.

This is the conclusion reached in 2014 by Babcock and Pouliot.[16] They performed quantitative analysis to estimate how the consumption of E85 can be increased through the construction of new fueling stations and by changing retail and RIN prices, while maintaining the number of flex-fuel vehicles constant at 2013 levels. In their study, E85 volumes could be expanded to produce 800 million additional ethanol gallons at a price of $0.18/RIN, under the assumption that hundreds of additional fueling stations were added.

A 2015 study by Christensen and Siddiqui has also shown that there is a strong correlation between E85 consumption targets and cost of compliance. They demonstrated that if new initiatives were undertaken to install blender pumps and help deploy an additional 600 million gallons of E85 in 2017, the cost of compliance could be reduced by approximately 50%.[17] According to this study, this would take the form of dampened D5 and D6 RIN prices; D4 RIN prices would largely be unaffected.

It is clear from simple calculations and the academic literature that relieving the infrastructure constraint would lead to a commensurate volume of higher blend fuels added to the market, even at RIN prices less than half their recent levels.

4. Using a Price Containment Mechanism to Address RFS Issues

There are several regulatory options for addressing the issues discussed in the previous section. One option would be to dynamically link the volume standards to market conditions, such as the actual amount of motor gasoline consumed and higher blend fuels in the market. This would only be effective if it kept mandates below the blend wall. Another option would be an expansion of qualifying ethanol RINs, such as allowing unobligated RINs for exports. This white paper focuses on a price containment mechanism.

4.1. How price containment mechanisms work

Well-designed price containment mechanisms can effectively limit the societal costs of environmental and energy policies, while also supporting the attainment of policy goals. The mechanisms are most beneficial in policies based on quantity goals, which have uncertain cost outcomes that need moderation. The mechanisms are also most beneficial in markets where high prices lead to negative impacts on most stakeholders and the prices do not efficiently drive desired policy outcomes. In these markets, higher prices may simply provide surplus income to producers and costs to consumers, while doing nothing for long-term policy

16 Babcock, B., & Pouliot, S. (2014). *Feasibility and Cost of Increasing US Ethanol Consumption Beyond E10.* Ames: Center for Agricultural and Rural Development, Iowa State University.

17 Christensen, A., & Siddiqui, S. (2015). Fuel Price Impacts and Compliance Costs Associated With The Renewable Fuel Standard (RFS). *Energy Policy*, 614-624.

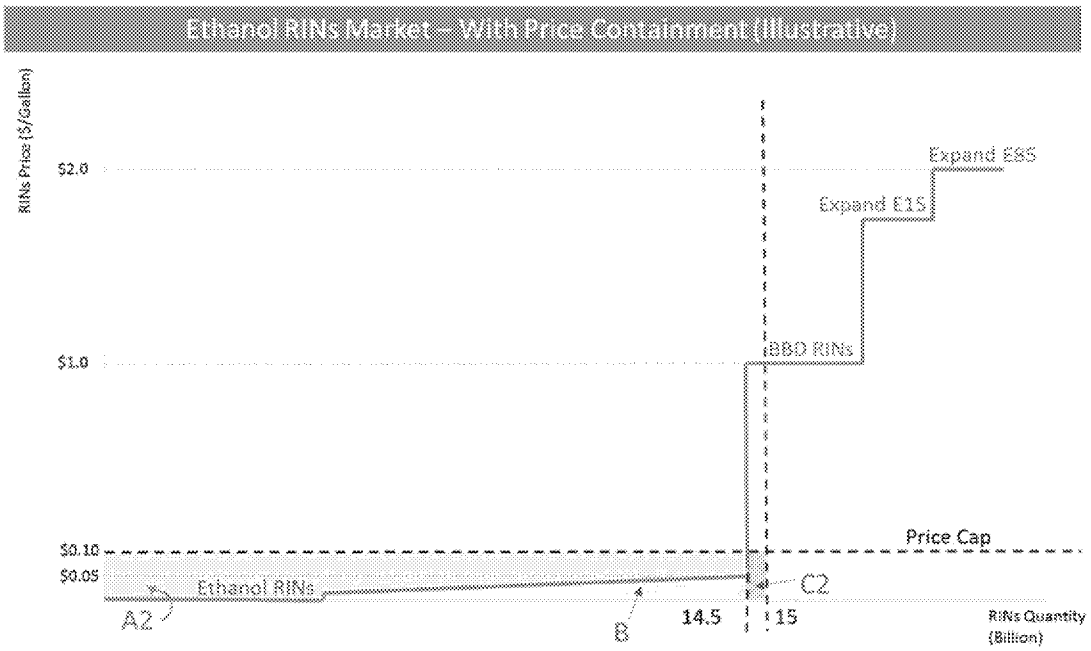
goals. Price containment mechanisms can prevent such unnecessary transfers, while lowering long-term policy costs.

The basic theory of price containment mechanisms is quite simple. An administrative mechanism is put in place that prevents the price of a compliance credit from exceeding a set level. The mechanism usually involves the administrator, often a government entity, selling compliance credits at a specified price to prevent prices from going higher in the market. This price cap can help contain the overall cost of compliance with a mandate.

Price caps are popular among policymakers for many reasons. They can make new regulations more palatable for many stakeholders by reducing the risk of high costs of compliance, which can both impact obligated parties as well as consumers downstream from the compliance market. In the long-term, this benefit can allow the policymakers to be more ambitious with targets. Philibert argues that a safety valve (another term for a price cap) allows for a more ambitious target in the face of uncertainty about costs because it prevents costs in excess of acceptable levels.[18] This can also extend the life of a policy, since a clear threat to policy longevity would be stakeholder backlash from extreme compliance costs.

Figure 6 shows how a simple price containment mechanism would work in the RFS. It begins with the same RIN supply curve and quantity mandate as in Figure 1, with a price cap added at $0.10 per compliance credit.

Figure 6: D6 RIN market illustration, including price containment [19]



The following describes each of the main elements of the above chart:

- Supply curve – The supply curve is the same as the example without a price cap.

18 Philibert, C. (2006). *Certainty versus Ambition: Economic Efficiency in Mitigating Climate Change.* Paris: International Energy Agency Working Paper Series. Report Number LTO/2006/03.

19 As mentioned in the text, this chart is illustrative and not a policy recommendation for a particular price cap level.

- Demand curve – The demand curve is the same as the example without a price cap, a vertical line at 15 billion RINs.
- Price cap – This purely illustrative example includes a price cap of $0.10 per compliance credit.
- RIN price – In this example, the price cap is reached before the volume standard is reached, and therefore the RIN price is set by the cap at $0.10 per RIN. If the volume standard were less than 14.5 billion gallons, the RIN price would have been set off the ethanol RIN supply curve and the price cap would not be used.
- Total market RIN value – The price of RINs fell from $1.00 per RIN to $0.10 per RIN. This $0.90 per RIN reduction results in a $13.5 billion reduction in the total value of all D6 RINs, including those purchased at the cap. In a market where most RINs are transacted, this is a major reduction in the total value of market transactions.
- Government revenue – Assuming the price cap is administered by the sale of compliance credits, the chart shows 500 million credits sold at the price cap level of $0.10 per credit. This results in $50 million of proceeds from the sale, represented by area C2 in the chart. If the volume standard was set below 14.5 billion RINs, there would be no proceeds from the sale of additional credits.
- BBD RINs - There are no BBD RINs used for compliance with the D6 mandate. This is a reduction of about 330 million gallons of biodiesel (since they receive 1.5 RINs per gallon blended). In addition, the D4 RIN market could see lower RIN prices, since they were previously being set by the marginal BBD RINs used for D6 compliance.

4.2. Infrastructure investment benefit

The chart in the previous section illustrated a RIN market outcome for a hypothetical year. Over time, dedicated policies can change the RIN supply curve significantly. An example from the biodiesel market is the blender tax credit, which causes a downward shift in the supply curve and therefore lower RIN prices when in effect. A price containment mechanism can have the same directional shift in the supply curve over time if it is designed to address RIN supply constraints. One possible way to do so is through strategic investment of the proceeds from the additional RIN sales associated with the price cap.

There are precedents for such "revenue recycling" programs in other markets. In Section 5.3.2, we discuss the program associated with the Northeast's Regional Greenhouse Gas Initiative (RGGI). Such programs are commonly proposed for national carbon policies, with support such as the following from Resources for the Future, "Scholarly research suggests that an alternative payment mechanism linked to investment can be designed to meet and exceed environmental goals and produce more rapid investment in innovative technologies, and improve environmental outcomes at a lower cost…"[20]

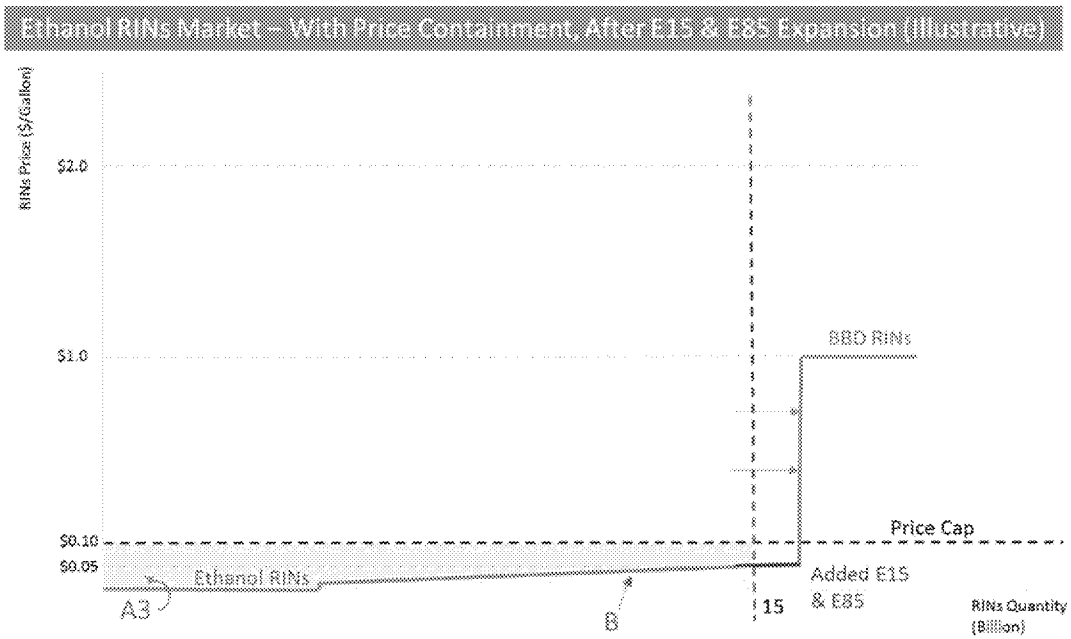
There can be significant sums of money brought in through a price containment mechanism in the RFS. In the example in the previous section, a mechanism that simply covered the hypothetical number of RINs beyond the blend wall led to $50 million in annual revenue. That

20 Burtraw, D., & Palmer, K. (2014, November 12). *Resources for the Future: Alternative Compliance Payments under the Clean Power Plan*. Retrieved 2 22, 2018. (See Patino, Echeverri et al. 2012, *Journal of Regulatory Economics*)

number could be much higher if the price cap was set at a level below a portion of the ethanol RIN step of the supply curve, thus leading to a greater number of RINs sold.

If a large share of that revenue was directed to relieving constraints to higher blend fuels, the policy could lead to lower priced RINs associated with more E15 and E85 consumption. In the long term, RIN prices could fall below the price cap, as shown in Figure 7 below. In this example, there are additional low cost RINs added to the supply curve, thus shifting the BBD RINs step out to the right. The new E15 and E85 RINs are plentiful enough to keep the RIN price below the price cap.

Figure 7: D6 RIN market illustration, including price containment & post-reinvestment



There are many positive outcomes in the above example. First, the price cap is no longer needed unless there are significant commodity price shifts that disadvantage ethanol against petroleum feedstocks. Second, the RFS volume standards are entirely met with ethanol, versus relying on biodiesel volumes indefinitely, as seems to be the current situation. Finally, note that the entire RIN value ($750 million) is far lower than in the first example with no price cap ($15 billion).

5. Designing a Mechanism for the RFS

As illustrated throughout this paper, the RFS could greatly benefit from a well-designed price containment mechanism. To be well-designed, the mechanism should adhere to a set of economic principles that support overall policy goals. It should also integrate the price containment experiences in other similar markets. Given these requirements, an ethanol RIN waiver credit program with certain design features could meet the goals of the RFS more effectively than the current RFS without a price containment mechanism.

5.1. Economic considerations

The following are some of the key economic considerations for policymakers when evaluating a price containment mechanism for the RFS. The list is not comprehensive, but rather highlights considerations based on the RFS issues and goals discussed in previous sections.

- Minimize overall compliance costs
- Avoid the unintended use of nested fuel tiers as long-term backstops for parent tiers
- Incentivize investment to relieve constraints, such as infrastructure expansion or new technology development
- Reduce volatility and RIN cost uncertainty

5.2. Lessons from price containment in other markets

When considering a price containment mechanism for the RFS, policymakers can benefit from the experiences in other similar markets. Price containment mechanisms have proven effective in a variety of markets, such as the Renewable Portfolio Standards and carbon emissions policies in many states and regions (such as the Regional Greenhouse Gas Initiative and California's Low Carbon Fuel Standard). There is even a price containment mechanism within the RFS already, in the form of the cellulosic (D3) waiver credit program.

All of the existing mechanisms were put in place to avoid potential issues in their respective policies, and those issues are in many cases the ones highlighted in this paper as currently plaguing the RFS. The issues most mentioned by policymakers include minimizing consumer costs, ensuring longevity of the policies by avoiding overly-burdensome outcomes, and reducing uncertainties of costs to comply with quantity-based policies.

We describe the mechanisms for several policies in Appendices A-C. We highlight key features of three different policies and the RFS' D3 waiver credits in the table below:

Table 1: Comparing Price Control Mechanisms in Similar Markets

	Renewable Portfolio Standards (RPS)	**Regional Greenhouse Gas Initiative (RGGI)**	**Low Carbon Fuel Standard (LCFS)**	**Cellulosic Waiver Credits (CWC)**
Region	USA (29 states)	Northeast, Mid-Atlantic USA	California	USA
Policy Mandate	Percentage or amount of utilities' electricity sales that must come from renewables	Carbon emissions caps for electric sector	Carbon emissions caps for transportation sector	Sale of waiver credits for compliance with RFS cellulosic mandates
Obligated Parties	Load serving entities (utilities)	Fossil-fuel-based electric power generators	Producers of petroleum-based fuels	Refiners and importers of conventional fuels
Compliance Options	Alternative compliance payments, financial penalties	Acquiring allowances issued by RGGI, traded among participants	Acquiring credits to offset carbon deficits from other participants	Purchasing waiver credits from the EPA at pre-set prices
Credits	Renewable Energy Certificates (REC)	RGGI Allowances	LCFS Credits	Cellulosic Waiver Credits
Price Control Mechanism	Alternative Compliance Payments (ACP), caps on rate impact, caps on contract prices or funds	Cost Containment Reserve (CCR)	Credit Clearance Market (CCM)	Price floor and price ceiling
Government Revenues Generated?	Yes	Yes	No, credits sold by other parties	Yes
Revenue Recycling Methods	Funding Public Benefit Funds (PBF)	Funding emissions reduction programs, assisting ratepayers	Kept within the clean-fuel market place, reallocated among participants	N/A

5.3. Waiver credit program design features

Based on the proposed set of principles and goals, and considering experiences with price containment mechanisms in other markets, we provide a set of design recommendations. We focus on the design aspects of an ethanol RIN waiver credit program for the RFS. While this paper does not advocate a particular price containment mechanism, there are clear strengths to the waiver credit approach compared to other options. It is a natural fit for the RFS.

The basic form of an ethanol RIN waiver credit program is straight-forward. The US government, through the EPA, offers waiver credits for sale at a set price to obligated parties. Obligated parties can comply with the RFS by: 1) submitting/retiring RINs that were separated during ethanol blending, similar to the current approach, 2) submitting waiver credits, or 3) submitting/retiring a combination of RINs and waiver credits.

Beyond the basic form, there are several design components critical to the mechanism:

- **Setting the initial waiver credit price** – Setting a price too high will lead to underutilization of the waiver credits and likely a continued breaching of the blend wall. This would defeat the cost minimization goal of the mechanism. The price should be set as low as possible without driving out significant ethanol volumes.

  In many markets there is also concern over setting the price too low, which could defeat environmental or other policy goals. For example, in the Renewable Portfolio Standards, an ACP that is too low could result in no construction of solar power facilities. Fortunately, this is not a significant concern in the RFS. There is recent history to demonstrate that the cost of ethanol RINs for volumes below the blend wall is extremely low under market conditions similar to the current conditions. It is possibly as low as $0 per RIN.

  In 2012, the average RIN price was $0.029 cents per RIN with an ethanol RIN quantity mandate just below the blend wall. Importantly, these prices were seen while the fundamental drivers of RIN costs were similar to their current levels. For example, in the last six months before the blend wall was breached, the average national feedstock spread (ethanol vs. RBOB), adjusted for energy content, was $0.55 per gallon. Over the first six months of 2017, the same spread averaged $0.53 per gallon. This would suggest very similar economics, and therefore similar ethanol RIN costs.

  This would suggest a recent proposal of a $0.10 per RIN waiver credit price would only be used for replacing RINs required beyond the blend wall, since obligated parties would find lower cost compliance from purchasing RINs from blenders (or blending the ethanol themselves if vertically integrated).

- **Predictable long-term price path with infrequent adjustments** – There must be a balance between setting a clear long-term waiver credit price path and having the mechanism adjust to significant changes in the market. The mechanism is most valuable if it removes long-term uncertainty. If the mechanism expires after a short period of time, the program will jump right back into a period of speculation and volatile RIN prices. That speculation would actually arrive in RIN prices before the mechanism expires due to RIN banking.

- **Ample waiver credits available to ensure the blend wall is not breached** – The precise volume of credits needed to prevent reliance on BBD RINs is not known in advance of a compliance year. While we can view historical biodiesel volumes to see how far they exceeded their D4 mandate, the presence of banking clouds that picture and the story can change year to year.

  In addition, the blend wall level can move significantly year-to-year, particularly during large economic downturns in the economy. For example, from both 2007-to-2008 and

2010-to-2011, there were drops in motor gasoline demand of about 3% in individual years. Applied to a blend wall of about 14 billion gallons, such a drop would remove about 450 million ethanol RINs. It is precisely during these times that the waiver credits could prove most valuable, and therefore they need to be available in sufficient quantities.

Given that this outcome is critical to the benefits of a price containment mechanism, the volume of waiver credits should substantially exceed the quantity estimated as necessary to avoid the blend wall. This is particularly true if there is a set volume of credits that is not responsive to economic shifts year-to-year.

Some stakeholders may have concern that a large volume of waiver credits would displace ethanol blending. However, given that ethanol RIN costs below the blend wall constraint are assumed to be extremely low, there is little risk of obligated parties overly relying on waiver credits regardless of the quantity available.

- **Recycling revenues into constraint-relieving investments** – The selling of waiver credits could lead to tens of millions of dollars in revenues per year. These revenues can be used to reduce long-term compliance costs by supporting initiatives to break through constraints. The most clear constraint deserving attention is the infrastructure constraint to higher ethanol blend fuel expansion. There are multiple examples of government programs that have expanded the number of fueling stations selling E85, but the funding for those programs has been insufficient without dedicated revenue streams like those available through a waiver credit program.[21]

21 *USDA announces grants to expand E15, E85 infrastructure* (2015, September 10). Retrieved from Ethanol Producer Magazine: http://ethanolproducer.com/articles/12612/usda-announces-grants-to-expand-e15-e85-infrastructure

Appendix A: Case Study: Renewable Portfolio Standards

A Renewable Portfolio Standard (RPS) is a regulation set by a state, region or nation that requires increasing percentages or amounts of electricity provided to retail customers be generated by eligible renewable sources. As of 2018, twenty-nine states have implemented an RPS, while eight others have adopted Renewable Energy Goals. The existing RPS programs vary in their design, targets, reporting and compliance enforcement methods.

The RPS-eligible sources vary by program, but generally include wind, solar, biomass and other generating technologies. In many cases, there are separate tiers for different sources, such as a solar "carve out," with specific targets nested within the overall target. This is similar to the biofuel tiers in the Renewable Fuels Standard (RFS). The obligated parties are Load Serving Entities (LSEs), commonly thought of as the utilities that provide electricity to end-use consumers. This is dissimilar to the RFS, since the RFS places the obligation on refiners, not the entities that directly serve end consumers of fuels.

In most RPS programs, the obligated parties can either directly procure or produce renewable electricity, or they can purchase compliance credits, known as Renewable Energy Certificates (REC), from the generators of renewable electricity. The RECs in RPS programs are similar to the RINs used in the RFS. A key difference, however, is that most RPS programs recognize the significant uncertainty in renewable energy technology development and cost competitiveness, and therefore many programs explicitly include price containment mechanisms. As of 2014, at least 24 of 30 states with renewable energy programs included a cost containment mechanism in their regulations.[22]

The price containment mechanisms found in RPS programs include, but are not restricted to the following:[23]

- Alternative Compliance Payment (ACP) – An RPS regulation may allow LSEs to pay an ACP for each megawatt-hour (MWh) of renewable electricity that the LSE is short of its compliance obligation, by failing to obtain sufficient RECs. The ACP rates are generally set administratively based on economic principles and expected technology costs over time. ACPs are discussed in more detail below.
- Caps on rate impacts or revenue requirements - Some states have created ceilings that limit how much a renewable energy policy can increase electricity rates for customers. They are often implemented in the form of set percentages of the utilities' annual retail revenue requirement to be spent on compliance with RPS. Thus, utilities that have spent the specified percentage on renewables may be considered compliant even if they have not met the annual RPS targets.[24]
- Renewable energy contract price caps - These caps limit the amount that a renewable energy generator can charge a utility for a renewable energy or REC purchase, which indirectly caps prices.

22 Heeter, J., Barbose, G., Bird, L., Weaver, S., Flores-Espino, F., Kuskova-Burns, K., & Wise, R. (2014). *A Survey of State-Level Cost and Benefit Estimates of Renewable Portfolio Standards.* National Renewable Energy Laboratory.

23 Barbose, G. (2017). *U.S. Renewables Portfolio Standards 2017 Annual Status Report.* Lawrence Berkeley National Laboratory.

24 Stockmayer, G., Finch, V., Komor, P., & Mignogna, R. (2012). Limiting the costs of renewable portfolio standards: A review and critique of current methods. *Energy Policy*, 155-163

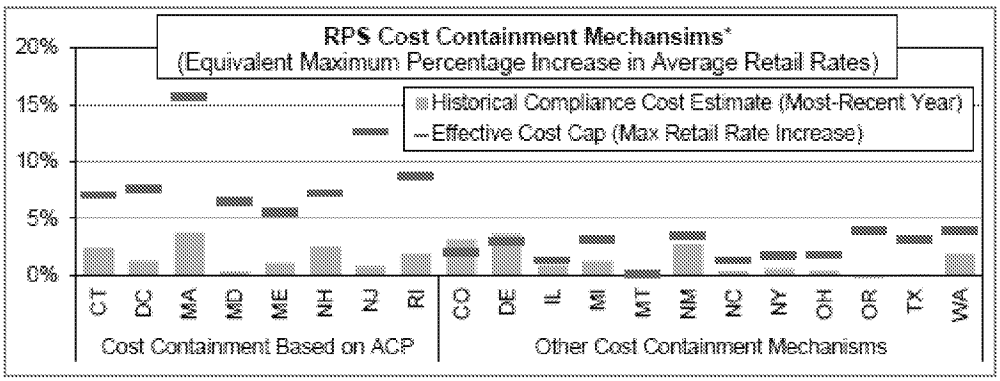
- Renewable energy fund caps – Some states, such as New York, have established specific programs for the purpose of a central RPS procurement. These caps limit the amount of funding that can be made available to cover the program's budget.
- Financial penalties - Similarly to ACPs, penalties can be imposed on LSEs who are not able to meet their RPS requirements for the year. They differ from ACPs insofar as they cannot be passed through to ratepayers and/or the penalty rate is not pre-specified.[25]

Among these mechanisms, ACPs and caps on rate impacts are the most common.[26] The latter are less relevant to the Renewable Fuels Standard since gasoline prices are not regulated to the same extent as electricity prices and the RFS obligated parties, as currently designated, would have no way to administer such caps. It is therefore more applicable to the RFS to consider the design and implementation of ACPs.

The design and price of ACPs vary by state. The total ACP cost is calculated as the state-determined ACP rate multiplied by the LSE's deficient kilowatt-hours. In some states, ACPs are required and thus they constitute the cost of RPS compliance. In Illinois, for example, alternative electricity suppliers must fulfill half of their RPS requirement by purchasing ACPs. In most other states, however, ACPs are optional. LSEs therefore pick the option that allows them to fulfill their RPS requirement at the least cost: if the ACP rate is higher than purchasing RECs or renewable energy, they will opt for this method of compliance. In this way the ACP effectively sets a ceiling on the REC and renewable procurement costs.

Typically, ACP costs have proven higher than the cost of meeting the requirement by generating renewable energy or purchasing RECs, but they have been critical in salvaging several RPS programs when costs may have otherwise have risen unsustainably. A 2014 study has shown that in almost all states the historical cost of complying with RPS has been lower than the effective cost cap (Figure 8). This means that the ACP has not been binding.

Figure 8. RPS cost caps compared to estimated recent historical cost [27]



Source: Heeter, et al., 2014

25 Heeter, et al, 2014

26 Pierpont, B. (2012, December). *Renewable portfolio standards – the high cost of insuring against high costs*. Retrieved February 07, 2018, from Climate Policy Initiative: https://climatepolicyinitiative.org/2012/12/17/renewable-portfolio-standards-the-high-cost-of-insuring-against-high-costs/

27 Further note on the chart: "For states with multiple cost containment mechanisms, the cap shown here is based on the most-binding mechanism." Heeter, et al., 2014.

The revenue from ACPs is generally used to fund a public benefits fund that supports renewable development, demand-side energy efficiency programs, low-income assistance and weatherization programs in the state.[28] These funds are often managed by governmental entities and in fewer cases by non-profit organizations or corporations created specifically to manage the fund. In some cases, separate sub-funds are created for specific technologies. For instance Maryland and Massachusetts set aside the revenue from ACPs collected from the solar carve-out obligation to fund more solar deployment. These funds can benefit communities in a wide variety of ways, including environmental health improvements, energy costs reductions achieved through energy efficiency, financial assistance to low-income customers and support to home-owners for home improvement initiatives.

28 Stockmayer, et al., 2012; U.S. Department of Energy. (2010). *Public Benefit Funds: Increasing Renewable Energy & Industrial Energy Efficiency Opportunities*. U.S. Department of Energy.

Appendix B: Case Study: Various Carbon Policies

Many countries around the world and states within the United States have set goals on limiting carbon emissions from fossil fuel combustion. To achieve these goals, many governments have formed carbon policies that limit emissions in single or multiple sectors of their economies, either directly through emissions caps or carbon pricing, or indirectly through regulated mandates on technologies or emissions controls. Quantity targets generally involve market mechanisms through cap-and-trade systems, whereby entities can buy and sell emissions permits in order to comply with emission limits. Price targets are often implemented in the form of a carbon tax: parties that emit carbon dioxide (CO_2) pay the government a set amount per ton of CO_2 emitted. Hybrid systems include imposing upper limits on the price for emissions permits by making additional permits available at a predetermined price. These policies can often be more efficient than pure price or pure quantity-based policies, because they are better equipped to deal with market uncertainty.[29]

A key difference from the RFS is that carbon policies are designed to reduce emissions, not to provide direct incentives for increasing a certain activity (like blending renewable fuels). Therefore, carbon allowances are generally not created by market participants, but rather auctioned by the government or freely allocated. Similar to the RFS, however, these credits are tradable and they are submitted by obligated parties to cover their annual emissions.

Successful carbon cap-and-trade programs have been implemented in Europe, New Zealand, Australia, North America, and recently in China. Several countries across Africa, Asia, Europe, Central and South America currently have a carbon tax in place.[30] There exists an expansive literature on the possible design and implementation of a carbon policy in the United States, although no such policy has been approved at the federal level. Instead, there are regional policies, such as the Regional Greenhouse Gas Initiative (RGGI) in the Northeast U.S. and the AB 32 program in California, which is in the process of expanding.

Price containment mechanisms feature prominently in both the existing carbon policies and the many proposals at the U.S. federal level. They are often referred to as "safety valves" in the carbon policy context. The most common form involves the government releasing additional allowances into the market if a set carbon price is reached. This additional supply of allowances moderates the price. The added allowances are either newly created or borrowed from future years. An example of such a program is the Cost Containment Reserve (CCR) in the RGGI program, described in the next section.

5.3.1. Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative (RGGI) was the first mandatory cap-and-trade program to limit CO_2 emissions from the power sector in the U.S. The participating states are all located in the Northeast and Mid-Atlantic regions and include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

29 Aldy, J., Hafstead, M., Metcalf, G., Murray, B., Pizer, W., Reichert, C., & Williams, R. (2017). *Resolving the Inherent Uncertainty of Carbon Taxes.* Harvard Environmental Law Review.

30 The World Bank. (2017, December 01). *Carbon Pricing Dashboard.* Retrieved February 09, 2018, from http://carbonpricingdashboard.worldbank.org/map_data

CO_2 emissions are regulated through CO_2 Budget Trading Programs that vary by state, but are all aligned with the RGGI Model Rule.[31] The overarching RGGI regulation requires fossil-fuel-based electric power generators above a certain size to obtain allowances equal to their CO_2 emissions over a three-year control period. Each allowance corresponds to the permission to emit one short ton of CO_2 and can be traded between different regulated parties. Allowances are issued by the states' Budget Trading Programs, which also establish participation in regional allowance auctions. There is a cap to the maximum amount of allowances that can be issued, which is set yearly by the RGGI and decreases over time.

RGGI includes a Cost Containment Reserve (CCR). The CCR consists of additional allowances on top of the caps, which are made available only when the allowance prices exceed a predefined threshold. The goal is to protect participants from exceedingly high emissions reduction costs. Both the threshold price at which the CCR is triggered and the size of the reserve is set to change every year: the former increases, while the latter decreases over time.

All 15 million CCR allowances were sold in 2014 to 2015, but the reserve was not triggered in 2016. Those 15 million allowances represent 2.5% of all allowances expected in RGGI from 2014 to 2020.[32] The independent market monitor for RGGI, Potomac Economics, emphasizes the value of the CCR, stating that "Since the program changes announced in February 2013, the CCR has been a significant factor in reducing the volatility of allowance prices."[33] Adding that the CCR "...may have helped to limit price volatility: (a) directly by providing for the sale of ten million additional allowances during 2015 and (b) indirectly since the potential for CCR allowances to be sold in future auctions limits upward speculative pressure on prices.[34]

The nine RGGI states receive significant revenues from the initial auctions of allowances and the CCRs. Through 2015, they had generated $1.7 billion, most of which has been invested in initiatives that further reduce emissions or assist ratepayers with the added cost on their electricity bills. The investment categories are summarized in the table below:[35]

Spending Category	Percentage of 2015 RGGI investment	Outcome
Energy Efficiency	64%	$1.3b lifetime energy bill savings to over 141,000 households and 5,700 businesses
Clean and Renewable Energy	16%	$785.8m lifetime energy bill savings to 19,600 households and 122 businesses

31 The Regional Greenhouse Gas Initiative. (2018). *Program Overview and Design: Elements of RGGI.* Retrieved 02 21, 2018, from https://www.rggi.org/program-overview-and-design/elements

32 Potomac Economics. (2017). *Annual Report On The Market For RGGI CO2 Allowances: 2016.* Potomac Economics. Retrieved February 22, 2018 from https://www.rggi.org/sites/default/files/Uploads/Market-Monitor/Annual-Reports/MM_2016_Annual_Report.pdf

33 Idem

34 Potomac Economics. (2016). *Annual Report On The Market For RGGI CO2 Allowances: 2015.* Potomac Economics. Retrieved February 22, 2018 from https://www.rggi.org/sites/default/files/Uploads/Market-Monitor/Annual-Reports/MM_2015_Annual_Report.pdf

35 The Regional Greenhouse Gas Initiative. (2017). *The Investment of RGGI Proceeds in 2015.* RGGI, Inc.

Greenhouse Gas Abatement	4%	Avoided release of 636,000 short tons of CO2
Direct Bill Assistance	10%	$40.4m returned in bill credits and assistance to consumers

5.3.2. Revenue Recycling

As just discussed, carbon polices with both initial emissions auctions and allowance-based reserve systems can bring in substantial amounts of money. Therefore, an important aspect of carbon policy design is determining how the revenues collected are to be returned to the economy. This is often referred to as "revenue recycling" and is covered in a large amount of academic literature.

One option is to use some of the revenues to pay for emissions reductions in sectors not covered by the carbon regulation, in the case where emissions targets have not yet been met.[36] Alternatively, the revenues could be used to invest in energy efficiency, renewable and other low-carbon technologies. Another option is to reinvest the revenues in other initiatives that touch the economy at large, such as income tax cuts or infrastructure spending.[37] For example, returning the revenues to individuals and businesses through lump-sum rebates can significantly lower the cost of a carbon tax. This cost offsetting idea has been popular in recent proposals that seek to achieve a carbon policy with minimal regulatory burden.

36 Murray, B., Pizer, W., & Reichert, C. (2017). *Increasing Emissions Certainty Under a Carbon Tax.* Harvard Environmental Law Review.

37 Goulder, L., & Hafstead, M. (2013). *Tax Reform and Environmental Policy.* Washington: Resources For the Future; Metcalf, G. (2017). *Implementing a Carbon Tax.* Washington: Resources For the Future.

Appendix C: Case Study: California's Low Carbon Fuel Standard

California's Low Carbon Fuel Standard (LCFS) is administered by the California Air Resources Board (ARB). Implemented in 2011, its goal is to reduce the carbon intensity of the transportation fuel consumed in California by at least 10% by 2020.[38] Unlike the RFS, it does not specify which fuels or what volumes of each are necessary to satisfy the requirement, letting the market determine the mix of fuels needed. Instead, it assigns to each fuel type a carbon intensity rating, measured in CO2 equivalent, which can be above or below the standard. LCFS deficits and credits are then defined as the difference between the fuel's rating and the standard (positive for deficits, negative for credits). Obligated parties must maintain compliance by purchasing or generating enough credits to offset the deficits they have produced in a calendar year.

The LCFS includes a price cap in the form of a Credit Clearance Market (CCM). It was developed with the following goals:[39]

- Allow compliance even if a credit shortfall occurs
- Strengthen incentives to invest in low carbon intensity fuels
- Increase certainty regarding the maximum cost of compliance
- Prevent extreme market volatility
- Ensure that willing credit generators can sell available credits

The CCM works as follows: If the obligated parties fail to offset their annual deficit, they must purchase their pro-rata share of credits in the CCM. Other parties that hold available credits for that year offer them for sale in this market at a set price of $200 per metric ton, adjusted annually for inflation. The LCFS Credit Prices have never come close to this ceiling, having traded at their highest point just above $120 per metric ton.

Prior to selecting the CCM option, the ARB staff had also considered a credit window option, which was closer in design to the price caps in RGGI and many RPS programs. One of the major differences between these two mechanisms is the way in which the revenues collected are reinvested. In the clearance market process, the proceeds are kept within the clean fuels marketplace: the money flows from parties that have not been able to offset their deficits to those that hold credits. In the credit window process instead, proceeds are distributed to low-carbon intensive fuel producers or used for other greenhouse gas reductions to mitigate the loss in LCFS benefits.[40]

With such cost-containment mechanisms in place, the LCFS achieved 98% compliance in 2015. Given that one party was short after the deadline, a CCM was held in 2016, which enabled them to cover their remaining 2015 obligation.[41] In 2017, the CCM for 2016 did not occur since all obligated parties with deficits were able to meet their compliance obligation.

---

38 California Air Resource Board. (2016, May 10). *LCFS Basics*. Retrieved February 08, 2018, from https://www.arb.ca.gov/fuels/lcfs/background/basics.htm

39 Idem.

40 Wade, S. (2016). *California Low Carbon Fuel Standard Cost Containment Provisions*. California Air Resources Board.

41 Wade, 2016

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Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 4/13/2018 5:18:14 PM
To: Parinello, Chris [Chris.Parinello@valero.com]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Meeting with Valero

Perfect -confirmed for Wednesday, April 18th at 11:30AM. Just give me a call when you are at security and I'll come down.

Directions and procedures to 1200 Pennsylvania Avenue NW:
Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn right. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, North Entrance.

Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left – that is the North Lobby of the William Jefferson Clinton building.

Security Procedures: A government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared and arrive at the meeting room on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. If you are a foreign national entering on a non-US passport, please let us know in advance, as there is a separate clearance process.

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Friday, April 13, 2018 12:30 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Re: Meeting with Valero

Could we do 11:30 Wednesday for 45 mins?

Sent from my iPhone

On Apr 13, 2018, at 12:11 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

> Hey Chris,
>
> Happy to set something up. If you only need thirty minutes Mandy could do Monday at 5:00PM; Tuesday at 12:00PM or 5:00PM. Wednesday 8:30-9:15 and then currently wide open 11:30 – 3:00 if you are looking for 45 or an hour. Just let me know what works or if easier to discuss by phone feel free to give me a call.
>
> Alex
>
> **Alex Dominguez**
> Policy Analyst to the Principal Deputy

Office of Air and Radiation
U.S. Environmental Protection Agency
D: 202-564-3164
C: 202-578-5985

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Thursday, April 12, 2018 8:09 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Meeting with Valero

Hi Mandy and Alex—Do you all have time to meet with Salo and me next week on the ongoing RFS discussions? We are free anytime Monday and Tuesday, and Wednesday morning. Please let me know if that works. Thank you!—Chris

Sent from my iPhone

Appointment

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 10/2/2018 7:44:35 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Meeting Forward Notification: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM

Recurrence: (none)

Your meeting was forwarded

Hengst, Benjamin has forwarded your meeting request to additional recipients.

Meeting

Meeting: Valero

Meeting Time

Wednesday, October 3, 2018 9:30 AM-10:30 AM.

Recipients

Machiele, Paul

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: 10/2/2018 6:11:12 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Meeting Forward Notification: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM

Recurrence: (none)

Your meeting was forwarded

Hengst, Benjamin has forwarded your meeting request to additional recipients.

Meeting

Meeting: Valero

Meeting Time

Wednesday, October 3, 2018 9:30 AM-10:30 AM.

Recipients

Master, Barbora

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Michael J. Teague
Secretary of Energy & Environment

Mary Fallin
Governor

STATE OF OKLAHOMA
OFFICE OF THE
SECRETARY OF ENERGY & ENVIRONMENT

October 17, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Renewable Fuel Standards

Dear Administrator Pruitt:

On behalf of the state of Oklahoma, please accept this letter in response to Federal Register Docket ID No. EPA-HQ-OAR-2017-0091.

The current Renewable Fuel Standards system has led to artificial market drivers that disproportionately and adversely impact smaller refiners and small retailers without providing any additional environmental benefits. Oklahoma has five refineries across the size spectrum with various levels of impact. We also are a state that relies on small fuel retailers and other associated small businesses. The current trading scheme for RINs fundamentally distorts the retail gasoline market by providing selective windfalls to large retailers while disadvantaging small, independently owned fuel stations. EPA can help resolve this issue by making structural changes to the RFS system that continue the environmental benefits without market distortions.

The current system of setting ever-increasing blending requirements based solely by volume ignores the environmental improvements achieved in vehicle fuel efficiency and instead feeds an overly speculative market for RINs. We believe it would be more beneficial to link the blending requirements to a proportion of gasoline rather than the volume of renewable fuel.

Today's trading scheme for RINs distorts the retail gasoline market by providing direct financial benefits to the larger retailers, again at the expense of small retailers. The speculative nature of the market significantly disadvantages small businesses.

For these reasons, we would like to encourage the administration to continue your efforts to change the current system so that it can be beneficial to all parties involved.

Sincerely,

Michael J. Teague

204 N. ROBINSON, SUITE 1010 • OKLAHOMA CITY, OK 73102 • 405-285-9213 • FAX 405-285-9212

Message

From: Lauren Sheehan [LSheehan@afpm.org]
Sent: 6/6/2017 2:11:12 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: CEI Dinner

I strongly agree with your assessment on the Fendi bags. I hope you have a great trip!! Hope to see you when you get back and have a minute to breathe

Lauren Sheehan
Senior Manager
Government Relations

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006
202.457.0480 office
202.552.8487 direct
202.457.0486 fax
LSheehan@afpm.org

From: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Sent: Monday, June 5, 2017 5:10:05 PM
To: Lauren Sheehan
Subject: Re: CEI Dinner

Haha! Yes. Sorry for late notice. I'm in route now so will miss the CEI fun. Hope you all have a GREAT time! And I take his statement as a clear directive to buy fendi bags.

Sent from my iPhone

On Jun 5, 2017, at 4:47 PM, Lauren Sheehan <LSheehan@afpm.org> wrote:

> Just realized I put on the wrong email address for you, but I'll assume from Surya's absurd statement that you will be in Italy? You will be missed!
>
> Lauren Sheehan
> Senior Manager
> Government Relations
>
> **American**
> **Fuel & Petrochemical**
> **Manufacturers**
> 1667 K Street NW
> Suite 700
> Washington, DC 20006
> 202.457.0480 office
> 202.552.8487 direct
> 202.457.0486 fax
> LSheehan@afpm.org
>
> ---
>
> **From:** Gunasekara, Surya [mailto:Surya@mail.house.gov]
> **Sent:** Monday, June 5, 2017 4:36 PM

To: Lauren Sheehan <LSheehan@afpm.org>
Cc: Mandy Gunasekara <Mandy_Gunasekara@epw.senate.gov>; Barnard, Brian <Brian.Barnard@mail.house.gov>; Robreno, Andrew <Andrew.Robreno@mail.house.gov>; Chris Parinello - Valero (Chris.Parinello@valero.com) <Chris.Parinello@valero.com>; Limardo, Rick <Rick.Limardo@mail.house.gov>
Subject: Re: CEI Dinner

Yes, but Mandy is out. She'll be at the G7 in Italy buying Fendi bags with my money.

Surya G. Gunasekara
Chief of Staff
Congressman Renacci (OH-16)

Sent from my iPhone

On Jun 5, 2017, at 4:12 PM, Lauren Sheehan <LSheehan@afpm.org> wrote:

> Hi Everyone,
>
> I just want to confirm that 1- you are all still planning on coming to the CEI dinner this Wed the 7th and 2- you should have received an email from them with more information (most of which I included in the calendar invite).
>
> Mostly let me know if your plans have changed- look forward to seeing everyone!
>
> Thanks!
> Lauren
>
> **Lauren Sheehan**
> Senior Manager
> Government Relations
>
> **American**
> **Fuel & Petrochemical**
> **Manufacturers**
> 1667 K Street NW
> Suite 700
> Washington, DC 20006
> 202.457.0480 office
> 202.552.8487 direct
> 202.457.0486 fax
> LSheehan@afpm.org

Appointment

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 9/28/2018 6:31:54 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Accepted: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM
Show Time As: Busy

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 9/28/2018 6:12:30 PM
To: Parinello, Chris [Chris.Parinello@valero.com]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Zelermyer, Salo [Salo.Zelermyer@valero.com]; Rakosnik, Delaney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=274573739a9f446883072599086ededd-Rakosnik, D]
Subject: RE: Meeting with Valero

You are confirmed for a 60 minute meeting on Wednesday, October 3rd at 9:30AM with Mandy Gunasekara.

Directions and procedures to 1200 Pennsylvania Avenue NW:

Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn right. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, North Entrance.

Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left – that is the North Lobby of the William Jefferson Clinton building.

Security Procedures: A government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared and arrive at the meeting room on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. If you are a foreign national entering on a non-US passport, please let us know in advance, as there is a separate clearance process.

Upon arrival, let the guards know that you were instructed to call 202-564-7404 for a security escort.

Please send me a list of participants and any handouts at least two days in advance of the meeting. Feel free to contact me should you need any additional information.

Alex Dominguez
Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency
D: 202-564-3164
M: 202-578-5985

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Friday, September 28, 2018 1:36 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: Re: Meeting with Valero

9:30 works great. We will see you all then!

Sent from my iPhone

On Sep 28, 2018, at 12:49 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

> Chris –Mandy is happy to meet on Wednesday, October 3rd. Currently any time from 9:30 – 12:30 works on our end. Let me know what time you all prefer and we'll lock it in.
>
> Alex
>
> ---
>
> **From:** Parinello, Chris [mailto:Chris.Parinello@valero.com]
> **Sent:** Friday, September 28, 2018 12:27 PM
> **To:** Rakosnik, Delaney <rakosnik.delaney@epa.gov>
> **Cc:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
> **Subject:** Re: Meeting with Valero
>
> Thank you for checking. Mandy, given the time sensitive nature of some of these issues, are you free to meet that morning?
>
> Sent from my iPhone
>
> On Sep 28, 2018, at 12:25 PM, Rakosnik, Delaney <rakosnik.delaney@epa.gov> wrote:
>
>> Hi Chris,
>>
>> Unfortunately, Bill Wehrum is out of the office on Oct 3rd. I can offer you meeting times the following week, if you like.
>>
>> Many thanks,
>>
>> Delaney Rakosnik
>> Staff Assistant
>> Immediate Office of the Assistant Administrator
>> Office of Air and Radiation, USEPA
>> Room 5406A, 1200 Pennsylvania Avenue NW
>> Washington, DC 20460
>> Voice: 202-564-0935
>> Email: rakosnik.delaney@epa.gov
>>
>> ---
>>
>> **From:** Parinello, Chris [mailto:Chris.Parinello@valero.com]
>> **Sent:** Thursday, September 27, 2018 3:28 PM
>> **To:** Rakosnik, Delaney <rakosnik.delaney@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
>> **Cc:** Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
>> **Subject:** Meeting with Valero
>> **Importance:** High

Hi Delaney—I am writing to request a meeting with Assistant Administrator Wehrum and Principal Deputy Assistant Administrator Mandy Gunasekara to discuss the Renewable Fuel Standard, particularly issues surrounding potential market reforms of RINs. We would like to bring in two outside commodities experts who have analyzed the RINs market and have identified potential reforms (they will be flying in from out of town). Is Assistant Administrator Wehrum available on Wednesday morning on the 3rd? The attendees from our side are listed below. Please let me know if you have any questions. Thank you!—Chris

Salo Zelermyer
Vice President & Counsel, Federal Government Affairs
Valero Energy Corporation

Chris Parinello
Director, Federal Government Affairs
Valero Energy Corporation

Stacie Hartman
Partner
Schiff Hardin LLP

Dr. Sharon Brown-Hruska
Managing Director, Securities and Finance
White Collar, Investigations & Enforcement
NERA Economic Consulting

Chris Parinello
Director, Federal Government Affairs
Valero Energy Corporation
Phone: (202) 560-5451
Email: chris.parinello@valero.com

Appointment

From: DCRoomARN5415PolyPCTB/DC-ARN-OAR [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=USER2C066053]
Sent: 9/28/2018 6:08:43 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]

Subject: Accepted: Meeting: Valero
Location: 5415 WJCN

Start: 10/3/2018 1:30:00 PM
End: 10/3/2018 2:30:00 PM

Recurrence: (none)

Your request was accepted.

Sent by Microsoft Exchange Server 2016

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 10/12/2018 4:05:56 PM
To: Parinello, Chris [Chris.Parinello@valero.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Sheehan, Lauren [Lauren.Sheehan@valero.com]; Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: RE: Visit to Valero HQ

Appreciate you sending this over. Looking forward to the visit and if for any reason you need to get in touch my work cell is Personal Phone / Ex. 6 Have a great weekend and see you Monday.

Alex

Sent from my iPhone

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Friday, October 12, 2018 10:30 AM
To: Gunasekara, Mandy (EPW) <Mandy_Gunasekara@epw.senate.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Sheehan, Lauren <Lauren.Sheehan@valero.com>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: FW: Visit to Valero HQ
Importance: High

Mandy, Alex—In advance of your visit to Valero HQ on Monday, I wanted to send along additional logistics information and meeting attendees. When you arrive at the front gate at 1 Valero Way, tell the security guard you are going to the B building. There is parking outside in front of the building. Once inside, ask for Karen Leach in the Public Policy department. Karen or I will come down to bring you upstairs. The meeting attendees are below. If you run into any issues or have any additional questions, please call my cell at Personal Phone / Ex. 6 Looking forward to seeing both of you.—Chris

10:00am-10:10—Arrival/check in with security—Valero B Building

10:15—11:40—RINs discussion

Chris Parinello—Director, Federal Government Affairs
Lauren Sheehan—Manager, Federal Government Affairs
Brian Donovan—Director, Strategic Planning
Brian Bartlett—Director, Product Supply
Matthew Priesmeyer—Trader
John Thomas—Manager, Trading
Scott Lively—Vice President, International Strategy

11:45-12:45—Lunch (Valero cafeteria)

1:00—2:00pm—Environmental compliance discussion

Chris Parinello—Director, Federal Government Affairs
Lauren Sheehan—Manager, Federal Government Affairs
Rich Walsh—Vice President and Deputy General Counsel
Parker Wilson—Vice President, Regulatory Law
Elizabeth Bourbon—Senior Managing Counsel

Matt Hodges—Director, Regulatory Affairs

2:00pm—Departure

From: Parinello, Chris
Sent: Thursday, September 13, 2018 2:30 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Visit to Valero HQ
Importance: High

Hi Mandy and Alex: We're looking forward to hosting you both at Valero's headquarters on Monday, October 15th. I'll send a follow up email as we get closer to the day that lays out some additional logistics info (along with a list of meeting attendees from Valero), but wanted to send over an initial rough draft agenda for the day. Please confirm if this looks ok and if there is any other information you think would be helpful. Thank you!—Chris

Visit to Valero Headquarters

Date and Time: Monday, October 15th: 10:00am-2:00pm
Location: Valero Corporate Headquarters—1 Valero Way, San Antonio, TX 78249

Draft Agenda

10:00am-10:10—Arrival/check in with security

10:15—11:40—RINs discussion

11:45-12:45—Lunch (either in cafeteria or in conference room with additional discussion)

1:00—2:00pm—Environmental compliance discussion

2:00pm—Departure

Message

From: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Sent: 9/30/2017 4:30:51 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: Hey

Stay strong. The cavalry is mobilizing.

Sent from my iPhone

> On Sep 29, 2017, at 9:50 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> Thank you for the note. Needed and very much appreciated
>
> Sent from my iPhone
>
>> On Sep 29, 2017, at 9:45 PM, Zelermyer, Salo <Salo.Zelermyer@valero.com> wrote:
>>
>> Hang in there. You're doing a great job. We'll get through this!
>>
>> Best
>>
>> Salo
>>
>> Sent from my iPhone

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

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October 19, 2017

Filed Electronically

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: **Valero Energy Corporation's Comments on Trade Issues to EPA's Availability of Supplemental Information and Request for Further Comment on Proposed Volume Standards for 2018, and the Biomass-Based Diesel Volume for 2019**

Docket ID No. EPA-HQ-OAR-2017-0091

Dear Administrator Pruitt:

Our client, Valero Energy Corporation, has asked that we provide these comments on the implications under U.S. obligations pursuant to international trade agreements, including those under the auspices of the World Trade Organization ("WTO"), if the U.S. Environmental Protection Agency ("EPA") were to modify the Renewable Fuel Standard Program ("RFS") such that no obligation to surrender Renewable Identification Numbers ("RINs") were created upon the export of renewable fuels from the United States.

We conclude that today's RFS discriminates against U.S. exports of renewable fuels by not allowing those volumes to receive the same benefits as volumes consumed (blended) domestically. If EPA were to remove the RFS obligation on exported renewable fuels, EPA would not violate the applicable provisions of the WTO's General Agreement on Tariffs and Trade 1994 ("GATT 1994") or the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). Indeed, by modifying the RFS to allow exported renewable fuel volumes to enjoy the same RIN benefit as volumes consumed at home, EPA will be viewed as correcting a compliance flaw in the RFS program with international trade laws, and will bring the program into compliance with such treaty-based trade rules. And as the modified RIN requirement would not constitute a subsidy, we do not see a meaningful risk that U.S. exports would be subject to countervailing duties imposed by our trading partners.

Sidley Austin (DC) LLP is a Delaware limited liability partnership doing business as Sidley Austin LLP and practicing in affiliation with other Sidley Austin partnerships.

We have focused on the GATT 1994 and the SCM Agreement because they are typically invoked against measures that create advantages for domestic goods, or create export opportunities. Indeed, Brazil's and Venezuela's successful GATT 1994 claims against EPA's reformulated gasoline rules under the Clean Air Act formed the basis of the very first WTO dispute to be litigated.[1] We have also reviewed U.S. free trade agreements ("FTAs"), many of which have disciplines on environmental regulation not found in the WTO agreements. It would be unlikely that a trading partner would challenge the RFS program under one of these FTAs rather than the WTO, but even if it did, the result would likely be the same as under the WTO.

I. Background

One of the main objectives of the RFS is to promote the use of renewable fuels in the United States to achieve U.S. energy security and independence.

Under the RFS, when a batch of renewable fuel is produced in the United States, imported into the United States, or exported from the United States, RINs are generated. RINs are the compliance tools for Obligated Parties to show compliance with RFS requirements. RINs are classified into two categories – (i) "Assigned RINs," which are directly associated with a batch of fuel, and that are transferred with that batch of fuel from party to party; and (ii) "Separated RINs," which are no longer assigned to a batch of fuel, and can be transferred independent of a batch of fuel. RINs can be bought and sold on the secondary market. Refiners and importers of hydrocarbon-based gasoline and diesel and exporters of renewable fuels are among the parties that are under an obligation to surrender specified numbers of RINs, corresponding to the volume of non-renewable fuel they produce or import or the volume of renewable fuels that are exported. ("Obligated Parties"). However, the importers of renewable fuels are not Obligated Parties and have no requirement to surrender RINs.

Currently, importation of renewable fuels into the United States generates RINs. Upon exportation of renewable fuels from the United States, RINs attached to that batch of renewable fuels become "Separated RINs." However, unlike the import of renewable fuels, the exportation of renewable fuels creates an obligation on the exporter to surrender a number of RINs corresponding to the volume exported.[2]

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[1] *See* Panel Report, *United States – Standards for Reformulated and Conventional Gasoline* (WT/DS2/R & WT/DS4/R), *as modified*, Appellate Body Report (WT/DS2/AB/R & WT/DS/AB/R), adopted 20 May 1996. (Note: All WTO panel and Appellate Body reports cited in this memorandum are available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx.) EPA revised its rules to eliminate elements found to be WTO inconsistent within the 15-month implementation period directed by the WTO. *See* 62 Fed. Reg. 45,533 (Aug. 27, 1997) ("EPA believes this final rulemaking is consistent with . . . the U.S. commitment to comply with obligations under the World Trade Organization agreement.")

[2] 40 CFR § 80.1430.

II. WTO Implications of the Proposed Modification to the RFS

We understand that EPA is considering an amendment to the RFS such that no obligation to surrender RINs would be created for the exporter when renewable fuel is exported from the United States.

The proposed modification, if adopted, is unlikely to give rise to any violation of WTO agreements. The WTO oversees a number of agreements that deal with trade in goods. The general principle underlying these agreements is one of trade free from distortive or discriminatory government action.[3]

Currently, the EPA requires that a person exporting renewable fuel from the United States surrender RINs. On the other hand, if the renewable fuel is sold in the domestic market, the sale does not attract an obligation to surrender RINs. In the domestic market, the obligation to surrender a RIN is at the point that it is blended with hydrocarbon-based fuels. Thus, the existing requirements create an artificial disincentive for exporting renewable fuels, and creates an incentive for selling renewable fuel in the domestic market. This is indeed a distortion of the market through government intervention, and as described below, would appear to violate Article XI:1 of GATT 1994.

Thus, the proposed modification should be seen as removing an artificially created disincentive against exportation, rather than as creating an incentive for exportation. Nonetheless, we also explain below that the proposed modification is consistent with Article III:4 of GATT 1994, and with Articles 3 and 5 of the SCM Agreement.

III. Existing Requirement May Violate Article XI:1 of GATT 1994

The applicable general prohibition on restricting trade is found at Article XI:1 of GATT 1994, which states "No *prohibitions or restrictions* other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any [Member] on the importation of any product … or … on the *exportation*… of any product destined for the territory of any other [Member]." While this prohibition is generally viewed as a prohibition to disadvantage imports, the WTO has applied this prohibition to government measures that restrict exports as well.

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[3] General Agreement on Tariffs and Trade, 1994, Preamble ("Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the *substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment* in international commerce…").

This provision has been interpreted by WTO dispute settlement panels as being "very broad in scope, providing for a general ban on import or export restrictions or prohibitions 'other than duties, taxes or other charges'."[4] The term "restriction" in this provision has also been understood to take a broad meaning, connoting "a limitation on action, a limiting condition or regulation."[5]

In the seminal WTO case on export restrictions, *China – Raw Materials*, the United States, the European Union, and Mexico claimed that Chinese restrictions, including "formalities in connection with exportation" of nine industrial raw materials (such as bauxite, silicon carbide, and zinc) violated GATT Article XI:1.[6] In its submission to the Panel, the United States argued that "China is a leading global producer of all nine of these raw materials, which renders China's restraints on their exportation particularly distortive for non-Chinese consumers of these raw materials and of the products manufactured from them."[7] The Panel found that the Chinese measures at issue in the case violated Article XI:1 "because they have a restrictive or limiting effect on exportation."[8] As the Appellate Body had not yet interpreted Article XI:1 in a case on export restrictions, the Panel applied much of the jurisprudence that had developed in cases involving restrictions on imports. Thus, the Panel quoted the holding in *India – Autos* that, if a measure allowed importation only upon meeting certain conditions, and those conditions had a "limiting effect" on importation, the measure would be a "restriction on importation" and covered by the scope of Article XI:1.[9] The Panel also quoted the holding in *Colombia – Ports of Entry* that "measures that create uncertainties and affect investment plans, restrict market access for imports, or make importation prohibitively costly" are "restrictions" within the meaning of Article XI:1, and are consequently prohibited.[10]

Under the present RFS, exportation of renewable fuel creates an obligation for the exporter to retire RINs. On the other hand, if the renewable fuel is sold on the domestic market, no such obligation arises for the seller. Thus, the existing measure creates a strong disincentive against exportation of renewable fuels, and may make exportation prohibitively expensive. That is, while there is no formal prohibition on exportation of renewable fuels from the United States, such exportation can be undertaken only subject to meeting "limiting conditions." In other

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[4] Panel Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, (WT/DS90/R), adopted on September 22, 1999 ("*India – Quantitative Restriction*"), para. 5.129; *India – Measures Affecting the Automotive Sector* (WT/DS146/R) adopted on April 5, 2002 ("*India – Autos*"); paras. 7.269-7.270.
[5] Panel Report, *India – Quantitative Restriction*, para. 5.129; Panel Report, *India – Autos*, paras. 7.269-7.270.
[6] Panel Report, *China – Measures Related to the Exportation of Various Raw Materials* (WT/DS394/R, WT/DS395/R, & WT/DS398/R), adopted on February 22, 2012 ("*China – Raw Materials*").
[7] Executive Summary of U.S. First Written Submission, June 8, 2010, (WT/DS394/R/Add.1, WT/DS395/R/Add.1, & WT/DS398/R/Add.1, p. A-3), para. 5.
[8] Panel Report, *China – Raw Materials*, para. 7.207.
[9] Panel Report, *China – Raw Materials*, para. 7.206, *quoting* Report, *India – Autos*, paras. 7.269-7.270.
[10] Panel Report, *China – Raw Materials*, para. 7.206, *quoting* Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry* (WT/DS366/R), adopted on May 20, 2009, paras. 7.240, 7.274-7.275.

words, the obligation placed on exporters to surrender RINs would amount to a "restriction on exportation," which is not in the form of "duties, taxes or other charges", and therefore appears to be a violation of Article XI:1.

Article XI:2(a) sets out an exception to the rule in Article XI:1 to permit "[e]xport prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting [Member]." For a measure to be considered "temporary," it must be "limited in time," and not "indefinite or permanent."[11] The creation of an obligation to surrender RINs upon exportation is intended to be a permanent provision by EPA in that it cannot be removed without going through public notice and comment rulemaking unlike a "temporary" restriction. Additionally, to succeed on this exemption, the United States would have to demonstrate that it currently faces a "critical shortage" of renewable fuels, which there is not, given, in part, because the RFS has exceeded the "blend wall", and volume requirements on Obligated Parties are becoming more and more difficult to meet. In view of these circumstances, the current requirement is unlikely to benefit from the exception under Article XI:2(a).

Similarly, it would be difficult for the United States to defend the current regulation using the general exception under Article XX(g) for measures "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption." In another case on export restrictions, *China – Rare Earths,* the Panel found that China could not use Article XX(g) to justify its export quotas because, among other things, they served to secure preferential access for Chinese manufacturers to rare earths, tungsten, and molybdenum.[12] Trading partners would likely make the same argument with respect to the current RFS regulation.

In sum, the current regulation, which creates an obligation upon exporters of renewable fuel to surrender RINs, appears to violate Article XI:1. The proposed modification would cure this violation, and would bring the RFS into conformity with the United States' WTO obligations.

IV. The Proposed Modification Would Not Violate Article III:4 of GATT 1994

GATT 1994 sets out a prohibition on discrimination in government regulation that favors domestic over "like" imported goods. In particular, Article III:4 states, "[t]he products of the territory of any [Member] imported into the territory of any other [Member] shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all

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[11] Panel Report, *China – Raw Materials*, paras. 7.257–7.258, 7.308.

[12] Panel Report, *China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum* (WT/DS431/R, WT/DS432/R & WT/DS433/R), *modified on other grounds,* Appellate Body Report (WT/DS431/AB/R, WT/DS432/AB/R & WT/DS433/AB/R) adopted on 29 August 2014, para. 7.804.

laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

Thus, imported goods should not be subjected to less favorable treatment, in comparison with domestic goods, "in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use". The Appellate Body has clarified that "[t]he broad and fundamental purpose of Article III is to avoid protectionism in the application of internal tax and regulatory measures".[13]

The renewable fuel that is exported from the United States is a domestic good. However, by virtue of being exported, it will not be subject to "internal sale, offering for sale, purchase, transportation, distribution or use" in the United States. There is no WTO requirement that the treatment of these goods upon exportation be equivalent with the treatment of imported goods when consumed in the United States.

In any event, importation of renewable fuel into the United States generates RINs, and does not generate an obligation to surrender RINs. The proposed modification would merely result in the same treatment being extended to domestic goods when exported. Thus, the proposed modification would place domestically consumed goods (including imports) and exports on the same playing field and not discriminate against either, thus not violating Article III:4.

V. The Proposed Modification Would Not Violate Provisions of the SCM Agreement

The SCM Agreement disciplines WTO Members' use of subsidies when that use distorts trade. Subsidies contingent on export are prohibited. Other subsidies are WTO-inconsistent if they cause adverse effects to the interests of other Members.

For a measure to be subject to the disciplines of the *SCM Agreement*, it must meet the definition of a subsidy, *i.e.*, it must constitute a "financial contribution by a government" (*e.g.*, by way of a direct transfer of funds or a foregoing of government revenue), and confer a benefit.[14] It does not appear that freeing exporters from the obligation to surrender RINs would meet this definition.

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[13] Appellate Body Report, *Japan – Taxes on Alcoholic Beverages* (WT/DS8/AB/R), adopted on November 1, 1996, p. 16.

[14] *SCM Agreement*, Article 1 ("For the purpose of this Agreement, a subsidy shall be deemed to exist if: … there is a financial contribution by a government or any public body within the territory of a Member … and … "a benefit is thereby conferred"). *See* Panel Report, *Canada – Export Credits and Loan Guarantees for Regional Aircraft* (WT/DS222/R), adopted on February 19, 2002, para. 7.16; Appellate Body Report, *Brazil – Export Financing Programme for Aircraft*, (WT/DS46/AB/R) adopted on August 20, 1999, para. 157; Appellate Body Report,

In any event, even if one were to assume that freeing exporters from the obligation to surrender RINs is a subsidy, it does not appear that it would breach any of the provisions of the *SCM Agreement*. It is not a "prohibited" subsidy under Article 3 (i.e., an import substitution or export contingent subsidy).[15] Nor is it an "actionable" subsidy under Article 5 likely to cause demonstrable "adverse effects" to the interests of another WTO Member.[16]

Importantly, as the proposed modification to the RFS would not constitute a "subsidy," the concern that U.S. exports would be subject to countervailing duties appears to be unfounded. Should any importing country impose countervailing duties, that importing country (assuming it is a WTO Member, which nearly all countries are) would be in violation of WTO rules, and the United States would be well positioned to pursue a successful challenge under WTO dispute settlement procedures.

VI. Implications of Other U.S. Trade Agreements

According to the Office of the U.S. Trade Representative, the United States is currently a party to fourteen FTAs covering twenty of its trading partners, all of which are also WTO Members.[17] These FTAs accord preferential access for trade in goods and services between the parties, and address certain topics (e.g., antitrust law) that go beyond the current scope of the WTO agreements. Except for the earliest agreement with Israel in 1985, each FTA incorporates GATT Articles III and XI by reference.[18] Accordingly, the arguments developed above with respect to those provisions are valid with respect to U.S. FTAs.[19] In contrast, U.S. FTAs do not

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United States – Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada (WT/DS257/AB/R), adopted on February 17, 2004, para. 51.

[15] *SCM Agreement*, Article 3.1 ("...the following subsidies, ... shall be prohibited: (a) subsidies contingent ... upon export performance; (b) subsidies contingent ... upon the use of domestic over imported goods"). *See* Appellate Body Report, *Canada – Certain Measures Affecting the Automotive Industry* (WT/DS139/AB/R), adopted on June 19, 2000, para. 118; Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft* (WT/DS70/AB/R), adopted on August 20, 1999, para. 166.

[16] *SCM Agreement*, Article 5 ("No Member should cause, through the use of any subsidy ... adverse effects to the interests of other Members"). *See* Panel Report, *United States – Subsidies on Upland Cotton* (WT/DS267/R) adopted on March 21, 2005, paras. 7.1392–1395; Appellate Body Report, *US – Upland Cotton*, para. 437; Appellate Body Report, *EC – Large Civil Aircraft* (WT/DS316/AB/R), para. 1232.

[17] Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. The agreements are available at https://ustr.gov/trade-agreements/free-trade-agreements.

[18] *See, e.g.*, Korea-U.S. Free Trade Agreement, Article 2.2.1 ("[e]ach Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994") and Article 2.8.1 ("neither Party may adopt or maintain any . . . restriction . . . on the exportation or sale for export of any good . . . except in accordance with Article XI of GATT 1994").

[19] The North American Free Trade Agreement is the only U.S. FTA with a separate chapter on trade in energy, which would appear to make it even more difficult than under the GATT 1994 for the United States to defend the current RFS program if it were challenged under the NAFTA. *See, e.g.*, Articles 605 (conditions on application of general exceptions) and 607 (conditions on application of national security exceptions).

incorporate or otherwise replicate WTO disciplines on industrial subsidies, so the issues discussed above with respect to the SCM Agreement would not arise in the context of an FTA.

Most of the FTAs contain a chapter on environmental regulation, but those provisions would not appear to have an impact even if an FTA party were to challenge the RFS program under one of those FTAs rather than under the WTO agreements. For example, Article 20.1 of the Korea-U.S. FTA ("KORUS") begins by "[r]ecognizing the right of each Party to establish its own levels of environmental protection . . . and to adopt or modify accordingly its environmental laws and policies," but the operative clauses focus on the fulfilment of a Party's obligations under specified multilateral environmental agreements.[20] Thus, if Korea were to challenge the current RFS program under KORUS, the United States would be unable to cite to any provision in the environment chapter of KORUS that would help it to justify a measure that would be otherwise inconsistent with GATT 1994 Article XI.

VII. Conclusion

For the reasons set out above, the current regulation, creating an obligation for exporters to surrender RINs, appears to be in violation of Article XI:1 of GATT 1994. The proposed modification, freeing exporters from this obligation, would remove this violation and would bring the United States into conformity with the obligation under Article XI:1. In any event, we do not consider that the proposed modification would violate any provision of the WTO agreements, in particular, Article III:4 of GATT 1994 and Articles 3 and 5 of the SCM Agreement, nor would the modified requirement be vulnerable to the legitimate application of countervailing duties by U.S. trading partners. We have reached the same conclusion with respect to U.S. FTAs, including their environment chapters.

Respectfully submitted,

Andrew W. Shoyer

Counsel for Valero Energy Corporation

[20] *See* KORUS Articles 20.2 and 20.3 and Annex 20-A ("Covered Agreements").

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

VALERO

Submitted Via eRulemaking Portal

August 31, 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

Dear Administrator Pruitt:

The Valero Energy Corporation and its subsidiaries (collectively, "Valero") hereby submit comments on EPA's proposed renewable volume obligations ("RVOs") for 2018 and for biomass-based diesel for 2019 under the renewable fuel standard ("RFS") program. In the proposal, EPA seeks comment on several issues in the RFS program in addition to the RVO. Valero's unique position as a refiner, importer, exporter, marketer and biodiesel and ethanol producer means that Valero views the RFS program from several perspectives that can be particularly helpful to EPA on the issues raised in the proposal. Valero urges EPA to consider Valero's unique frame of reference in evaluating the views and recommendations presented in these comments.

As the largest petroleum refining company in the U.S. and the world's largest independent refiner, Valero employs approximately 10,000 employees and operates 15 petroleum refineries in the U.S., Canada and the U.K. Valero therefore has a large RFS obligation and has the perspective of an obligated party and a merchant refiner. Valero is also a fuel importer, exporter, and a major fuel wholesaler. Important also from Valero's perspective is Valero's experience as a biofuel producer. Valero was the first traditional petroleum refiner to enter large-scale ethanol production and has 11 state-of-the-art plants making Valero the third largest ethanol producer in the U.S. Valero's investment in Diamond Green Diesel makes Valero also the largest renewable diesel producer in the U.S.

Due to these diverse business interests, Valero is a member of several different trade associations that themselves represent diverse interests. To the extent that these associations submit comments on this proposal, they should not be construed as necessarily representing Valero's viewpoints, particularly when such comments (or lack of comments) may conflict with our statements herein.

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Valero Comments on EPA's Proposed Rule for Renewable Fuel Standard Program: Standards for 2018 and Biomass-based Diesel Volume for 2019
Docket ID No. EPA-HQ-OAR-2017-0091

In these comments, we identify corrections to the RFS that will substantially improve the program and ensure that it continues to meet the statutory goals set by Congress: to support growth in renewable fuels in the U.S. and to enhance U.S. energy security and independence. Several of these recommendations are consistent with recommendations made by the Bipartisan Policy Center in 2014.[1]

I. EPA must consider the point of obligation each time it establishes the annual percentage standards.

EPA states that it is not reopening the docket for the proposed denial of the petitions related to the point of obligation.[2] However, EPA does not have the option to exclude such comments where they are directly relevant to issues EPA raised in the proposal. An agency is required to respond to comments that are "relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule [because they] cast doubt on the reasonableness of a position taken by the agency."[3] EPA's failure to satisfy a required element of this rulemaking by not considering the point of obligation not only "cast[s] doubt on the reasonableness" of the proposal, it renders it unlawful. Valero's comments on the point of obligation are not outside the scope of this rulemaking and must be given full consideration by EPA despite the Agency's insistence that it is not "reopening" this issue. The D.C. Circuit in *Americans for Clean Energy v. EPA*[4] ("*ACE v. EPA*") did not address this issue because the court had already decided to remand the 2014-2016 RVO rule to EPA. The fact that the court left EPA with only the choice of venue for its consideration of the point of obligation—on remand or in response to a rulemaking petition[5]—indicates that the court does not consider the point of obligation outside the scope of the RVO.

As presented in the various administrative petitions submitted to the agency and in briefs to the D.C. Circuit, the statute requires that EPA (1) regulate entities "as appropriate" to ensure transportation fuels contain renewable fuels and (2) consider the appropriateness of the entities regulated under the RFS every time it sets the RVO. The statute provides that the primary goals of the RFS are "greater energy independence and security and increasing production of clean renewable fuels."[6] To meet these goals, the statute assigns EPA certain duties. First, it requires EPA to promulgate regulations that regulate the appropriate parties to ensure that transportation fuel introduced into commerce contains renewable fuel.[7] Second, it assigns EPA an annual, mandatory duty to evaluate whether the appropriate parties are regulated:

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[1] Bipartisan Policy Center, Options for Reforming the Renewable Fuel Standard at 30 (Dec. 2014), *available at* https://cdn.bipartisanpolicy.org/wp-content/uploads/2014/12/BPC-Options-for-Reforming-the-RFS1.pdf.
[2] 82 Fed. Reg. 34,206, 34,211 (July 21, 2017).
[3] *Home Box Office, Inc. v. FCC,* 567 F.2d 9, 35 n. 58 (1977); *cert. denied,* 434 U.S. 829 (1977).
[4] No. 16-1005, slip op. at 84 (D.C. Cir. July 28, 2017) ["*ACE v. EPA*"].
[5] *Id.* at 85.
[6] Energy Independence and Security Act of 2007 ("EISA"), Pub. L. No. 110-140, tit. X, § 1001-1002, 121 Stat. 1492 (2007).
[7] 42 U.S.C. § 7545(o)(2)(A)(iii).

- Not later than November 30 of each calendar year, EPA "shall determine and Publish . . . the renewable fuel obligation that ensures the requirements of paragraph (2) are met."[8]
- The renewable fuel obligation shall "be applicable to refineries, blenders, and importers, *as appropriate.*"[9]

It is clear that this is not a one-time requirement, but rather, an annual duty because EPA cannot fulfill its duty to ensure that the renewable volumes prescribed by the statute for a given year are met without considering whether it has regulated the appropriate parties at that point in time. It is not sufficient to regulate the parties that were appropriate at one point in time or continue with the parties regulated at one time when a change would improve the performance of the program. EPA acknowledged the need to reevaluate the appropriateness of the regulation related to "appropriate" parties when EPA committed to reevaluate the point of obligation as circumstances change.[10] It is equally clear that EPA must fulfill its annual duty to consider the point of obligation within sufficient time to publish a final rule every November.[11] EPA has not fulfilled its duty with regard to the annual percentage standards for 2018 in this proposal.

Considering the point of obligation each time EPA sets the annual percentage standards serves the statute's goals of "increasing production of clean renewable fuels" and "greater energy independence and security." EPA cannot ignore the positive effect that changing the point of obligation would have on consumption of all renewable fuels. Nor can EPA ignore how the current point of obligation promotes fuel exports and supports biofuel imports. Neither can EPA continue to rely on a regulation that amounts to restructuring a segment of the U.S. economy on the basis of administrative convenience or because some economic sectors are profiting from the regulatory structure in a way that does not serve the statutory purposes. When EPA "lay[s] claim to extravagant statutory power over the national economy while at the same time strenuously asserting that the authority claimed would render the statute unrecognizable to the Congress that designed it," such an announcement should be greeted with skepticism.[12]

Moreover, EPA itself has recognized a "guiding principle" of the RFS is that "the program should preserve existing business practices for the production, distribution, and use of both conventional and renewable fuels."[13] In failing to consider the point of obligation, EPA has flouted this principle, preferring instead to try to force merchant refiners to change their business practices in order to add blending facilities and risk further consolidation in the fuel industry rather than fix the underlying flaws in the structure of the RFS.

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[8] *Id.* § 7545(o)(3)(B)(i).
[9] *Id.* § 7545(o)(3)(B)(ii)(I).
[10] 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010) ("We will continue to evaluate the functionality of the RIN market. Should we determine that the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers, we will consider revisiting this provision in future regulatory efforts.").
[11] 42 U.S.C. § 7545(o)(3)(B)(i); 40 C.F.R. § 80.1405(b).
[12] *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014) (internal citations omitted).
[13] 71 Fed. Reg. 55,552, 55,557 (Sept. 22, 2006).

II. EPA's consideration of the impact of market constraints is incomplete without also considering the point of obligation, and EPA should not increase the RVO as long as the point of obligation constrains the market.

In prior rulemakings, Valero responded to EPA's concerns about market constraints and described the direct connection between the point of obligation and the ability of renewable fuels to further penetrate the market. In the current proposed rule, EPA continues to disregard the importance of this connection as it relates to a well-functioning market. As long as the current RFS structure (i.e. the placement of the point of obligation) remains unaddressed, the many-identified constraints on the ethanol market will remain. [14] EPA cannot increase the RVO for total renewable fuel under such circumstances. EPA must evaluate the severe economic harm that would result from the impact on RIN prices as a result of these unaddressed constraints. High RIN prices will continue to cause disproportionate economic harm to merchant refiners, small fuel retailers, and U.S. consumers. In short, high RIN prices constitute precisely the sort of severe economic harm contemplated in EPA's general waiver authority.

EPA states that the constraints in the ethanol market discussed in the 2014-2016 RVO rulemaking remain relevant for 2017 and 2018.[15] According to EPA, those constraints include:

- the blendwall.
- the number of retail stations that offer higher blends such as E15 and E85.
- the number of vehicles that can legally and practically consume E15 and/or E85.
- relative pricing of E15 and E85 versus E10 and the ability of RINs to affect this relative pricing.
- the supply of E0.[16]

EPA has failed to acknowledge the role of the RFS structure in reinforcing these constraints or how the proper alignment of the point of obligation could help to reduce them.

In a report acknowledging significant and persistent challenges in the implementation of the RFS, the Bipartisan Policy Center recommended that EPA consider a change in the point of obligation as an option that could improve the RFS.[17] Valero urges EPA to undertake a serious evaluation of how a change will improve the RFS. In its Petition for Rulemaking of June 13,

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[14] *See, e.g.*, Valero Energy Corp., Comments on Proposed Renewable Fuel Standards for 2014, 2015 and 2016 and Biomass-Based Diesel Volume at 16 (July 27, 2015), Docket ID No. EPA-HQ-OAR-2015-0111-2765 (citing Ronald E. Minsk statement that "The current point of obligation is a significant factor inhibiting greater amounts of E85, and perhaps biodiesel, from reaching the market due primarily to the lack of properly aligned incentives and the resulting shortfall in blending infrastructure expansion"), provided here as Attachment 1; Valero Energy Corp., Comments on Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018, Proposed Rule at 2 (July 11, 2016), Docket ID No. EPA-HQ-OAR-2016-0004-1746 ("The current Point of Obligation is a structural deficiency that prevents the RFS program from functioning as intended."), provided here as Attachment 2; Comment submitted by Richard Alonso, Partner, Bracewell LLP (Feb. 23, 2017) (providing commenters in support of change in point of obligation), Docket ID No. EPA-HQ-OAR-2016-0544-0189.
[15] 82 Fed. Reg. at 34,230.
[16] *Id.*
[17] Bipartisan Policy Center *supra* note 1 at 43.

2016 Valero described how the current point of obligation inhibits the RIN market from increasing renewable fuels.[18] The disparity in the RIN market between the RIN-long parties and RIN-short parties impairs the ability of the RFS program to incentivize increasing renewable fuel use and setting prices to encourage consumption of renewable fuels.

In comments submitted on EPA's Proposed Denial of the Petitions for Rulemaking, Valero responded to EPA skepticism that aligning the point of obligation with the RFS compliance point would improve incentives for E85.[19] Valero describes the effect of aligning the point of obligation would be to compel RIN-long refiners to compete for E85 market share because they will now have a proportional obligation. As a result, E85 retail prices would have the best opportunity to compete with E10 and gain penetration into the market with increased availability of E85 at retail stations. Ron Minsk, former Special Assistant to President Obama for Energy and Environment and former Special Assistant to President Clinton for Economic Policy reached a similar conclusion in a letter submitted to EPA in 2015[20] and in a report summarizing research findings in February 2017.[21] Valero continues to urge EPA to reduce the impact of these constraints by aligning the point of obligation with the point of compliance. Not only does the statute require this but it remains unreasonable for EPA to avoid correcting the program while seeking to limit the RVO to avoid the harms created by the constraints. Absent the proper alignment of the point of obligation, higher RVOs will cause economic harm.

EPA asserts that the standards set under the RFS program provide incentives to overcome the ethanol-related constraints. However, EPA has adjusted its calculation of the demand and supply of E0. After the D.C. Circuit decision in *ACE v. EPA*, EPA cannot consider the demand for E0 or any of these demand-side constraints for determining the adequacy of renewable fuel supply under its general waiver authority. However, the demand for E0 along with other demand constraints contributes to the limited supply of RINs since EPA only allows RINs for renewable fuels consumed in the U.S. This constrained supply of RINs is causing severe economic harm as the RIN bank is depleted, the RVO increases, and disproportional impacts greatly distort the market. Absent alignment of the point of obligation, to avoid severe economic harm, EPA must limit the RVO to ensure that the RIN supply is not depleted.

III. EPA should exclude biofuel imports in determination of "domestic supply" when setting the RVO.

EPA has requested comment concerning biofuel imports, including any "inherent authority or other basis consistent with general construction of authority in the statute to reduce

[18] Valero Energy Corp., Petition for Rulemaking: Renewable Fuel Standard Definition of Obligated Party - 40 C.F.R § 80.1406 at 12, 19-20 (June 13, 2016), provided here as Attachment 3.
[19] Valero Energy Corporation, Comments on EPA's Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation at 39-40 (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0274 (discussing pass-through of RINs) ["Valero Point of Obligation Comments"], provided here as Attachment 4.
[20] Ronald E. Minsk, Comments on Proposed Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017 (July 24, 2015), Docket ID No. EPA-HQ-OAR-2015-0111-1307 ["Minsk 2015 Comments"], provided here as Attachment 5.
[21] Ronald E. Minsk, Comments on Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0195, provided here as Attachment 6.

the required volume of advanced biofuel (with a corresponding reduction to the total renewable fuel requirements) below the level proposed for 2018."[22] As EPA notes, the goals of the RFS include promoting "greater energy independence and security," and statutory provisions concerning biomass-based diesel require an assessment of the impact of renewable fuels on the energy security of the United States. EPA states that, in recent years, increasing volumes of renewable fuels have been imported to comply with the RFS mandates. In the past, EPA has used these volumes as part of its RVO calculations, however, EPA's proposed rule acknowledges that "[d]ue to their origin outside of the United States, imported renewable fuels may not have the same impact on energy independence as those produced domestically."[23] EPA therefore requests "stakeholder views on this topic and on what steps EPA might take to ensure energy independence and security."[24]

How EPA defines "domestic supply" for purposes of evaluating the adequacy of domestic supply in the process of setting the annual RVO is fundamental to how EPA addresses biofuel imports. Valero agrees with AFPM's comments stating that imported renewable fuel cannot be considered to constitute part of the "domestic" supply of renewable fuel. As AFPM has previously explained to EPA, "[r]elying on imports to satisfy the advanced biofuel requirement runs contrary to the intent of Congress," which was to foster domestic energy independence.[25] Valero also agrees with the joint comments of API and AFPM on this proposal (hereinafter "AFPM comments") that even though EPA may not consider available foreign-sourced renewable fuels in establishing the volumetric requirements under the RFS program or in determining whether there is "inadequate domestic supply" for purposes of using the general waiver, Congress specifically contemplated that imported renewable fuels *can* be used for demonstrating compliance with the volumes EPA establishes (*i.e.*, for the generation of RINs).

A. Purpose of the RFS is promoting domestic, not foreign, production.

i. Definition of "domestic supply."

The EPA Administrator may waive the RFS statutory applicable volume requirements upon a determination that there is an "inadequate domestic supply" of renewable fuel.[26] The logical corollary is that EPA must consider the adequacy of domestic supply when setting the RVO each year. Neither Congress nor EPA has defined "domestic supply." In the past, EPA has interpreted "domestic supply" to mean the amount of fuel available in the United States for consumption by the consumer.[27] The D.C. Circuit recently invalidated EPA's interpretation of

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[22] 82 Fed. Reg. at 34,212.
[23] *Id.*
[24] *Id.*
[25] API & AFPM, Comments on Proposed Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017 at 25 (July 29, 2015), Docket ID No. EPA-HQ-OAR-2015-0111-1948; *see also Nat'l Petrochem. & Refiners Ass'n v. EPA*, 630 F.3d 145, 156 (D.C. Cir. 2010) (EISA should be interpreted in view of its purpose); *HCA Health Servs. of Okla. v. Shalala*, 27 F.3d 614, 620 (D.C. Cir. 1994) (statute should be interpreted in light of congressional purpose).
[26] 42 U.S.C. § 7545(o)(7)(A), (D).
[27] 80 Fed. Reg. 77,420, 77,435 (Dec. 14, 2015).

"supply" to mean "supply to the ultimate consumer."[28] Because Congress chose to include the term "domestic" to modify "supply," EPA must consider giving some meaning to "domestic" rather than assuming all "supply" of renewable fuel means "domestic supply." In light of the D.C. Circuit's views limiting EPA's overreach in defining "supply", EPA should consider how to define "domestic" to align with the purposes of the statute. EPA includes within its estimation of the available domestic supply projected volumes of imported renewable fuel.[29] EPA's interpretation of "domestic supply" to include imported renewable fuel is contrary to the statutory purpose of the RFS.[30]

Congress enacted the RFS program in an effort to promote energy security by *reducing* America's dependence on fuel imports; it also wanted to promote growth in domestic energy jobs and domestic renewable fuel production.[31] Given those goals, including foreign production of renewable fuels in the calculation of the domestic supply makes no sense, because foreign production and imports are an obstacle to energy independence, not an aid to such independence. Consequently, when assessing the adequacy of the domestic supply of renewable fuel, EPA should focus only on domestic production so that it does not obligate domestic refiners to purchase foreign renewable fuel. Failing to do so could lead to unintended consequences, as previously described by API:

> A direct implication of setting renewable fuel volume standards that exceed the ethanol blendwall is that it encourages imported biodiesel that is produced from palm oil. EPA's own analysis finds that biodiesel produced from palm oil fails to meet GHG emission reduction requirements of the RFS, except it is allowed if it meets grandfathering provisions of [the Energy Independence and Security Act of 2007 ("EISA")]. Biodiesel imports into the U.S. from Indonesia, a leading palm oil producing country, have increased from zero in 2012 to 73 million gallons in 2015. This outcome of increased palm oil biodiesel consumption in the U.S. is another inconsistency with EISA's stated purpose to [sic] "…to increase the production of clean renewable fuels . . . ."
>
> In the 2017 RFS proposal, EPA set the conventional volume at 14.8 billion RINs or 10.42% of the gasoline pool if all conventional biofuel were ethanol, hence breaching the E10 blendwall. In Table IID.1 of the proposal, EPA assumes 400 million gallons of conventional biodiesel/renewable diesel are included in the conventional D6 pool. This

[28] *ACE v. EPA*, No. 16-1005, slip op. at 25.
[29] *See, e.g.*, 81 Fed. Reg. 89,746, 89,783 (Dec. 12, 2016).
[30] This assertion is not counter the court's statement in ACE v. EPA that its "interpretation of supply allows EPA to consider the amount of renewable fuel available through import . . . ." *ACE v. EPA*, No. 16-1005, slip Op at 33. There, the court was construing the term "supply" as it relates to the person being supplied. In addressing an argument by EPA, the court pointed out that interpreting "supply" to mean supply to the obligated party does not make "supply" synonymous with "production." *Id.* The court noted that, "for example," "supply" could include imported fuel and not only fuel production. *Id.* The court was not construing the term "domestic" and did not have before it any question as to the appropriateness of including imported fuel in a determination of "domestic" supply. *Id.* at 34-35. The court's comment is dicta and has no bearing on the construction of statutory terms not before it in that case.
[31] *See* Energy Independence Security Act ("EISA"), Pub. L. No. 110-140, tit. X, § 1001-1002, 121 Stat. 1492 (2007); Energy Policy Act of 2005 ("EPAct"), Pub. L. No. 109-58, tit. I, § 134, 210, 119 Stat. 594 (2005).

continued practice of EPA to encourage imports from grandfathered facilities, including palm based biodiesel/renewable diesel results in significant increases in GHGs, contrary to the stated intents of the Agency to lower GHGs.[32]

ii. Foreign supply available for import is difficult to predict and to oversee.

Reliance on imports subjects obligated parties to unnecessary supply risks. The quantity of renewable fuel that can be imported is very difficult to predict. Market forces could direct volumes of exported renewable fuels to countries other than the United States. Additionally, a decision from the U.S. International Trade Commission and Department of Commerce to impose duties on renewable fuel, specifically biodiesel, produced in Argentina and Indonesia could impact the quantity available in the United States.[33] When projecting available supplies of renewable fuel for future compliance years, EPA typically relies on production in previous years. Thus, inclusion of foreign supplies in the volumetric requirements for any one year tends to increase the volume of renewable fuel that EPA projects is available in the future. Relying on past performance as indicative of future performance risks improperly "locking in" such production, increasing future dependence on that foreign production.

Furthermore, EPA lacks the ability to oversee production outside of the United States and thus, cannot confirm that the renewable fuel produced abroad satisfies the greenhouse gas reduction and other requirements in the statute. It furthermore could not enforce the requirements of the statute against the foreign producer even if it discovered a violation. Despite this, at least two Indonesian biodiesel producers qualify for RINs even though their biodiesel generally does not meet the RFS program's minimum greenhouse gas reduction threshold.[34]

iii. The current structure incentivizes foreign production to the detriment of domestic producers.

As EPA's proposed rule cites, in 2016, 46 million gallons of ethanol and 731 million gallons of advanced biodiesel and renewable diesel were imported into the United States.[35] Domestic biodiesel production has declined in terms of relative market share—domestic production accounted for 86.2% of the market in 2014, 76.7% in 2015, and 68.0% in 2016.[36] When assessing the available domestic supply of renewable fuel, EPA should exclude imported renewable fuel.

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[32] API, Comments on Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018 at 23 (Aug. 10, 2016), Docket ID No. EPA-HQ-OAR-2016-0004-3512 (internal citations omitted).
[33] Biodiesel From the Republic of Indonesia: Preliminary Affirmative Countervailing Duty Determination, 82 Fed. Reg. 40,746 (Aug. 28, 2017); Biodiesel From Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part, 82 Fed. Reg. 40,748 (Aug. 28, 2017).
[34] Biodiesel From Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part, 82 Fed. Reg. 40,748 (Aug. 28, 2017).
[35] 82 Fed. Reg. at 34,212.
[36] *See* US Int'l Trade Comm., *Biodiesel from Argentina and Indonesia*, Investigation Nos. 701-TA-571-572 and 731-TA-1347-1348 at 22 (May 2017), *available at* https://www.usitc.gov/publications/701_731/pub4690.pdf.

B. Excluding imports from the "domestic supply" promotes RFS stability

Including foreign-produced renewable fuel within the domestic supply of such fuel provides an incentive for additional foreign production in the future. This is inconsistent with the statute's stated purpose of promoting American energy independence. This situation is exacerbated where there may be instances of product dumping and unfair subsidization of imports, as reflected in the pending Department of Commerce investigation of imports of biodiesel from Argentina and Indonesia.[37]

Setting the RVO based only on domestically produced biofuel but allowing the use of imported biofuel for compliance (as required by the World Trade Organization) provides more stability in the RIN market by ensuring the availability of renewable fuel to maintain sufficient RINs in the market. Given EPA's express solicitation of comment in this area, we encourage the Agency in the final rule to recalculate both advanced biofuel and total renewable fuel volumes by excluding foreign production.

IV. EPA must consider that the loss of the blender tax credit will shrink the supply of biofuel and exacerbate economic harm.

EPA acknowledged that the expiration of the blender tax credit is expected to reduce the domestic supply of biodiesel. EPA should also recognize that a reduction in the domestic supply of biodiesel will result in higher RIN prices and exacerbate economic harm.

Not only are current biofuel producers faced with non-economic conditions due to the current status of the blender tax credit, the future of favorable tax treatment is in doubt. The Administration and allies in Congress have supported "fuel neutral" tax reform proposals under which specialty credits may not be restored or may cease altogether. While the future of tax reform is difficult to predict with precision, EPA must take into account the fact that supportive credits and production they incentivize might not be a reality in the future. Should such support not materialize, then there is a significant likelihood that there will be biodiesel production in the U.S. that will be forced out of the market. It is also clear that absent the subsidy, biodiesel will be priced well above the D6 RIN and the cost of biodiesel D4 RINs will increase, which limits their utility for compliance with the total renewable fuel obligation.

Similarly, lower prices for petroleum derived diesel (due to lower crude oil prices) also place pressure on smaller biodiesel producers, with crude prices not expected to rebound in at least the near term. Indeed, truck stops that blend biodiesel are reducing blending because biodiesel cannot compete with petroleum derived diesel. These market and regulatory realities must be considered by EPA in revising the RVO.

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[37] Fact Sheet: Commerce Preliminary Finds Countervailable Subsidization of Imports of Biodiesel from Argentina and Indonesia, U.S. Department of Commerce, International Trade Administration, *available at* http://enforcement.trade.gov/download/factsheets/factsheet-multiple-biodiesel-cvd-prelim-082217.pdf.

V. Absent a change to the Point of Obligation, EPA should reduce the RVO to account for small refinery exemptions.

EPA seeks comment regarding how to account for small refinery exemptions in the 2018 RVO.[38] A change to the RFS structure would eliminate the need for small refinery exemptions. Without a change to the point of obligation, Valero agrees with EPA's past approach to not adjust the current RVO percentage obligations for other obligated parties to account for small refinery exemptions. Moreover, EPA should fix the problems with the RFS program identified throughout these comments so that small refineries no longer need hardship exemptions. Otherwise, the increasing harm to the 59 or more small refineries[39] subject to the RFS will make meeting the RFS or statutory goals of the RFS more problematic. Furthermore, evidence of economic harm to small refineries indicates that the RFS also causes economic harm to other obligated parties.

In the proposal, EPA seeks comments on how EPA should account for small refinery exemptions in setting the annual percentage standards in light of repeated congressional direction to both DOE and EPA in 2016 and 2017 indicating the extent to which Congress intended small refineries to receive relief from RFS compliance when necessary.[40] In both cases, Congress indicated that compliance with the RFS program can cause "disproportionate economic hardship" to small refineries even where a small refinery remains profitable, and even directed DOE to recommend that EPA grant a partial small refinery exemption under some circumstances.[41] Congress's 2017 statement further indicates that DOE has previously recommended partial exemptions to small refineries for hardship.[42] Similarly, the Tenth Circuit has pointed out to EPA that it must consider small refinery hardship.[43]

As a result of the congressional directives, DOE's recommendations for partial exemptions, and now a federal appeals court, in addition to the increasingly burdensome RVOs, it is reasonable to expect that many of the 59 or more small refineries might seek exemptions from the 2018 RVO. In prior RVOs, EPA concluded that it was not appropriate to adjust the annual percentage standards to account for small refinery exemptions that were granted *after* EPA issued the final rule establishing the annual percentage standards for that year. EPA stated:

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[38] 82 Fed. Reg. at 34,242.

[39] DOE identified 59 small refineries in its 2011 study. *See* DOE, 2011 Small Refinery Exemption at vii (2011), *available at* https://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=595. Based on EIA data, there may be additional refiners that could qualify for a small refinery exemption: 62 refineries have an operable daily capacity of 75,000 barrels or less; 10 additional refineries have an operable daily capacity of 75,001-90,000 barrels, and 6 additional refineries have operable daily capacity of 90,001-100,000. *See* EIA, Refinery Capacity Report, Tbl 5 (Refiners' Total Operable Atmospheric Crude Oil Distillation Capacity by Individual Refinery as of January 1, 2017), *available at* https://www.eia.gov/petroleum/refinerycapacity/table5.pdf.

[40] Sen. 114-281, 114th Cong. (2016); Explanatory Statement to Consolidated Appropriations Act, 2017, Pub. L. 115–31, 131 Stat. 135 (2017), *available at* https://rules.house.gov/sites/republicans.rules.house.gov/files/115/OMNI/DIVISION%20G%20-%20INT%20SOM%20FY17%20OCR.pdf.

[41] *Id.*

[42] *See* Explanatory Statement to Consolidated Appropriations Act, *supra* note 40.

[43] *Sinclair Wyo. Ref. Co. v. EPA*, No. 16-9532 (Aug. 15, 2017).

> If any small refinery exemptions for 2011 are approved after this final rulemaking, the parties in question would be exempt but we would not intend to modify the applicable percentage standards and announce new standards for 2011. EPA believes 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. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.[44]

EPA further stated that:

> If, subsequent to announcing the 2011 standards, we make a determination that one or more hardship petitions should be approved, we do not intend to revise the 2011 standards applicable to other obligated parties to require that they make up for volumes that will not be attained by the exempt refineries.[45]

EPA took a similar approach in subsequent annual rulemakings.[46]

This is still the best approach to provide regulatory certainty and avoid unnecessary disruption to the RINs market in the current compliance year. However, EPA should account for any exempted small refinery volumes by reducing the next year's RVO. EPA should not raise the RVO to make up for exempted volumes in the past, but should instead ensure that future RVOs reflect reality when the RVO has created a hardship. Doing so would avoid setting an overly aggressive RVO that assumes that all of the prior year's volumes were met *and* uses that faulty assumption as the basis of even more aggressive volumes.

VI. An adequate RIN bank is crucial to a more functional and stable RIN market.

A. EPA must preserve the RIN bank to ensure compliance flexibility.

Valero agrees with EPA 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, and in providing a liquid and well-functioning RIN market . . . ."[47] EPA should not take any action in the final rule that would increase RFS volumes on the basis that RINs generated in a prior year that are still available for compliance, *i.e.*,

[44] 75 Fed. Reg. 76,790, 76,804 (Dec. 9, 2010).
[45] *Id.* at 76,805.
[46] *See e.g.,* 77 Fed. Reg. 1,320, 1,340 (Jan. 9, 2012) (establishing the annual percentage standards for 2012); 78 Fed. Reg. 49,794, 49,826 (Aug. 15, 2013) (establishing the annual percentage standards for 2013).
[47] 82 Fed. Reg. at 34,213.

"carryover RINs," may be available to obligated parties. Instead, EPA should exclude all such carryover RINs—the "RIN bank"—from consideration when setting annual RFS standards.

Valero agrees with AFPM's comments that EPA must preserve the RIN bank to ensure compliance flexibility for the RFS program. In the final 2017 rule, EPA observed that "the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves."[48] EPA also noted that many obligated parties lack the ability to separate RINs through blending and that a significant drawdown in the RIN bank "may stop the market from functioning in an efficient manner, even where the market overall could satisfy the standards."[49] These conditions will only worsen in 2018 and successive compliance years, and they support EPA's proposed determination to preserve the full amount of the RIN bank. In addition, the continuing volatility in the RIN market demonstrates that banking RINs is and will remain a prudent compliance strategy.

B. The RIN bank must not drop below 10 percent and should be maintained at 14 percent or higher.

In the proposal, EPA has noted that the RIN bank "balance" is currently approximately 11 percent of the proposed total renewable fuel standards.[50] This level is far below the 20 percent "rollover" limit specified in EPA regulations. EPA has previously determined that such a limit is consistent with the structure of the RFS while recognizing that credits *must* be available in the year generated and the year thereafter. When EPA set the 20 percent limitation, EPA stated that "the 20 percent cap provides the appropriate balance between, on the one hand, allowing legitimate RIN carryovers and protecting against potential supply shortfalls that could limit the availability of RINs, and on the other hand ensuring an annual demand for renewable fuels as envisioned by the Act."[51] Valero does not dispute the 20 percent limit but recommends that EPA consider that the stability of the RIN market requires the RIN bank to hold at 14 percent or higher, the level of the bank in 2013.[52]

i. <u>The RIN bank has been drawn down, there is a RIN deficit carryover and the RIN bank is not likely to recover in 2017 or 2018.</u>

Despite drawing down the RIN bank for compliance, obligated parties began 2017 with the largest RIN deficit carryover in the history of the RFS—a shortfall of 500 million RINs. This deficit effectively increases the 2017 standards from 19.28 billion to 19.78 billion and may result

[48] 81 Fed. Reg. at 89,755.
[49] *Id.*
[50] 82 Fed. Reg. at 34,213.
[51] 72 Fed. Reg. 23,000, 23,934-35 (May 1, 2007) (emphasis added).
[52] EPA calculates the RIN bank based on the projected RVO and carry-over RINs and also based on the actual data; in 2013, EPA calculated that the carry-over RIN bank based on actual data was at 14.6%. *See* EPA, Carryover RIN Bank Calculations for 2018 NPRM at 7 tbl 9, Docket ID No. EPA-HQ-OAR-2017-0091-0067.

in a significant further drawdown of carryover RINs. Under current conditions, the RIN bank is not likely to rebuild to prior levels. Yet, a healthy RIN bank is needed for RIN market stability.

Several factors that led to the earlier buildup and maintenance of the RIN bank simply no longer apply. For example, in 2016, an increase in biofuels production ahead of the expiration of the blender tax credit resulted in a surge in biofuel production and the generation of biomass-based diesel RINs. That surge in renewable fuel production will not be repeated this year because the tax credit has expired, reducing expected RIN generation. Similarly, imports of palm oil biodiesel from Indonesia are uneconomical in the absence of the tax credit.[53] There also is a concern that without the tax credit, many small US biodiesel production facilities will close, putting further pressure on RIN supply. The anti-dumping and countervailing duty actions initiated by the National Biodiesel Board are likely to reduce biodiesel imports and the availability of RINs.

ii. EPA should consider that the RIN bank needs to be higher than 11%.

In 2016, obligated parties met the 2016 RVO using 91 percent 2016 vintage RINs and 9 percent prior year RINs from the RIN bank. In 2015, 10 percent of the obligation was met using prior year RINs.[54] It is reasonable to expect that all prior year RINs available for use are used, and the declining use of carryover RINs suggests the balance in the RIN bank will not be sufficient to offset the supply reductions discussed above. RIN prices have been volatile since 2013 and a declining RIN bank aggravates volatility. Valero agrees that the RIN bank should be above 10 percent but up to 20 percent might be better in light of limited RIN liquidity. EPA should improve the RFS so that the RIN bank consists of 14.6% or more of the RVO, reflecting the RIN bank levels of 2013.[55]

C. A sufficient volume in the RIN bank does not necessarily reduce economic harm.

The RIN bank accounts for RINs that RIN-long parties and unobligated parties might still hold. As long as RIN-long parties and unobligated parties hoard RINs, the amount in the RIN bank does not reduce economic harm of the RFS. To improve the functioning of the RIN bank to relieve the economic harm under the RFS, EPA must address the RIN market problems that are due to the inequitable distribution of RINs among obligated parties. EPA could right the RFS and eliminate the inequitable distribution of RINs by adjusting the point of obligation. Short of the correction to the program, EPA must consider additional measures recommended below to reduce the harm that comes from RIN hoarding and other market manipulation. Without a market correction and an adequate RIN bank, the RFS will cause severe economic harm that justifies EPA reducing the RVO through use of the general waiver.

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[53] According to EPA EMTS data, D6 imports in 2017 constitute ~0.1% of total D6 RINs generated in 2017 versus ~3% in previous years.
[54] *See* EPA, Carryover RIN Bank Calculations for 2018 NPRM, *supra* note 52 at 1 tbl 1.
[55] *Id.* at 7 tbl 9.

VII. RIN market operational problems.

In the proposal, EPA expressed interest "in further assessing whether and how the current trading structure provides an opportunity for market manipulation. To that effect, EPA seeks comment and input on potential changes to the RIN trading system that might help address these concerns."[56] EPA also said it "has continued to explore additional ways to increase program transparency in order to support the program and share data with all stakeholders."[57] EPA is "interested in providing more information, to the extent consistent with our obligations to protect confidential business information. EPA seeks comment on specific data elements and posting frequency that stakeholders believe would be useful to help with market transparency and liquidity."[58]

Understanding the nature of the RIN market requires realization that the RIN market is virtually unregulated. This stands in stark contrast to trading markets for commodities and securities. A RIN is simply a representation of fuel that is blended; a RIN has no value outside of the RFS market. However, due to the structure of the RFS, obligated parties—particularly RIN-short parties—are a captive market for RINs. They must purchase a government mandated and publicly known quantity of RINs every year regardless of the price. Thus, RIN-short obligated parties are captive buyers while sellers can dictate trade terms.

A fundamental characteristic of the RIN market is that a very small number of companies control the vast majority of unobligated RINs. Until 2013, the RIN market was relatively stable—RIN prices were low.[59] After 2013, when the RVO approached the level that would begin to breach the blendwall, the market became vulnerable to price volatility[60] and structural deficiencies became apparent.[61] The structural deficiencies include:

- The RIN market is unregulated.
- The market is easily moved—by speculation, news, purchasing or selling efforts—causing price volatility.
- There is a small number of sophisticated market participants that control a large number of the surplus RINs—making the market extremely "thin" and illiquid.
- Among RIN-long parties, there is an ability to actively drive the market.
- There is not a centralized or uniform platform for trading.
- There are no limitations on who can participate in the market, resulting in pure speculatory participants in the market.

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[56] 82 Fed. Reg. at 34,211.
[57] *Id.*
[58] *Id.*
[59] Minsk 2015 Comments, *supra* note 20 at 2.
[60] Numerous media outlets reported on this "RINsanity." *See e.g.,* Gretchen Morgenson, *Wall St. Exploits Ethanol Credits, and Prices Spike*, Wall St. Journal (Sept. 14, 2013), http://www.nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike.html?pagewanted=all&_r=0 ("For now, companies like Valero say that they are eating the cost of high RIN prices, which are still eight times more expensive than they were in January.").
[61] Paul Bernstein, NERA Economic Consulting, *Effects of Moving the Compliance Obligation under RFS2 to Suppliers of Finished Products* (July 27, 2015), ["NERA Report"], previously submitted to EPA with Valero's Petition for Rulemaking and provided here as Attachment 7.

- The market is not transparent—prices are not disclosed and there is no obligation to accurately report prices.
- As an environmental trading mechanism, the market fails to provide the option to comply through blending rather than through purchasing of RINs. This is due to the placement of the obligation separate from the place of compliance and other market structure issues.

A. RIN market manipulation.

i. Types of market manipulation.

Manipulation in the RIN market is possible due to the lack of market controls, lack of market regulation and the lack of a centralized clearinghouse. The unregulated RIN market allows for disruptive trading practices. RIN market trading takes place largely on Yahoo Instant Messenger not through a clearinghouse. Thus, records of trading practices are not preserved and activity in the market occurs over very short periods of time—via instant messaging.

Disruptive trading practices include:

- Violation of bids or offers: Traders put offers to sell RINs at a specific price and when a buyer takes the offer, the seller refuses to sell. Because the market is unregulated, this practice is not illegal but it is disruptive and it is manipulative.

- Spoofing: Traders place bids or offers with intent to cancel before the orders are filled. The flurry of activity around the buy or sell orders is intended to attract other high-frequency traders to induce a particular market price.

- Setting artificial price floors: RIN-long dominant parties post blanket offers to purchase RINs below a certain target price. This message/offer is sent to all known large sellers of RIN and is used to set an artificial pricing floor.

The practices listed above fall into three types of market manipulation described by the Brattle Group: uneconomic trades, outright fraud, or the exercise of market power. The Brattle Group identifies each as illegal market manipulation for securities but describes the difficulty in identifying and enforcement particularly for uneconomic trades. "Uneconomic trading has also provided the basis for several enforcement actions brought by the agencies empowered with anti-manipulation authority."[62] They define uneconomic trading as "loss-based manipulative behavior: intentionally losing money on anomalous price-making trades to benefit the value of the trader's related price-taking positions, where losses are measured relative to the trader's opportunity costs."[63] But where the Brattle Group makes recommendations for identifying and

[62] Shaun D. Ledgerwood, The Brattle Group, *A Framework for the Analysis of Market Manipulation* at 256 (2012) ["Brattle Group Report"], provided here as Attachment 8.
[63] *Id.*

enforcing against market manipulation that occurs in the regulated markets, the RIN market cannot be fixed by the framework recommended because the RIN market is unregulated.

ii. The RIN market is vulnerable to manipulation.

First, because there is no centralized clearinghouse or exchange for RINs and no requirement for accurately reporting RIN trading information, information is spread thin and across many brokers contributing to chaotic trading with no natural order to trade flow. The lack of a centralized clearinghouse means also that there is no centralized validation of RIN volumes or RIN prices and no trader accountability. Because of the lack of a centralized trading exchange, RIN trading requires bilateral agreements between traders; this is a transactional barrier to acquiring or trading RINs. A RIN purchaser acquiring RINs from one party could have no way to verify RINs that have come through a third party and no ability to directly purchase RINs from that third party because agreements are not in place with the third party. Similarly, some RIN sellers may be forced to sell RINs to a RIN-long party because they lack direct contractual agreements with enough other RIN purchasers.

Second, the market is not regulated. Due to the lack of transparency of information and the lack of regulation, RIN traders face no repercussions for doing things that are illegal in other markets or that might be considered manipulative. Some actions by traders might constitute collusion or market manipulation under other existing law, but EPA has taken no action to investigate.

Third, the volume of RIN trading, due to the disparity between those who need RINs and those who have RINs, contributes to the profitability of manipulative practices.

Fourth, misalignment of the point of obligation with the natural compliance point creates the fundamental market flaw that is the existence of RIN-long parties controlling large numbers of RINs.

This thin and unregulated environment together with high volatility in RIN prices makes the RIN market prone to manipulation. Participants that control large numbers of RINs can hold RINs to short the market. The dominance of these parties makes the RIN market far less liquid. As explained in a report by the Brattle Group,[64] liquidity in the market plays a critical role in the success or failure of manipulations. Manipulation in thin markets is more likely to be profitable.

> Inelastic demand or supply is symptomatic of illiquid bids or offers, respectively, thus making a manipulation more likely to be profitable if price movements are directionally aimed at the thin side of the market. If an agent's private information set gives it the ability to predict times when such thinness is likely to occur, it can coordinate its price-making efforts accordingly to trigger a manipulation. If markets are efficient, other market participants will perceive the opportunity and arbitrage away future efforts. Conversely, if the pattern of thinness is irregular or, more likely, if the manipulator can influence when and whether such illiquidity emerges (by the exercise of market power,

[64] *See generally* Brattle Group Report, *supra* note 62.

> the execution of uneconomic trades, or the commission of outright fraud), the ability to successfully repeat the manipulation over time increases. This possibility may support the logic of investigating and bringing enforcement actions against attempted manipulations, for the failure of such attempts might only reflect that the would-be manipulator misjudged or was testing the depth of market liquidity it faced at particular moments in time.[65]

A paper by Ramon Benavides, a RIN trader and biofuel professional, describes how speculation and manipulation takes place in the RIN market at the expense of RIN-short obligated parties and to the advantage of investors, large retailers, and RIN-long refiners.[66] Mr. Benavides describes how speculators benefit even as RIN prices increase without any corresponding increase in renewable fuels. Charles River Associates ("CRA"),[67] a global economic consulting firm; Doug Parker,[68] a federal enforcement expert; and Joe Jobe,[69] the former director of the National Biodiesel Board; and others agree that the RFS program is vulnerable to market manipulation, speculation and fraud.

B. Other RIN market operational problems.

EPA acknowledges other concerns about the RIN market, stating that EPA is working with appropriate market regulators to analyze targeted concerns of some stakeholders.

Several comments were submitted in EPA RFS rulemaking dockets addressing RIN market problems. Valero indicated that potential RIN speculation and fraud might undermine the RFS program.[70] Valero included references to experts who described the failure of the RIN system to function as intended. In February 2017 comments, Valero described harms under the current RFS arising from RIN fraud, RIN speculation and volatility and the impacts on small and independent refiners and small retailers and the harm to the program, renewable producers, and ultimately consumers.[71]

C. Recommendations.

The Brattle Group report demonstrates that identifying and preventing market manipulation is very difficult. Thus, EPA's priority should be to fix any part of the RFS structure that makes it susceptible to manipulation, including by moving the point of obligation or

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[65] *Id.* at 279.
[66] Ramon M. Benavides, Global Renewable Strategies and Consulting, LLC, *The US Renewable Identification Number: RINs Trading Market* at 8, 13-14 (Mar. 6, 2017), Docket No. EPA-HQ-OAR-2016-0544-0412, provided here as Attachment 9.
[67] Charles River Associates, *Market Frictions and the RINs Point of Obligation* (Feb. 2017), provided here as Attachment 10.
[68] Doug Parker, E&W Strategies, *Update to: September 4, 2016 White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* (Feb. 3, 2017), provided here as Attachment 11.
[69] Letter from Joe Jobe, Rock House Advisors, LLC to EPA, Office of Air and Radiation at 7 (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0271, provided here as Attachment 12.
[70] Valero Petition for Rulemaking, *supra* note 18 at 24.
[71] *See* Valero Point of Obligation Comments, *supra* note 19 at 9, 15, 26.

lowering the RVO. Valero firmly believes that EPA can only truly resolve the problems with the RIN market by (1) restructuring the obligation, as Valero petitioned, to align it with the point of compliance, (2) adjusting the RVO to limit the mandates to correspond with the blend wall and domestic biofuel supply, (3) provide greater liquidity to the RIN market and lowering RIN prices, or (4) changing the program to provide greater RIN liability to limit manipulation. Absent these fundamental changes, EPA may help curb hoarding, speculation and manipulation that artificially raises RIN prices by implementing at least some of the following measures:

- Mandate accurate reporting of prices and volumes of RINs to EPA.
- Limit RIN purchasing to obligated parties and in relative proportions to their obligations.
- Impose position limits, trading limits, or require position/trading disclosures.
- Prohibit parties from taking actions to set artificial price floors (as described in A.i. above).
- Provide for market price surveillance and investigate manipulation.
- Set limitations on holding carry-over RINs by unobligated parties and RIN-long parties.
- Set a target RIN price and provide EPA-issued RINs when that target is exceeded.

VIII. EPA should adjust its treatment of biofuel exports under the RFS.

EPA requested comments regarding the treatment of imported biofuels relative to domestically produced biofuels and the statutory goals. We have included above our thoughts on the treatment of imported biofuels. A logical outgrowth of treatment of imported biofuels for the purposes of meeting statutory goals is the treatment of domestically produced exported biofuels and the same statutory goals. EPA should revise the RFS to allow all domestically produced biofuel to be used for compliance under the RFS, including ethanol exported for use as transportation fuel and exported biodiesel. EPA should eliminate the export RVO, eliminate the denaturant prerequisite for RINs for renewable fuel, and allow RINs for all exported biofuels. These revisions will increase available RINs for compliance and will promote the purposes of the RFS by supporting domestic renewable fuel production.

A. EPA should eliminate the export RVO and allow RINs generated by all domestically produced renewable fuel to be used for compliance with the RFS.

EPA devised a system under which exports of renewable fuel are burdened with a separate export RVO ("ERVO") that requires exporters to retire the RINs attached to the exported renewable fuels.[72] This ERVO penalizes domestically-produced, exported renewable fuel in comparison to foreign-produced, imported renewable fuel. It is well within EPA's discretion to eliminate the ERVO—thereby allowing RINs generated from all renewable fuels produced in the U.S. to be used for compliance. Critically, its elimination would support several important national goals. It would support job creation by expanding the market for domestically produced renewable fuels, improve our trade balance by increasing exports, enhance our energy and economic security by reducing net fuel imports and reinforcing our growing role as an

[72] 40 CFR §§ 80.1427(c), 80.1430.

energy superpower, and reduce greenhouse gas emissions by replacing petroleum with fuel with lower lifecycle carbon emissions. Moreover, each of these policy goals are consistent with the goals of the RFS as enacted under the Energy Policy Act of 2006 ("EPAct") and as amended under EISA, which are: (1) job creation;[73] (2) "greater energy independence and security"; and (3) "increase[d] . . . production of clean renewable fuels."[74] It also makes sense as a matter of public policy because it would correct EPA's punitive treatment of exports under the current program rules, which has contributed to the increase in renewable fuel imports in recent years, and would add much-needed liquidity to the RIN market.

Moreover, this system is inconsistent with the plain language of the statute, which requires only that transportation fuel "*sold or introduced into commerce* in the United States" contains annually increasing minimum amounts of renewable fuel.[75]

i. EPA has the discretion to eliminate the ERVO and it would be reasonable and good policy to do so.

Section 211(o) gives EPA the interpretive room to revise the RFS program to eliminate this provision so long as the change is permissible under the statute and based on a reasoned explanation.[76] Such a change in policy can be based "on a reevaluation of which policy would be better in light of the facts," and "[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal" of its regulations and programs.[77] There is nothing in the text of the statute that forecloses this interpretation. Nor does the legislative history of the adoption of the statute give any indication that Congress intended to manage domestically produced volumes of renewables that are exported as any different from volumes used in the United Sates.

Eliminating the ERVO is not only permissible, it is good public policy because it better serves the purposes of the RFS—domestic job creation, energy independence and security, and increased domestic production of renewable fuels—than the program's current punitive treatment of exports. Even though imported renewable fuel does not serve the purposes of EPAct and EISA, EPA still endows it with the benefit of a RIN that can be separated to demonstrate compliance or traded as a potential revenue stream. Meanwhile, exported renewable fuel, which does serve the statutory purposes, receives no such benefits. Instead, EPA has decided export RINs must be retired to offset the fictional ERVO. Domestic renewable fuel that is later exported is similarly disadvantaged in comparison to renewable fuel produced and consumed in the U.S. The latter gets the benefit of a useable, tradeable RIN while the former does not—even though it serves the purposes of EPAct and EISA just as well as domestically consumed renewable fuel.

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[73] EPAct, Pub. L. 109-58, 119 Stat. at 659.
[74] *See ACE v. EPA*, slip op. at 5 (quoting Preamble to EISA, Pub. L. No. 110-140, 121 Stat. at 1492.)
[75] 42 U.S.C. § 7545(o)(2)(A).
[76] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).
[77] *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox,* 556 U.S. at 514-15 (Rehnquist, J., concurring in part and dissenting in part)).

Eliminating the ERVO and allowing RINs associated with exported renewable fuel to be used for compliance with the RVO would remove this burden on exports and enable them to meaningfully contribute to satisfying the statute's mandates, and to the programs goals of creating jobs, enhancing our energy security, and increasing production of renewable fuels. Such a change has already been suggested by the Bipartisan Policy Center in a 2014 report, which suggested that "eliminat[ing] the exporters' RVO" could allow "the export of biofuels [to] meaningfully contribute to satisfying the RFS mandates."[78]

a) Allowing RINs attached to renewable fuel exports to be used for compliance would incentivize further domestic production of renewable fuels as required by the statute's design and provide benefits to the U.S. renewable fuels industry.

EPA recognizes that there are numerous market constraints that will limit increases in domestic renewable fuel production. What EPA fails to recognize is that—through the ERVO—the Agency has constrained domestic production, one of the key purposes of the RFS. The ERVO penalizes the production of renewable fuels in the U.S. if the fuel is exported by keeping RINs associated with those volumes from being used in the program. This is contrary to how the RFS program is supposed to work—incentivizing increased renewable fuel production year-over-year. As the D.C. Circuit recently observed, "[T]he Renewable Fuel Program'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."[79] EPA's interpretation of Section 211(o) to treat consumption as the measurement of compliance with the statutory volumes "flouts that statutory design" because instead of forcing greater production, the ERVO creates a disincentive for further domestic production.[80] EPA cannot continue with such a "goal-defying (much less that text-defying) statutory construction."[81] Designed correctly, the RFS can promote continued growth in domestic biofuel production. Eliminating the ERVO would remove the burden on exports and incentivize further increases in production—a conclusion supported by a recent report issued by CRA.[82]

Eliminating the ERVO also would make exporting more attractive to domestic producers by giving them access to additional markets for their products without the burden of retiring the RIN just because they export. EPA acknowledged that the "rate of growth in the supply of ethanol to the U.S. market has decreased in recent years as the gasoline market has become saturated with gasoline that contains 10 volume percent ethanol (E10), favorable blending economics have diminished, and efforts to expand the use of higher ethanol blends such as E15 and E85 have not been sufficient to maintain past growth rates in total ethanol supply."[83]

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[78] Bipartisan Policy Center *supra* note 1 at 30.
[79] *ACE v. EPA*, slip op. at 31.
[80] *Id.*
[81] *Id* (quoting *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1662 (2017).
[82] Charles River Associates, *Balancing the Treatment of Ethanol Exports, Imports, and Consumption in the Renewable Fuel Standard* at 2 (Aug. 2017) ["CRA Ethanol Exports Report"], provided here as Attachment 13.
[83] 82 Fed. Reg. at 34229.

Removing the ERVO would eliminate a non-tariff barrier to increasing ethanol exports, resulting in a positive impact on this sluggish growth.

Having additional markets would also improve domestic producers' competitiveness with foreign renewable fuel imports. Domestic producers that export would hold separated RINs that they can sell in the RIN market and will level the playing field in international markets consistent with the WTO. Foreign producers importing renewable fuels already have these benefits—domestic producers that export should not be penalized in comparison.

In addition, exporting renewable fuels positively impacts the U.S. economy and protects jobs in the biofuels industry, which helps to satisfy the RFS program's goal of job creation under EPAct. The Renewable Fuel Association ("RFA") estimates that ethanol exports have resulted in 14,940 direct, indirect, and induced jobs.[84] RFA also estimates ethanol exports have contributed about $3 billion to GDP and reduced the U.S. trade deficit by $4 billion.[85] U.S. ethanol exports rose to more than one billion gallons in 2016.[86] CRA recently concluded that the increase in exports that is likely to result if the ERVO were eliminated would represent over 26,000 jobs, mostly within the agriculture and services sectors.[87]

Moreover, the ethanol and farming communities have long recognized the benefits of export promotion for ethanol. Some examples:

> "The United States exported 900 million gallons of ethanol in 2014, supporting both U.S. farmers and the ethanol industry. We know that, going forward, ethanol exports have the potential to grow and become equally beneficial for our customers overseas. [U.S. Grains Council], Growth [Energy] and RFA are committed to launching initiatives . . . to build demand for U.S. ethanol and address barriers to ongoing [ex]ports."[88]

> "U.S.-produced ethanol continues to be the lowest-cost, cleanest octane source on the planet. Our industry produced 15.2 billion gallons of ethanol last year, and while we continue to meet our domestic needs, ethanol exports are essential for future growth."[89]

Allowing domestic producers of renewable fuels that are later exported to benefit from the value of a RIN would further encourage exports and result in further benefits to the U.S. economy, our national and economic security, and the industry.

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[84] Renewable Fuels Association, *2017 Ethanol Industry Outlook at 7* (2017), provided here as Attachment 14.
[85] *Id.*
[86] *Id.* at 8.
[87] CRA Ethanol Exports Report, *supra* note 82 at 3.
[88] U.S. Grains Council, Growth Energy and RFA Participate in Exploratory Market Development Mission to Japan, U.S. Grains Council (May 26, 2015), available at https://www.grains.org/news/20150526/us-grains-council-growth-energy-and-rfa-participate-exploratory-market-development (quoting Tom Sleight, President and Chief Executive Officer, U.S. Grains Council).
[89] Emily Druckman, *RFS Has Been 'Tremendous Success' Since Adoption, According to RFA Analysis*, Renewable Fuels Association (June 7, 2017), available at http://www.ethanolrfa.org/2017/06/rfs-has-been-tremendous-success-since-adoption-according-to-rfa-analysis/ (quoting Bob Dineen, President and Chief Executive Officer, Renewable Fuels Association).

b) Eliminating the ERVO would help to correct the imbalance in imports identified by EPA that undermine the United States' energy independence and security.

Given that one of the goals of the RFS is to enhance the United States' energy security, it is difficult to imagine that Congress intended the program to replace import of petroleum with imports of renewable fuel, reinforcing the nation's dependence on foreign fuel. Allowing RINs associated with exported renewable fuel to be used for compliance with the RVO would restore the proper balance between renewable fuel imports and exports in the market and support the RFS program's purpose of increased energy independence and security. EPA is concerned that "[i]n recent years, increasing volumes of renewable fuels have been imported and used by obligated parties to comply with their RFS obligations."[90] The Agency notes correctly that "[d]ue to their origin outside the United States, imported renewable fuels may not have the same impact on energy independence as those produced domestically."[91] EPA also notes that the U.S. Department of Commerce has instituted countervailing duty and antidumping duty investigations regarding alleged subsidized and dumped imports of biodiesel.[92] EPA seeks public comment on "this topic" and "on what steps EPA might take to ensure energy independence and security."[93]

EPA's discussion of energy security and the RFS treatment of renewable imports necessarily implicates the program's treatment of renewable fuel exports. EPA is concerned that increased dependence on imported renewable fuel to meet the RVO—totaling 777 million gallons in 2016,[94] for example—may not serve the nation's energy security goals. EPA should also be concerned with how the corresponding 800 million gallons of renewable fuel expected to be exported from the U.S. in 2017 may impact the nation's energy security.[95] EPA should consider giving U.S. producers favorable regulatory treatment for the potential energy security benefit of enhancing exports of U.S. produced renewable fuels. As the proposed rule notes, ensuring energy security through the RFS "is embedded in [the] statutory provisions."[96] At the highest levels of the Administration, it is now recognized that the capacity for energy exports is inextricably linked to underlying U.S. energy security. EPA Administrator Pruitt, writing together with Energy Secretary Perry and Interior Secretary Zinke, wrote a month before the publication of the Proposed Rule, that,

> our abundant domestic energy resources and technological innovations [can be used] for good, both at home and abroad. An energy-dominant America means a self-reliant and secure nation, free from the geopolitical turmoil of other nations that seek to use energy as an economic weapon. An energy-dominant America will export to markets around the

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[90] 82 Fed. Reg. at 34,212.
[91] *Id.*
[92] *Id.* (citing 82 Fed. Reg. 22,155 (May 12, 2017).
[93] 82 Fed. Reg. at 34212.
[94] *See* 82 Fed. Reg. at 34212 (noting that "data from EPA's EMTS system show that in 2016, 46 million gallons of ethanol and 731 million gallons of advanced biodiesel and renewable diesel were imported into the United States.").
[95] EIA, Independent Statistics and Analysis, *U.S. ethanol exports exceed 800 million gallons for second year in a row* (March 10, 2016) https://www.eia.gov/todayinenergy/detail.php?id=25312.
[96] 82 Fed. Reg. at 34212.

> world, increasing our global leadership and influence. Becoming energy dominant means that we are getting government out of the way so that we can share our energy wealth with developing nations. For years, Washington stood in the way of our energy dominance. That changes now.[97]

In turn, the President has recently re-committed the federal government to ensuring the energy independence and security of the nation—specifically through increasing U.S. energy exports.[98]

This continues a longstanding bipartisan acknowledgement of the U.S. energy security benefits generated by increased exports of U.S. produced energy sources. For example, in July 2015, The Atlantic Council's Global Energy Center issued a report co-chaired by Senator Lisa Murkowski (R-AK) and Senator Mark Warner (D-VA) that states:

> The linkage between US energy and security interests, and the embrace of multiple paths to advance these interests, is both bipartisan and long standing. We can agree that increased availability of US energy supplies on the global market increases price competition, boosts countries' purchasing power, and strengthens resilience during uncertain times.[99]

Accordingly, eliminating the ERVO will help meet the statute's key goals of energy independence and security. International trade laws may require RINs for imported renewable fuels, but there is no such mandate for placing a separate RVO on exported domestically produced volumes.

c) Allowing RINs attached to renewable fuel exports to be used for compliance would improve the liquidity of the RIN market while transitioning through the blendwall or otherwise resolving other market constraints identified by EPA.

Given the significant volumes of renewable fuel exported in recent years (described above), allowing the use of RINs associated with that renewable fuel to be used to comply with the RVO would improve the liquidity of the RIN market. CRA concluded that adding RIN value to exported renewable fuel could have an impact of 1.2 billion gallons in 2020.[100] This influx of RINs would provide substantial relief in the RIN market by reducing RIN price volatility and reducing the costs of the RFS program while also providing incentives for continued domestic biofuel production.

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[97] R. Perry, R. Zinke and S. Pruitt, *Paving the path to U.S. energy dominance*, Washington Times, June 26, 2017, *available at* http://www.washingtontimes.com/news/2017/jun/26/us-energy-dominance-is-achievable/.
[98] *See* Pres. Donald J. Trump, Remarks at the Unleashing American Energy Event (June 29, 2017 3:31 PM), *available at* https://www.whitehouse.gov/the-press-office/2017/06/29/remarks-president-trump-unleashing-american-energy-event.
[99] Task Force on the U.S. Energy Boom and National Security, The Atlantic Council Global Energy Center *Empowering America: How Energy Abundance Can Strengthen U.S. Global Leadership* at 9 (2015), *available at* http://www.atlanticcouncil.org/images/publications/Task_Force_Report_PDF.pdf.
[100] CRA Ethanol Exports Report *supra* note 82 at 2.

In addition, using ethanol exported for RVO compliance means that there would be continuous incentive to grow ethanol production while the longer term structural changes needed to move through the blendwall are phased in. This would avoid the severe economic harm being experienced in the current RIN-short environment while still providing for growth in the renewable industry.

d) With declining U.S. fuel consumption, growth in the U.S. renewable fuel industry depends on international markets

The long-term forecast projects declining U.S. fuel consumption. Encouraging exports of renewable fuels and forging markets for U.S. renewable fuels will insulate the agriculture and renewable fuel industry from future U.S. consumption decline. Revising the treatment of biofuel exports would provide support for the U.S. renewable fuel industry consistent with the goals of the statute.

e) The regulatory changes needed to enact these changes are straightforward.

The changes to the regulations to implement the correct reading of the statute are straightforward:

- Delete all of 40 CFR § 80.1430 (RVO for exports).
- Delete the export compliance provisions in 40 CFR § 80.1427(c).
- Delete recordkeeping for RINless exported renewable fuel in 40 CFR § 80.1454(a)(6).
- Delete the definition of "exporter of renewable fuel" in 40 CFR § 80.1401.
- Promulgate regulations to prohibit the short term import and re-export of biofuels for the purposes of generating RINs.[101]

ii. Section 211(o) prohibits the ERVO.

Not only does it make sense as a matter of public policy to eliminate the ERVO, the plain language of the statue forecloses EPA's contrary interpretation punishing domestically-produced renewable fuel because the statute does not require consumption of renewable fuel in the U.S. CAA Section 211(o)(2) and (o)(3) require that the renewable fuel be "*sold or introduced into commerce* in the United States."[102] This provision is focused on the introduction into commerce of renewable fuel, not on the geography of disposition or consumption of the renewable fuel. In fact, Congress explicitly prohibited EPA from restricting the geographic areas in which renewable fuel may be used.[103]

[101] EPA should also promulgate regulations to prevent manipulation of this change.
[102] 42 U.S.C. § 7545(o)(2)(A).
[103] *Id.* § 7545(o)(2)(A)(iii)(II)(aa) (prohibiting any regulations that "restrict geographic areas in which renewable fuel may be used.").

That all volumes of renewable fuel must be counted is evident from the definitions Congress employed. Congress broadly defined "transportation fuel" to mean "fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels)."[104] Renewable fuels are, by definition, transportation fuel. If the renewable fuel is produced in the U.S. and transported, stored, and/or sold in the U.S. to anyone, then it is transportation fuel that has been "introduced in commerce in the United States," regardless of whether it is ultimately destined for export and regardless of whether it is denatured or not. As a consequence of this language, EPA cannot refuse to count all volumes of renewable fuel produced in the United States toward compliance.

That the ERVO is not countenanced by the text of Section 211 is also apparent when one considers how Congress amended the RFS in 2007 under EISA. When enacted in 2005 as part of the EPAct, Section 211 mandated that EPA ensure that "*gasoline* sold or introduced into commerce in the United States . . . on an annual average basis, contains" at least the statutory renewable volumes. "Since the gasoline that is blended with renewable fuels under the RFS program must be 'sold or introduced into commerce' within the U.S.," EPA reasoned, "renewable fuels that are exported cannot be claimed by an obligated party for compliance purposes, and therefore would not need to be assigned a RIN."[105] Because, for practical reasons blended gasoline is not exported, there was no reason to challenge this reasoning.

However, in 2007, EISA widened the RFS mandate, requiring EPA to ensure that "*transportation fuel*" (not just gasoline) introduced into commerce contains the applicable volumes of renewable fuel.[106] This change extended the RFS to a full array of renewable fuels produced in the U.S. and as long as these fuels were introduced into U.S. commerce they are entitled to RINs even if ultimately exported in an unblended state. Congress's decision to revise the statute is meaningful and presumed to be deliberate, and should be given effect.[107]

B. EPA must allow RINs to be generated for undenatured ethanol.

Lifting the ERVO is necessary to maintain program integrity and is well within EPA's discretion under the statute. The current definition of ethanol as denatured only, however, must also be adjusted because it is a limiting factor on the number of RINs that can be separated for exports.[108]

Current EPA regulations require a gallon of ethanol to be denatured in order to qualify under the RFS.[109] In the RFS1, EPA established a system where "RINs would represent proof of

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[104] *Id.* § 7545(o)(1)(L).
[105] 71 Fed. Reg. at 55,579.
[106] EISA, Pub. L. No. 110-140, § 202(a)(1).
[107] *ACE v. EPA*, slip op. at 79 (citing *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) ("We take a different approach, instead presuming that 'the legislature says what it means and means what it says.'").
[108] CRA Ethanol Exports Report *supra* note 82 at 4. A review of export data from 2012-2017 indicates a steady increase in exports of undenatured ethanol vs. denatured ethanol.
[109] *See* 40 C.F.R. § 80.1401 (defining "renewable fuel" to include ethanol that is "denatured as required and defined in 27 CFR parts 19 through 21."); 40 C.F.R. § 80.1415(b)(1) (assigning an equivalence value of 1.0 to "[e]thanol which is denatured.").

production which is then taken as proof of consumption as well, since all renewable fuel produced or imported will be either consumed as fuel or exported."[110] As explained above, this is inconsistent with the current language of the statute. Because EPA was focused only on the ethanol used in the U.S. for transportation fuel, it defined "renewable fuel" to include only denatured ethanol because, in the U.S. "ethanol produced for use as a motor vehicle fuel is denatured specifically so that it can only be used as fuel."[111] As a result, EPA limited RIN generation for ethanol to the production of denatured ethanol. This is illustrated in the RFS1 regulations setting equivalence values. As EPA explained, "ethanol is expected to dominate the renewable fuel pool for at least the next several years" and that "it seems likely that it was the intent of the authors of the Act that each physical gallon of denatured ethanol be counted as one gallon for RFS compliance purposes."[112]

Although all fuel ethanol consumed in the United States includes denaturants even today, this is not the case for fuel ethanol that is exported. Many markets outside the United States, such as Brazil, specifically require ethanol to be undenatured. The result of the current denaturant requirements in the RFS is that 51% of the 1.05 billion ethanol gallons exported from the United States in 2016 were RIN-less.[113] Because ethanol export markets in many cases differ in fuel specifications from the U.S. market, it is necessary for EPA to revise the definition of ethanol to include both denatured and undenatured ethanol. Providing RINs for undenatured ethanol allows such fuel to be used by foreign transportation sectors. EPA has previously acknowledged that it must design the RVO "to achieve the Congressional intent of increasing renewable fuel use over time . . . , while at the same time accounting for the real-world challenges that have slowed progress toward these goals."[114] Updating this would align the definition of ethanol with the present day global market realities, which demand both undenatured and denatured ethanol for fuel use.

As discussed above, the current language of Section 211(o) entitles renewable fuels that were introduced into commerce to RINs even if they are ultimately exported in an unblended state. The same concerns that require equal treatment of exports require equal treatment under the RFS of denatured and undenatured ethanol used as transportation fuel or exported for transportation use. Nothing in the statute forecloses including such undenatured ethanol in the RFS. In fact, including undenatured ethanol used as transportation fuel or exported for transportation use in the RFS better serves the purposes of the RFS as expressed in EPAct and EISA—domestic job creation, energy independence and security, and increased domestic production of renewable fuels—than the program currently does by excluding undenatured ethanol. EPA has recognized that "[t]he fact that Congress set volume targets reflecting increasing and substantial amounts of renewable fuel use clearly signals that it intended the RFS program to create incentives to increase renewable fuel supplies . . . ."[115] The D.C. Circuit

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[110] 71 Fed. Reg. at 55,562.
[111] *Id.*
[112] *Id.* at 55,571.
[113] Renewable Fuels Association, *2016 U.S. Ethanol Exports and Imports: Statistical Summary* at 1 (2017), provided here as Attachment 15.
[114] 81 Fed. Reg. at 89,747.
[115] 80 Fed. Reg. 33,100, 33,118 (June 10, 2015).

recently reinforced this point.[116] Providing RINs for such undenatured ethanol would provide precisely the sort of incentive that Congress intended to meet the volumes mandated in the statute.

Changing the definition of "renewable fuel" to include both undenatured as well as denatured ethanol is also consistent with the D.C. Circuit's opinion in *ACE v. EPA*. There, the court assessed EPA's authority to waive the statutory volumes of renewable fuel in Section 211(o)(2) using the statute's "inadequate domestic supply" waiver provision. The court explained that the inadequate domestic supply waiver "does not allow EPA to consider the volume of renewable fuel that is available to the ultimate *consumers* or the *demand-side* constraints that affect the consumption of renewable fuel by consumers."[117] As ACE argued and the court agreed, the domestic supply waiver authority is not about how renewable fuel is consumed by end-users in the U.S., but rather about how renewable fuels like ethanol are produced. The court found that EPA's use of its domestic supply waiver authority to focus on consumption by the end-user, was counter to the goals of the statute. Expanding the definition of renewable fuel to include undenatured ethanol would advance the purposes of the statute by focusing the RFS program as Congress intended on increasing the production of renewable fuel.

The regulatory changes needed to provide RINs for undenatured ethanol can be accomplished largely through the following amendments:

- Amend paragraph (2) of the definition of "renewable fuel" in 40 CFR § 80.1401 as follows:
  (2) Ethanol covered by this definition ~~shall~~ includes ~~be:~~
  (A) ethanol that has been denatured ~~as required and defined in 27 CFR parts 19 through 21. Any volume of denaturant added to the undenatured ethanol by a producer or importer in excess of 2 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.~~; and
  (B) undenatured ethanol used as transportation fuel or exported for use as transportation fuel.[118]
- Amend the ethanol equivalence value in 40 CFR § 80.1415(b)(1) by deleting "which is denatured."

[116] *See ACE v. EPA*, slip op. at 31 ("[T]he Renewable Fuel Program'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.").
[117] *Id.* at 4 (emphasis original).
[118] EPA's prior experience differentiating between quantities of renewable fuel that can generate and separate RINs and those that cannot could be used as a model here. For example, the RFS regulations allow producers of a renewable fuel other than ethanol, biodiesel, or renewable diesel that meets certain ASTM requirements to generate RINs if (among other things), the producer has entered into a written contract for the sale of the fuel that specifies that the fuel will be used in neat form as transportation fuel. 40 C.F.R. § 80.1426(f)(17)(i)(B)(3). The regulations also allow RINs to be separated for neat renewable fuel if the party that procures, sells, imports, owns, or uses the neat fuel designates that fuel as transportation fuel and the fuel is used as such. 40 C.F.R. § 80.1429(b)(4). Similar requirements could be used to help ensure that RINs are generated and separate for undenatured ethanol when used as transportation fuel or exported for transportation use.

- Amend the reporting requirements in 40 CFR § 80.1451(b)(1)(ii) as follows and re-letter the paragraphs that follow it:
  (ii)(I) For denatured ethanol, t~~T~~he volume of denaturant ~~and applicable equivalence value of each batch~~.***
  (N) The applicable equivalence value of each batch.
- Amend the attest engagement requirements in 40 CFR § 80.1464(b)(1)(ii) as follows:
  (ii) Obtain production data for each renewable fuel batch by type of renewable fuel that was produced or imported during the year being reviewed; compute the number of gallon–RINs production dates, types, volumes of added denaturant (if any) and applicable equivalence values, and production volumes for each batch; report the total RINs generated during the year being reviewed; and state whether this information agrees with the party's reports to EPA. Report as a finding any exceptions.[119]

To ensure that increased domestic production meets the goals of the statute, EPA would not make any changes to the requirements related to the lifecycle GHG emissions in the definition of renewable fuel nor to related requirements in 40 C.F.R. § 80.1403.

IX. Valero supports the use of the general waiver on the basis of severe economic harm.

Although EPA has determined that there is adequate supply of renewable fuel and "use of the general waiver authority for 2018 to further reduce the total renewable fuel on the basis of supply considerations would therefore not be necessary,"[120] EPA solicits comments on whether it is appropriate to exercise its general waiver authority based either on supply considerations or on economic harm. EPA invites comment on "use of the general waiver authority to reduce the required volume of renewable fuel in an effort to increase the energy independence impacts of the RFS program."[121] EPA specifically identifies the concern that severe economic harm would result if the standards require the use of ethanol beyond the blendwall.[122] EPA also refers to constraints in the ethanol market described in prior RVO rulemakings.[123]

As reflected in the AFPM comments, the evidence supports EPA's use of the general waiver authority based on severe economic harm. To use the severe economic harm waiver authority, EPA must find that such harm exists on a national, regional, or state level with respect to imposition of the statutory volumes for any of the four required renewable fuels.[124] EPA need only find that such harm "would" occur through imposition of the statutory renewable fuel volumes in order to avail itself of authority to waive volumetric requirements "in whole or in part."[125] Furthermore, EPA's responses to prior petitions requesting EPA issue a waiver based on economic harm suggest that harm to specific economic sectors may be sufficient to justify use of

[119] Additional conforming amendments may be necessary.
[120] 82 Fed. Reg. at 34,228, 34,229.
[121] 82 Fed. Reg. at 34,229.
[122] *Id.*
[123] *Id.*
[124] 42 U.S.C. § 7545(o)(7)(A)(i).
[125] *Id.*

the waiver.[126] Numerous parties have provided evidence to EPA that the increasing RVOs cause economic harm, especially if EPA does not take other action to address RIN prices and disparity in RIN distribution. It is evident that severe economic harm will result if the statutory volumes are imposed for 2018, and EPA may therefore waive those volumes pursuant to this provision.

A. Economic harms from raising RVO with a constrained renewable fuel market.

According to EPA, the constraints in the ethanol market discussed in the 2014-2016 RVO rulemaking remain relevant for 2017 and 2018.[127] Among those constraints, EPA includes:

- the blendwall.
- the number of retail stations that offer higher blends such as E15 and E85.
- the number of vehicles that can legally and practically consume E15 and/or E85.
- relative pricing of E15 and E85 versus E10 and the ability of RINs to affect this relative pricing.
- the supply of E0.[128]

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.

That the RFS causes severe economic harm should also be evident to EPA in that the Agency still regularly considers petitions for small refineries seeking hardship waivers. 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.[129] 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.

B. Severe economic harm to independent refineries, their communities and small businesses.

Numerous parties have described to EPA the economic harms arising from the RFS, particularly due to the current structure that causes disparities both (i) between RIN-long refiners and independent and small refiners who are RIN-short and (ii) between large fuel retailers and small fuel retailers. Incomplete pass-through of the RIN[130] and the illiquidity of the RIN market

[126] *See e.g.*, 77 Fed. Reg. 70,752, 70774-75 (Nov. 27, 2012).
[127] 82 Fed. Reg. at 34,230.
[128] *Id.*
[129] *Sinclair*, No. 16-9532, slip op. at 22, 26.
[130] *See* Valero Point of Obligation Comments *supra* note 19 at 9.

have magnified this disparity. Such harmful disparities are inconsistent with the statutory goals of the RFS program, including energy independence and security, because they threaten small communities with job losses, threaten family businesses, and threaten to change the nature of the retail business in ways that reduce competition and hurt consumers. These disparities have also led to an increasingly larger advantage in the RINs market to large foreign-owned corporations. Also, the lack of a rational purpose for distinguishing among these parties with such disparate treatment may create constitutional concerns regarding equal treatment and procedural due process.

i. EPA's use of its general waiver authority is justified by the severe economic harm to merchant refiners that do not qualify for the small refinery hardship waiver.

As noted above, the Tenth Circuit recently held that, in the context of small refinery exemptions from the RFS, EPA must consider disproportionate economic impacts that fall short of existential threats. In addition, other refineries that may not meet the statutory criteria of a small refinery[131] or that might not seek a hardship exemption are also exposed to significant damage as a result of misalignments in the RFS program particularly as they relate to the RIN market. Valero understands that several of these refiners are also placing comments in the record in support of EPA's use of the general waiver, and we support those comments to the extent they are consistent with statements made herein.

All evidence that support granting small refinery hardship exemptions is evidence that the RFS is not working right and that increasing the RVO will cause severe economic harm. The Tenth Circuit's opinion suggests (albeit in a different context) that the refining sector need not suffer from the highest, most significant order of harm before "emergency valves"—such as the general waiver on the basis of severe economic harm—are triggered. EPA should take the court's decision to heart and find that increasing the RVO will cause severe economic harm to independent or merchant refiners, including those that are not small. The Agency should use its authority to reduce the RVO. This will help all refiners operate within the bounds of RFS and avoid burdening some refiners over others.

ii. The refinery communities are at risk.

The current RFS program with the 2018 proposed volumes poses a significant threat to independent refineries and their communities. 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

[131] The term 'small refinery' means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels." 42 U.S.C. § 7545(o)(1).

> 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.[132]

Holcomb described the economic impacts from loss of a refinery on local businesses and on local jobs. Regarding the impact on local businesses, Holcomb concluded:

> The bankruptcy of any refiner is certain to have a large financial impact on the stakeholders of the refiner (employees and investors), all the other businesses which have dealings with the refiner, and via both these channels on the economic region in which the refiner does business.[133]
>
> Compounding the rise of the price at the pump, will be the resulting loss of employment for the area, as well as the indirect loss of business for the many local entities that supply, maintain, or otherwise interact with the refinery. . . .[A]n analysis released in anticipation of the closure of two refineries in Pennsylvania—the ConocoPhillips-Trainer and Sunoco-Marcus Hook refineries in Delaware County (CPT and SMH refineries) estimated that the loss of every 100 refinery jobs could reduce the output of the local economy by as much as 1 billion dollars (CFWIA, 2012).[134]

Regarding job losses, Holcomb explained:

> Estimates of the total jobs lost as a result of a refinery closure vary substantially (CFWIA, 2012), but we can say with certainty that those employees whom are directly employed by the refinery will be out of work at least temporarily. While the job loss will be an acute negative[135] outcome for the individuals, it is the length of unemployment for displaced workers that will be the most significant impact factor for the local economy. If the employees are quickly able to find re-employment the economic impact on the region could be minimal, but if their unemployment is long term the impact will be more severe. In their analysis of the potential closures of the CPT and SMH refineries, CFWIA (2012) estimates that 39% of the CPT labor force (156 workers) would face a fair to difficult time finding re-employment, while 42% of the SMH labor force (250 workers) would face a fair to difficult time.[136]
>
> With an estimated 10-18 indirect jobs lost for every direct refinery employee laid off during bankruptcy, the total jobs lost in the Southeastern Pennsylvania region could have

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[132] Alex Holcomb, *Market Analysis of the Proposed Change to the RFS Point of Obligation* at 19 (Feb. 22, 2017), ["Holcomb Market Analysis"], provided here as Attachment 16.
[133] *Id.* at 16.
[134] *Id.* at 17.
[135] "Something that should not be overlooked in the analysis of these potential outcomes." *Id.* at 18 n.36.
[136] *Id.* at 18; *see also id.* at 18 n. 37 (noting that employees that would have a more difficult time finding re-employment are those whom hold positions that are more specific to the refinery industry, and thus would find difficulty doing the same job with a different entity).

> approached 15,000-20,000 workers. An extrapolation of the CFWIA (2012) analysis to estimate the impact of closures across the whole set of potentially at risk refiners indicates that the estimated total potential jobs at risk is substantial. Just twelve of these refiners directly employ approximately 7,500 people, and anywhere from 2,000-10,000 daily contract workers. Loss of work for every direct employee, and the multiplier (10-18x) would suggest that 75,000 to 150,000 jobs are potentially at risk. A great many of these jobs will likely be unionized labor, as the majority of these refineries are either entirely unionized or have large union labor bases. Considerably more jobs are at risk if we consider a more limited multiplier effect for daily contract laborers who also lose their employment many of whom are also union members. If an average of 40% of those jobs lost will face a fair to difficult time finding re-employment, the economic cost to the regions in which these refineries operate will be extensive.[137]

Professor Holcomb's research and analysis demonstrates the potential for severe economic harm to any refinery and neighboring communities depending on the refinery, regardless of whether they qualify for a small refinery hardship exemption. The evidence is sufficient to justify EPA's use of its general waiver authority.

iii. Small fuel retail businesses and minority-owned businesses are currently harmed by the RVOs.

There are also myriad studies, data, and other useful resources available to EPA that clearly show that small fuel retailers suffer severe and disproportionate economic harm due to competitive advantage conferred upon larger retailers as a result of the RINs market. Professor Bernard Weinstein, a noted economist at the Maguire Energy Institute at the Cox School of Business at Southern Methodist University, made the following findings in February 2017:

> Reports indicate that large retailers are using the RIN profit stream for retail expansion and acquiring a larger share of a limited market. The acquisition of convenience store chains by cash-rich limited partnerships suggests the chains' market share will continue to grow. The effect of these convenience store chain acquisitions has been detrimental for small retailers. In fact, these retailers are losing both sales volume and stores to large retailers. In other words, small retailers aren't just less profitable than before; rather, they are going out of business due to their growing inability to compete with large retailers and a related loss of sales. As a result, the demise of small 'mom-and-pop' fueling stations has accelerated, with more than 12,000 closing since 2007.[138]

Weinstein further found windfall RINs profits gained by large retailers are not consistent with the statutory goals of the RFS. The benefits conferred on large retailers create no incentives for additional blending:

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[137] *Id.* at 19.

[138] Bernard L. Weinstein, Southern Methodist Univ., *Renewable Identification Numbers Trading Under the Renewable Fuels Program: Continued Unintended Consequences for Small Fuel Retailers* at 7 (Feb. 2017), provided here as Attachment 17.

> With higher RIN prices anticipated as mandated RVOs grow year after year, large retailers should increase the blending infrastructure for renewable fuels and promote higher blends by passing on the RIN value to consumers. But because large retailers are not obligated parties, they have no incentive to implement these initiatives. Put differently, higher RIN values won't motivate large retailers to blend higher levels of renewable fuels because, in the current market, their RINs can be sold to generate substantial revenue.[139]

Without policy change, small retailers will face disproportionate and severe economic harm under the proposed volume levels. Professor Weinstein concludes: "Absent a shift in the point of obligation, small retailers will be increasingly driven out of business, which will be harmful to market competition and local economies across the United States."[140]

The squeeze placed on small-business retailers is particularly acute in the minority business community. In December 2016, the National Black Caucus of State Legislators ("NBCSL") observed that "big integrated oil companies and large gasoline convenience store chains are able to earn and sell RINs" and that "the current method the EPA has chosen to demonstrate compliance with that standard, has caused both excessive Wall Street speculation and fraud in the market for renewable fuels, endangering the very purpose of the program."[141] After noting that windfall RIN profits accruing to large retailers "create competitive disadvantages for small gasoline retailers and convenience stores with large numbers of minority owners," NBCSL reported that "people of color own about 42 percent of independent gasoline retail stations, which are often squeezed by these implementation problems."[142] NBCSL passed a resolution calling on EPA "to adopt a rule to address problems in the RINs market by moving the point of obligation in order to eliminate incentives for excessive speculation and fraud."[143]

C. Impacts on fuel supply and reduced competition in the fuel sector harms consumers.

Consumers are likely to feel the impact of the RIN market in two ways. First, any loss of a refinery will directly impact the regional fuel supply. Second, increased consolidation in the fuel sector will decrease competition and ultimately impact fuel choices and fuel prices.

Professor Holcomb described the potential impacts of the RFS dysfunction on regional fuel supply; he found:

> In particular, failure of any of the East Coast refiners could give rise to a significant supply shock in the East Coast fuel market, given that the domestic supply to the East

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[139] *Id.* at 15.
[140] *Id.* at 15-16.
[141] National Black Caucus of State Legislators, Res. BED-17-15: A Resolution Urging the U.S. Environmental Protection Agency to Adopt Rules Addressing Problems Impacting Minority Consumers and Small Businesses in the Renewable Identification Numbers Market (Dec. 11, 2016), *available at* http://www.nbcsl.org/index.php/public-policy/resolutions/item/1908-bed-17-15.
[142] *Id.*
[143] *Id.*

> Coast is already relatively constrained. The Colonial pipeline system is the main artery that transports fuel from the Gulf refiners to the East Coast, and it is already operating at capacity. If one, or more, of the East Coast refiners were to cease production it will likely result in a shortage of fuel along the East Coast, because there is no additional pipeline capacity available to allow for an increase in supply. Consumers in the region are likely to experience a significant increase in the price of fuel, before the supply shortage is filled by foreign refiners either along the European coast or within the Atlantic basin.
>
> Similar shocks to the Central U.S. market are likely to occur if a major refiner filed for bankruptcy in the Mid-con market. Temporary closures of major refineries in the Midwest have resulted in price hikes in Chicago and throughout Illinois, which were severe enough to cause the Mayor and State Attorney General to involve themselves in the local petroleum market (Milne, 2010; Popely, 2015; Cancino, 2015).[144]

The risks of harm to consumers from the RFS risks to refineries are not dissimilar to the impacts felt when refineries curtail production or shutdown during or as a result of severe weather, such as Hurricane Harvey currently actively reducing fuel supply throughout the country. As of August 30, after less than a week from when the hurricane made landfall, thirteen refineries were offline accounting for about 22% of the nation's refining capacity.[145] Fuel prices rose to a two year high.[146] Although some of these refinery shutdowns and the impact on fuel prices are expected to extend a few weeks or longer, the harm to consumers and to local communities will not approach the loss that would be felt from the permanent loss of refineries due to bankruptcy shutdowns and the resulting job losses. Furthermore, this level of temporary refinery curtailment would be made worse by any loss of refinery capacity in other regions. While about 22% of refinery capacity was impacted by hurricane Harvey, the percentage could be greater if the east coast or mid-continent refineries were no longer operating.

Consumers are likely to be impacted by reduced competition in both the retail and wholesale fuel sectors. Reduced competition in the retail sector is not in the best interests of consumers as robust competition including large and small retailers is an essential prerequisite of appropriate pricing. Professor Weinstein observed:

> On a global scale, if profit margins for small, independent retailers continue to narrow in order to "meet the competition" even more of these businesses can be expected to fail in coming years. Fewer small retailers, in turn, will result in higher fuel prices for

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[144] Holcomb Market Analysis, *supra* note 132 at 16.
[145] S&P Global Platts, *Oil factbox: USGC refinery outages, port closures continue to increase Aug 30*, https://www.platts.com/latest-news/oil/newyork/oil-factbox-usgc-refinery-outages-port-closures-26796285 (Aug. 30, 2017 3:20 PM); Jill Horowitz, *Nation's largest oil refinery forced to shut down as Harvey flood Port Arthur*, http://money.cnn.com/2017/08/30/news/harvey-motiva-oil-refinery-shutdown/index.html (Aug. 30, 2017 3:23 PM).
[146] Lucy Nicholson, Reuters, *US crude falls 1%, settling at nearly 6-week low of $45.96, as Harvey keeps refineries offline*, https://www.cnbc.com/2017/08/29/oil-dips-as-us-floods-cause-large-scale-refinery-shutdowns.html (last updated Aug. 30, 2017).

> consumers along with a reduction in the services these businesses provide, such as auto repair and maintenance.[147]

Independent of the impact on retail, pressure applied to the marginal refiner can also be expected to adversely impact consumers. The national consumer organization EmPower Consumers found that, "There can be little doubt that high RINs prices disproportionately impact smaller merchant refiners, placing their much-needed capacity in danger."[148] The organization further cited sources finding that, "Small and medium-size refiners process roughly half the nation's transportation fuels."[149] Further relying on data collected by congressional sources, EmPower Consumers concluded that, "When marginal refiners that serve specific regions exit the marketplace, significant price spikes for consumers result."[150]

Absent addressing the point of obligation or some other significant reform that addresses RIN prices, EPA should exercise its general waiver authority to avoid the severe economic harms described above and to protect the nation's fuel security.

X. Conclusion

Valero greatly appreciates the opportunity to comment and recognizes the challenge that EPA faces in administering the RFS. EPA understands and has already recognized that the structural and market issues that exist are preventing the RFS from achieving its goals—of energy independence and security and promotion of renewable production. Furthermore, the current RFS is actually undermining both of these goals and threatening severe economic harm to the nation and a number of geographic and sector specific parts of our economy. However, EPA has the opportunity to address these structural problems and avoid further harm while implementing congressional intent. EPA must address the current structural disconnect between the point of obligation and the point of compliance. EPA should also look to lifting obstacles to renewable energy exports that limit the growth of domestic renewable transportation fuel production and hurt US renewable producers—most specifically lifting the renewable fuels export RVO. EPA should also look to RIN market reforms that would help curb the rampant manipulation of the RIN market and finally, if EPA cannot immediately relieve the RIN market with the reforms place above, it must tailor the RVO to meet the limits created by the blend wall and impairment of our domestic production by the foreign producers. These actions are necessary to prevent further severe economic harm, protect the nation's refining infrastructure, promote renewable fuel, and protect small retailers and American consumers.

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[147] Weinstein, *supra* note 138 at 15.
[148] EmPower Consumers, Refine the Facts, *Addressing High RINs Prices Essential to Holding the Line on Consumer Prices* at 1, *available at* www.refinethefacts.com/resources/.
[149] *Id.* at 2
[150] *Id.*

Valero Comments on EPA's Proposed Rule for Renewable Fuel Standard Program: Standards for 2018 and Biomass-based Diesel Volume for 2019
Docket ID No. EPA-HQ-OAR-2017-0091

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

One Valero Way • San Antonio, Texas 78249-1616
Post Office Box 696000 • San Antonio, Texas 78269-6000 • Telephone (210) 345-2000

Valero Comments on EPA's Proposed Rule for Renewable Fuel Standard Program: Standards for 2018 and Biomass-based Diesel Volume for 2019
Docket ID No. EPA-HQ-OAR-2017-0091

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Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 5/9/2018 10:10:42 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: New Analysis
Attachments: 4-WTO Analysis (11 July 2017).docx; 1-CRA_EthanolVolumes_ExportProposal_10_17_2017.pdf; 2-CRA_BalancingTreatmentofEthanolExports.pdf; 3-EthanolBlendingvRINs.pdf

Importance: High

Figured I should send this as well. Separate email with actual comments right behind this.

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, October 17, 2017 1:24 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: New Analysis
Importance: High

Mandy,

As part of our RVO comments in August, we submitted a study by Charles River Associates (CRA) that found a net increase of 1.2 billion gallons of exports over the next year under the export RINs policy (that number is comprised of: preventing a loss of 600 million gallons a year based on current policy, and an additional 600 million gallons of production capacity expansion). That study is attached again for your reference (attachment 2). One argument that has been pushed by opponents of this policy is that exports would cannibalize domestic consumption of ethanol, essentially shifting gallons overseas that would otherwise be used domestically. **We asked CRA to look at this argument closely, and we just received their analysis (attachment 1: Unobligated RINs for Renewable Exports—Impact on Ethanol Volumes). CRA found that if the export RINs policy were enacted, domestic consumption would remain steady as ethanol volumes increased.** The policy would not cannibalize domestic consumption, as opponents have suggested. This is largely due to the fact that ethanol is the most economic option for octane enhancement. We wanted to make sure you had the most up to date data. Included in this email, please find the following:

1) **NEW CRA Analysis: Unobligated RINs for Renewable Exports—Impact on Ethanol Volumes**
2) Original CRA analysis (Balancing the Treatment of Ethanol Exports, Imports, and Consumption in the Renewable Fuel Standard) submitted as an attachment to our 2018 RVO comments.
3) Slide produced by Valero using EIA and Argus data demonstrating that high RIN prices since 2013 have not led to a significant increase in ethanol blending. (This is an important counterpoint to those arguing that high RINs are necessary to foster an increase in ethanol blending.)
4) Memo from Sidley Austin on the international trade law implications of the ethanol export RIN proposal. Sidley's memo found that not only would modifying the export treatment within the RFS not constitute a WTO/GATT violation, but that the current export framework could already be a violation of GATT '94.

Please let us know if you would like to discuss further. Thank you.

Chris

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Prepared For:

Bracewell LLP

Valero Energy

Balancing the Treatment of Ethanol Exports, Imports, and Consumption in the Renewable Fuel Standard

August 2017

Prepared by:

Charles River Associates

EPA-HQ-2018-010264

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ED_004107_00020754-00002

1. Introduction

Through the EPA's current administration of the Renewable Fuel Standard (RFS), ethanol exports are disadvantaged relative to domestic uses of ethanol. Blending ethanol domestically results in a Renewable Identification Number (RIN) value that encourages increased ethanol production and use. The majority of export gallons are never assigned a RIN. The export gallons that are assigned RINs also receive a matching Renewable Volume Obligation (RVO), thus creating a disincentive for exporting ethanol relative to domestic blending of both US-produced ethanol and imported ethanol.

While US exporters have developed significant market share in several key markets based on relative agricultural economics, they face constant policy barriers and other dynamics that lead to high volatility in export volumes. They also face rising headwinds, such as increased tariffs and subsidies for domestic production in several key importing countries.

One of the proposed policy prescriptions for issues within the RFS could help US ethanol exporters overcome these headwinds. In response to concerns about the current RFS program, there exists a proposal to provide RINs for exported biofuels, without accompanying RVOs. These unobligated RINs could be sold by exporters to RFS obligated parties, thus eliminating the current program's export disincentives relative to domestic consumption. This would lead to increased exports, more equitable treatment in comparison to biofuel imports, and therefore increased production of biofuels in the US, providing employment benefits along the value chain. It would also moderate the price of RINs without directly impacting biofuel use in transportation fuels.

This report evaluates the economic impacts of providing unobligated RINs for ethanol exports. This is only a subset of the benefits of the proposal since we did not include other biofuels covered by the proposed regulatory change. The value of the RINs will improve the competitive position of US ethanol exports in the global market, increasing exports and demand for US-produced ethanol. The increase in export volumes depends on many factors, which were considered at a country level in our analysis. We also assessed the contributions of increased ethanol production to the US economy.

1.1. Key Findings

The following are our key findings:

- RIN values improve the competitive position of US exporters in each of the key ethanol import markets. The improved economics likely could be enough to overcome diverse policy barriers, such as tariffs and domestic production subsidies.

- The degree of benefit depends on factors such as: the RIN value/price, international fuel and feedstock prices, country-level policy assumptions, demand for gasoline in each market, and the specifics of the RFS regulatory adjustment.

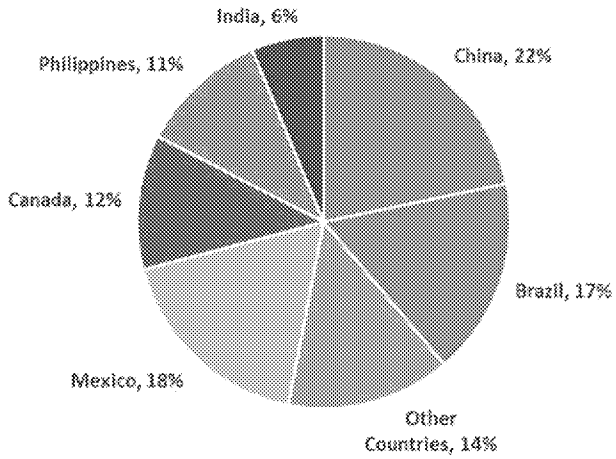
- Denatured ethanol is ethanol treated with additives to make it non-consumable except in industrial processes and as fuel. Undenatured ethanol can still be converted to spirits, but US exports of undenatured ethanol is generally used for the same purposes as denatured ethanol. Because of the similar end uses, both denatured and undenatured ethanol exports can be considered for unobligated RIN value.

- **The scale of the export expansion opportunity is estimated to be around 1.2 billion gallons a year at a moderate RIN value**. This includes increases from new

opportunities, reviving lost exports, and protecting exports that are currently at risk of being lost.

- With RIN values for exports, the countries projected to see the greatest increases in imports of US-produced ethanol include China, Brazil, Mexico and Canada. The following chart shows the share of export volume increases, compared to a baseline of existing RFS policy, in the major destinations for US ethanol exports.

Figure 1: Shares of Ethanol Export Expansion Opportunity by Country



- **This export increase would represent over 26,000 jobs annually**, mostly within the agricultural and services sectors.
- While assigning unobligated RINs to ethanol exports will contribute to the economy, it does not follow that higher RIN prices increase total economic activity. In fact, the opposite is likely true given the volume of ethanol exports compared to domestic ethanol consumption. RIN costs are mostly borne by US businesses and consumers. Therefore, the proposed regulatory change adds the most value when RINs for ethanol exports do not include expanded RFS obligations.

1.2. Report Structure

We begin with a background of the current treatment of exports under the RFS and a description of the proposed RFS regulatory prescription. We then evaluate the opportunity for expansion of export volumes if RIN value is attached to exports. We present this analysis through country-level evaluations in the key export markets. Lastly, we translate the expanded volume into economic benefits along the US ethanol value chain.

2. Background

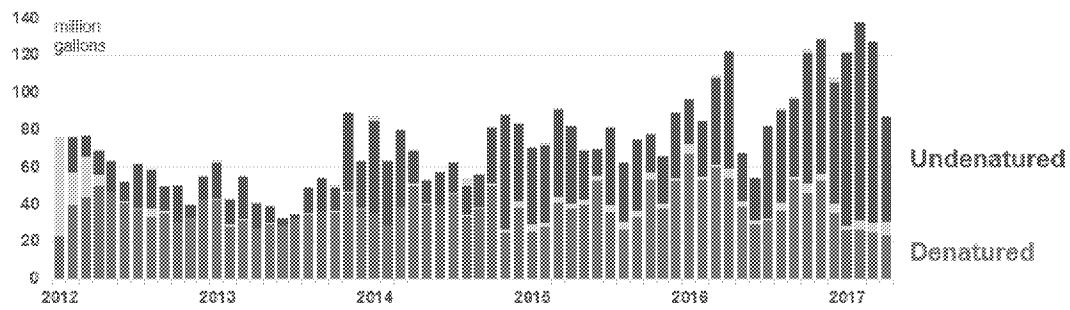
2.1. Ethanol Exports in the RFS

Under RFS2, exporters must separate any RINs assigned to the renewable fuel that they export. They are also assigned a Renewable Volume Obligation (RVO) that represents the separated RINs, creating a transaction with no net impact on the total renewable fuel obligation at the national level. Given the matching obligation, the exporter does not benefit from the RIN transaction. Instead, it actually serves as a disincentive to the exporter due to administrative costs for reporting and retiring RINs. The volumes of renewable fuel that do not have assigned RINs, which are mostly undenatured volumes, exist outside of the RFS.

Exports are not completely independent of RFS economics. They create an upward pressure on ethanol prices through increased ethanol demand. Because RIN prices are substantially driven by ethanol-to-petroleum product price spreads, the exports indirectly contribute to higher RIN prices. However, this impact is minimal given current volumes. In 2016, ethanol exports represented about 3.5% of total ethanol (D6) RINs. This is less than the 6% share of biodiesel (D4) RINs represented by biodiesel exports.

A limiting factor on the number of RINs separated for exports is the fact that RINs are generally only attached to denatured ethanol, and not undenatured ethanol. The standard practice guided by the RFS recognizes the process of denaturing as a distinguishing point between ethanol destined for transportation fuels versus ethanol destined for other uses. This is not an accurate distinction, as undenatured volumes are used as fuel and, even when not used directly as fuel, often indirectly increase biofuels use through displacement effects. The distinction is increasingly important given the gradual shift from denatured to undenatured ethanol exports. This shift is demonstrated in the chart below that shows monthly export volumes for since 2012 of both denatured and undenatured ethanol.

Figure 2: Monthly US Ethanol Exports, Denatured and Undenatured (million gallons)



Source: US Department of Commerce, Census Bureau

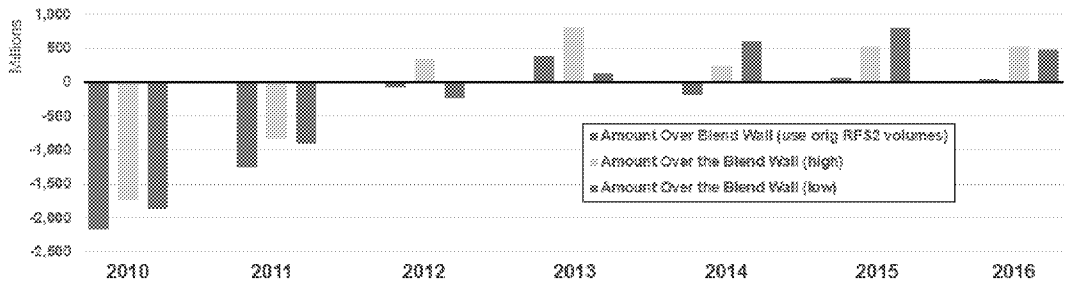
2.2. RFS Concern and a Proposed Regulatory Prescription

While from a national policy perspective it may make sense to remove obstacles to ethanol exports to increase agricultural and other economic activity, the current impetus for regulatory change is actually a proposed remedy to a concern with the RFS program. For several years, the RFS volumetric requirements for ethanol blended into transportation fuel have exceeded the amount that could be consumed in E10 gasoline. This breach of the “blend wall” has led to high RIN prices, which have negative economic impacts at both the refining and final consumer levels.

The exact amount of the blend wall breach is debated, due to competing estimates of E0, E15 and E85 gasoline consumption. The following chart shows various views on the blend

wall breach over the past seven years, with the original breach occurring in 2012, 2013 or 2014, depending on assumptions.

Figure 3: Historical Blend Wall "Breaching" (million gallons)



Sources: EPA, EIA, CRA calculations

Clear evidence of blend wall breaching is the rise in RIN prices since 2013. The rise is best explained by biodiesel (D4) RINs becoming the marginal source for ethanol (D6) RINs. The jump in price would not be a major concern if it was mitigated quickly by expanding ethanol use through additional consumption of higher blend fuels, but that has not happened in the four years of higher prices. Rather, prices have remained high without relief while ethanol consumption has not increased substantially.

Our previous work has demonstrated that a significant share of the burden of higher RIN prices fall on merchant and other non-integrated refiners.[1] This is due to blenders capturing margins from RINs. A relief from this burden is possible if more ethanol consumption pathways can contribute RINs, such as through providing unobligated RINs for ethanol exports, which would expand the pool of RINs available for purchase by obligated parties.

The specific proposal involves removing the export RVO and generating RINs for both undenatured and denatured ethanol. It is reasonable to include undenatured exports due to their primary use in transportation fuels (e.g., Brazil) and their potential to displace domestic ethanol in foreign non-fuel markets, which increases domestic ethanol volumes available for transportation fuels (e.g., India). The analysis in this report examines a scenario in which all export ethanol volumes receive unobligated RINs.

[1] "Evaluating the Response of Blender Margins to RIN Price Changes," Charles River Associates, February 2017

3. Estimating the Opportunity

3.1. RIN Value Impact on Ethanol Export Demand

There are a few, key global market indicators that influence overall demand for US ethanol exports. For example, the price of crude oil has several competing impacts on ethanol demand. Most directly, higher global oil prices increase ethanol demand due to substitution economics, since petroleum feedstocks and ethanol compete in the transportation fuels markets. Indirectly, higher oil prices lead to lower gasoline demand, particularly in countries with blending percentage mandates driving ethanol demand, which can cause a decrease in ethanol consumption.

Assuming these global indicators do not move significantly, the major drivers of demand for US ethanol exports are country dependent. Major policy-related drivers include policies in importing countries that: protect domestic ethanol producers, change mandated volumes of ethanol, or impact transportation fuel demand. Major economic drivers include overall economic growth, fuel demand, and domestic renewable fuel pricing.

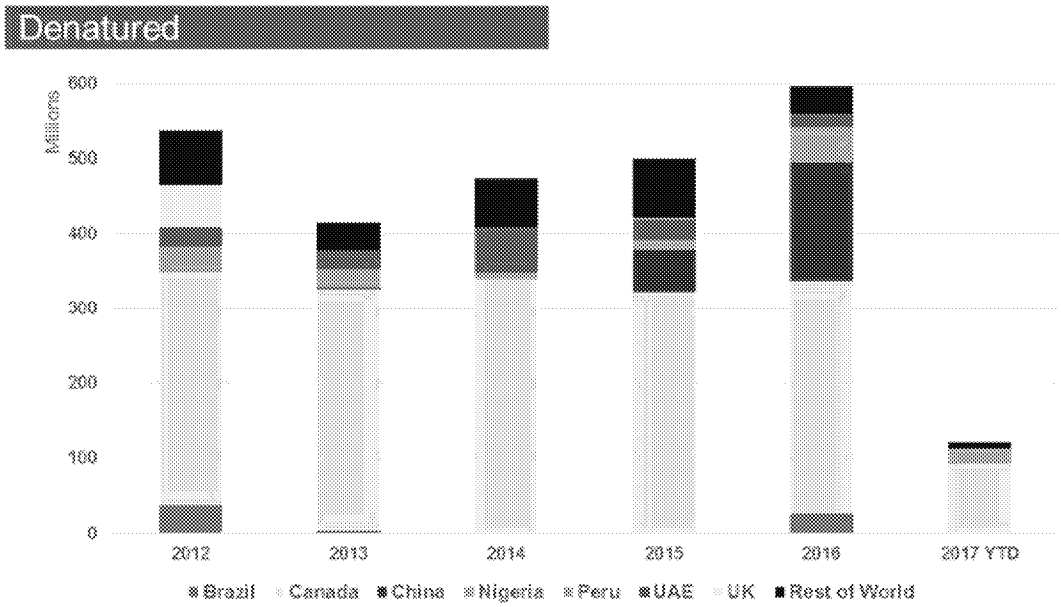
To estimate the demand impact of the proposed RFS regulatory change, we begin with a review of baseline demand in importing countries. We then evaluate how the demand for US exports would change based on a reduction in the relative price of US ethanol equal to the RIN value that would be generated by exports. Some of the ways in which a price reduction can increase demand for US exports include:

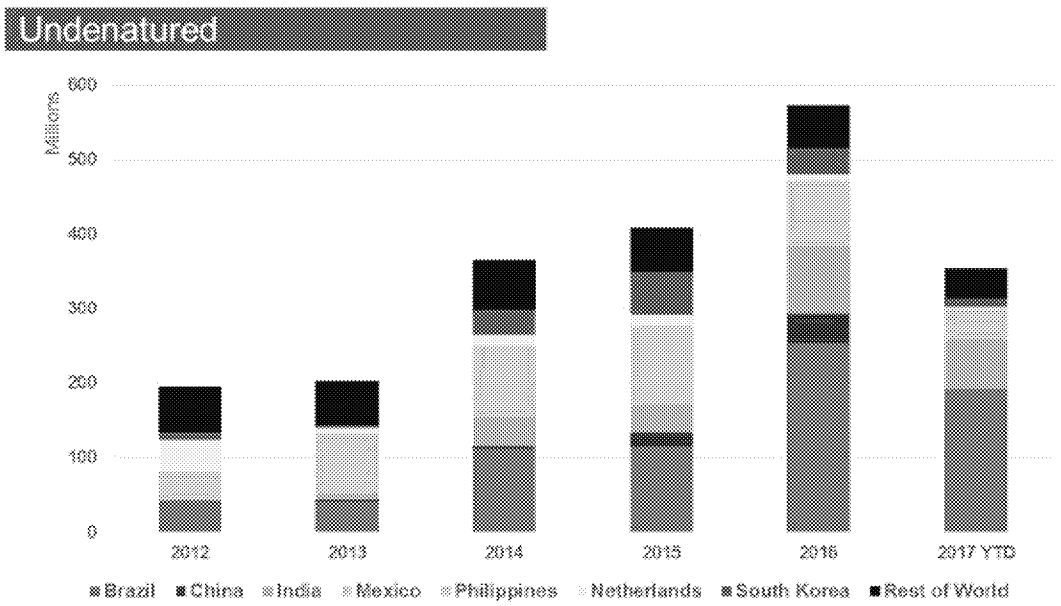
- Overcoming protective tariffs of importing countries
- Making increased mandates in other countries more economically palatable for foreign policymakers
- Directly competing on price with foreign produced renewable fuels and petroleum-based gasoline

3.2. Country Level Analyses

Our analysis focused on six key countries based on historic imports and projected future imports of US ethanol. The countries selected for deeper analysis were: China, Brazil, Mexico, Canada, India, and the Philippines. They were selected from the 34 different countries that reportedly received US ethanol exports in 2016. The following chart shows export volumes to different countries from 2012 through April 2017.

Figure 4: US Ethanol Exports by Receiving Country, 2012 through April 2017 (million gallons)





Source: US Department of Commerce, Census Bureau

In the following sub-sections, we evaluate the expanded export opportunity that could be driven by adding RIN value for exports. We focused on the year 2020. We evaluated the impact using an assumed RIN price of about $0.25 per RIN. This price is significantly lower than current prices, and is therefore a conservative assumption for estimating increased export volumes. It is a price that represents only one of the many possible future RIN price scenarios. Our export volume estimates are reasonably scalable with various RIN price assumptions, but there are limits to the expansion opportunities in each country that prevent a constant returns to scale assumption.

Except where otherwise noted, the trade statistics in the following sections are based on trade data obtained from the US Census Bureau.

3.2.1. China

Ethanol exports to China have seen the most explosive growth compared to 2012 levels of any destination country, but they are also experiencing the most precipitous decline over the past year. The rise was initially driven by increased ethanol demand that accompanied steadily increasing gasoline consumption, despite a relatively stable ethanol blend rate at the national level. The ethanol demand is driven by blending mandates similar to the RFS, but in China the mandates only exist at the provincial level. About 20% of gasoline consumed in China contains 10% ethanol, contributing to an achieved blend rate of about 2.5%.[2]

While domestic production increased 60% since 2012, it has not kept pace with consumption and production currently represents about 75% of fuel ethanol consumed. The production gap first appeared in 2015 and was initially filled by imports from the US, Pakistan, Brazil and, to a lesser extent, Vietnam and South Korea.[3]

The interesting dynamic has been the shift in sources of ethanol imports over the past two years. Just over a year ago, China dramatically reduced the import tariff on US denatured ethanol from 30% to 5%. As a result, the US provided 96% of imports in 2016, which represented an increase of nearly 150 million gallons over the prior year. Then, in December 2016, the government announced a return to the WTO-bound tariff rate of 30% starting January 1, 2017. This decimated import volumes from the US, shifting China back to imports from other ASEAN countries exempt from the tariff, as well as bolstering domestic ethanol production.

The volume impact on US imports is informative in estimating the impact of providing RIN value. The tariff change of 25% of the ethanol price was enough to cause a massive shift in imports from the US. Given prevailing ethanol prices, the tariff increase could represent about $0.45/gallon of ethanol, which is apparently enough to make US imports uncompetitive. A $0.25/gallon RIN value for exports translates to a $0.33/gallon reduction in cost of US ethanol to Chinese purchasers (due to the price reduction and avoided tariff), which covers a large share of the tariff increase.

We evaluated this benefit on a volume level, based on assumptions of static price elasticities and Chinese demand and domestic production rising at levels in line with national goals. We adjusted the government's production estimates based on the knowledge that the 2015 production levels were only 60% of the government's target, so future goals are also likely to be missed. Our analysis concluded that the proposed RFS regulatory change could have an impact of 260 million gallons in 2020, which represents an increase in US exporter market share to 70% of China's imports (similar to the share during low tariffs) from the currently diminished level.

3.2.2. Brazil

Ethanol exports to Brazil have seen the most steady and significant climb of any destination country over the past six years. The vast majority of exports are in denatured form, which is a required specification in Brazil. The largest leap in US exports was from 2015 to 2016, as volumes more than doubled. The driver behind the changes in US exports to Brazil is sugar production economics. Because the majority of ethanol produced in Brazil uses sugarcane as a feedstock, it competes with the global market for sugar, and recently has been losing due to high sugar prices.

The demand for ethanol in Brazil is expected to remain fairly steady despite a continuing recession. The national blending mandate is expected to remain steady at 27% and remain

[2] Shuyang Si, et al., "The effects of China's biofuel policies on agricultural and ethanol markets," Working Paper, January 2017.

[3] Global Agricultural Information Network (GAIN), "Biofuels Annual: China," USDA Foreign Agricultural Service, February 7, 2017.

non-binding due to high demand for ethanol. The demand is driven by fuel switching between gasoline and ethanol based on relative pricing, since over half of cars in Brazil are flex fuel and can easily switch between gasoline and ethanol.

The greatest threat to US exports to Brazil is a quota and tax enacted in August 2017.[4] Brazil's government approved a 20% tax on any imports after a tax-free quota of 600 million liters (159 million gallons) per year is exceeded, which represents approximately one quarter of imports expected in 2017.

The proposed RFS regulatory change will support US ethanol producers in their attempts to hold a consistent share of the Brazilian fuels market despite the new tariff. Given current ethanol prices, the assumed $0.25/gallon RIN value could negate the majority of the tariff's impact. Given the current estimates for sugarcane production and global demand, the price of sugar ethanol is not expected to decrease in the near-term, allowing US exporters to compete on price in spite of the new tariff.

3.2.3. Mexico

Ethanol exports to Mexico have been limited by a lack of policy-driven demand and a bias toward domestic ethanol. The Government launched a pilot program after which state-run PEMEX began selling E6 in selected cities. To meet that demand, it signed contracts with domestic suppliers. The US has provided a steady but small volume of undenatured ethanol, but the volume is a small share of total US exports.

The market is about to expand significantly. In June 2017, the Government of Mexico increased allowable ethanol levels from E6 (5.8%) to E10 (10%) in most of the country, with the exception of three major cities (Monterrey, Guadalajara, and Mexico City). The new demand represents 480 million gallons, which domestic suppliers are not currently prepared to meet.[5] This is a significant opportunity for US exports, if they can remain price competitive and overcome some infrastructure hurdles. The proposed RFS regulatory change will support US price advantages over Mexican-produced sugar ethanol.

3.2.4. Canada

Ethanol exports to Canada have been the most consistent of all the destination markets. They have not moved more than 6% year-to-year in either direction since 2012. Ethanol from the US represents about half of the ethanol consumed in Canada. The demand is mostly driven by a federal mandate of 5% ethanol in gasoline, as well as several provincial mandates at higher blending levels, which together lead to a total blend rate of about 6%.

Domestic production in Canada decreased slightly last year. It is expected that most incremental ethanol volumes could come from the US, assuming US ethanol producers are price competitive. One threat to competitive pricing is a possible change in NAFTA, which currently prevents tariffs on US ethanol.

To consider the benefit of the proposed RFS regulatory change, we evaluated the potential expansion of the Canadian blending mandate to 10% in response to lower cost imported ethanol from the US. The impact could be even greater if tariffs are placed on ethanol imports, with the RIN value representing a significant share of the WTO-bound rates.

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[4] "Brazil approves quota, 20 percent tax on ethanol imports," Reuters, August 23, 2017.

[5] "Building A Billion Gallon Market For Ethanol In Mexico," US Grains Council, June 22, 2017.

3.2.5. India

Ethanol exports to India have grown substantially in recent years, but are limited by Indian law to undenatured products and industrial end uses. However, the volumes exported to India facilitate expansion of transportation fuel ethanol use by displacing domestic volumes in the industrial sector, which can then be used for gasoline blending. This is important because domestic demand has surpassed domestic supply and the shortage is expected to remain indefinitely.

The production gap will grow even larger if policymakers expand their blending goals from 5% to 10%, as they have repeatedly stated. However, such an expanded mandate cannot be met with domestic supplies in the near term, so an accompanying change in the fuel import ban would be required.

Imports from the US accounted for almost 80% of total Indian ethanol imports in 2016. The proposed RFS regulatory change could expand the US share in a time of increasing demand for imports. For our analysis, we assumed that imports would be capped at industrial demand for ethanol, but the opportunity would be much greater with the potential administrative change.

The benefits associated with US ethanol exports to India are dependent on how EPA treats those exports. For instance, if EPA required that RINs were to be generated for ethanol certified only as a transportation fuel, then the benefits of a growing export market in India would unlikely be fully realized due to domestic Indian law.

3.2.6. Philippines

Exports to the Philippines only represented about 7% of US exports over the past 5 years, but the opportunity is significant. The country has a growing population and stated biofuel aspirations of 20% ethanol by 2020 and 85% by 2025.[6] While there are infrastructure and other hurdles to such growth, the Philippines could become a key export market.

Current projections that do not take into account the government's ambitious blending goals foresee declining imports. However, there is little expectation that domestic production can keep pace with future goals, or even with enforcement of the existing 10% blending goal. There is significant opportunity for US ethanol exporters, under the proposed RFS regulatory change, to expand market share and support the government's enforcement of its aspirations. This is especially true with the current tariff on US imports of only 1%.

4. Contributions to the US Economy

Expanding ethanol exports can contribute significantly to the US economy, primarily in the agriculture, bulk transportation and services sectors. By assuming the exports are incremental to current volumes, the economic contributions can also be considered additional. Therefore, the proposal to provide unobligated RINs for ethanol exports will contribute to regional and national economic growth. The degree of impact is based on the expected volume expansion. The impact is greatest when the exports are significant enough to require new infrastructure development, which generates construction and investment benefits in corn producing and exporting areas of the country.

To determine the economic contributions of the proposed RFS regulatory change, we evaluated the existing literature on the benefits of ethanol exports and production and then

[6] GAIN, "Biofuels Annual: Philippines," USDA Foreign Agricultural Service, August 16, 2016.

scaled the benefits to the export expansion opportunity. From the literature, we gathered estimates of direct and indirect economic contributions per unit of ethanol produced or exported. We also considered the contributions of expanding infrastructure to support increased ethanol production. This involved the use of a government developed model and assumptions regarding production capacity utilization.

The following are key sources and their findings of economic contributions per unit of ethanol:

- According to a study for the US Grains Council, ethanol exports contributed nearly $3 billion and over 25,000 jobs in 2014, the majority of which was created along the value chain (agriculture production, services, etc.). [7] The analysis involved the input-output model IMPLAN, and thus captured both direct and indirect impacts. The study's calculations imply that 24 jobs are contributed for every one million gallons of exports.
- A recent study on the economic impact of the ethanol industry in 2016 also used the IMPLAN model.[8] The study estimated over $3 billion in output and nearly 15,000 jobs associated with ethanol exports in 2016. The employment estimate appears to only include activities directly involved in the export of ethanol, such as employment in transportation and export trade related administrative and financial industries. The industry as a whole contributed $42 billion and over 339,000. The share of ethanol production attributable to exports in 2016 suggests that about 23,000 of the 319,000 remaining jobs are related to exports. This suggests a total of 35,000 jobs in 2016 related to exports, or 20 jobs for every one million gallons of exports.

Given the level of consistency between the two studies, and methodologies that included a respected model and data gathering techniques, we used the midpoint of their per unit estimates as a reasonable approximation of employment per unit of ethanol export expansion. We estimate 22 jobs for every one million gallons of ethanol exports. **Under the RIN value export scenario from the previous section, the proposed RFS regulatory change would result in approximately 26,000 additional jobs in the US**.

This estimate does not include any specific investments in capacity expansion that could lead to temporary employment additions. The US Department of Energy's National Renewable Energy Laboratory provides a model for such purposes called the Jobs and Economic Development Impact (JEDI) model. It provides a model specifically for corn ethanol capacity investments.[9] This model estimates two jobs during the construction phase for every one million gallons of capacity expansion. The EIA estimates the production capacity as of January 2017 was 15.5 billion gallons per year. Given our estimates of the share of new exports that are new volumes versus those that are preserving volumes, we estimate production capacity expansion of about 600 million gallons per year. This would represent **1,200 jobs over the next three years to expand production capacity**.

[7] IEG, "Evaluating the Economic Contributions of U.S. Grain Exports…", April 2016.

[8] Urbanchuk, John, "Contribution of the Ethanol Industry to the Economy of the United States in 2016," ABF Economics, January 2017.

[9] JEDI Corn Ethanol Model, Release Number CE12..23.2016.

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Disclaimer

The study was commissioned by Valero. The research, analysis, results and conclusions were all developed independently by the authors. The conclusions set forth herein are based on independent research and publicly available material.

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MEMORANDUM

TO: Richard Walsh
Deputy General Counsel
Valero Energy Corp

FROM: Andrew Shoyer
Deepak Raju

RE: International Trade Law Implications of Proposed Reform to the Renewable Fuel Standard Program as Applied to Export of Renewable Fuel

DATE: July 11, 2017

I. INTRODUCTION

This memorandum is in response to your query on the implications under U.S. obligations pursuant to international trade agreements, including those under the auspices of the World Trade Organization ("WTO"), if the U.S. Environmental Protection Agency ("EPA") were to modify the Renewable Fuel Standard Program ("RFS") such that no obligation to surrender Renewable Identification Numbers ("RINs") were created upon the export of renewable fuels from the United States. We conclude that today's RFS discriminates against U.S. exports of renewable fuels by not allowing those volumes to receive the same benefits as volumes consumed (blended) domestically. If EPA were to remove the RFS obligation on exported renewable fuels, EPA would not violate the applicable provisions of the WTO's General Agreement on Tariffs and Trade 1994 ("GATT 1994") or the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). Indeed, by modifying the RFS to allow exported renewable fuel volumes to enjoy the same RIN benefit as volumes consumed at home, EPA will be viewed as correcting a compliance flaw in the RFS program with international trade laws, and will bring the program into compliance with such trade laws.

We have focused on the GATT 1994 and the SCM Agreement because they are typically invoked against measures that create advantages for domestic goods, or create export opportunities. Indeed, Brazil's and Venezuela's successful GATT 1994 claims against EPA's

reformulated gasoline rules under the Clean Air Act formed the basis of the very first WTO dispute to be litigated.[1] Some U.S. free trade agreements, such as the North American Free Trade Agreement, impose additional disciplines on the regulation of energy.[2] Please let us know if you would like us to explore these other agreements.

II. BACKGROUND

One of the main objectives of the RFS is to promote the use of renewable fuels in the United States to achieve U.S. energy security and independence.

Under the RFS, when a batch of renewable fuel is produced in the United States, imported into the United States, or exported from the United States, RINs are generated. RINs are the compliance tools for Obligated Parties to show compliance with RFS requirements. RINs are classified into two categories – (i) "Assigned RINs," which are directly associated with a batch of fuel, and that are transferred with that batch of fuel from party to party; and (ii) "Separated RINs," which are no longer assigned to a batch of fuel, and can be transferred independent of a batch of fuel. RINs can be bought and sold on the secondary market. Refiners and importers of hydrocarbon-based gasoline and diesel and exporters of renewable fuels are among the parties that are under an obligation to surrender specified numbers of RINs, corresponding to the volume of non-renewable fuel they produce or import or the volume of renewable fuels that are exported. ("Obligated Parties"). However, the importers of renewable fuels are not Obligated Parties and have no requirement to surrender RINs.

Currently, importation of renewable fuels into the United States generates RINs. Upon exportation of renewable fuels from the United States, RINs attached to that batch of renewable fuels become "Separated RINs." However, unlike the import of renewable fuels, the exportation

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[1] *See* Panel Report, *United States – Standards for Reformulated and Conventional Gasoline* (WT/DS2/R & WT/DS4/R), *as modified*, Appellate Body Report (WT/DS2/AB/R & WT/DS/AB/R), adopted 20 May 1996. (Note: All WTO panel and Appellate Body reports cited in this memorandum are available at [HYPERLINK "https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx"].) EPA revised its rules to eliminate elements found to be WTO inconsistent within the 15-month implementation period directed by the WTO. *See* 62 Fed. Reg. 45,533 (Aug. 27, 1997) ("EPA believes this final rulemaking is consistent with . . . the U.S. commitment to comply with obligations under the World Trade Organization agreement.")

[2] *See, e.g.,* North American Free Trade Agreement Articles 604 (restrictions on taxes on energy exports), 605 (conditions on application of general exceptions) and 607 (conditions on application of national security exceptions).

of renewable fuels creates an obligation on the exporter to surrender a number of RINs corresponding to the volume exported.[3]

We understand that EPA is considering an amendment to the RFS such that no obligation to surrender RINs would be created for the exporter when renewable fuel is exported from the United States.

III. WTO Implications of the Proposed Modification to the RFS

The proposed modification, if adopted, is unlikely to give rise to any violation of WTO agreements. The WTO oversees a number of agreements that deal with trade in goods. The general principle underlying these agreements is one of trade free from distortive or discriminatory government action.[4]

Currently, the EPA requires that a person exporting renewable fuel from the United States surrender RINs. On the other hand, if the renewable fuel is sold in the domestic market, the sale does not attract an obligation to surrender RINs. In the domestic market, the obligation to surrender a RIN is at the point that it is blended with hydrocarbon-based fuels. Thus, the existing requirements create an artificial disincentive for exporting renewable fuels, and creates an incentive for selling renewable fuel in the domestic market. This is indeed a distortion of the market through government intervention, and as described below in Section II.A., appears to amount to a violation of Article XI:1 of GATT 1994.

Thus, the proposed modification should be seen as removing an artificially created disincentive against exportation, rather than as creating an incentive for exportation. Nonetheless, we also explain in Sections III.B and III.C. below that the proposed modification is consistent with Article III:4 of GATT 1994, and with Articles 3 and 5 of the SCM Agreement.

A. Existing Requirement May Violate Article XI:1 of GATT 1994

The applicable general prohibition on restricting trade is found at Article XI:1 of GATT 1994, which states "No *prohibitions or restrictions* other than duties, taxes or other charges,

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[3] 40 CFR § 80.1430.

[4] General Agreement on Tariffs and Trade, 1994, Preamble ("Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the *substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment* in international commerce…").

whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any [Member] on the importation of any product … or … on the *exportation*… of any product destined for the territory of any other [Member]." While this prohibition is generally viewed as a prohibition to disadvantage imports, the WTO has applied this prohibition to government measures that restrict exports as well.

This provision has been interpreted by WTO dispute settlement panels as being "very broad in scope, providing for a general ban on import or export restrictions or prohibitions 'other than duties, taxes or other charges'."[5] The term "restriction" in this provision has also been understood to take a broad meaning, connoting "a limitation on action, a limiting condition or regulation."[6]

In the seminal WTO case on export restrictions, *China – Raw Materials*, the United States, the European Union, and Mexico claimed that Chinese restrictions, including "formalities in connection with exportation" of various raw materials, violated GATT Article XI:1. The Panel found that the Chinese measures at issue in the case violated Article XI:1 "because they have a restrictive or limiting effect on exportation."[7] As the Appellate Body had not yet interpreted Article XI:1 in a case on export restrictions, the Panel applied much of the jurisprudence that had developed in cases involving restrictions on imports. Thus, the Panel quoted the holding in *India – Autos* that, if a measure allowed importation only upon meeting certain conditions, and those conditions had a "limiting effect" on importation, the measure would be a "restriction on importation" and covered by the scope of Article XI:1.[8] The Panel also quoted the holding in *Colombia – Ports of Entry* that "measures that create uncertainties and

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[5] Panel Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, (WT/DS90/R), adopted on September 22, 1999 ("*India – Quantitative Restriction*"), para. 5.129; *India – Measures Affecting the Automotive Sector* (WT/DS146/R) adopted on April 5, 2002 ("*India – Autos*"), paras. 7.269-7.270.

[6] Panel Report, *India – Quantitative Restriction*, para. 5.129; Panel Report, *India – Autos*, paras. 7.269-7.270.

[7] Panel Report, *China – Measures Related to the Exportation of Various Raw Materials* (WT/DS394/R, WT/DS395/R, & WT/DS398/R), adopted on February 22, 2012 ("*China – Raw Materials*"), paras. 7.207.

[8] Panel Report, *China – Raw Materials,* para. 7.206, *quoting* Report, *India – Autos*, paras. 7.269-7.270.

affect investment plans, restrict market access for imports, or make importation prohibitively costly" are "restrictions" within the meaning of Article XI:1, and are consequently prohibited.[9]

Under the present RFS, exportation of renewable fuel creates an obligation for the exporter to retire RINs. On the other hand, if the renewable fuel is sold on the domestic market, no such obligation arises for the seller. Thus, the existing measure creates a strong disincentive against exportation of renewable fuels, and may make exportation prohibitively expensive. That is, while there is no formal prohibition on exportation of renewable fuels from the United States, such exportation can be undertaken only subject to meeting "limiting conditions." In other words, the obligation placed on exporters to surrender RINs would amount to a "restriction on exportation," which is not in the form of "duties, taxes or other charges", and therefore appears to be a violation of Article XI:1.

Article XI:2(a) sets out an exception to the rule in Article XI:1 to permit "[e]xport prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting [Member]." For a measure to be considered "temporary," it must be "limited in time," and not "indefinite or permanent."[10] The creation of an obligation to surrender RINs upon exportation is intended to be a permanent provision by EPA in that it cannot be removed without going through public notice and comment rulemaking unlike a "temporary" restriction. Additionally, to succeed on this exemption, the United States would have to demonstrate that it currently faces a "critical shortage" of renewable fuels, which there is not, given, in part, because the RFS has exceeded the "blend wall", and volume requirements on Obligated Parties are becoming more and more difficult to meet. In view of these circumstances, the current requirement is unlikely to benefit from the exception under Article XI:2(a).

Similarly, it would be difficult for the United States to defend the current regulation using the general exception under Article XX(g) for measures "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions

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[9] Panel Report, *China – Raw Materials,* para. 7.206, *quoting* Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry* (WT/DS366/R), adopted on May 20, 2009, paras. 7.240, 7.274-7.275.

[10] [HYPERLINK "http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/DS/398R.doc" \t "_blank"], paras. 7.257–7.258, 7.308.

on domestic production or consumption." In another case on export restrictions, *China – Rare Earths,* the Panel found that China could not use Article XX(g) to justify its export quotas because, among other things, they served to secure preferential access for Chinese manufacturers to rare earths, tungsten, and molybdenum.[11] Trading partners would likely make the same argument with respect to the current RFS regulation.

In sum, the current regulation, which creates an obligation upon exporters of renewable fuel to surrender RINs, appears to violate Article XI:1. The proposed modification would cure this violation, and would bring the RFS into conformity with the United States' WTO obligations.

B. The Proposed Modification Would Not Violate Article III:4 of GATT 1994

GATT 1994 sets out a prohibition on discrimination in government regulation that favors domestic over "like" imported goods. In particular, Article III:4 states, "[t]he products of the territory of any [Member] imported into the territory of any other [Member] shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

Thus, imported goods should not be subjected to less favorable treatment, in comparison with domestic goods, "in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use". The Appellate Body has clarified that "[t]he broad and fundamental purpose of Article III is to avoid protectionism in the application of internal tax and regulatory measures".[12]

The renewable fuel that is exported from the United States is a domestic good. However, by virtue of being exported, it will not be subject to "internal sale, offering for sale, purchase, transportation, distribution or use" in the United States. There is no WTO requirement that the

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[11] Panel Report, *China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum* (WT/DS431/R, WT/DS432/R & WT/DS433/R), *modified on other grounds,* Appellate Body Report (WT/DS431/AB/R, WT/DS432/AB/R & WT/DS433/AB/R) adopted on 29 August 2014, para. 7.804.

[12] Appellate Body Report, *Japan – Taxes on Alcoholic Beverages* (WT/DS8/AB/R), adopted on November 1, 1996, p. 16.

treatment of these goods upon exportation be equivalent with the treatment of imported goods when consumed in the United States.

In any event, importation of renewable fuel into the United States generates RINs, and does not generate an obligation to surrender RINs. The proposed modification would merely result in the same treatment being extended to domestic goods when exported. Thus, the proposed modification would place domestically consumed goods (including imports) and exports on the same playing field and not discriminate against either, thus not violating Article III:4.

C. The Proposed Modification Would Not Violate Provisions of the SCM Agreement

The SCM Agreement disciplines WTO Members' use of subsidies in a manner that distorts trade. Subsidies contingent on export are prohibited. Other subsidies are WTO-inconsistent if they cause adverse effects to the interests of other Members.

For a measure to be subject to the disciplines of the *SCM Agreement*, it must meet the definition of a subsidy, *i.e.,* it must constitute a "financial contribution by a government" (*e.g.*, by way of a direct transfer of funds or a foregoing of government revenue), and confer a benefit.[13] It does not appear that freeing exporters from the obligation to surrender RINs would meet this definition.

In any event, even if one were to assume that freeing exporters from the obligation to surrender RINs is a subsidy, it does not appear that it would breach any of the provisions of the *SCM Agreement*. It is not a "prohibited" subsidy under Article 3 (i.e., an import substitution or

[13] *SCM Agreement*, Article 1 ("For the purpose of this Agreement, a subsidy shall be deemed to exist if: … there is a financial contribution by a government or any public body within the territory of a Member … and … "a benefit is thereby conferred"). *See* Panel Report, *Canada – Export Credits and Loan Guarantees for Regional Aircraft* (WT/DS222/R), adopted on February 19, 2002, para. 7.16; Appellate Body Report, *Brazil – Export Financing Programme for Aircraft*, (WT/DS46/AB/R) adopted on August 20, 1999, para. 157; Appellate Body Report, *United States – Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada* (WT/DS257/AB/R), adopted on February 17, 2004, para. 51.

export contingent subsidy).[14] Nor is it an "actionable" subsidy under Article 5 likely to cause demonstrable "adverse effects" to the interests of another WTO Member.[15]

IV. CONCLUSION

For the reasons set out above, we believe that the current regulation, creating an obligation for exporters to surrender RINs is a violation of Article XI:1 of GATT 1994. The proposed modification, freeing exporters from this obligation, will remove this violation and will bring the United States into conformity with the obligation under Article XI:1.

Furthermore, we do not consider that the proposed modification will violate any provision of the WTO agreements, in particular, Article III:4 of GATT 1994 and Articles 3 and 5 of the SCM Agreement.

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[14] *SCM Agreement*, Article 3.1 ("…the following subsidies, … shall be prohibited: (a) subsidies contingent … upon export performance; (b) subsidies contingent … upon the use of domestic over imported goods"). *See* Appellate Body Report, *Canada – Certain Measures Affecting the Automotive Industry* (WT/DS139/AB/R), adopted on June 19, 2000, para. 118; Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft* (WT/DS70/AB/R), adopted on August 20, 1999, para. 166.

[15] *SCM Agreement*, Article 5 ("No Member should cause, through the use of any subsidy … adverse effects to the interests of other Members"). *See* Panel Report, *United States – Subsidies on Upland Cotton* (WT/DS267/R) adopted on March 21, 2005, paras. 7.1392–1395; Appellate Body Report, *US – Upland Cotton*, para. 437; Appellate Body Report, *EC – Large Civil Aircraft* (WT/DS316/AB/R), para. 1232.

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 2/27/2018 2:17:44 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Map
Attachments: At-Risk Refiners.pptx; ATT00001.htm

Attached

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 10/17/2017 5:23:52 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,]; Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: New Analysis
Attachments: 4-WTO Analysis (11 July 2017).docx; 1-CRA_EthanolVolumes_ExportProposal_10_17_2017.pdf; 2-CRA_BalancingTreatmentofEthanolExports.pdf; 3-EthanolBlendingvRINs.pdf

Importance: High

Mandy,

As part of our RVO comments in August, we submitted a study by Charles River Associates (CRA) that found a net increase of 1.2 billion gallons of exports over the next year under the export RINs policy (that number is comprised of: preventing a loss of 600 million gallons a year based on current policy, and an additional 600 million gallons of production capacity expansion). That study is attached again for your reference (attachment 2). One argument that has been pushed by opponents of this policy is that exports would cannibalize domestic consumption of ethanol, essentially shifting gallons overseas that would otherwise be used domestically. **We asked CRA to look at this argument closely, and we just received their analysis (attachment 1: Unobligated RINs for Renewable Exports—Impact on Ethanol Volumes). CRA found that if the export RINs policy were enacted, domestic consumption would remain steady as ethanol volumes increased.** The policy would not cannibalize domestic consumption, as opponents have suggested. This is largely due to the fact that ethanol is the most economic option for octane enhancement. We wanted to make sure you had the most up to date data. Included in this email, please find the following:

1) **NEW CRA Analysis: Unobligated RINs for Renewable Exports—Impact on Ethanol Volumes**
2) Original CRA analysis (Balancing the Treatment of Ethanol Exports, Imports, and Consumption in the Renewable Fuel Standard) submitted as an attachment to our 2018 RVO comments.
3) Slide produced by Valero using EIA and Argus data demonstrating that high RIN prices since 2013 have not led to a significant increase in ethanol blending. (This is <u>an important counterpoint</u> to those arguing that high RINs are necessary to foster an increase in ethanol blending.)
4) Memo from Sidley Austin on the international trade law implications of the ethanol export RIN proposal. Sidley's memo found that not only would modifying the export treatment within the RFS not constitute a WTO/GATT violation, but that the current export framework could already be a violation of GATT '94.

Please let us know if you would like to discuss further. Thank you.

Chris

Chris Parinello
Senior Manager, Federal Government Affairs
Valero Energy Corporation
Phone: (202) 560-5451
Email: chris.parinello@valero.com

Message

From: Wright, Rhonda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5D6D041A34EA466DAC1F7985308E35EA-RWRIGH04]
Sent: 2/1/2018 10:08:14 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: eFolder for Friday, February 2, 2018

Hi Mandy,

Here's your eFolder for Friday, February 2, 2018. I hope you enjoyed NC. Have a safe trip.

9:30am – 10:15am Planning Meeting

10:00am – 10:45am North American Free Trade Agreement (NAFTA) 2.0 Trade Negotiation Update

OAR Trade Update February 2 2018.ppt

11:00am – 12:00pm FCA Diesel Action

2018-01-31_FCA Overview Briefing v1

1:00pm – 2:00pm Meet with FAA (Confirmed)

CORSIA One-pager 1.16.18 v6.docx FW ICAO CORSIA background paper.r

2:00pm – 3:15pm HD Gliders

3:15pm – 4:00pm Meet w/ SmartTruck

4:00pm – 4:30pm One-on-One with Jon Edwards

4:00pm – 5:00pm Meeting: Valero

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: (202) 365-6008

Message

From: Rakosnik, Delaney [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=274573739A9F446883072599086EDEDD-RAKOSNIK, D]
Sent: 9/27/2018 7:46:31 PM
To: Parinello, Chris [Chris.Parinello@valero.com]; 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,]; Zelermyer, Salo [Salo.Zelermyer@valero.com]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: RE: Meeting with Valero

Hi Chris,

Thank you for your note. We will review and get back to you shortly.

Many thanks,

Delaney Rakosnik
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-0935
Email: rakosnik.delaney@epa.gov

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Thursday, September 27, 2018 3:28 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Meeting with Valero
Importance: High

Hi Delaney—I am writing to request a meeting with Assistant Administrator Wehrum and Principal Deputy Assistant Administrator Mandy Gunasekara to discuss the Renewable Fuel Standard, particularly issues surrounding potential market reforms of RINs. We would like to bring in two outside commodities experts who have analyzed the RINs market and have identified potential reforms (they will be flying in from out of town). Is Assistant Administrator Wehrum available on Wednesday morning on the 3rd? The attendees from our side are listed below. Please let me know if you have any questions. Thank you!—Chris

Salo Zelermyer
Vice President & Counsel, Federal Government Affairs
Valero Energy Corporation

Chris Parinello
Director, Federal Government Affairs
Valero Energy Corporation

Stacie Hartman
Partner
Schiff Hardin LLP

Dr. Sharon Brown-Hruska
Managing Director, Securities and Finance
White Collar, Investigations & Enforcement
NERA Economic Consulting

Chris Parinello
Director, Federal Government Affairs
Valero Energy Corporation
Phone: (202) 560-5451
Email: chris.parinello@valero.com

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 1/31/2018 2:45:08 PM
To: Parinello, Chris [Chris.Parinello@valero.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: RE: Meeting Request

Hey Chris - Confirmed for Friday at 4:00. Just give me a call when you are going through security and I'll come down. My work cell is Personal Phone / Ex. 6

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, January 30, 2018 8:53 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Re: Meeting Request

Friday at 4 works for us. If anything changes please let us know...we are flexible. Thanks!

Sent from my iPhone

On Jan 30, 2018, at 7:49 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

> I'm happy to meet. Looping in Alex to help firm up logistics. On first look-This Friday around 4 might work.
>
> Sent from my iPhone
>
> On Jan 30, 2018, at 2:53 PM, Parinello, Chris <Chris.Parinello@valero.com> wrote:
>
>> Hi Mandy—Are you free later this week or sometime next week to discuss some of the latest issues surrounding the RFS? Salo and I have a pretty open schedule tomorrow thru Friday, and we're also free Monday the 5th, Thursday the 8th or Friday the 9th. Please let us know if any of those days work for you. Thank you!—Chris
>>
>> Chris Parinello
>> Director, Federal Government Affairs
>> Valero Energy Corporation
>> Phone: (202) 560-5451
>> Email: chris.parinello@valero.com

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 8/24/2018 5:21:01 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: 2019 RVO Comments
Attachments: Valero Comments.pdf

Attached are their comments

Valero

Submitted Via eRulemaking Portal

August 17, 2018

Acting Administrator Andrew Wheeler
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 28221T
Washington, D.C. 20460

Attn: Docket ID No. EPA-HQ-OAR-2018-0167

Re: Renewable Fuel Standard: Proposed RVOs for 2019 and Biomass-based Diesel Volume for 2020

Dear Acting Administrator Wheeler:

The Valero Energy Corporation and its subsidiaries (collectively, "Valero") submit these comments on EPA's proposed renewable volume obligations ("RVOs") for 2019 and for biomass-based diesel for 2020 under the renewable fuel standard ("RFS") program. In the proposal, EPA seeks comment on several issues in the RFS program in addition to the RVO. Valero's unique position as a refiner, importer, exporter, marketer and biodiesel and ethanol producer means that Valero views the RFS program from several perspectives that can be particularly helpful to EPA on the issues raised in the proposal. Valero urges EPA to consider its unique frame of reference in evaluating the views and recommendations presented in these comments.

As the largest petroleum refining company in the U.S. and the world's largest independent refiner, Valero employs approximately 10,000 employees and operates 15 petroleum refineries in the U.S., Canada and the U.K. Valero therefore has a large RFS obligation and has the perspective of an obligated party and a merchant refiner. Valero is also a fuel importer, exporter, and a major fuel wholesaler. Important also from Valero's perspective is Valero's experience as a biofuel producer. Valero was the first traditional petroleum refiner to enter large-scale ethanol production and has 11 state-of-the-art plants making Valero the third largest ethanol producer in the U.S. Valero's investment in Diamond Green Diesel makes Valero also the largest renewable diesel producer in the U.S.

Due to these diverse business interests, Valero is a member of several different trade associations that themselves represent diverse interests. To the extent that these associations submit comments on this proposal, they should not be construed as necessarily representing Valero's viewpoints, particularly when such comments (or lack of comments) may conflict with our statements herein.

Valero is concerned that EPA has yet again proposed RVOs that are not reasonably attainable and EPA has declined to make use of available authorities to reduce harms caused by the program and the volatile RIN market. In addition to our concerns about the volumes, in these comments, we

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Post Office Box 696000 • San Antonio, Texas 78269-6000 • Telephone (210) 345-2000

identify corrections to the RFS that will substantially improve the program and ensure that it continues to meet the statutory goals set by Congress: to support growth in renewable fuels in the U.S. and to enhance U.S. energy security and independence. As noted in these comments, Valero has provided information and recommendations to EPA in previous comments. Valero has separately submitted its prior comments and other centrally relevant documents to this docket and asks EPA to consider that information as well as these comments in considering how to reduce the unintended and unnecessary harms caused by the RFS.

I. Introduction and Summary

Since 2013, the RFS program has been fraught with challenges, yet EPA has set annual mandates every year at aspirational levels. In that time, EPA has made decisions based on interpretations of the statute that conflict with the goals and the structure of the statute. EPA has acknowledged that the RFS has resulted in renewable fuel entering the market in volumes that increasingly exceed the blendwall and that the statutory goals for biofuel volumes are not achievable. Yet, EPA has not exercised all the authority available under the statute to minimize harm that arises from well-documented market constraints. One of EPA's fundamental obligations under the statute is to set volumes at levels that do not cause unnecessary harm. EPA fails to meet these obligations with the proposal. Valero urges EPA to reconsider the proposed volumes and to reconsider statutory interpretations made in prior rules that EPA relies upon in this proposal.

Despite having numerous tools at its disposal, EPA continues to fail to address the harm to merchant refiners that became apparent before 2015. Although EPA has recently granted waivers to small refineries, the small refinery exemption is not EPA's only tool to address harm in the market nor is it sufficient to remedy harm to all merchant refiners, since many refineries that are harmed do not qualify for the waiver. Valero urges EPA to change course from relying on the same theory-based assessments on which it has relied in each of last three RVO rulemakings and instead undertake a serious and robust evaluation of evidence in the past year that support EPA using more tools to reduce distortions in the RIN market and the fuel market.

Valero asks that EPA reduce mandates for total renewable fuels and advanced renewable fuel so that they are reasonably attainable. EPA admits that the mandate relies on biomass-based diesel volumes that are not reasonably attainable. EPA must also consider domestic supply of biomass-based diesel ("BBD") in setting a reasonably attainable 2020 standard. Valero supports EPA's intention to preserve the RIN carry-over bank and urges EPA to consider that the proposed RVO might result in drawing down the RIN bank because the mandates are not reasonably attainable.

Recent developments provide overwhelming evidence that the current RFS is causing economic harm; thus, Valero urges EPA to reduce the harm by using the general waiver authority to reduce volumes. EPA should use both general waivers: (i) EPA should define "domestic supply" to mean only renewable fuel produced in the U.S. and find that there is an inadequate domestic supply of advanced renewable fuel and (ii) EPA should undertake a robust evaluation of the harms identified by states, by merchant refiners and small retailers and reduce the volumes to prevent the severe economic harm otherwise caused. EPA must not re-allocate volumes attributable to exempt small refineries among the other obligated parties; to do so would exceed

statutory authority, violate due process of obligated parties and cause additional harm to merchant refiners who do not qualify for small refinery waivers.

Additional tools available to EPA to provide relief in the RIN market include changing the status of exported renewable fuel, changing the point of obligation and implementing trading reforms. EPA can increase the supply of RINs in the market and provide additional RIN liquidity and RIN price stability if EPA changes the RFS to ensure that all renewable fuel produced in the U.S. for transportation fuel is available for compliance credits. EPA should ensure that exported renewable fuel can also be used for compliance with the RVO. In response to EPA's request for recommendations to address RIN market problems, Valero suggests several measures that might address problems in the RIN market but Valero must remind EPA that the primary cause of RIN market problems is the definition of obligated party and the fact that blenders are not obligated parties.

II. The Proposed Volumes Are Not Reasonably Attainable

A. EPA Must Set Reasonably Attainable Volumes for Total Renewable Fuel

The RFS volumes must be reasonably attainable. To determine reasonably attainable volumes of total renewable fuel under the current structure, EPA must assess markets for conventional ethanol. In the proposal for the 2019 RVO, EPA did not provide an assessment of the E0, E15, and E85 markets to determine what levels of conventional ethanol are reasonably attainable for 2019. Rather, EPA assumed ethanol use in 2019 will be as high as actual used in 2017—10.11%. This amounts to 14.527 billion gallons of ethanol consumption for 2019, falling short of the implied conventional ethanol volume of 15 billion gallons.[1]

Even assuming EPA's projections are accurate for 2019, the implied conventional fuel mandate of 15 billion gallons is not achieved and 3.2 billion gallons of other renewable fuel, such as advanced and conventional biodiesel and renewable diesel, are needed to satisfy the total renewable fuel volume. According to EPA, 3.2 billion gallons is approximately 300 million gallons higher than the volume EPA projected for biodiesel needed in 2017 and in 2018. This is above and beyond the volume needed to achieve the advanced fuel volumes. In order to achieve the implied conventional fuel mandate of 15 billion gallons, the ethanol content would have to average

[1] David Korotney, EPA, Market impacts of biofuels in 2019 at 3 (Nov. 27, 2017) (EPA-HQ-OAR-2018-0167-0025). Determination of Volume of Biodiesel and Renewable Diesel Needed in 2019 to Achieve 19,880 Million Gallons of Total Renewable Fuel

Total renewable fuel volume	19,880
Ethanol	14,527
Non-ethanol cellulosic biofuel	362
Other non-ethanol renewable fuels	40
Biodiesel and renewable diesel needed (ethanol-equivalent volume/physical volume)	4,951 / 3,194

10.45%. This is a significant increase beyond historical levels. Currently, the ethanol content is ~9.96% for the first 6 months of 2018.[2] These requirements are not reasonably attainable.

B. EPA Must Set Reasonably Attainable Volumes for Advanced Renewable Fuel

EPA should not finalize its proposed advanced renewable fuel volume because EPA fails to consider the costs and uncertainty associated with importing renewable fuel and account for reduced volumes of renewable fuel imports due to increased costs and because the volumes of advanced ethanol, other advanced biofuels, and advanced biodiesel and renewable diesel EPA estimates will be reasonably attainable are insufficient to meet its proposed requirement.

EPA has proposed to find that "100 million gallons of advanced ethanol, 60 million gallons of other advanced biofuels, and 2.65 billion gallons of advanced biodiesel and renewable diesel are reasonably attainable."[3] However, the Agency concludes that, combined with its estimate of 381 million gallons of reasonably attainable cellulosic biofuel, "the sum of these volumes falls short of 4.88 billion gallons, which is lowest advanced biofuel requirement that EPA can determine under the cellulosic waiver authority."[4] To make up the difference, EPA suggests there may be as much as 2.8 billion gallons of advanced biofuel available in 2019, but admits that this is a risky bet because of "likely feedstock/fuel diversions."[5] If this bet fails, EPA suggests that carryover RINs can serve as a backstop,[6] but acknowledges that compliance using carry-over RINs is not practical.[7]

EPA must consider the costs and uncertainty associated with reliance on imported BBD to meet the RVO. Historically imported BBD accounted for ~30% of generated RINs. Through May 2018, imported BBD accounts for ~18% of the generated BBD RINs. EPA's projection of 4.34 billion advanced biodiesel and renewable diesel RINs in 2019 is overly optimistic. Given tariffs on imported biodiesel from Argentina and Indonesia, EPA proposes an RVO that requires unreasonably high growth in domestic production and imports from other countries. Current domestic BBD capacity is 2.4 billion gallons and utilization is ~70% through May 2018.[8] Biodiesel imports are significantly down so far in 2018. Actual imports of BBD are down 52% from last year (296 vs. 614 mbpm). Based on the year-to-date average, 2018 imports of BBD are expected to have a 62% decrease from last year (296 vs. 781 mbpm).[9] Domestic production of biodiesel is higher in 2018, but not high enough to meet 4.34 billion RINs in 2019 with meager

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[2] According to EIA's July STEO report (Table 4a), motor gasoline consumption was on average 9.23 million barrels/day for 1H18. Fuel ethanol blended into gasoline averaged 0.92 million barrels/day. EIA, July 2018 Short-Term Energy Outlook at 41, https://www.eia.gov/outlooks/steo/archives/jul18.pdf.
[3] *Id.* at 32,040.
[4] *Id.*
[5] *Id.*
[6] *Id.* at 32,047.
[7] *Id.* at 32,048
[8] EIA, Monthly Biodiesel Production Report, Table 1: U.S. Biodiesel production capacity and production, https://www.eia.gov/biofuels/biodiesel/production/table1.pdf.
[9] EIA, Petroleum & Other Liquids, U.S. Imports of Biomass-Based Diesel Fuel, https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=M_EPOORDB_IM0_NUS-Z00_MBBL&f=M (July 31, 2018 release date).

imports. EPA's "Determination of Volume of Biodiesel and Renewable Needed in 2019" effectively requires 100% utilization rates and zero exports. This is completely unrealistic.

EPA also assumes unrealistically that higher domestic production is reasonably achievable. The registered domestic capacity totaling 4.1 billion gallons of total biodiesel and renewable diesel is irrelevant in this discussion as this volume is not reflective of actual domestic production. EPA should be relying on the EIA production capacity of 2.4 billion gallons. EPA acknowledges in the preamble "domestic production of advanced biodiesel and renewable diesel in 2016 and 2017 was approximately 1.85 billion gallons. Of this total, approximately 150 million gallons of domestically produced biodiesel was exported in 2016 and 2017."[10] It is irrational for EPA to count on significantly higher production than in years past and no exports.

In short, EPA cannot finalize the proposed 4.88 billion gallons when that is premised on the uncertainty of attaining 2.8 billion gallons of BBD to achieve the advanced fuel mandate, "notwithstanding likely feedstock/fuel diversions."[11] If there is substantial doubt as to whether a quantity of renewable fuel is reasonably attainable, it is unreasonable for EPA to set the volume at that level. Valero agrees that EPA should not "propose to set the 2019 volume requirements at levels that would envision an intentional drawdown in the bank of carryover RINs."[12] 2.8 billion gallons of advanced biodiesel and renewable diesel for 2019 for the calculation of advanced biofuels is an unattainable volume and, therefore, is an intentional drawdown of the RIN bank balance. EPA should avoid this by using the general waivers to ensure that all RVOs are reasonably attainable without drawing down the RIN bank.

C. EPA Proposes Biomass-Based Diesel Volumes that Are Not Reasonably Attainable and Are Not Based on Domestic Supply

As described in previous comments and again below, EPA should define "domestic supply" to mean produced within the U.S. Thus, in its determination of what volume for BBD is reasonably attainable, EPA should consider domestic supply and not set the standard based on uncertain and costly imports. The promotion of imports is not consistent with the statutory purpose of protecting national security and promoting domestic resource development.

The domestic production capacity of BBD is 2.4 billion gallons/year at 100% utilization. While utilization is currently up year over year from 2017, it is not averaging near 2.4 billion gallons this year. In fact, annualized BBD domestic production is approximately 1.7 billion gallons for 2018. Excluding imports from "domestic supply," the proposed BBD RVO for 2020 is aspirational, not reasonably attainable.

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[10] 83 Fed. Reg. at 32,047.
[11] *Id.* at 32,040
[12] *Id.* at 32,030.

D. Marine Ultra-low sulfur diesel Impact on Available Supply and Compliance Issues

In setting the applicable BBD volume for 2020, 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% sulfur IMO marine fuel oil, ULSD may be an optimum blend component to achieve the more stringent sulfur specification for 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.

III. EPA Should Preserve the RIN Carry-Over Bank

Valero agrees with EPA that EPA should not set the RVO at a level that would result in a reduction of the RIN bank. The RIN bank should be maintained at 14 percent or higher. In the proposal, EPA has noted that the RIN bank is currently at 15 percent of the proposed total renewable fuel standards and 14 percent of the proposed advanced biofuel standard.[13] This level is below the 20 percent "rollover" limit specified in EPA regulations. EPA has previously determined that such a limit is consistent with the structure of the RFS while recognizing that credits must be available in the year generated and the year thereafter. When EPA set the 20 percent limitation, EPA stated that "the 20 percent cap provides the appropriate balance between, on the one hand, allowing legitimate RIN carryovers and protecting against potential supply shortfalls that could limit the availability of RINs, and on the other hand ensuring an annual demand for renewable fuels as envisioned by the Act."[14] Valero does not dispute the 20 percent limit but recommends that EPA consider that the stability of the RIN market and improve the RFS so that the RIN bank is not drawn down and remains available to serve the purposes for which it was intended. EPA acknowledges that there are a number of uncertainties regarding how the RIN bank will be impacted in 2019. Therefore, EPA should not do anything in the 2019 RVO that is intended to or could be anticipated to result in drawing down the RIN bank.

Despite assurances not to set RVOs at levels that would draw down the RIN bank, EPA nonetheless proposes to set the advanced biofuel standard at a level that EPA suggests a large number of carry-over RINs may be necessary. If EPA's concerns about "likely fuel/feedstock diversions" come to fruition, the proposed volume for advanced biofuel will not be reasonably attainable and obligated parties will have to draw down the carryover RIN bank. As EPA recognizes, "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, and in providing a liquid and well-functioning RIN market…."[15] Preserving the RIN bank ensures compliance flexibility and depleting it can disrupt the functioning of the RFS program.[16]

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[13] 83 Fed. Reg. at 32,030
[14] 72 Fed. Reg. 23,000, 23,934-35 (May 1, 2007)
[15] 83 Fed. Reg. at 32,029.
[16] *Id.* ("An adequate RIN bank serves to make the RIN market liquid…[W]e believe the RFS program functions best when sufficient carryover RINs are held in reserve….").

EPA can avoid the potentially significant negative consequences of depleting the RIN bank by considering whether the use of one or both general waiver authorities is appropriate. This is one "circumstance[ ]...that would warrant further reductions in volumes through the exercise of the general waiver authority."[17] EPA has already determined that the volumes that will be reasonably attainable will fall short of the proposed advanced biofuel RVO. Using either or both general waiver authorities can correct this. As described further below, EPA should consider only the domestically produced renewable fuel to determine whether there is adequate domestic supply for meeting statutory mandates and EPA must consider the economic harm on refineries and refinery communities in evaluating use of the waiver for severe economic harm. EPA should not rely on the carry-over RIN bank to increase the RVO when the circumstances support use of one or both of the general waivers.

A sufficient volume in the RIN bank does not necessarily reduce economic harm. The RIN bank accounts for RINs that RIN-long parties and unobligated parties might still hold. As long as RIN-long parties and unobligated parties hoard RINs, the amount in the RIN bank does not reduce economic harm of the RFS. To improve the functioning of the RIN bank to relieve the economic harm under the RFS, EPA must address the RIN market problems that are due to the inequitable distribution of RINs among obligated parties. EPA could right the RFS and eliminate the inequitable distribution of RINs by adjusting the point of obligation. Short of this correction to the program, EPA must consider additional measures recommended below to reduce the harm that comes from RIN hoarding and other market manipulation. Without a market correction and an adequate RIN bank, the RFS will cause severe economic harm that demands EPA reducing the RVO through use of the general waiver.

IV. Recent Developments Should Compel EPA to Conduct a Full-fledged Analysis of Whether to Use the General Waivers

In the proposal, EPA summarily dismisses consideration of using general waivers for severe economic harm or inadequate domestic supply. Yet, in the past year, several developments demand that EPA evaluate use of the waiver for severe economic harm, including: (1) petitions to EPA requesting EPA grant waivers based on severe economic harm; (2) the bankruptcy of the PES refinery, the largest east coast refinery; (3) exemptions granted to over 30 small refineries; and (4) the court decision in *Ergon-West Virginia, Inc. v. EPA* rejecting EPA's reliance on analysis showing that the cost of the RIN passes through to conclude that a small refinery suffered no disproportionate economic hardship.[18] Furthermore, irrationally high RIN prices continue to reflect a poorly-functioning RFS program. High RIN prices do not promote higher blends of renewable fuel[19] and will continue to cause disproportionate economic harm not only to small refineries but to merchant refiners who are not eligible to seek small refinery exemptions.

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[17] 83 Fed. Reg. at 32,048

[18] No. 17-1839, 2018 WL 3483282 (4th Cir. July 20, 2018).

[19] *See* NERA Economic Consulting, Effects of Moving the Compliance Obligation under RFS2 to Suppliers of Finished Products 15-23 (2015), Attachment A; Ron Minsk, Comments on Proposed 2014, 2015, and 2016 RVO 2-4, 6-8 (June 24, 2015), Attachment B.

Additionally, in response to EPA's expressed concerns about biofuel imports and tariffs imposed on biodiesel imports, EPA received numerous comments in 2017 about the definition of "domestic supply" and how to account for biofuel imports in the RFS. A year later, the market has experienced the initial impacts of these tariffs, proving the validity of some of the comments. Valero and others requested that EPA define "domestic supply" to include only renewable fuel produced in the United States.[20] EPA must determine whether there is adequate domestic supply of renewable fuel to meet the statutory volumes. Including only domestically produced renewable fuel as domestic supply for setting the RVO is a better means for ensuring that the RVO will be reasonably attainable; it eliminates the uncertainty and costs of imports. It is also consistent with congressional intent. Nonetheless, imported renewable fuel must still be available for compliance with the RVO and thus would only serve the purposes of the RFS to the extent imported renewable fuel is more economical than domestically produced renewable fuel.

A. EPA's Criteria for Identifying Severe Economic Harm is Too Limited, Unsupported by the Statute and Disregards the Reality of the Impacts of the RFS Program

Before 2017, EPA's review of economic harm caused by the RFS was limited to evaluation of production and prices of corn and ethanol; food expenditures for households, feed costs for cattle, pigs, poultry and dairy; and gasoline prices and expenditures for households.[21] In the 2018 final RVO, EPA assessed economic harm in 2017 by looking again only at very limited criteria instead of considering information submitted by commenters during the comment period and submitted well before the comment period.[22] EPA admitted that its 2017 analysis had significant limitations, which EPA attributed to time limits. Yet Congress gave EPA a time limit of 90 days to approve or disapprove petitions for waivers based on severe economic harm.[23] Congress did not authorize EPA to disapprove petitions or refuse to properly evaluate petitions on the basis of time constraints.

EPA's own characterization of its review was that of a "high level investigation of a number of broad economic indicators" that "may not be as useful in assessing the possibility that the RFS program would cause severe economic harm on a State or regional level, as compared to a national level."[24] Since 2017, EPA has had more than enough time to undertake a more in-depth investigation. Even in 2017, EPA was given early notice that small refineries and merchant refineries had incurred severe harm under the RFS and that small retailers also experienced substantial harm. EPA should not continue to hide behind the limited time between proposal and final annual rulemakings to shirk its responsibility to evaluate the evidence of economic harm provided in comments to every RVO rulemaking since 2015.

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[20] *See, e.g.,* Valero Comments on Proposed 2018 RVO (Aug. 31, 2017) (EPA-HQ-OAR-2017-0091-3988)., Attachment C.
[21] 83 Fed. Reg. at 32,048
[22] 82 Fed Reg. 58,364, 58,518 (Dec. 12, 2017).
[23] 42 U.S.C. § 7545(o)(7)(B).
[24] David Korotney, EPA, Assessment of waivers for severe economic harm or BBD prices for 2018 at § A.2 (Nov. 30, 2017) (EPA-HQ-OAR-2017-0091-4925) ("Korotney Memo").

EPA must evaluate whether economic harm would occur at the State or regional level and cannot rest a decision regarding economic harm only on evaluation at the national level based on broad criteria that has little relevance for the actual harms arising from the rule. EPA must also evaluate actual evidence and not rely on economic theory.

As further described below, EPA disregarded warnings of harm that already existed but were likely to become more apparent in 2018. For 2018, the only new information EPA considered was crop-based feedstock futures, projected gasoline demand and market impacts of ethanol and biodiesel consumption. EPA disregarded evidence provided by refineries impacted by the standard and small businesses losing to disruptive unfair advantages made possible by the RFS. In this rulemaking, EPA should not commit the same errors disregarding the evidence provided in 2018 of economic harm and disregarding pleas by states and impacted entities to provide relief from harm.

B. EPA Should Consider Evidence of Severe Economic Harm and Undertake Evaluation of Economic Harm Concerns

EPA received several requests to waive RVO volumes to reduce severe economic harm. The states of Texas, New Mexico, Delaware and Pennsylvania sent EPA requests[25] and several companies[26] and the Small Retailers Coalition made requests[27] in response to EPA's Notice of Data Availability in October 2017.[28] In addition, PES filed for bankruptcy in January 2018, directly contradicting EPA's claim that the RFS and the RVOs were not adversely impacting refineries.[29] Valero sent to EPA a Petition for Reconsideration[30] requesting EPA reconsider its decision to deny the Point of Obligations Petitions based on EPA's determination that there was no harm under the RFS. In that petition, Valero requested that EPA provide any other remedy to relieve the harm. Valero attaches the Petition for Reconsideration to these comments and incorporates it as part of these comments on the proposed RVO.

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[25] EPA made these letters and its responses to them available to the public at https://www.epa.gov/renewable-fuel-standard-program/learn-more-about-letters-seeking-additional-information-related. They are included here as Attachments D, E, F, and G for convenience.

[26] AFPM Comments on 2018 Supplemental Notice 18 (Oct. 19, 2017) (EPA-HQ-OAR-2017-0091-4703) (requesting a 3.3-billion-gallon reduction of total renewable fuel and advanced biofuel volumes due to past reliance on now uncertain supply of imported renewable fuel); Valero Comments on 2018 Supplemental Notice 14 (Aug. 31, 2017) (EPA-HQ-OAR-2017-0091-4885) (requesting reduction in requirements for advanced and total renewable fuel), Attachment H; HollyFrontier Comments on Proposed 2018 RVO 9-10 (Aug. 31, 2017) (EPA-HQ-OAR-2017-0091-2547); PES Comments on Proposed 2018 RVO 3 (Aug. 31, 2017) (EPA-HQ-OAR-2017-0091-3887).

[27] Small Retailers Coalition Comments on Proposed 2018 RVO 1-8 (Oct. 19, 2017) (EPA-HQ-OAR-2017-0091-4687).

[28] 82 Fed. Reg. 46,174 (Oct. 4, 2017).

[29] Disclosure Statement for the Joint Prepackaged Chapter 11 Plan of Reorganization of PES Holdings, LLC and Its Debtor Affiliates, *In re PES Holdings, LLC*, No. 18-10122-KG (Bankr. D. Del. Jan. 22, 2018) ("PES Disclosure Statement"), Attachment I. Energy Ventures Analysis examined the circumstances that led to PES's bankruptcy and concluded that "the actual costs of the RFS are significant compared to its realized benefits, that [PES] and other east coast merchant refiners are absorbing the cost, and that the dramatic changes in energy markets since 2007 have rendered moot most of the goals of the RFS." EVA Comments on PES Holdings, LLC Proposed Consent Decree 1 (Mar. 26, 2018), Attachment J.

[30] Valero Petition for Reconsideration (Mar. 22, 2018), Attachment K.

EPA's conclusion that the RFS does not cause harm to refineries or small retailers is based primarily on EPA's conclusion that the RIN costs are passed through in the wholesale price of petroleum fuels. The recent court decision in *Ergon-West Virginia, Inc. v. EPA*[31] rejects EPA's reliance on this conclusion to determine disproportionate economic harm to individual refineries and challenges its utility to conclude that the RFS does not cause severe economic harm in any state, Region or the nation.[32] EPA must undertake a new evaluation of the economic harm of the RFS and determine whether the harm is severe. It is inconsistent for EPA to ignore the waiver when granting over 30 small refinery exemptions based on economic harm and reaching a settlement with PES, which in total represent as much as 2.25 billion gallons.[33] That same kind of harm is affecting both regional economies and refineries that don't qualify for exemptions and don't declare bankruptcies. It is arbitrary and capricious for EPA to deny that there is harm arising from the RFS because of RIN value pass-through while EPA grants hardship exemptions based on disproportionate economic harm. By doing so, EPA is wading neck deep in the market distortion.

1. To date, EPA has interpreted the waiver provision too narrowly

To date, EPA's statutory interpretation of the severe economic harm waiver provision has been an unreasonable interpretation. EPA narrowly interpreted the provision to require proof that a single market factor—RFS volume requirements—is the sole cause of the harm.[34] EPA's interpretation undermines the purpose and utility of the statutory waiver. It is hard to imagine how EPA's test might ever be met, given that the RFS requirements interact with many factors contributing to the economy of the nation, a state, or a region. EPA cannot, through interpretation, nullify the effect or purpose of a statute.

Various factors make states and regions uniquely vulnerable to harm from implementing RFS requirements and cause those areas to experience such harm more acutely. For example, economic analysis identified East Coast and Mid-continent refiners as facing the "most risk" from the RFS Program due to "their higher operating costs, significant logistical challenges in sourcing crude oil, and direct competition from large foreign based refiners…."[35] EPA unreasonably interpreted the statute to make those factors disqualifiers that precluded a finding of severe harm. EPA should reconsider this interpretation and consider the evidence already available of economic harm caused by the RFS.

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[31] No. 17-1839, 2018 WL 3483282, at *8.

[32] In addition, EPA's previous analyses on pass-through "ignores the fact that different entities are differentially situated at the rack. EPA fails to explain…how a merchant refiner such as [PES] can recover RIN costs when competing at the rack with a blender or marketer that has no obligation under the RFS. Merchant refiners would be similarly disadvantaged when competing against an integrated refiner which blends in excess of its RFS obligation and thus would not face the same costs at the rack…These competitive dynamics leave merchant refiners…to disproportionately bear the cost of increasing RIN obligations." EVA Comments 6.

[33] 83 Fed. Reg. at 32,029 (explaining that the 3.06 billion carryover RIN bank includes 1.460 million RINs attributable to small refinery hardship exemptions for 2017 and 790 million RINs attributable to small refinery hardship exemptions for 2016 and the PES bankruptcy settlement).

[34] Korotney Memo at § A.3.

[35] Alex Holcomb, *Market Analysis of the Proposed Change to the RFS Point of Obligation* 15 (Feb. 22, 2017) (EPA-HQ-OAR-2017-0091-3988), Attachment L.

This is not a theoretical problem. A month after EPA published the 2018 RVO, Philadelphia Energy Solutions ("PES"), the largest refiner on the East Coast, declared bankruptcy. PES identified the primary event precipitating the bankruptcy as RFS compliance costs.[36] Comments on the 2018 Rule foreshadowed this, explaining that RIN volatility had caused rating agencies to downgrade PES's credit and classify its outlook as "negative."[37] Comments further detailed that, by any metric, economic harm resulting from shutdown of PES refineries would be "severe."[38] "[F]or every 100 jobs lost, Pennsylvania would lose over $128 million in labor income, $21 million in state and local taxes, and over $797 million in output."[39] Pennsylvania's Governor Tom Wolf put it succinctly: "The current and proposed Renewable Volume Obligations are putting thousands of good paying jobs in my state and elsewhere at risk."[40] EPA categorically dismissed these real concerns as lacking "sufficient evidence that the purchase of RINs, as opposed to other market factors, is responsible for the company's difficult economic circumstances ...."[41] EPA should not dismiss these concerns and the evidence provided in comments submitted in 2017 and additional evidence of harm in 2018.

EPA's restrictive interpretation is inconsistent with the statute. In *Americans for Clean Energy v. EPA ("ACE")*,[42] the D.C. Circuit invalidated EPA's overly broad interpretation of "supply" in the general waiver provisions, concluding that breadth was unnecessary because the severe economic harm waiver protected against harmful volume requirements.[43] Interpreting that protection too narrowly, as EPA did in the 2018 RVO rule, equally offends the statutory language and purpose.

2. *EPA must undertake analysis of harm at the state and regional levels*

In the 2018 RVO rulemaking, EPA admittedly undertook no independent analysis of harm at the state or regional level because "an analysis tailored to assessing State or regional impacts was not practical to accomplish within the timeframe ...."[44] Aside from EPA's "high-level" review, which admittedly "has limitations,"[45] EPA's determination rests on "belie[f]" that 2018 market conditions are unlikely to make RFS compliance "more economically challenging," and assurance that 2018 standards are "very similar" to the 2017 standards.[46] The evidence of harm in 2018 demonstrates that EPA's assumptions were wrong. EPA should take a closer look at the evidence provided and undertake a more robust evaluation.

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[36] PES Disclosure Statement 25, Attachment I.
[37] PES Comments on Proposed 2018 RVO 2-3.
[38] *Id.* at 3.
[39] *Id.*
[40] Gov. Tom Wolf, Petition for RFS Waiver Under CAA Section 211(o)(7)(A)(i) at 2 (Nov. 2, 2017), Attachment D.
[41] 82 Fed. Reg. at 58,517.
[42] 864 F.3d 691, 737 (D.C. Cir. July 28, 2017) ("*ACE*").
[43] *ACE*, 864 F.3d at 714.
[44] Korotney Memo § A.2.
[45] *Id.*
[46] 82 Fed. Reg. at 58,518.

3. *The basis of EPA's determination of harm has been rejected by a federal court*

To find an absence of harm, EPA relies on a 2015 theoretical assessment of RIN-price effects on the market as a whole,[47] while disregarding specific evidence of actual harm. EPA's conclusory reliance on the same preliminary assessment in denying a small refiner exemption was recently held arbitrary and capricious. In *Ergon-West Virginia, Inc. v. EPA,* the Fourth Circuit ruled that "EPA's analysis of the effect of RIN prices on Ergon's refining facility was arbitrary…because EPA ignored specific evidence suggesting that those prices had a negative effect."[48] As in *Ergon*, in its determination in 2017 and in this proposal, EPA ignores actual data regarding state and regional economic jeopardy and dramatically skyrocketing refinery operating costs.[49]

The decision in *Ergon* applies here to EPA's evaluation of whether there is severe economic harm arising from the RFS. EPA cannot rely on an industry-wide study and a non-specific nationwide trend:

> Insomuch as the EPA cited generally to an industry-wide study and a nonspecific nationwide trend to find that RIN prices would not harm Ergon although Ergon provided specific, contradictory evidence of hardship particular to its refinery due to RIN costs, the EPA failed to squarely address Ergon's petition with regards to RIN costs and "explain[ed] its decision in a manner contrary to the evidence before it."
>
> Furthermore, the EPA's disregard for Ergon's RIN arguments appears inconsistent with its statement earlier in the 2016 decision that the EPA considers "RIN prices[ ] and the cost of compliance through RIN purchases" in making its determination. J.A. 327; accord J.A. 201 (explaining in a December 2016 memorandum that the EPA considers "RIN prices[] and the cost of compliance through RIN purchases" in evaluating a petition). Consequently, the EPA's cursory consideration and failure to address Ergon's specific evidence regarding RIN costs was an arbitrary and capricious action.[50]

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[47] Kortoney Memo § A.2.b n.20.
[48] No. 17-1839, 2018 WL 3483282, at *8 (4th Cir. July 20, 2018)
[49] PES Comments on 2018 Proposed RVO 2 (Aug. 31, 2017) (EPA-HQ-OAR-2017-0091-3387) (PES "needs to spend another $369 million [on RINs] by March 31, 2018"); Valero Comments on 2018 Supplemental Notice 10 (Oct. 19, 2017) (EPA-HQ-OAR-2017-0091-4885) ("The harm to Valero that can be expected from the 2018 RVO is over $850 million."), Attachment H; Monroe Energy Co. Comments on 2018 Supplemental Notice 18 (Oct. 19, 2017) (EPA-HQ-OAR-2017-0091-4645) ("RIN costs currently exceed every category of expense other than the crude oil Monroe purchases to refine.").
[50] *Ergon,* No. 17-1839, 2018 WL 3483282, at *26.

4. EPA must also consider the harm to small retailers and the effect of the RIN market in creating or contributing to dramatically unfair competition in the retail market

EPA must not continue to ignore the severe economic harm nationally that threatens the viability of small petroleum retailers, which comprise approximately 75% of fuel retailers nationwide. Comments in 2017 explained that excluding blenders from RFS obligations has allowed large, integrated retailers to use billions of dollars in RIN profits to push small retailers, who cannot recoup finished-fuel costs by selling RINs, out of business.[51] EPA must not only consider the harm occurring in recent years, every year, but also what that harm means for changes in the marketplace for small businesses, communities relying on small businesses, and, in the long-term, what it is likely to mean for consumers. With the unfair competition made easier by the RIN market, large retailers have experienced growth and are squeezing out small businesses and small retailers, reducing the competition in the market for consumers. This increased consolidation is not good for consumers. Unfortunately, if EPA waits to see more absolute proof of the harm, it will be too late to correct.

EPA should not continue to act arbitrarily and contrary to the statute by failing to exercise the severe economic harm waiver.

C. EPA Must Give Meaning to the Statutory Definition of "Inadequate Domestic Supply"

Even after the D.C. Circuit's decision in *ACE,* EPA retains substantial discretion to use the general waiver authority for inadequate domestic supply. EPA should appropriately define "domestic supply" as the supply of renewable fuel produced in the U.S. and evaluate whether that supply, in terms of both its existence and its cost, is adequate to support annual requirements. EPA may define "inadequate" to include consideration of the cost of 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. EPA must consider RIN prices as evidence of the costs of compliance and the costs of the renewable fuel supply used for compliance.

1. EPA should reconsider the interpretation of the provision and decisions made in 2017

In the 2017 Supplemental Notice for the 2018 RVO, EPA expressed "concern[ ] about the high cost of advanced biofuels" and the impact of imports and exports on the nation's energy independence and security.[52] EPA enumerated several reasons to interpret "domestic supply" as referring to "volumes of domestically-produced renewable fuels."[53] Under that interpretation,

[51] Small Retailers Comments on Proposed 2018 RVO 3-6 (Aug. 31, 2017) (EPA-HQ-OAR-2017-0091-3572).
[52] 82 Fed. Reg. 46,177.
[53] *Id.* at 46,177-78.

EPA would "consider only whether there was an adequate supply of domestically produced volumes to satisfy the statutory volume targets."[54] EPA reasoned:

- This interpretation is "consistent with a straightforward reading of the term 'domestic supply' as referring to volumes of domestically-produced renewable fuels";
- It "may better meet the energy independence and security purposes of EISA"; and
- History demonstrates that projecting supplies of foreign-produced renewable fuel available for import "is extremely difficult."[55]

EPA invited comments on this interpretation and the possibility of applying it to reduce advanced biofuel and total renewable fuel volume requirements.[56] Just two months later, however, EPA found it "unnecessary"[57] to adopt the interpretation that Notice suggested was "appropriate."[58] We urge EPA to reconsider the interpretation to align more closely with the statute and the plain meaning of the terms.

"Domestic" is defined as originating in, pertaining to, or relating to a country's internal affairs. A "domestic" orange is one grown in the United States, not one grown in Brazil and transported here for sale. Likewise, the "domestic supply" of renewable fuel does not encompass fuel imported from abroad. "Domestic" must be given meaning. The statutory context of the phrase "inadequate domestic supply" reflects a focus on events within the United States. The waiver is paired in the same subsection with a waiver focused on harm to "a State, a region, or the United States."[59] Other RFS provisions likewise emphasize domestic concerns.[60] The legislative history also indicates Congress was focused on domestic production of renewable fuels.

Comments in 2017 addressed a number of issues regarding EPA's interpretation of the waiver provision. We urge EPA to review those comments as part of this 2019 RVO rulemaking and interpret the provision consistent with the goals and plain meaning of the statute. Commenters explained how treating foreign imports as "domestic supply" would negatively affect energy security and independence. Reliance on imports invites supply chain risk, does not ensure that lifecycle greenhouse gas requirements are met, and incentivizes additional foreign production to the detriment of domestic producers.[61] Commenters provided ample evidence that, properly

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[54] *Id.* at 46,177.
[55] *Id.* at 46,178.
[56] *Id.*
[57] 82 Fed. Reg. at 58,516.
[58] 82 Fed. Reg. at 46,178.
[59] 42 U.S.C. § 7545(o)(7)(A).
[60] *See, e.g., id.* § 7545(o)(2)(B)(ii) (when setting volume requirements after 2022, EPA must consider "energy security of the United States…infrastructure of the United States…job creation...rural economic development, and food prices").
[61] Valero Comments on Proposed 2018 RVO 7-9, Attachment C; *see also* AFPM/API Comments on Proposed 2018 RVO 31-33 (Aug. 31, 2018) (EPA-HQ-OAR-2017-0091-3645); AFPM Comments on 2018 Supplemental Notice (providing additional data on biomass-based diesel and proper interpretation of EPA's waiver authorities).

interpreted, "domestic supply" was inadequate to meet statutorily-required volumes. Imports of foreign-produced fuel are not de minimis. EPA determined that imported advanced biofuel and biomass-based diesel contributed 2.298 billion RINs to total supply in 2016, or over 12.5% of that year's total renewable fuel requirement.[62] And EPA admitted "uncertainty" regarding whether domestic advanced biofuel could "compensate…for volumes that would not be provided through imports."[63] The same conditions still exist today.

EPA must first resolve the issue of whether the term "domestic supply" should include consideration of imports *and then* consider whether use of the inadequate domestic supply waiver is necessary.

2. EPA Must Include Only Domestically-Produced Biofuel to Determine Whether There is Adequate Domestic Supply for Meeting Statutory Volumes

EPA should not include foreign produced biofuel imports as "domestic supply." The RFS should not be designed to mandate fuel imports as it currently does for cellulosic, BBD, and advanced 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 D.C. Circuit'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.

In addition, imports should not be included because of the difficulty in predicting with any confidence how much the U.S. will import in a given year as well as the difficulty in overseeing foreign production to ensure that imported fuel counted toward RFS compliance in fact meets the statute's requirements.

a. <u>Excluding imports is consistent with the statutory text and goals</u>

The "inadequate domestic supply" waiver provision allows EPA to waive RFS statutory applicable volume requirements upon a determination that there is an "inadequate domestic supply" of renewable fuel.[64] The logical corollary is that EPA must consider the adequacy of domestic supply when setting the RVO each year. Neither Congress nor EPA has defined "domestic supply." In the past, EPA has interpreted "domestic supply" to mean the amount of fuel available in the United States for consumption by the consumer.[65] The D.C. Circuit invalidated EPA's interpretation of "supply" to mean "supply to the ultimate consumer."[66] Because Congress chose to include the term "domestic" to modify "supply," EPA must consider giving some meaning

[62] 82 Fed. Reg. at 46,177, Tbls. III-1, III-2.
[63] *Id.* at 58,517.
[64] 42 U.S.C. § 7545(o)(7)(A), (D).
[65] 80 Fed. Reg. 77,420, 77,435 (Dec. 14, 2015).
[66] *ACE*, 834 F.3d at 696.

to "domestic" rather than assuming all "supply" of renewable fuel means "domestic supply." In light of the D.C. Circuit's views limiting EPA's overreach in defining "supply," EPA should consider how to define "domestic" to align with the purposes of the statute. EPA includes within its estimation of the available domestic supply projected volumes of imported renewable fuel.[67] EPA's interpretation of "domestic supply" to include imported renewable fuel is contrary to the statutory purpose of the RFS.[68]

Congress enacted the RFS program in an effort to promote energy security by reducing America's dependence on fuel imports; it also wanted to promote growth in domestic energy jobs and domestic renewable fuel production. Given those goals, including foreign production of renewable fuels in the calculation of the domestic supply makes no sense, because foreign production and imports are an obstacle to energy independence, not an aid to it. Consequently, when assessing the adequacy of the domestic supply of renewable fuel, EPA should focus only on domestic production so that it does not obligate domestic refiners to purchase foreign renewable fuel. Failing to do so could lead to unintended consequences, as previously described by API:

> A direct implication of setting renewable fuel volume standards that exceed the ethanol blendwall is that it encourages imported biodiesel that is produced from palm oil. EPA's own analysis finds that biodiesel produced from palm oil fails to meet GHG emission reduction requirements of the RFS, except it is allowed if it meets grandfathering provisions of [the Energy Independence and Security Act of 2007 ("EISA")]. Biodiesel imports into the U.S. from Indonesia, a leading palm oil producing country, have increased from zero in 2012 to 73 million gallons in 2015. This outcome of increased palm oil biodiesel consumption in the U.S. is another inconsistency with EISA's stated purpose to [sic] "...to increase the production of clean renewable fuels . . . ."[69]

b. Foreign supply available for import is difficult to predict and to oversee

Reliance on imports subjects obligated parties to unnecessary supply risks. The quantity of renewable fuel that can be imported is very difficult to predict. Market forces could direct volumes of exported renewable fuels to countries other than the United States. When projecting available supplies of renewable fuel for future compliance years, EPA typically relies on production in previous years. Thus, inclusion of foreign supplies in the volumetric requirements for any one year tends to increase the volume of renewable fuel that EPA projects is available in the future. Relying

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[67] *See, e.g.,* 81 Fed. Reg. 89,746, 89,783 (Dec. 12, 2016).

[68] This assertion is not counter the court's statement in *ACE v. EPA* that its "interpretation of supply allows EPA to consider the amount of renewable fuel available through import...." *ACE,* 864 F.3d at 711. There, the court was construing the term "supply" as it relates to the person being supplied. In addressing an argument by EPA, the court pointed out that interpreting "supply" to mean supply to the obligated party does not make "supply" synonymous with "production." *Id.* The court noted that, "for example," "supply" could include imported fuel and not only fuel production. *Id.* The court was not construing the term "domestic" and did not have before it any question as to the appropriateness of including imported fuel in a determination of "domestic" supply. *Id.* at 34-35. The court's comment is dicta and has no bearing on the construction of statutory terms not before it in that case.

[69] API, Comments Proposed 2017 RVO 23 (Aug. 10, 2016) (EPA-HQ-OAR-2016-0004-3512) (internal citations omitted).

on past performance as indicative of future performance risks improperly "locking in" such production, increasing future dependence on that foreign production.

Furthermore, EPA lacks the ability to oversee production outside of the United States and thus, cannot confirm that the renewable fuel produced abroad satisfies the greenhouse gas reduction and other requirements in the statute. Furthermore, EPA cannot easily enforce the requirements of the statute against the foreign producer even if it discovered a violation. Despite this, at least two Indonesian biodiesel producers have qualified for RINs even though their biodiesel generally does not meet the RFS program's minimum greenhouse gas reduction threshold.[70]

3. *The Determination of "Inadequate" Must Consider the Costs to Obligated Parties for Compliance*

Since EPA designed the RFS so that compliance can be met by either purchasing renewable fuel and blending or through the purchase of separated RINs, EPA must consider the adequacy of domestic supply of renewable fuel in this context. In evaluating whether the supply of renewable fuel is adequate for purposes of a reasonable RVO, EPA must consider not only the costs of compliance by purchasing and blending renewable fuel into transportation fuel in the U.S. but must also consider whether the supply is adequate to ensure that RIN prices are stable and reasonable. Where the domestic supply is not sufficient to ensure stable and reasonable RIN prices, the supply is inadequate. As evidenced by RIN price history since 2014, the supply of RINs has demonstrated that the supply of renewable fuel is inadequate. EPA should waive statutory volumes to reduce the costs of compliance with the RFS.

V. EPA Cannot Re-Allocate RFS Obligations to Account for Small Refinery Exemptions

In designing the RFS, Congress made it clear that EPA was to set annual standards by November 30 prior to the year for which the standards would apply.[71] Congress also provided EPA authority to exempt small refineries from the standards if meeting the standards would cause disproportionate economic harm for a small refinery.[72] If EPA issues exemptions after EPA has set the annual standard, the statute does not allow EPA to adjust the annual standard for that year or the percentage requirements to account for exemptions granted for that year's annual standard. To do so would be contrary to the statute as well as run afoul of the due process owed to obligated parties who might bear a greater burden of the annual standard. It would also run afoul of the presumption against retroactive regulation.

The CAA establishes statutory targets for four nested types of renewable fuel.[73] EPA's responsibility is to annually publish "the renewable fuel obligation" in percentage form that

[70] 82 Fed. Reg. 40,748 (Aug. 28, 2017).
[71] 42 U.S.C. § 7545(o)(3)(B)(i).
[72] *Id.* § 7545(o)(9).
[73] *Id.* § 7545(o)(2)(B)(i).

"ensures" these requirements are met.[74] In doing so, EPA considers whether to use one or more waiver authorities to reduce the applicable volumes established by Congress.[75] EPA must consider different criteria in deciding whether to use its waiver authorities, but *none* of them allows EPA to *increase* an annual standard to account for volumes not met in prior years either because of waiver or because of volumes attributable to exempt small refineries. In fact, nothing in the statute permits EPA to increase volumes in any year to account for the waiver or exemptions granted for previous year RVOs. To do so would be contrary to the statute as well as run afoul of the due process owed to obligated parties who might bear a greater burden of the annual standard.

In addition, Congress also designed the RFS to mandate no more than 15 billion gallons of conventional ethanol in any year and no more than 4.5 billion gallons of non-cellulosic advanced biofuel in 2019.[76] EPA would be in danger of violating these limitations in a given year if it were to re-allocate exempt small refinery volumes from the prior year.

Although Congress provided EPA authority to exempt small refineries that may experience disproportionate economic hardship, nothing in these provisions authorizes EPA to re-allocate these volumes.[77] The only adjustment the statute allows EPA to make to account for small refinery exemptions is an adjustment to the applicable percentage to account for use of renewable fuel by small refineries that were exempt in the prior year.[78] In other words, when exempt refineries still use renewable fuel, those volumes should count toward compliance with the mandate and EPA can reduce the annual percentage applicable to obligated parties in setting the next year's RVO to account for "the use of renewable fuel during the previous calendar year by small refineries that are exempt."[79]

Moreover, Congress also recognized that the RFS might cause broader economic harm that may not be remedied with small refinery exemptions.[80] Re-allocation of RVO volumes to non-exempt obligated parties will cause broader economic harm and amount to unreasonable compliance burdens for non-exempt refineries. As discussed above, EPA has noted that the RIN carry-over bank is important for compliance flexibility. The RIN carry-over bank has increased from 11% for 2017 to 14% for 2018. Without the small refinery exemptions and the PES settlement, which account for as much as 2.25 billion RINs, the RIN carry-over bank would not currently hold 3.06 billion RINs; there would have been a drawdown of the RIN carry-over bank. It would no longer serve the critical role that EPA claims it must serve. Re-allocation of the RVO obligation to non-exempt refineries would also mean drawing down the RIN bank, an action that

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[74] *Id.* § 7545(o)(3)(B)(ii)(II). EPA must also obligate the "appropriate parties" as a "required element" of its annual rulemaking. *Id.* § 7545(o)(3)(B)(ii)(I).
[75] *Id.* § 7545(o)(7).
[76] The annual cap on conventional biofuels—*i.e.*, ethanol—is implied. It is the difference between the total renewable fuel and advanced biofuel volumes. The cap on non-cellulosic advanced biofuels is 4.5 billion gallons in 2019. It is the difference between the advanced biofuel and the cellulosic biofuel volumes. *See* 83 Fed. Reg. at 32,028 n.10.
[77] 42 U.S.C. § 7545(o)(9)(B)(i).
[78] *Id.* § 7545(o)(3)(C)(ii).
[79] *Id.* § 7545(o)(3)(C)(ii).
[80] *See,* EPA's authority to reduce the applicable volumes when the Agency determines they would "severely harm the economy or environment of a State, a region, or the United States," *id.* § 7545(o)(7)(A)(i); or when there is an "inadequate domestic supply," *id.* § 7545(o)(7)(A)(ii); or when there is a "significant renewable feedstock disruption or other market circumstances" that would increase the price of BBD, *id.* § 7545(o)(7)(E)(ii).

EPA has repeatedly said is not what EPA intends to do when setting the RVO, bringing the system to the brink of illiquidity (further complicating the placement of the obligation in the wrong location in the system).

VI. EPA Should Remove the Export RVO and Treat All Domestically-Produced Renewable Fuel Equally

EPA should revise the RFS to allow all domestically produced biofuel to be used for compliance under the RFS, including ethanol exported for use as transportation fuel and exported biodiesel. EPA should eliminate the export RVO, eliminate the denaturant prerequisite for RINs for renewable fuel, and allow RINs for all exported biofuels. These revisions will promote the purposes of the RFS by supporting domestic renewable fuel production, correct EPA's punitive treatment of exports under the current program rules, and add much-needed liquidity to the RIN market.

Such changes more closely adhere to the text of the RFS statute and contrary to assertions by some, the changes will not destroy demand for ethanol or biodiesel or for renewable fuel feedstocks at home.

A. The current system is inconsistent with the RFS statute

From the start of the RFS program, EPA treated exported renewable volumes outside the realm of the program. EPA devised a parallel program under which RINs attached to renewable fuel that is exported cannot be used by a party to comply with its RVO.[81] Instead, the RINs must be retired with no compliance benefit under a separate export RVO ("ERVO").[82] In this way, the RFS program has historically kept off-the-books volumes of renewable fuel *produced in the United States* that otherwise would count toward compliance under the RIN accounting system.

This anomalous treatment of exported renewable volumes has no basis in the statute, which focuses on the introduction into commerce of renewable fuel, not on the geography of disposition or consumption of the fuel.[83] The plain language of 42 U.S.C. § 7545(o)(2) and (o)(3) requires EPA "ensure that transportation fuel sold or introduced into commerce in the United States . . . , on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel" provided in § 7545(o)(2)(B).[84] Under the statute, renewable fuel is by definition transportation fuel, whether ultimately used in or outside the United States.[85] "Introduction" into commerce is not synonymous with "used" or

[81] 40 C.F.R. § 80.1130 (replaced under RFS2 with the very similar 40 C.F.R. § 80.1430); *see also* 40 C.F.R. § 1427(c).
[82] EPA accomplishes this by imposing a parallel regulatory obligation applicable only to exported volumes, known as an Export Renewable Volume Obligation ("ERVO"). Meeting an ERVO has no relation to the statutory compliance obligation required by the statute.
[83] In fact, there are indications in the statute to the contrary, that Congress intended to place no restriction on the geographic distribution of renewable fuel. *See* 42 U.S.C. § 7545(o)(2)(A)(iii)(II)(aa) (prohibiting any regulations that "restrict geographic areas in which renewable fuel may be used.").
[84] 42 U.S.C. § 7545(o)(2)(A).
[85] *See id.* § 7545(o)(1)(J) ("The term 'renewable fuel' means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.").

"consumed."[86] Therefore, if the renewable fuel is produced and offered for sale to anyone while the fuel is physically in the U.S., then it would be "introduced in commerce in the United States," regardless of whether it is destined for export. As a result, this plain language calls for providing that all renewable fuel introduced in the U.S. can generate credits toward compliance with the renewable fuel mandate in the statute.

There is nothing in the text of the statute that forecloses this interpretation. Nor does the legislative history indicate that Congress intended to create a disparity between domestically produced renewable fuel that is exported and renewable fuel used in the United Sates.

The ERVO is contrary to how the RFS program is supposed to work—incentivizing increased renewable fuel production year-over-year. As the D.C. Circuit recently observed, "[T]he Renewable Fuel Program'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."[87] EPA's interpretation of § 7545(o) to treat consumption as the measurement of compliance with the statutory volumes "flouts that statutory design" because instead of forcing greater production, the ERVO creates a disincentive for further domestic production.[88] EPA cannot continue with such a "goal-defying (much less that text-defying) statutory construction."[89] Designed correctly, the RFS can promote continued growth in domestic biofuel production. Eliminating the ERVO would remove the burden on exports and incentivize further increases in production—a conclusion supported by a recent report issued by Charles River Associates.[90]

That EPA has previously *misinterpreted* the statute does not mean the Agency is forever required to maintain its faulty interpretation. The agency can change course to one consistent with the statute as long as it provides a reasoned explanation for doing so.[91] "[P]revious statutory violations," of course, "cannot excuse" new ones.[92] Regardless of EPA's policy preference for encouraging the domestic consumption of renewable fuel, exported renewable fuel is part of the U.S. supply of renewable fuel. Therefore, to be true to the statutory text, RINs associated with exported renewable volumes should also be available for compliance with the annual RVO.

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[86] *See, e.g., United States v. Hill*, 248 U.S. 420 (1919) ("Commerce includes the transportation of persons and property no less than the purchase, sale, and exchange of commodities."); *Bell v. Porter*, 159 F.2d 117, 119 (7th Cir. 1946), *cert. denied*, 330 U.S. 813 (1947) (Goods may move in commerce though they never enter the field of commercial competition).
[87] *ACE*, 864 F.3d at 710.
[88] *Id.*
[89] *Id.* (quoting *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1662 (2017).
[90] Charles River Associates, *Balancing the Treatment of Ethanol Exports, Imports, and Consumption in the Renewable Fuel Standard* 2 (Aug. 2017), provided here as Attachment M.
[91] *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). In fact, a "change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal" of its regulations and programs. *Nat'l Ass'n of Home Builders* v. *EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox*, 556 U.S. at 514-15 (Rehnquist, J., concurring in part and dissenting in part)).
[92] *New Jersey v. EPA*, 517 F.3d 574, 583 (D.C. Cir. 2008).

B. Eliminating the ERVO Makes Policy Sense and Serves the Goals of the Program

Eliminating the ERVO is not only consistent with the statute, it is good public policy because it better serves the purposes of the RFS—domestic job creation, energy independence and security, and increased domestic production of renewable fuels—than the program's current punitive treatment of exports. The proposed change will also remove a distortion that makes America less competitive in global markets without undermining the greenhouse gas-reduction benefits of the RFS. Such a change has already been suggested by the Bipartisan Policy Center in a 2014 report, which suggested that "eliminat[ing] the exporters' RVO" could allow "the export of biofuels [to] meaningfully contribute to satisfying the RFS mandates."[93]

1. Allowing RINs for exported renewable fuel corrects the distorted position of exports in comparison to domestically-consumed fuels and in global markets

The ERVO creates a disparity between volumes of domestic renewable fuel that remain in the United States and those that do not and it gives preferential treatment to imports. Because RINs associated with exported renewable fuel must be retired against a fictional RVO, this fuel is disadvantaged in comparison with domestically-produced renewable fuel that remains in the United States. This distinction is not rational when *all* domestically-produced renewable fuel serves the purposes of the RFS statute and benefits domestic producers. Treating domestically consumed ethanol and exported ethanol equally will drive up ethanol production, increase demand for corn, generate additional value for ethanol producers, create jobs and support American energy dominance—a goal of the current administration.[94]

Similarly, EPA's current regulations have a punitive effect on exports. Imported renewable fuel does not serve the purposes of the program, but foreign-produced volumes imported into the United States receive preferential treatment in the form of a RIN that can be separated upon blending and either used for annual compliance purposes or sold. Meanwhile, and at the expense of greater energy independence and security, biofuels produced in the U.S. that are ultimately used in place of petroleum-based transportation fuel abroad do not generate a RIN. Eliminating the ERVO so that these volumes generate RINs that can be used for RFS compliance would remove this penalty on exports. Such a regulatory change would improve the competitive price position of U.S.-produced ethanol in global markets[95] and drive additional demand for U.S. corn. The value of the RIN would assist exporters in overcoming protective tariffs of importing countries, making increased mandates in other countries more economical.[96]

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[93] Bipartisan Policy Center, *Options for Reforming the Renewable Fuel Standard* 30 (Dec. 2014), Attachment N.

[94] President Trump Vows to Usher in Golden Era of American Energy Dominance, https://www.whitehouse.gov/articles/president-trump-vows-usher-golden-era-american-energy-dominance/ (June 30, 2017).

[95] Charles River Associates, *Unobligated RINs for Renewable Fuel Exports: Impact on Ethanol Volumes* (Oct. 16, 2017), Attachment O.

[96] Charles River Associates, *Balancing the Treatment of Ethanol Exports* 2, Attachment M.

By increasing demand for American ethanol, export RINs will support the price of ethanol and allow plants to run at higher rates. This will help maintain America's position as the best ethanol manufacturer in the world. Most importantly, smaller producers and co-ops will, for the first time, be able to capture the economic upside of RINs. Historically, separating and selling a RIN by biofuel producers generally required direct control of gasoline blending infrastructure. Going forward, ethanol producers who export their products can capture RIN values for themselves.

2. *Eliminating the ERVO supports the goals of the RFS program*

Allowing RINs for exported renewable fuel would better support the statutory goals of the RFS than the current regulatory regime. Those goals are chiefly (1) job creation;[97] (2) "greater energy independence and security"; and (3) "increase[d] . . . production of clean renewable fuels."[98]

The U.S. exported nearly 1.5 billion gallons of renewable fuel in 2017, setting a new record for ethanol exports.[99] This represents *actual* domestic production but this fuel does not generate RINs. EPA acknowledges that

> the rate of growth in the use of ethanol in the U.S. has decreased in recent years as a result of a number of factors, including that the gasoline market has to a large degree become saturated with gasoline that contains 10 volume percent ethanol (E10), favorable blending economics diminish for gasoline-ethanol blends beyond E10, gasoline demand has leveled off, and efforts to expand the use of higher ethanol blends such as E15 and E85 have not been sufficient to maintain past growth rates in total ethanol use.[100]

This means that continued growth in domestic ethanol production depends in large part on appropriately incentivizing exports of ethanol.[101] Currently, EPA discourages exports by creating a fictional RVO against export RINs that must be retired. Eliminating the ERVO would make exporting more attractive to domestic producers by giving them access to additional markets for their products without the burden of retiring the RIN just because they export. Ensuring that RINs can be generated for compliance by *all* renewable fuel produced in the U.S. would provide

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[97] Energy and Policy Act of 2005, Pub. L. 109-58, 119 Stat. at 659.

[98] *See ACE*, 864 F.3d at 697 (quoting Preamble to Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. at 1492.)

[99] EIA, Today In Energy, *U.S. exported a record amount of fuel ethanol in 2017* (Apr. 27, 2018), https://www.eia.gov/todayinenergy/detail.php?id=35972.

[100] David Korotney, EPA, Market impacts of biofuels in 2019 (June 26, 2018) (EPA-HQ-OAR-2018-0167-0025).

[101] EVA's analysis concluded that "the 'benefit' of the RFS program going forward is effectively limited to pushing the ethanol blend percentage beyond 10% in an attempt to incentivize demand for that fuel....If ethanol can be sold to blenders at a lower price than wholesale gasoline, there is no reason blending would *not* occur up to the 10% blend wall." Consequently, allowing RINs for exports supports additional markets for domestic ethanol produced in excess of 10% of the U.S. motor gasoline pool. *See* EVA Comments 4, 5.

opportunities for expanded domestic production, estimated to be as much as an additional 1.2 billion gallons per year (greater than baseline export levels).[102]

In addition, exporting renewable fuels positively impacts the U.S. economy and protects jobs in the biofuels industry, which helps to satisfy the RFS program's goal of job creation. The increased demand for domestic production that would result from eliminating the ERVO would add 26,000 jobs annually, which will contribute to regional and national economic growth.[103] As many as 1,200 additional temporary jobs could be created over the next three years as a result of specific investments in capacity expansion.[104] This will undoubtedly benefit American corn farmers and rural farming communities in addition to renewable fuel producers.

The proposed change would also enhance our energy and economic security by reinforcing our growing role as an energy superpower. Given that one of the goals of the RFS is to enhance the United States' energy security, it is difficult to imagine that Congress intended the program to replace import of petroleum with imports of renewable fuel, reinforcing the nation's dependence on foreign fuel. Allowing RINs associated with exported renewable fuel to be used for compliance with the RVO would restore the proper balance between renewable fuel imports and exports in the market and support the RFS program's purpose of increased energy independence and security. This change is entirely consistent with President Trump's recommitment to national energy security and special emphasis on U.S. energy exports.[105]

C. Eliminating the ERVO Would Ensure Greater Liquidity in the RIN Market

A significant consideration in setting annual RVOs is ensuring a "liquid and well-functioning RIN market upon which success of the entire program depends."[106] In the proposal, EPA explains the gravity of its concern that the RIN bank remain healthy:

> An adequate RIN bank serves to make the RIN market liquid. Just as the economy as a whole functions best when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were

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[102] *See* Charles River Associates, *Unobligated RINs for Renewable Fuel Exports* 2. That number represents preventing a loss of 600 million gallons a year based on current policy, and an additional 600 million gallons of production capacity expansion.

[103] Charles River Associates, *Balancing the Treatment of Ethanol Exports* 3, 10, Attachment M. While assigning unobligated RINs to ethanol exports will contribute to the economy, it does not follow that higher RIN prices increase total economic activity. In fact, the opposite is likely true given the volume of ethanol exports compared to domestic ethanol consumption. RIN costs are mostly borne by US businesses and consumers. Therefore, the proposed regulatory change adds the most value when RINs for ethanol exports do not include expanded RFS obligations. *Id.* at 3.

[104] *Id.* at 11.

[105] President Trump Vows to Usher in Golden Era of American Energy Dominance, https://www.whitehouse.gov/articles/president-trump-vows-usher-golden-era-american-energy-dominance/ (June 30, 2017).

[106] 83 Fed. Reg. at 32,029.

> there to be no RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could lead to the need for a new waiver of the standards, undermining the market certainty so critical to the RFS program.[107]

Revising the regulatory treatment of exported renewables would help to resolve the RIN liquidity concern in both the short- and long-term. As ethanol exports continue to increase, the RINs from such exports would become part of the RINs market, increasing liquidity and ameliorating the potential for RINs price spikes that occur when renewable blending capacity is constricted.

Economic studies have demonstrated that a significant share of the burden of higher RIN prices fall on merchant and other non-integrated refiners.[108] This is due to blenders capturing margins from RINs. Relief from this burden is possible through providing unobligated RINs for ethanol exports,[109] as the change would make an estimated 1.2 billion RINs available in the market in every compliance year, and it would incentivize domestic renewable production to meet growing demand abroad.

D. Eliminating the ERVO Would Not Undermine Demand at Home for Renewable Fuels or for Corn As A Feedstock

If the export RINs policy were enacted, domestic consumption of ethanol and demand for corn as a feedstock would not be harmed as ethanol volumes increased.

The addition of export RINs to the market are likely to decrease the price of RINs. However, this will not have a negative impact on the domestic consumption of renewables. The following chart (based on RVO and ethanol volumes from EIA and RIN pricing from Argus) shows that high RIN prices do not correlate with increased ethanol blending.

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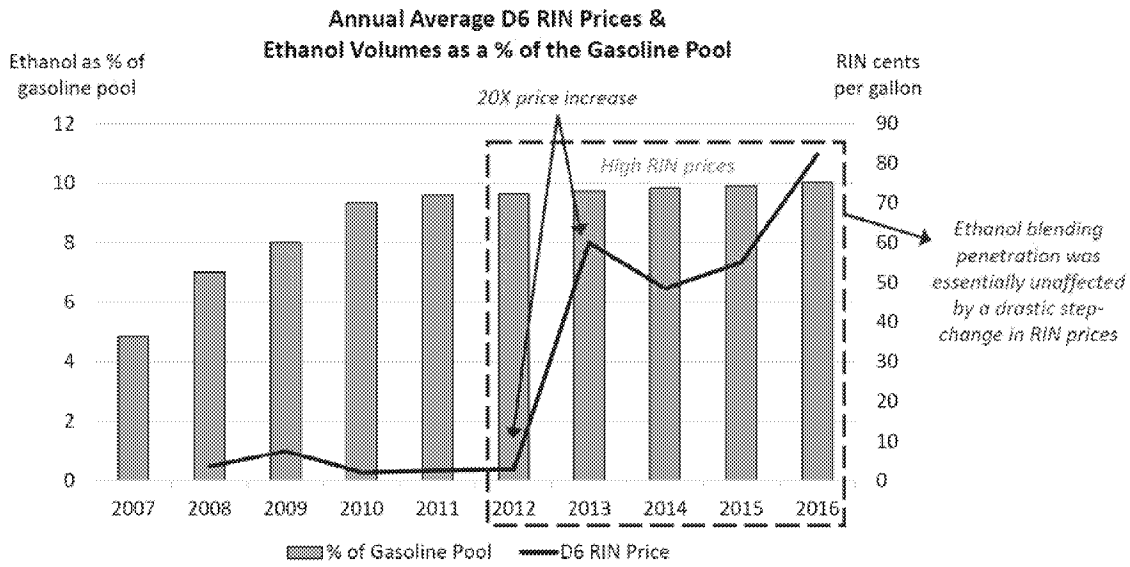
[107] *Id.*
[108] Charles River Associates, *RINs Market Frictions and the RFS Point of Obligation* (2017), Attachment P.
[109] Charles River Associates, *Balancing the Treatment of Ethanol Exports* 3, Attachment M.



Between 2012 and 2013, RIN prices increased by 20 times. Yet, during the same time, the volume of ethanol in the gasoline pool was nearly unchanged.[110] In fact, EIA recently confirmed that lower RIN prices (such as would result from the increasing RINs pool if this proposal were enacted) do not impact domestic ethanol consumption.

This regulatory change would not cannibalize domestic consumption because ethanol is the most economic option for octane enhancement (a dynamic that would be expected to persist if the ERVO were eliminated).[111] Overall, continued domestic use of ethanol for octane and increased exports would result in a net increase in ethanol demand.[112]

E. Eliminating the ERVO is Consistent with International Trade Agreements

Critics of the proposal to allow RINs assigned to exported volumes to be separated and used for compliance argue that the proposal may present problems with the United States' trading partners. Arguments that the change could lead to dumping in foreign markets, create a subsidy that is prohibited by international trade agreements (including those under the auspices of the World Trade Organization ("WTO")), or result in countervailing duties are speculative at best for several reasons.

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[110] Critics of the proposal to allow RINs for exported volumes argue that it will not cure the blendwall. This is a strawman. The proposed change to the treatment of renewable fuel exports is not intended to cure the blendwall. Rather, it is intended to add liquidity to the RINs market by allowing all biofuel produced in the U.S. to count toward compliance, resulting in reasonable RINs prices and RFS compliance costs that do not subject merchant and, small retailers, and others among the fuel value chain to harm.

[111] Charles River Associates, *Unobligated RINs for Renewable Fuel Exports* 4, Attachment O.

[112] *Id.* at 3.

First, WTO rules typically do not apply to environmental conservation measures. Article XX of General Agreement on Tariffs and Trade ("GATT") provides

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures … relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.[113]

This exception has been used to except the RFS program in general from WTO restrictions. The proposed regulatory change would be adopted in order to allow that overall program to operate more efficiently and effectively—very likely making it exempt from WTO concerns. In addition, demonstrating a WTO violation would require evidence of harm to foreign biofuels producers which would be difficult. There is no evidence that treating exported ethanol the same as domestically consumed ethanol (including imports) would result in the loss of existing ethanol production capacity in countries that would purchase U.S. ethanol.

Moreover, the current treatment of exported volumes under the RFS may be considered to be a violation of international trade agreements. The proposal to eliminate the ERVO would rectify these concerns. These issues are discussed in brief below, but Valero incorporates into its comments analysis conducted by Sidley Austin LLP.[114]

1. Modifying the export treatment within the RFS would not constitute a violation of GATT 1994

Modifying the treatment of exported renewable fuels would not violate the WTO's General Agreement on Tariffs and Trade 1994 ("GATT 1994").[115] In fact, in modifying the RFS to allow exported renewable fuel volumes to enjoy the same RIN benefit as volumes consumed at home, EPA will be viewed as addressing compliance flaws posed by the current ERVO and will bring the RFS program into compliance with international trade laws.

Article XI:1 of GATT 1994 bars "prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences [*stet*] or other measures" that are "instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party." As Sidley Austin explained,

> Today's RFS discriminates against U.S. exports of renewable fuels by not allowing those volumes to receive the same benefits as volumes consumed (blended)

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[113] *See* GATT Art. XX(g) (exempting

[114] *See* Letter from Andrew W. Shoyer, Sidley Austin, to EPA Admin. Scott Pruitt (Oct. 19, 2017) (EPA-HQ-OAR-2017-0091-4716), Attachment Q.

[115] *Id.* at 1.

> domestically....Currently, the EPA requires that a person exporting renewable fuel from the United States surrender RINs. On the other hand, if the renewable fuel is sold in the domestic market, the sale does not attract an obligation to surrender RINs. In the domestic market, the obligation to surrender a RIN is at the point that it is blended with hydrocarbon-based fuels. Thus, the existing requirements create an artificial disincentive for exporting renewable fuels, and creates an incentive for selling renewable fuel in the domestic market. This is indeed a distortion of the market through government intervention, and...appears to amount to a violation of Article XI:1 of GATT 1994.[116]

For purposes of compliance with international trade agreements, the proposed modification would remove an artificially created disincentive against exportation rather than creating an incentive for exportation.[117] By eliminating the ERVO, EPA would allow exported renewable fuel volumes to enjoy the same RIN benefit as volumes consumed at home, which would be viewed as rectifying these concerns.[118]

2. Allowing export RINs to be used for compliance should not result in "dumping"

Allowing export RINs to be used for RFS compliance purposes should not result in dumping, which is prohibited by Article VI of GATT 1994. "Dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products is to be condemned if it causes or threatens material injury to an established industry."[119]

There is no reasonable argument that allowing the RINs to attach to exports would allow for exports to occur at a price that is artificially lower than the "normal price" for domestic sale of ethanol. The proposed change would not provide any financial benefits to exports of ethanol above and beyond domestic consumption (for which RINs already attach). In addition, the scope of the RFS program as a whole means that the price implications of the proposed change would be negligible. And, to the extent that the international ethanol market is influenced by U.S. policy, that influence is dominated by the overall RFS program, the vast majority of which is unaffected by this proposed change.

As discussed above, the change would support the functioning of the RFS program, which is exempt as an environmental conservation measure, and there is no evidence that the change would harm foreign producers of renewable fuel.

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[116] *Id.* at 1, 3.
[117] *Id.* at 3.
[118] *Id.* at 1, 3. Although GATT 1994's general prohibition on restricting trade "is generally viewed as a prohibition to disadvantage imports, the WTO has applied this prohibition to government measures that restrict exports as well." *Id.* at 4.
[119] GATT Art. VI:1.

3. The proposed change does not create a prohibited subsidy or result in countervailing duties

The WTO's Subsidies and Countervailing Measures Agreement ("SCM Agreement") prohibits subsidies contingent on exports and subsidies that cause adverse effects to the interests of other WTO members.[120] Annex I of the SCM Agreement lists a variety of prohibited subsidies, and the proposed change is not similar to any of the listed subsidies. The proposed change would result in exported ethanol being treated the same as domestically consumed ethanol. It would rectify an existing obstacle to exports, and would not create any scheme to privilege or promote exports above and beyond domestic use. Again, the change would be covered by the exception for environmental conservation measures, and there is no evidence that treating exported ethanol the same as domestically consumed exports would result in the loss of existing ethanol production capacity in countries that would purchase U.S. ethanol. And, it is likely the proposed change would be considered part of the overall program and therefore subject to the general exception for environmental conservation measures in GATT Article XX.

VII. EPA must consider the point of obligation each time it establishes the annual percentage standards

Although EPA may attempt to declare (as it has in the last two annual rulemakings) issues related to who is "appropriately" charged with ensuring that the annual volumes of renewable fuel required by the statute are met are beyond the scope of rulemaking, EPA does not have the option to exclude such comments aimed at informing the agency of its failure to satisfy a required element of this rulemaking. Valero's comments on the point of obligation are not outside the scope of this rulemaking and must be given full consideration by EPA despite the Agency's insistence that it is not "reopening" this issue. The D.C. Circuit in *ACE*[121] did not address this issue because the court had already decided to remand the 2014-2016 RVO rule to EPA. The fact that the court left EPA with only the choice of venue for its consideration of the point of obligation—on remand or in response to a rulemaking petition[122]—indicates that the court does not consider the point of obligation outside the scope of the RVO.

As presented in the various administrative petitions submitted to the agency and in briefs to the D.C. Circuit, the statute requires that EPA (1) regulate refiners, importers and blenders "as appropriate" to ensure transportation fuels contain renewable fuels and (2) consider the appropriateness of the entities regulated under the RFS every time it sets the RVO. The primary statutory goals of the RFS are "greater energy independence and security and increasing production of clean renewable fuels."[123] To meet these goals, the statute assigns EPA certain duties. First, it requires EPA to promulgate regulations that regulate the appropriate parties to

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[120] *SCM Agreement*, Article 3.1, *available at* https://www.wto.org/english/docs_e/legal_e/24-scm.pdf ("the following subsidies,...shall be prohibited: (a) subsidies contingent...upon export performance; (b) subsidies contingent...upon the use of domestic over imported goods").
[121] 864 F.3d at 737.
[122] *Id.* at 85.
[123] Energy Independence and Security Act of 2007 ("EISA"), Pub. L. No. 110-140, tit. X, § 1001-1002, 121 Stat. 1492 (2007).

ensure that transportation fuel introduced into commerce contains renewable fuel.[124] Second, it assigns EPA an annual, mandatory duty to evaluate whether the appropriate parties are regulated:

- Not later than November 30 of each calendar year, EPA "shall determine and publish…the renewable fuel obligation that ensures the requirements of paragraph (2) are met."[125]

- The renewable fuel obligation shall "be applicable to refineries, blenders, and importers, *as appropriate.*"[126]

It is clear that this is not a one-time requirement, but rather, an annual obligation because EPA cannot fulfill its duty to ensure that the renewable volumes prescribed by the statute for a given year are met without considering whether it has regulated the appropriate parties at that point in time.[127] It is not sufficient to regulate the parties that were appropriate at one point in time or continue with the parties regulated at one time when a change would improve the performance of the program.

EPA acknowledged the need to reevaluate the appropriateness of the regulation related to "appropriate" parties when the agency committed to reevaluate the point of obligation as circumstances change.[128] It is equally clear that EPA must fulfill its annual duty to consider the point of obligation within sufficient time to publish a final rule every November.[129] EPA has not fulfilled its duty with regard to the annual percentage standards for 2019 in this proposal.

Considering the point of obligation each time EPA sets the annual percentage standards serves the statute's goals of "increasing production of clean renewable fuels" and "greater energy independence and security." EPA cannot ignore the positive effect that changing the point of obligation would have on consumption of all renewable fuels. Nor can EPA ignore how the current point of obligation promotes fuel exports and supports biofuel imports. Neither can EPA continue to rely on a regulation that amounts to restructuring a segment of the U.S. economy on the basis of administrative convenience or because some economic sectors are profiting from the regulatory structure in a way that does not serve the statutory purposes. When EPA "lay[s] claim to extravagant statutory power over the national economy while at the same time strenuously

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[124] 42 U.S.C. § 7545(o)(2)(A)(iii).
[125] *Id.* § 7545(o)(3)(B)(i).
[126] *Id.* § 7545(o)(3)(B)(ii)(I).
[127] In disclaiming this duty, EPA has in other contexts attempted to rely on *Valero Energy Corp. v. EPA,* No. 7:17-CV-00004, 2017 WL 8780888 (N.D. Tex. Nov. 28, 2017), but the district court in that case did not address EPA's annual rulemakings or whether EPA must consider comments regarding the point of obligation in that context. That court's analysis was also flawed. It conflated the general requirement in § 7545(o)(2)(A)(iii) to promulgate "compliance provisions" with the specific requirements applicable to annual determinations in § 7545(o)(3)(B). It failed to explain what purpose the annual requirement would serve if it were met merely by the compliance provision. And it treated the first "required element" of EPA's annual determination differently from the other two. 2017 WL 8780888, at *4-*6.
[128] 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010) ("We will continue to evaluate the functionality of the RIN market. Should we determine that the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers, we will consider revisiting this provision in future regulatory efforts.").
[129] 42 U.S.C. § 7545(o)(3)(B)(i); 40 C.F.R. § 80.1405(b).

asserting that the authority claimed would render the statute unrecognizable to the Congress that designed it," such an announcement should be greeted with skepticism.[130]

Moreover, EPA itself has recognized a "guiding principle" of the RFS is that "the program should preserve existing business practices for the production, distribution, and use of both conventional and renewable fuels."[131] In failing to consider the point of obligation, EPA has flouted this principle, preferring instead to try to force merchant refiners to change their business practices in order to add blending facilities and to risk further consolidation in the fuel industry rather than fix the underlying flaws in the structure of the RFS.

In the context of EPA's proposed denial of their administrative petitions regarding the definition of "obligated parties" and in the context of other annual rulemakings, Valero and many other parties have explained the numerous, significant benefits that would result from EPA defining "obligated party" consistent with the federal excise tax definition of "position holder." These benefits include (but are not limited to) reducing (1) administrative burden on EPA; (2) harm to obligated parties that must purchase RINs on the market to satisfy their annual RVOs; (3) market frictions that undermine the program's ability to increase renewable fuel penetration; (4) volatility in the RIN market; (5) unfair competition experienced by small retailers; and (6) opportunities for speculation and fraud in the RINs market.[132] These benefits would still be achieved today if EPA were to properly align the point of obligation with position holders.

IX. RIN Market

While we commend the EPA for opening the dialogue on market reforms, Valero nevertheless believes that RFS implementation reforms of the sort discussed elsewhere in these comments (including counting RINs generated by exports and shifting the point of obligation) are necessary prerequisites to resolving the structural causes of manipulation and speculation.[133] Valero is also very concerned that EPA has already delayed taking action to reduce the harms arising from the RIN market problems. Valero urges EPA to advance its multi-year discussion of RIN market concerns by issuing concrete rule proposals designed to protect the integrity and orderly, efficient functioning of the market. EPA has received comments, information and

[130] *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014) (internal citations omitted).
[131] 71 Fed. Reg. 55,552, 55,557 (Sept. 22, 2006).
[132] *See, e.g.,* Valero Comments on Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation (Feb. 22, 2017) (EPA-HQ-OAR-2016-0544-0274), Attachment R; PBF Energy Comments on Proposed Denial (Feb. 22, 2017) (EPA-HQ-OAR-2016-0544-0373); Small Retailers Coalition Comments on Proposed Denial (Feb. 22, 2017) (EPA-HQ-OAR-2016-0544-0344); Small Refiners Coalition Comments on Proposed Denial (Feb. 22, 2017) (EPA-HQ-OAR-2016-0544-0406); Monroe Energy Comments on Proposed Denial (Feb. 22, 2017) (EPA-HQ-OAR-2016-0544-0368); Valero Comments on Proposed 2017 RVO (July 11, 2016) (EPA-HQ-OAR-2016-0004-1746), Attachment S; Valero Comments on Proposed 2018 RVO, Attachment C.
[133] Some have argued that the RFS credit trading program is not consistent with the statute. However, the appropriate placement of the point of obligation, by obligating blenders as well as refiners and importers, would alleviate the harm caused by alleged statutory violation.

recommendations regarding this issue in prior rulemakings; EPA should consider those comments as well as ones submitting in this docket and not delay in taking action.[134]

The RIN market is susceptible to manipulation and other market abuses, such as hoarding, which contribute to volatility, price spikes, and uncertainty that increase costs and threaten economic stability for RFS program participants. By taking steps to improve transparency, liquidity, and implementing certain basic market protections, the EPA can ensure that the market is not susceptible to excessive speculation or abusive market practices.

A. The Similarity of the RIN Market and Commodity Markets

RIN trading is very similar to trading in commodities and commodity derivative financial instruments like futures. There is a finite deliverable supply of both commodities and RINs, and temporal differences in supply and demand can lead to episodic volatility and price spikes. As with commodity futures contracts, RINs have a specific expiration date. Just as the seller of a commodity futures contract has an obligation to deliver at a future contract expiry date, most RINs are traded on a forward basis with a title transfer date tailored to meet periodic RVO compliance dates. RIN two-year expiration cycles and periodic compliance retirements resemble both literal expiration cycles for agricultural commodities and contractual tenor expiration cycles for commodity futures contracts.

The RIN market is a largely unregulated over-the-counter[135] commodity derivatives market subject to market frictions and opacity in trading, an inelastic demand curve, as well as illiquidity, scarcity, and volatility. As regulators have long observed in similar markets in the commodities space, these factors can create obstacles to efficient price discovery and can create incentives to undermine market integrity by engaging in manipulative behaviors. Due to the practical similarities between RIN markets and commodity derivative and spot markets, a number of the proposed reforms discussed below are modeled after existing regulations designed to protect market participants, promote market integrity, and foster efficient price discovery that have been implemented by federal agencies, such as the Commodity Futures Trading Commission ("CFTC"), which have many decades of experience in regulating markets.[136] Valero addresses below topics

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[134] Valero has submitted comments and recommendations in EPA RFS rulemaking dockets aimed at improving RIN market transparency and reducing market manipulation on previous occasions. Concerns raised by Valero in these submissions remain valid, in that no market reforms have been adopted to address the concerns and the issues persist. In June 2016, Valero indicated that potential RIN speculation and fraud might undermine the RFS program, including with reference to experts who described the failure of the RIN system to function as intended. *See* Valero Petition for Rulemaking: Renewable Fuel Standard Definition of Obligated Party – 40 C.F.R. § 80.1406 at 24 (June 13, 2016), Attachment T. In February 2017, Valero described harms under the current RFS arising from RIN fraud, RIN speculation, and volatility and the impacts on small and independent refiners and small retailers and the harm to the program, renewable producers, and ultimately consumers. *See* Valero Comments on Proposed Denial 9, 15, 26, Attachment R. In August 2017, Valero identified potential market manipulation occurring in the RIN market and other RIN market operational problems, explained why the RIN market is vulnerable to manipulation, and recommended a number of fundamental changes and other measures that EPA should implement to resolve the problems with the RIN market. *See* Valero Comments 2018 Proposed RVO 14-18, Attachment C.

[135] Over-the counter refers to commodities, stocks, etc. that are traded off an exchange.

[136] Valero supports EPA's ongoing dialogue with the CFTC to develop techniques that could be employed to minimize fraud, market abuses or other violations, and to conduct appropriate oversight of the RIN market. *See* "Memorandum of Understanding Between the Environmental Protection Agency and the Commodity Futures Trading Commission

raised by EPA in its comment solicitation to help EPA better understand the illiquidity, instability, price discovery problems, potential manipulation, and lack of transparency in the RIN market.

B. Illiquidity

1. The RIN market is often illiquid

RIN markets are often very illiquid. This is due in part to the finite production of RINs over time, which limits the possibility of a substantial oversupply and creates a high floor for demand. There also is the potential for hoarding behavior by some market participants.

As a result of the mismatch between the RFS point of obligation and RIN production, there are not enough RINs available in the market to satisfy RVOs at any given time. Only RINs available in the market contribute to liquidity; warehoused RINs do not contribute to short- or medium-term supply curves relevant for the next RVO.

2. Illiquidity undermines price discovery and market stability

It is widely accepted in the financial economics literature that liquidity enhances price discovery—*i.e.*, the incorporation of new information into asset pricing. In an illiquid market, bid-ask spreads tend to be wider, raising the transaction costs to an informed trader and creating a friction against the placement and execution of informed orders. Moreover, in illiquid markets, it can be difficult for an informed trader to place and execute large orders without substantially affecting market prices, reducing the potential reward for informed trading. Illiquidity can thus undermine price discovery.

Illiquidity also undermines market stability. Markets with relatively few and/or relatively small providers of liquidity at any given point in time tend to be more subject to extreme price movements in the event of large order placements. Large orders, particularly those of commercial market participants, may contain information about their supply and demand, which can affect prices. Price changes should relate to supply and demand. But if those orders are purely speculative and therefore not reflective of true supply and demand, other traders can misinterpret those orders as informed trades, and price spikes can occur and thereby impact price discovery. Further, economic experience demonstrates that illiquid markets often have characteristically high volatility, which not only undermines price discovery but also creates uncertainty for market participants regarding the true economic value of the asset in question.

3. Recommendations to enhance RIN market liquidity and prevent excessive speculation

Valero recommends that EPA implement reforms to increase market liquidity and discourage excessive warehousing or hoarding of RINs. These reforms could be pursued

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on the Sharing of Information Available to EPA Related to the Functioning of Renewable Fuel and Related Markets" (Mar. 15, 2016), *available at* https://www.epa.gov/sites/production/files/2016-03/documents/epa-cftc-mou-2016-03-16.pdf.

independently or in tandem. These reforms would require additional position and/or transaction data reporting to regulators, discussed in detail below.

First, Valero recommends that EPA implement position limits. Position limits are an important tool used by market regulators, such as the CFTC, to prevent excessive speculation and the potential for manipulation while ensuring sufficient market liquidity for bona fide market participants and protecting the price discovery process.[137] Speculative position limits have been used as a tool to regulate futures markets for over seventy years and Congress has repeatedly expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable and unwarranted price fluctuations that undermine market stability.[138]

EPA requested comment on whether it should change the duration for which RINs could be held and require obligated parties to retire RINs for compliance on a more frequent basis. Valero believes that EPA can discourage hoarding and encourage liquidity by implementing position limits subject to a durational component.

In addition to position limits, Valero recommends that EPA establish carryover limits relative to a RIN holder's compliance obligations and that such proportional limits be tightened to reduce the excess RINs a firm is permitted to carry over and bank for the following compliance period. The limits would include carryover allowances such that market participants with RVO obligations would qualify for exemptions enabling them to carry over a greater number of RINs as a function of the entity's requirements to hedge future RVO obligations. Limits could be structured to discourage hoarding by net RIN-long parties and encourage unobligated net RIN-long parties to make more RINs available to the market, thereby increasing liquidity.[139] The limits also should become more restrictive as RINs approach expiration, analogous to telescoping position limits commonly applied to commodities markets, with RVOs operating as hedge exemptions.

Valero also recommends that EPA create a central RIN repository and auction process for excess carryover RINs. In a tight market with a limited supply of RINs, some net long market participants could be motivated to allow RINs to expire rather than to sell them in order to restrict available market supply and drive up the price of their remaining positions. In order to eliminate such behavior, RINs that would otherwise exceed carryover limits would be transferred to a central RIN repository where they could then be made available for purchase via a public auction.

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[137] For information on the CFTC's position limit framework, see CFTC, Speculative Limits, https://www.cftc.gov/IndustryOversight/MarketSurveillance/SpeculativeLimits/index.htm (last visited Aug. 15, 2018).

[138] *See* 78 Fed. Reg. 75,680, 75,681 (Dec. 12, 2013). *See also* H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935); H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986). The Commodity Exchange Act ("CEA") provides criteria for the CFTC to address with respect to position limits: (i) to diminish, eliminate, or prevent excessive speculation as described under this section; (ii) to deter and prevent market manipulation, squeezes, and corners; (iii) to ensure sufficient market liquidity for bona fide hedgers; and (iv) to ensure that the price discovery function of the underlying market is not disrupted. *See* 7 U.S.C. § 6a(a)(3)(B).

[139] *See* 83 Fed. Reg. 32,024, 32,029 (July 10, 2018).

C. The RIN Market Is Susceptible to Manipulation, Which Undermines Price Discovery and Market Integrity

1. The RIN market is susceptible to manipulation

The RIN market is virtually unregulated. Due to the structure of the RFS, obligated parties—particularly RIN-short parties—are a captive market for RINs. They must purchase a government mandated and publicly known quantity of RINs every year regardless of the price. Thus, RIN-short obligated parties are captive buyers while sellers can dictate trade terms. This dynamic, which results in an inelastic demand curve, combined with a lack of regulation, no restrictions on who can participate in the market, and no limits on the size of positions a participant can accumulate, provides for a market highly susceptible to abuse by participants engaged in manipulative and disruptive trading behavior.

The susceptibility of RIN markets to manipulation can be analyzed through the frameworks used to analyze commodity and commodity derivative markets. The finite supply of RINs, in conjunction with the inelastic demand curve for RINs created by defined RVOs and a single, universally known compliance schedule, creates opportunities for RIN-long parties in RIN markets—akin to the suppliers in a commodity market—to "squeeze" those with a net short position into paying higher prices, especially as RVO deadlines loom.[140] Also analogous to commodity markets, traders with larger positions are proportionately more capable of effectuating squeezes by withholding a greater portion of the total RIN supply from the market and keeping them warehoused. Such withholding and warehousing directly reduces liquidity in RIN markets, and can lead to increased volatility.[141] Unlike most commodity markets, the RFS program does not currently restrict or prohibit large positions, meaning RIN squeezes can be even more effective than commodity market squeezes, with a lower risk of detection and punishment.

Moreover, in addition to an inelastic demand curve that is the result of the RVO for obligated parties, Charles River Associates has found that supply for RINs is "relatively inelastic."[142] This allows net long RIN market participants to withhold and warehouse larger positions with less concern that another party will increase RIN supply and devalue their long position.

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[140] *See* Frank H. Easterbrook, *Monopoly, Manipulation, and the Regulation of Futures Markets* at S106, 59 Journal of Business, Issue 2 (Apr. 1986) ("The party may acquire a large portion of the existing contracts, thus under-cutting the usual assumption that every trader is 'small' in relation to the market. Or the party may simply decline to liquidate his position, so that at the very close of trading a formerly small holding becomes large in relation to the open contracts. The holder of these contracts then demands or tenders delivery (depending on whether he is long or short). Holders of opposite positions, surprised by the sudden demand or tender, unable either to make or take delivery without incurring large costs, and unable to find other parties with whom to close out their positions, must pay a premium to negotiate around the demand.").

[141] *See* Allen et al., *Large Investors, Price Manipulation, and Limits to Arbitrage: An Anatomy of Market Corners* at 647, Review of Finance (2006) ("We show that market corners tend to increase market volatility and have an adverse price impact on other assets.")

[142] *See* Charles River Associates, *RINs Market Frictions and the RFS Point of Obligation* 3 ("[T]he relatively inelastic supply of RINs due to the characteristics of the RFS program and supply conditions past the "blendwall" tends to make manipulation issues more serious."), Attachment P.

2. *The hoarding problem*

The prevalent market abuse existing in the RIN market today is hoarding—the intentional withholding of RIN supplies from obligated parties to create short squeezes and force obligated parties to purchase RINs at higher prices. Hoarding has been a significant concern to Valero and other market participants since the development of the RFS program and remains a real and costly issue today. Hoarding continues to have an increasingly significant impact on Valero's business—Valero attributes a portion of its increasing RIN expenditures, which have more than doubled since 2015 and almost quadrupled since 2014, to artificially high RIN prices supported by hoarding behavior.[143]

Hoarding imposes large costs on all RIN-short parties in the RIN market. A Columbia University study listed high and volatile RIN prices as a failure of the program: "RIN prices under the RFS have been both high and volatile. Since February 2013, the price of the D6 RIN…has fluctuated from less than $0.20 per gallon to more than $1.40 per gallon."[144] One of the listed sources for such price inflation and volatility stated: "Because RINs are bankable, expectations of future changes in the conventional [price] gap induce changes in current RIN prices. Thus, RIN prices are sensitive to rumors and market guesses about shifts in future RFS policy."[145]

Another concern is that financial speculators—parties with no RVOs—can buy RINs and engage in hoarding to reduce liquidity and benefit from illiquidity-induced volatility, selling RINs only at peak price spikes. RIN hoarding has an adverse effect on market liquidity, market stability, price discovery, and, ultimately, market integrity, creating great uncertainty for obligated parties. Hoarding reduces RIN supplies from the marketplace, thereby reducing liquidity. Less liquidity, in turn, increases volatility, which makes the RIN market more susceptible to other types of manipulative conduct and interferes with efficient price discovery.

3. *Recommendations to discourage hoarding*

Valero recommends that EPA establish rolling compliance dates and/or shorten the shelf life of a RIN to prevent short squeezes. By allowing for more flexibility regarding compliance dates and/or shortening the shelf life of a RIN, short squeezes could be made less profitable and liquidity could be more evenly spread throughout the year, particularly if pursued in tandem with position limits and/or a central RIN repository and periodic auctions.

Valero also recommends that EPA continue to work with other federal agencies and other regulators responsible for overseeing established trading markets to adopt clear anti-manipulation requirements that explicitly identify and prohibit hoarding and other abusive market practices occurring in the RIN market (*e.g.*, spoofing, violations of bids or offers, and artificial price floors).[146] The CFTC has a long history of administering rules, such as position limits, and

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[143] *See* Seeking Alpha, *Valero Almost Broke The $1B Threshold On RINs in 2017,* https://seekingalpha.com/article/4155058-valero-almost-broke-1b-threshold-rins-2017 (Mar. 9, 2018).
[144] *See* James Stock, Columbia University, *Reforming the Renewable Fuel Standard* (Feb. 2018), Attachment U.
[145] *Id.*
[146] Spoofing occurs when traders place bids or offers with the intent to cancel their quotes before execution, in order to attract other traders to the market and induce a particular market price; violations of bids or offers occur when

enforcing those rules to prevent market manipulation and attempts to corner or hoard the market. For example:

- The CFTC stated in the final rule released on Position Limits for Futures and Swaps that the "long-standing statutory mandate [to limit trading] is based on Congressional findings that market disruptions can result from excessive speculative trading. In the 1920s and into the 1930s, a series of studies and reports found that large speculative positions in the futures markets for grain, even without manipulative intent, can cause 'disturbances' and 'wild and erratic' price fluctuations. To address such market disturbances, Congress was urged to adopt position limits to restrict speculative trading notwithstanding the absence of manipulation. In 1936, based upon such reports and testimony, Congress provided the Commodity Exchange Authority (the predecessor of the Commission) with the authority to impose Federal speculative position limits."[147]

- The CFTC stated in its prior proposal that "Large concentrated positions in the physical commodity markets can potentially facilitate price distortions given that the capacity of any market to absorb the establishment and liquidation of large positions in an orderly manner is related to the size of such positions relative to the market and the market's structure and is, therefore, not unlimited."[148]

- In its Cost-Benefit Analysis of the proposed post Dodd-Frank Position Limits for Derivatives, the CFTC concluded that in addition to volatility reduction benefits of position limits, "visibility levels and associated reporting requirements of proposed [position limit rules] would enable the Commission to better understand generally the portfolio compositions, including *bona fide* hedging needs, of the largest position holders of referenced contracts. This data would enable the Commission to determine whether to readjust the speculative position limits to continue to ensure the statutory objectives are met. Visibility reports would allow the Commission to have a better sense of the relative distribution of speculative versus non-speculative positions and activity, as well as the nature and effect of the largest speculative traders in referenced contracts."[149]

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traders buy at a price higher than the lowest available offer price and/or sell at a price that is lower than the highest available bid price; and artificial price floors are the result of RIN-long dominant parties sending blanket offers to purchase RINs to all known large sellers below a certain target price. *See* Valero Comments on Proposed 2017 RVO 15, Attachment S; *see also* 7 U.S.C. § 6c(a)(5)(A). The Dodd-Frank Act amended the CEA to prohibit "spoofing," making it "unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)." *See* 7 U.S.C. § 6c(a)(5)(C).

[147] 76 Fed. Reg. 71,626, 76,127 n.10 (Nov. 18, 2011).

[148] 76 Fed. Reg. 4,752, 4,755 (Jan. 26, 2011).

[149] *Id.* at 4,764.

EPA should provide legislative recommendations to Congress if it determines that additional oversight authority is needed to implement appropriate market reforms, such as those currently utilized by the CFTC to protect market integrity.

Valero's recommendations to increase market liquidity noted above, *e.g.*, position limits, carryover limits, and a central RIN repository and auction process for excess carryover RINs, have the added benefit of reducing incentives to manipulate the RIN market. Consequently, Valero repeats its recommendation that EPA implement these requirements to discourage RIN hoarding and increase market liquidity, from the additional perspective of enhancing market integrity.

D. Transparency

1. Transparency in the RIN market

Manipulation and transparency are obviously related, in that a lack of transparency opens the door to fraud and other misconduct. Valero agrees with the statement of one former CFTC Commissioner that "[t]ransparency is the cornerstone of a well functioning regulatory system,"[150] and strongly believes that improving transparency in the RIN market will help EPA identify and eliminate manipulative behavior, which in turn will benefit RFS program participants and protect the program's integrity. Notwithstanding the above, transparency improvements alone will not fix the RIN market; they will only be effective if they are accompanied by reforms implementing position limits, carry-over limits (with exemptions), and enhancing liquidity of the RIN pool.

Unlike the commodities and securities markets, the RIN market is not transparent—prices are not disclosed and there is no obligation to accurately report prices. Because there is no requirement for accurately reporting RIN trading information, information is spread thin and across many brokers contributing to chaotic trading with no natural order to trade flow. There is also no centralized validation of RIN volumes or RIN prices and no trader accountability.

Although RIN market participants are required to enter certain transaction information in the EPA Moderated Transaction System ("EMTS") within prescribed time frames, the current EMTS reporting regime does not inform regulators about net positions and forward contracts in real time, and instead reports prices at the time of deliveries.[151] Since the RIN market is primarily a forward market, regulators cannot engage in effective market surveillance in the ways that other agencies are able to do so.

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[150] *See* "Integrity of the Futures Markets and the Role of Transparency," Remarks by CFTC Commissioner Jill E. Sommers Before the FIA Asia Derivatives Conference Tokyo, Japan (Sep. 19, 2008), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/opasommers-5.

[151] According to an expert report, "the EMTS is inadequate for tracking the price of RINs because it collects price data on either a per-RIN or per-gallon basis. In addition, recording such data is subject to human error, so it is nearly impossible to identify and assess the cause of RIN volatility where the recorder incorrectly enters the data. Furthermore, several of the data fields in EMTS are voluntary; therefore, this information is often incomplete or in many cases misleading because there is no regulatory requirement to collect or analyze that data." Ramon Benavides, Global Renewable Strategies and Consulting, LLC, *The US Renewable Identification Number: RINs Trading Market* 5 (2017), Attachment V.

Moreover, regulators are unable to monitor the RIN markets in real time to ensure that the markets function in an efficient manner, *i.e.*, one in which there are a sufficient number of reasonably available RINs for obligated parties seeking to purchase them.[152] Thus, if a market participant intentionally withholds supplies to squeeze RIN short parties, regulators would not have the means to anticipate the temporary shortage or assess whether a squeeze is occurring.

2. Transparency reforms

EPA requested comment on a number of transparency reforms for the RIN market, including whether EPA should consider increasing the frequency at which currently available information is posted; post regular updates to the number of RINs it anticipates will be required for compliance; post average RIN prices based on the price information submitted to EPA through EMTS; and require public disclosure if a party holds a certain percentage of the RIN market. EPA also sought comment on whether it would be helpful to have access to aggregated information related to the number of RINs held by different categories of entities, such as renewable fuel producers, obligated parties, and parties that neither produce renewable fuel nor have an RVO under the RFS program.

In considering how to improve RIN market transparency, it remains important for EPA to obtain basic transaction information through EMTS that will enable it to conduct effective surveillance across the RIN market and detect, analyze, and sanction manipulative behavior. According to recent press reports, RIN data was not adequate for the CFTC to examine the market for the presence of manipulation. The proposals below include components of the CFTC's transparency framework to improve the adequacy of data collected by EPA.[153]

EPA should consider reforming EMTS reporting requirements to capture more transaction data (including forward transactions) and net position data prerequisite to effective market surveillance. For example, EPA can require parties to report RIN transactions to EMTS within a short period of time after market participants agree to the transaction (*e.g.*, same day, t+1, or t+2), rather than upon delivery. Public posting of anonymized aggregates of reported data also should be considered to increase market transparency to the public and reduce information asymmetry across market participants.

One of the more important tools used by the CFTC to surveil markets is its large trader reporting program, pursuant to which it collects daily market data and position information from exchanges, clearing members, futures commission merchants, foreign brokers, and traders.[154] The large trader reporting program works as follows:

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[152] 83 Fed. Reg. at 32,029.

[153] Chris Clayton, *EPA RIN Market Data Poor* (Feb. 15, 2018), https://www.dtnpf.com/agriculture/web/ag/news/business-inputs/article/2018/02/15/cftc-draw-conclusion-rin-market-epa-2.

[154] *See* CFTC, Large Trader Reporting Program, https://www.cftc.gov/IndustryOversight/MarketSurveillance/LargeTraderReportingProgram/index.htm (last visited Aug. 15, 2018). To ensure privacy of the information they provide, the CFTC assigns confidential reporting numbers to reporting firms and traders.

- "Under the Commission's LTRS, clearing members, FCMs, and foreign brokers (collectively called reporting firms) file daily reports with the Commission under Part 17 of the CFTC's regulations. The reports show futures and option positions of traders with positions at or above specific reporting levels as set by the Commission....If, at the daily market close, a reporting firm has a trader with a position at or above the Commission's reporting level in any single futures or option expiration month, the firm reports that trader's entire position in all futures and options expiration months in that commodity, regardless of size."[155]

- The CFTC collects data directly from exchanges, but such data have limitations which are addressed by the Large Trader Reporting System: "Each day, exchanges report each clearing member's open long and short positions, purchases and sales, exchanges of futures for cash, and futures delivery notices for the previous trading day. This data is reported separately by proprietary and customer accounts by futures month, and for options by puts and calls, expiration date and strike price....Clearing member data, however, do not directly identify the beneficial owners of positions. The aggregate customer position reported for a clearing member could represent either a single trader or numerous traders. Also, the data would not reveal a circumstance where a single trader controls substantial portions of the customer positions with more than one clearing member, and therefore, could control a substantial portion of the market. To address such a limitation on clearing member data, the Commission's market surveillance program uses large trader data."[156]

- "The aggregate of all large trader positions reported to the Commission usually represents 70 to 90 percent of the total open interest in any given market. The reporting level for large trader reports can range from 25 contracts to over 1,000 contracts. The level for any given market is based on the total open positions in that market, the size of positions held by traders in the market, and the size of deliverable supplies for physical delivery markets."[157]

- "The Commission has the discretion to raise or lower the reporting levels in specific markets to strike a balance between collecting sufficient information to oversee the markets and minimizing the reporting burden on traders that are reportable."[158]

These reports enable the CFTC to view activities of large traders to determine when their positions pose a threat by exceeding position limits or accountability levels. EPA should consider

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[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] *Id.*

implementing similar reporting by large and active RIN traders, to provide EPA with information needed to prevent or at least detect manipulation or short squeezes.

EPA also should consider public reporting of anonymized net position data to help market participants and the public understand market dynamics similar to the CFTC's Commitments of Trader Reports.[159] Such public data could come in two forms. This could involve reporting periodic aggregate positions for the general categories of renewable fuel producers, obligated parties, and parties that neither produce renewable fuel nor have an RVO under the RFS program, but should also include positions of large traders, speculative positions, and those with high volumes of transactions, again with an eye toward allowing regulators the information needed to prevent manipulation or short squeezes. Since some large traders are reporting as obligated parties because they import small amounts of fuel, in developing rules to report by categories, EPA should carefully design the rules to appropriately classify traders who are genuinely obligated parties separate from those that are chosen to be obligated merely to be able to trade and report as obligated parties.

EPA also should consider more frequent public posting of data that is already made available on EMTS (*e.g.*, in real-time to the extent possible) and public posting of periodic stock and flow data relating to aggregate RIN obligations to ensure that market participants have appropriate data to forecast RIN demand and information regarding when RINs are retired. Each market participant can estimate its own RIN obligations, but may not have a strong sense for market-wide RIN obligation changes that should define the demand curve. Similarly, regulators may not be aware of short-term RIN obligation developments. Because of this, EPA should consider requiring market participants to report their estimated RIN obligations to the EPA periodically, such as monthly or quarterly.

[159] *See* CFTC, Commitment of Traders, https://www.cftc.gov/MarketReports/CommitmentsofTraders/index.htm (last visited Aug. 15, 2018). These reports provide a breakdown of each Tuesday's open interest for futures and options on futures markets in which 20 or more traders hold positions equal to or above the reporting levels established by the CFTC.

Valero Comments on EPA's Proposed Rule for Renewable Fuel Standard Program: Standards for 2019 and Biomass-based Diesel Volume for 2020
Docket ID No. EPA-HQ-OAR-2018-0167

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 W. Fraser,
Senior Vice President & Counsel,
Public Policy, Strategy & External Communications
Valero Energy Corporation

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 9/26/2017 9:08:27 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]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]
Subject: Severe economic harm comments
Attachments: 1754 National Chicken Council.pdf; 2545 SIGMA NACS.pdf; 2547 Holly Frontier.pdf; 3106 CVR Energy.pdf; 3429 PBF Energy.pdf; 3645 AFPM API.PDF; 3649 Monroe Energy.pdf; 3677 Valero.pdf; Growth Energy comments on 2018 NPRM.pdf

Hi Mandy—

I'm attaching several comment files, per your request, that make mention of EPA's authority under the severe economic harm prong of our general waiver authority.

These come from API/AFPM and a handful of merchant refiners. I'm also including two comments that support use of severe economic harm and that come from non-refiners: the National Chicken Council and SIGMA/NACS (fuel retailers). Finally, in case you want to see the other side of the arguments, I've included Growth Energy's comments.

Please let me know if you need more. Thanks, Ben

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August 31, 2017

VIA REGULATIONS.GOV

EPA Docket Center
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Attn: Docket ID No. EPA-HQ-OAR-2017-0091

Re: Comments on Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; EPA-HQ-OAR-2017-0091

Coffeyville Resources Refining & Marketing, LLC ("CRRM") and Wynnewood Refining Company, LLC ("WRC") submit these comments in response to the Environmental Protection Agency's ("EPA" or "the Agency") proposed rule entitled "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019" ("Proposed Rule").[1]

CRRM owns and operates a refinery in Coffeyville, Kansas and WRC owns and operates a refinery in Wynnewood, Oklahoma. CRRM and WRC are merchant refiners that do not control the downstream blending and distribution of the majority of the regulated gasoline and diesel fuel they produce. Both companies are obligated parties under EPA's Renewable Fuel Standard ("RFS") and are directly impacted by the Proposed Rule. An affiliated company, CVR Partners, LP, produces fertilizer at plants in Kansas and Illinois and the demand for its product is driven in part by biofuel consumption. These companies are uniquely situated among commenters on the Proposed Rule because they are affected by the RFS program both as an obligated party and as an entity that benefits from increased demand for renewable fuel.

As described in greater detail below, there continue to be very significant problems with the proper functioning of the RFS program that have persisted since mid-2012 when EPA first signaled that it would set the RFS volume mandates above the E10 blendwall and the cost of RINs increased by nearly 5000%. The extraordinary increase in the price of RINs has caused gross distortion in the transportation fuels market, creating extreme winners and extreme losers, and facilitating the transfer of billions of dollars of windfall profits to the winners without incentivizing increased renewable fuel use. Cellulosic biofuel production has either been nonexistent or de minimis since the volumetric requirements first took effect, and from 2014 to 2017, EPA cumulatively waived 14.30 billion gallons of total renewable fuel and 12.06 billion gallons of advanced biofuel. This is plain evidence of severe statutory flaws that need to be

[1] Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Proposed Rule, 82 Fed. Reg. 34,206 (July 21, 2017).

addressed in order to meet the goals of the RFS program and prevent further harm to critical U.S. energy infrastructure and American jobs.

With these important goals in mind, CRRM and WRC recommend that EPA:

- Determine whether "appropriate parties" have been obligated to "ensure" that the statutory volume targets are met.
- Exercise its waiver authorities to further reduce the total renewable fuel and advanced biofuel volumes.
- Exclude foreign renewable fuel from the RFS program.
- Reconfigure the RIN market to comply with the Clean Air Act by closing the market and only allowing obligated parties to generate, buy, and sell RINs, and only allowing RINs to be generated for the increment of over compliance with the standards.
- Until the RIN market is reconfigured, EPA should take immediate steps to increase transparency in the RIN market by divulging the market positions of all non-obligated participants in the market to reduce the risk of manipulation, speculation and fraud, and to determine if the RIN market beneficiaries are using their windfall RIN revenues to advance the RFS program's goal of increasing renewable fuel use.

I. EPA Should Lower the Proposed 2018 Renewable Fuel and 2019 Biomass-Based Diesel Volumes And Obligate "Appropriate Parties" to "Ensure" That the Volumes are Met

A. Each Year, EPA Must Consider Whether Appropriate Parties are Obligated to Ensure that the Statutory Volumes are Met

As a starting point in EPA's analysis in setting the annual volume mandates it must, by law, consider whether appropriate parties are obligated to ensure that the statutory volumes are met.[2] While EPA stated that it was not reopening for public comment the current definition of "obligated party,"[3] EPA may not preclude or fail to consider comments that are directly relevant to issues EPA raised in the proposal. An agency is required to respond to comments that are "relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule [because they] cast doubt on the reasonableness of a position taken by the agency."[4] EPA's failure to satisfy a required element of this rulemaking, by not considering

[2] 42 U.S.C. § 7545(o)(2)(A)(iii).
[3] 82 Fed. Reg. at 34,211.
[4] *Home Box Office, Inc. v. FCC,* 567 F.2d 9, 35 n.58 (D.C. Cir. 1977); *cert. denied,* 434 U.S. 829 (1977).

whether appropriate parties are obligated to ensure that the statutory volumes are met, "cast[s] doubt on the reasonableness" of its proposal and renders it unlawful. Comments on the definition of obligated party are directly relevant to setting the volume mandates because the definition of obligated party is a market constraint on more renewable fuel use, legally compelling a change to the definition.

As presented in the petitions and in briefs to the D.C. Circuit in *Americans for Clean Energy v. EPA*, No. 16-1005 (July 28, 2017), the primary goals of the RFS are "greater energy independence and security and increasing the use of clean renewable fuels."[5] To meet these goals, the statute assigns EPA certain mandatory duties. First, it requires EPA to promulgate regulations that regulate "appropriate parties" to ensure that transportation fuel introduced into commerce in the United States contains the applicable volumes of renewable fuel.[6] Second, it assigns EPA a mandatory duty, described as a "required element" of the annual rulemaking, to evaluate whether the appropriate parties are regulated to meet those volumes:

> Not later than November 30 of each calendar year… [EPA] shall determine and Publish… the renewable fuel obligation that ensures the requirements of paragraph (2) are met…The renewable fuel obligation shall be applicable to refineries, blenders, and importers, *as appropriate.*[7]

It is not sufficient to continue with the parties regulated at one time when a change would improve the performance of the program. It is equally clear that EPA must fulfill its annual duty to consider the definition of obligated party within sufficient time to publish a final rule every November.[8] EPA has not fulfilled its duty with regard to the annual percentage standards for 2018 in this proposal.

Considering the definition of obligated party each time EPA sets the annual percentage standards serves the statute's goals of "increasing production of clean renewable fuels" and "greater energy independence and security." EPA cannot ignore the positive effect that revising the definition of obligated party, to include the parties that control the physical fuel and decision whether or not to blend, would have on consumption of all renewable fuels. Nor can EPA ignore how the current definition of obligated party promotes fuel exports and supports biofuel imports. Neither can EPA continue to rely on a regulation that amounts to restructuring a segment of the U.S. economy on the basis of administrative convenience or because some economic sectors are profiting from the regulatory structure in a way that does not serve the statutory purposes. When

[5]Energy Independence and Security Act, Pub. L. No. 110-140.
[6]42 U.S.C. § 7545(o)(2)(A)(iii).
[7]42 U.S.C. § 7545(o)(3)(B)(i), (o)(3)(B)(ii)(I).
[8]42 U.S.C. § 7545(o)(3)(B)(i); 40 C.F.R. § 80.1405(b).

EPA "lay[s] claim to extravagant statutory power over the national economy while at the same time strenuously asserting that the authority claimed would render the statute 'unrecognizable to the Congress that designed it,'" such an announcement should be greeted with skepticism.[9]

Further, EPA's consideration of the impact of market constraints on more renewable fuel use is incomplete without also considering the definition of obligated party, and EPA should not increase the volume mandates as long as the definition of obligated party constrains the market. In prior rulemakings, numerous commenters responded to EPA's concerns about market constraints and described the direct connection between the definition of obligated party and the ability of renewable fuels to further penetrate the market. In the current proposed rule, EPA continues to disregard the importance of this connection as it relates to a well-functioning market. As long as the current RFS structure (*i.e.*, the definition of obligated party) remains unaddressed, the many-identified constraints on the renewable fuel market will remain. EPA cannot increase the volume mandates under such circumstances.

High RIN prices will continue to cause disproportionate economic harm to merchant refiners, small fuel retailers, and U.S. consumers. EPA states that the constraints in the ethanol market discussed in the 2014-2016 RVO rulemaking remain relevant for 2017 and 2018.[10] According to EPA, those constraints include: the blendwall; the number of retail stations that offer higher blends such as E15 and E85; the number of vehicles that can legally and practically consume E15 and/or E85; relative pricing of E15 and E85 versus E10; the ability of RINs to affect this relative pricing; and the supply of E0.

EPA has failed to acknowledge the role of the RFS structure in reinforcing these constraints or how a definition of obligated party that includes the parties that control the physical fuel at blend point could help to reduce them. Not only does the statute require this but it remains unreasonable for EPA to avoid correcting the program while seeking to limit the volume mandates to avoid the harms created by the constraints. Absent revising the definition of obligated party to obligate the parties that control the fuel and the decision whether or not to blend (currently exempt blenders), higher RVOs will cause severe economic harm.

EPA asserts that the standards set under the RFS program provide incentives to overcome the ethanol-related constraints. However, EPA has adjusted its calculation of the demand and supply of E0. After the D.C. Circuit decision in *ACE v. EPA*, EPA cannot consider the demand for E0 or any of these demand-side constraints for determining the adequacy of renewable fuel supply under the waiver authority. However, the demand for E0 along with other demand constraints contributes to the limited supply of RINs since EPA only allows RINs for renewable fuels consumed in the U.S. This constrained supply of RINs is causing severe economic harm

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[9] *Util. Air Regulato. Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014).
[10] 82 Fed. Reg. at 34,230.

(described further below) as the RIN bank is depleted, the RVO increases, and disproportional impacts greatly distort the market. Absent revising the definition of obligated party, to avoid severe economic harm, EPA must limit the RVO to ensure that the RIN supply is not depleted.

B. EPA Should Exercise Additional Waiver Authorities to Set a Reasonably Attainable Total Volume Requirement

EPA is correct to rely on its cellulosic waiver authority to reduce the annual volume mandates, but EPA is incorrect in asserting that "further reductions in the total renewable fuel applicable volume … are not necessary to address supply issues."[11] EPA is also incorrect to suggest that "there will be adequate supply to meet a total renewable fuel volume requirement of 19.24 billion gallons in 2018."[12]

i. EPA Should Determine That Lowering the Total Renewable Fuel Volume Requirement is Necessary to Avoid Severe Economic Harm

As independent and small refiners and retailers have explained to EPA numerous times over the last several years, the RFS program is imposing a severe economic hardship on independent and small entities without achieving the goals set out by Congress. Obligated parties' RFS compliance costs have increased dramatically over the last few years as EPA has continually increased the annual volume mandates without addressing the causes of the extraordinarily high cost of RINs. It is now common for a refinery's RFS compliance costs to be one of the company's highest operating costs, surpassing both labor and energy costs.

These increasing costs are forcing merchant refiners into a precarious financial position and forcing them to delay or cancel important capital improvement projects at their refineries. This pressure on merchant refiners and retailers is imposing a severe economic harm on the states in which they are located, the regions they serve, and the United States. EPA has broad authority under section 211(o)(7)(A)(i) of the Clean Air Act to reduce this harm by waiving the volume requirements. Using its waiver authority to reduce the proposed 2018 volume mandates to an achievable standard is critical to protecting merchant refiners and the U.S. economy from severe economic harm.

ii. EPA Must Consider Cost When Determining Whether There is an Inadequate Domestic Supply

Section 211(o)(7)(A)(ii) of the Clean Air Act allows EPA to lower any of the renewable fuel volume mandates if it determines that there is an "inadequate domestic supply." When

[11] 82 Fed. Reg. at 34,229.
[12] 82 Fed. Reg. at 34,229.

determining whether this is an "inadequate domestic supply" for purposes of establishing the annual volume mandate, EPA must consider the costs of its proposed volumes on obligated parties.

RIN prices have increased by 5,000% since mid-2012. While much of this price inflation is due to the structure of the market and market manipulation, as described in section II below, EPA must consider the cost of RINs when determining whether the supply of domestic renewable fuel is adequate. When EPA considers these costs, it is clear that the 2018 volume mandates must be reduced below the proposed levels.

iii. The Proposed Rule's Ethanol Projections Are Overstated

The proposed rule's ethanol projections are overstated because EPA underestimated the amount of E0 that will be consumed and overestimated the amount of E15 and E85 that will be consumed. These overstated ethanol projections will have the effect of placing further pressure on the market to fill the gap by delivering foreign biodiesel and renewable diesel in quantities that do not promote the statute's goals of energy independence and security.

In previous annual rulemakings, EPA took the unreasonable position that it would only consider volumes of E0 used by recreational marine engines, and therefore found that E0 usage was no greater than 200 million gallons. This position was demonstrably false. According to pure-gas.org, there are approximately 12,000 retail stations selling E0—about *four times* the number of stations selling E85.[13] EIA's estimate is that more than 5 billion gallons of E0 are sold to consumers each year.[14]

EPA in the current proposed rule has for the first time recognized that it cannot simply wish E0 usage away through administrative fiat. Instead, EPA acknowledges that substantial volumes of E0 are likely to continue to be used each year, and that its volume requirements should account for this reality.[15] EPA's willingness to engage in a realistic appraisal of E0 usage is both welcome and appropriate; however, EPA's new estimate of 500 million gallons remains far too low—over 4.5 billion gallons less than EIA's 2016 estimate. EPA provides no evidence to support its conclusion that splash blending below the rack explains the gap between its estimate and EIA's, and in any event, EIA's estimate already accounts for splash blending.[16]

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[13] Pure-gas.org, the list of ethanol-free gas stations in the US and Canada, http://www.pure-gas.org (last visited Aug. 26, 2017).
[14] EIA, Almost All U.S. Gasoline Is Blended with 10% Ethanol (May 4, 2016), http://www.eia.gov/todayinenergy/detail.cfm?id=26092.
[15] 82 Fed. Reg. at 34,232.
[16] EIA, Almost All U.S. Gasoline Is Blended with 10% Ethanol (May 4, 2016), http://www.eia.gov/todayinenergy/detail.cfm?id=26092.

Even if the actual amount is somewhere in the middle, the proposed rule still overestimates ethanol consumption by several hundred million gallons.

In addition to underestimating E0 usage, EPA also continues to overestimate E15 and E85 usage. As EPA itself admits, both the number of retail stations that offer E15 and the number of vehicles that are legally permitted to use E15 prevent additional growth of this fuel. In fact, about 85% of the vehicles on the market today are not designed to use E15.

What's more, the proposed rule projects at least 200 million gallons of E85 usage in 2018, but the various scenarios demonstrating paths to compliance envision the possibility of as much as 350 million gallons. There is no evidentiary support for the notion that E85 volumes could be as high as 350 million gallons.

In order to hypothesize that E85 volume sales might be as high as 350 million gallons, the proposed rule speculates that the number of E85 retail stations could increase by nearly 40% during 2018 alone. No evidence supports such a projection. E85 station growth has averaged close to 6% between 2012 and 2015.[17] There are currently 2,987 public (and 320 private) stations selling E85 in the United States,[18] which is only a 6.5 percent increase in E85 stations since 2016 according to EPA's own data.[19] Only 23 additional E85 stations are planned.[20] Indeed, as the proposed rule elsewhere notes, "many retailers are concerned about the return on investment for the substantial capital costs required for retail stations to offer E85," and "some retail station owners who had offered E85 have stopped doing so as a result of poor sales, despite the annual increases in the RFS standards in previous years."[21]

The USDA's Biofuel Infrastructure Partnership ("BIP") program is no solution. While the proposed rule speculates that the BIP program could bring about 2,000 new stations, bringing the total number of E85 stations to 5,000, that assumption is contradicted by the agency that administers the BIP program. According to the BIP website, a maximum of 1,486 stations are being built under the program,[22] and these stations will mainly sell E15, not E85. According to the USDA, the BIP program "investment will more than double the number of stations that offer

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[17] Comments of Monroe Energy LLC and Philadelphia Energy Solutions Refining and Marketing LLC at 27-28, Docket No. EPA–HQ–OAR–2015–0111-2603 (July 27, 2015).
[18] U.S. Dep't of Energy, Alternative Fueling Station Counts by State, http://www.afdc.energy.gov/fuels/ethanol_locations.html (last visited Aug. 29, 2017).
[19] David Korotney, U.S. EPA, Memorandum: Preliminary estimate of E85 consumption in 2016, at 3, EPA-HQ-OAR-2017-0091.
[20] U.S. Dep't of Energy, Alternative Fueling Station Counts by State, http://www.afdc.energy.gov/fuels/ethanol_locations.html (last visited Aug. 29, 2017).
[21] 82 Fed. Reg. at 34,232.
[22] United States Department of Agriculture, Farm Service Agency, Biofuel Infrastructure Partnership, *See* https://www.fsa.usda.gov/programs-and-services/energy-programs/bip/.

intermediate blends of ethanol, *mainly E15 fuel levels*, nationwide."[23] In any event, the BIP program would not justify any increase in E85 projection above 2017 levels of E85, because, as the proposed rule elsewhere points out, "we expect the programs to be fully phased in by the end of 2017 and thus have no influence on further growth in the number of retail stations offering E15 and E85 in 2018."[24]

In addition to speculating that the number of E85 stations might massively increase, the proposed rule also speculates that the E85 might enjoy a 30 percent price discount relative to E10, and that such a large price discount could facilitate an increase in E85 usage to 350 million gallons. Yet there is no evidence that such a large price discount is possible, let alone probable. EPA's own data shows that, in 2015, a 30 percent price discount was reached only 3% of the time.[25] There is no evidence that such large price discounts are likely to be repeated, let alone become more widespread. Indeed, in 2016, the average price discount was only 16.1%. [26] As the proposed rule elsewhere recognizes, "we continue to believe that the full value of the RIN is not passed through to retail fuel prices, diluting the influence that the RFS program would otherwise have on E85 sales."[27]

In sum, EPA's proposal uses unreasonably low E0 assumptions and overly optimistic E15 and E85 assumptions to presume that ethanol will be blended into gasoline at an average rate of 10.13% for 2018. This is untenable, completely unrealistic, and not based on sufficient evidentiary support. Instead, EPA should assume an average rate of at most 9.7%. This volume will ensure that American refiners and consumers are not forced to pay for blending foreign-produced renewable fuel into domestic gasoline and diesel, and will continue to recognize that, despite nine years of statutorily-mandated volumes, cellulosic biofuel simply cannot come anywhere near meeting the statutory targets Congress put in place 10 years ago.

iv. The Proposed Rule's Biodiesel And Renewable Diesel Projections Are Contradicted By Evidence And, Even If They Were Reasonable, The Proposed Levels Are Too Costly

EPA's proposed volumes are based on an assumption that there will be 14.479 billion gallons of ethanol used in 2018, and 2.901 billion physical gallons of biodiesel and renewable

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[23] News Release, USDA, USDA Announces State Finalists for the Biofuel Infrastructure Partnership (Sept. 10, 2015), http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2015/09/0249.xml&printable=true&contentidonly=true.
[24] 82 Fed. Reg. at 34,231.
[25] 82 Fed. Reg. at 34,236 & n.103.
[26] Fuels Institute, Retailing E85: An Analysis of Market Performance, July 2014-August 2015 at 4 (2017), link to report available at http://www.nacsonline.com/Media/Daily/Pages/ND0328175.aspx.
[27] 82 Fed. Reg. at 34,232.

diesel.[28] Biodiesel and renewable diesel includes both *advanced* biodiesel/renewable diesel and *conventional* biodiesel/renewable diesel. However, the reasonableness of the proposed rule's biodiesel and renewable diesel projections are contradicted by evidence, including evidence set forth in the proposed rule. In setting the volume requirement for *advanced* biofuels, EPA thoroughly explains its projection that "approximately 2.5 billion gallons of advanced biodiesel and renewable diesel is reasonably attainable" in 2018.[29] But EPA's "reasonably attainable" level is based on several improper considerations.

First, as described in more detail in section I.C. of these comments, EPA's "attainable" volume includes about 1.0 billion gallons of imported renewable fuel that should not be included in the domestic volume requirements. Further, EPA uses a growth rate from 2011 to 2016 that includes imports, which is similarly improper. EPA should only be including domestic volumes and should only be basing growth rates on domestic production growth.

Second, EPA notes that the expiration of the biodiesel blender tax credit will dampen growth in biodiesel production. The proposed rule examined historical data regarding changes in biodiesel production the last time that the blender tax credit expired and concluded: "We believe it is reasonable to anticipate a similar production pattern in 2016 through 2018 as observed in 2013 through 2015; that increases in the volumes of advanced biodiesel and renewable diesel will be modest in 2017-2018, following a significant increase in 2016. Available RIN generation data further supports this pattern."[30]

Third, EPA projected that the growth in domestic feedstocks would allow for an increase in 2018 of approximately 100 million gallons of advanced biodiesel/renewable diesel production as compared to 2017.[31] Again, this is unrealistic.

Fourth, the proposed rule notes that advanced biodiesel/renewable diesel volumes in excess of 2.5 billion gallons would likely result in "switching advanced biofuel feedstocks from existing uses to biofuel production."[32] The resulting market reactions "could cause disruptions and/or price increases in the non-biofuel markets that currently use these feedstocks."[33]

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[28] 82 Fed. Reg. at 34,232, Table V.B.2-1.
[29] 82 Fed. Reg. at 34,227.
[30] 82 Fed. Reg. at 34,225; *see also* 82 Fed. Reg. at 34,227 ("The 100 million gallon increased in advanced biodiesel and renewable diesel that we project will be reasonably attainable for 2018 represents a smaller annual increase in advanced biodiesel and renewable diesel than we assumed in deriving the 2017 advanced biofuel standard … We believe that this is reasonable because the circumstances we are facing in this action are different from those we were facing in the 2017 final rule. The primary differences are a smaller projected increase in advanced feedstock production in the United States and the expiration of the biodiesel tax credit.").
[31] 82 Fed. Reg. at 34,227.
[32] 82 Fed. Reg. at 34,222.
[33] 82 Fed. Reg. at 34,222.

Moreover, EPA acknowledges that basing the advanced biofuel mandate on volumes of advanced biodiesel and renewable diesel in excess of 2.5 billion gallons "could also result in diversion of advanced biofuels from foreign countries to the U.S. without increasing total global supply."[34] Increasing the supply of advanced biofuels in this way (by shifting the end use of advanced feedstocks to biofuel production and satisfying the current markets for these advanced feedstocks with non-qualifying or petroleum based feedstocks or simply shifting advanced biodiesel or renewable diesel from foreign to domestic use) would likely not produce the additional GHG benefits that might otherwise be expected."[35]

Based on extensive consideration of these dynamics, EPA decided to set an advanced biofuel requirement based on 2.5 billion gallons of advanced biodiesel/renewable diesel, to "minimize the incentives for the RFS program to increase the supply of advanced biodiesel and renewable diesel through feedstock switching."[36]

Assuming EPA is correct that 2.5 billion gallons of advanced biodiesel/renewable diesel are reasonably attainable in 2018, there is a 400 million gallon gap between that assumption and the 2.9 billion-gallon projection for total biodiesel usage that forms the basis for the total renewable volume. That gap will need to be filled either by additional advanced biodiesel—amounts above what EPA has determined to be reasonably attainable—or by conventional biodiesel/renewable diesel. Neither scenario is supportable.

To the extent that EPA believes that parties will meet the total renewable requirement by using advanced biodiesel/renewable diesel in excess of 2.5 billion gallons, EPA is setting a total volume requirement that effectively requires the very feedstock switching and fuel shuffling that EPA sought to *minimize* in setting the advanced biofuel requirement.[37] It makes little sense as a policy matter to carefully calibrate the advanced biofuel requirement to ensure that the program's mandates actually further the statute's energy-security and environmental purposes, and then to promptly undo that careful calibration in setting the total requirement.

EPA's rationale supporting its proposed advanced biofuels requirement remains just as persuasive with respect to the total renewable fuel requirement: "Increasing the demand for advanced biodiesel and renewable diesel beyond the projected increase in the feedstocks used to produce these fuels would likely require diverting volumes of advanced biodiesel and renewable diesel (or the feedstocks used to produce these fuels) from existing markets to be used to produce biofuels supplied to the United States. Increasing the short-term supply of advanced biodiesel and renewable diesel to the United States in this manner (simply shifting the end use of advanced

[34] 82 Fed. Reg. at 34,222.
[35] 82 Fed. Reg. at 34,222.
[36] 82 Fed. Reg. at 34,225.
[37] 82 Fed. Reg. at 34,225.

feedstocks to biodiesel and renewable diesel production and meeting non-biofuel demand for these feedstocks with conventional renewable and/or petroleum based feedstocks) may not advance the full GHG or energy security goals of the RFS program."[38] In short, EPA should not finalize a total volume requirement that assumes a greater quantity of advanced biodiesel/renewable diesel than EPA found to be appropriate when setting the advanced biofuel requirement.

To the extent that EPA is expecting *conventional* biodiesel/renewable diesel to fill the 400 million gallon gap between the reasonably attainable level of advanced biodiesel/renewable diesel usage and the projection for total biodiesel usage, there is simply no evidence that there is sufficient supply of that conventional fuel. In 2016, conventional biodiesel/renewable diesel amounted to only 156 million gallons. In 2015, the figure was 180 million gallons. As of August 10, 2017, the market has *generated* only about 83 million physical gallons of conventional biodiesel and renewable diesel[39]—and if history is any guide, only about half of that quantity will actually be made available for compliance.[40] In no years have conventional biodiesel/renewable diesel volumes ever reached 200 million gallons, let alone come close to the 400 million gallons that would be needed to close the gap between the reasonably attainable level of advanced biodiesel/renewable diesel and the 2.9 billion gallon projection for total biodiesel usage that underlies the proposed total volume requirement.

Nor should EPA wish to promote such a large increase in conventional biodiesel/renewable diesel in any event. As described in more detail in section I.C., below, usage of these fuels does not advance the statute's goals. As the proposed rule notes, *every single gallon* of conventional biodiesel/renewable diesel is imported.[41] Setting volume requirements that encourage greater usage of these fuels does nothing to further the statute's goal of energy security and independence. Nor does conventional biodiesel/renewable diesel serve the statute's environmental purpose. Much of this fuel is produced in Indonesia using palm oil as a feedstock by grandfathered facilities, and it does not satisfy the GHG requirements even for

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[38] 82 Fed. Reg. at 34,226.
[39] *See* 2017 Renewable Fuel Standard Data, https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2017-renewable-fuel-standard-data.
[40] Indeed, in 2016, only 53% of the conventional biodiesel and renewable diesel RINs generated were actually made available for compliance; the remainder were designated for non-transportation use. *See* https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2016-renewable-fuel-standard-data; EPA, 2016 RIN Supply, EPA-HQ-OAR-2017-0091-0061. That was not an anomaly: the same pattern occurred in 2015 and earlier. EPA, 2015 Volume Supply of RINs, EPA-HQ-OAR-2016-0004-0004 at 2 (65% of conventional biodiesel/renewable diesel RINs generated were made available for compliance); EPA, 2014 Volume Supply, EPA-HQ-OAR-2015-0111-3609 at 2 (26%); EPA, 2013 Volume Supply, EPA-HQ-OAR-2015-0111-3608 at 2 (58%).
[41] 82 Fed. Reg. at 34,224 (Table IV.B.2-2).

conventional biofuel.[42] As described in detail in section I.C, below, EPA should not set volume requirements that would *expand* reliance on foreign imports while providing no environmental benefit. Such a policy conflicts with the plain language of the statute and the environmental and energy-independence goals of the program.

v. EPA Overestimated the Amount of Cellulosic Biofuel that Will be Available

Section 211(o)(7)(D)(i) of the Clean Air Act requires EPA to project "the volume [of cellulosic biofuel] available during [each] calendar year" when setting the RVO. Yet since 2012 when the cellulosic biofuel requirement first became applicable, EPA has consistently overestimated future production. In 2016, EPA still missed the mark. EPA projected that a total volume of 230 million gallons of cellulosic biofuel would be available in 2016, when in fact 188.12 million gallons was available.

For 2018, EPA is again proposing an unrealistic volume. EPA is proposing a cellulosic biofuel requirement of 238 gallons, of which 221 million gallons would be attributed to CNG/LNG biofuel production and 17 million gallons would be liquid cellulosic biofuel. In 2016, however, the total amount of liquid cellulosic biofuel produced was only 3.8 million gallons. As such, EPA is assuming there will be a 450% increase in two years. This is unrealistic. Further, the Clean Air Act explicitly requires EPA to "promulgate regulations to ensure that… [transportation fuel]… contains the applicable volume of renewable fuel…"[43] Therefore, EPA violates the Clean Air Act to the extent that the volume mandate includes non-liquid renewable fuel or any other renewable fuel, like CNG and LNG, that is not blended with petroleum-based fuel.

Moreover, EPA should revise its existing regulations related to the treatment of cellulosic waiver credits ("CWC") to ensure that the credits count not only towards the cellulosic biofuel requirement, but also the advanced biofuel and total renewable fuel mandates. Under the current RFS regulations, an obligated party may only use CWCs for compliance with the cellulosic biofuel standard.[44] However, this makes no sense from either a practical or legal perspective. From a practical perspective, obligated parties should not have to pay a penalty because cellulosic production has not reached EPA's anticipated levels. From a legal perspective, Congress and EPA have purposefully nested the remaining types of RIN credits and that nesting should apply to CWCs. To address these concerns, EPA should amend 40 C.F.R. §

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[42] *See* Union of Concerned Scientists, Comments on U.E. Environmental Protection Agency's *Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018*, 81 Fed. Reg. 34,778 (May 31, 2016), EPA-HQ-OAR-2016-004; FRL-9946-90-OAR, (July 8, 2016).
[43] 42 U.S.C. § 7545(o)(A)(i).
[44] *See* 40 C.F.R. § 80.1456(c)(4).

80.1456(c)(4) as follows: "(4) Cellulosic biofuel waiver credits may ~~only~~ be used to meet an obligated party's cellulosic biofuel RVO, advanced biofuel RVO, and renewable fuel RVO."

C. Foreign Biofuel Volumes Should Not be Included in Calculating the Annual Volume Mandates

EPA has requested comment on whether it may exercise its "general waiver authority, inherent authority or other basis consistent with general construction of authority in the statute to reduce the required volume of advanced biofuel" below the 2018 proposed level by excluding the volume of imported renewable fuels. EPA wants to ensure that the energy independence and security goals of the RFS are met in light of the high levels of imported biofuel in the United States. Additionally, EPA has requested comment on whether it has authority to reduce the biomass-based diesel required volume below the level specified in the proposed rule for 2019 for the same reason – that achieving the proposed volume is contingent upon importing a significant amount of biofuel and may be adversely affecting the United States energy independence and security. We request that EPA exercise its general waiver authority to reduce the applicable volumes on the basis of inadequate domestic supply by excluding imported volumes from EPA's assessment of the annual renewable fuel percentage standards. Because Congress intended to reduce U.S. reliance on fuel imports when it promulgated the RFS, EPA should interpret "domestic supply" to encompass only domestically produced renewable fuel. This would result in a reduction of the annual volumes of approximately 831 million gallons of advanced biofuel, which is equivalent to 1.23 billion RINs.

Section 211(o)(7) of the Clean Air Act authorizes the EPA Administrator to waive some or all of the statutory volumes upon a determination that there is an "inadequate domestic supply" of renewable fuel or that the projected volume of cellulosic biofuel production is less than the statutory volume.[45] Neither Congress nor EPA has defined "domestic supply" as it applies to imports of renewable fuels. In past rulemaking preambles, however, EPA has interpreted "domestic supply" to mean the amount of fuel available for consumption in the United States.[46] Historically, EPA has included projected volumes of imported renewable fuel in its estimation of the available domestic supply.[47] However, nothing in the statute allows EPA to include imported renewable fuel when calculating the quantity of domestic supply and in setting the annual renewable fuel percentage standards. In fact, the stated purposes of the RFS – to

[45] 42 U.S.C. § 7545(o)(7)(A), (D).
[46] Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017, 80 Fed. Reg. 77,420, 77,435 (Dec. 14, 2015).
[47] *See, e.g.*, Renewable Fuel Standard Program: Standards for 217 and Biomass-Based Diesel Volume for 2018, 81 Fed. Reg. 89,746, 89,783 (Dec. 12, 2016).

foster greater energy independence and security – counsel against such an approach. The best reading of the statute requires that EPA exclude foreign-produced renewable fuel from the RFS program.

i. The Plain Language of the Statute Requires Interpreting Domestic Supply to Exclude Imports

EPA's current interpretation of "domestic supply" as including foreign renewable fuel imports is contrary to the plain language of the statute. In deciding whether to exercise its waiver authority, EPA's approach has been to assess the adequacy of the domestic supply of renewable fuel by estimating both the amount of domestic production as well as the quantity imported.[48] EPA followed this same methodology in the proposed rule.[49] Though "domestic supply" is not defined in § 211(o) of the Clean Air Act or anywhere else in the statute, the plain meaning of the term "domestic" does not encompass foreign-produced renewable fuel. The dictionary definition of domestic is "of, relating to, or *originating within* a country and especially one's own country."[50] In analogous legal contexts, the term domestic is used to differentiate activity within the United States from that occurring outside the borders.[51] Domestic supply, therefore, should reference the supply of renewable fuels that originate within the United States. This plain meaning precludes EPA from considering imported volumes of biofuel when determining whether to exercise its waiver authority based on an inadequate domestic supply.

EPA's interpretation of domestic supply also contravenes basic canons of statutory construction. In construing a statute, an agency is obliged to interpret a provision in a manner that avoids treating a term as redundant or superfluous.[52] The logical corollary to this canon is that an agency must "give effect, if possible, to every clause and word of a statute."[53] If EPA had adhered to this principle, it would have interpreted its waiver authority in a manner that differentiates "domestic supply" from "supply." Instead, EPA has interpreted and applied the

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[48] 80 Fed. Reg. at 77,427 ("Our determination in this final rule that the required volumes of advanced biofuel and total renewable fuel should be reduced from the statutory targets is based on a consideration of the ability of the market to supply such fuels through domestic production or import…"). In setting volumes for 2017, EPA also indicated that it did not differentiate between domestically produced and imported renewable fuel. 81 Fed. Reg. at 89,766.

[49] 82 Fed. Reg. at 34,212.

[50] "Domestic," Merriam-Webster.com, Merriam-Webster, n.d. Web. (Aug. 8, 2017) (emphasis added).

[51] *Cf.* Black's Law Dictionary (defining "domestic commerce" as "commerce carried on wholly within the limits of the United States, as distinguished from foreign commerce. Also, commerce carried on within the limits of a single state, as distinguished from interstate commerce.").

[52] *Gustafson v. Alloyd Co.*, 513 U.S. 561, 574-75 (1995).

[53] *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017) (citation omitted); *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 550 (1996) ("Speculation loses, for the more natural reading of the statute's text, which would give effect to all of its provisions, always prevails over a mere suggestion to disregard or ignore duly enacted law as legislative oversight.").

statute in a manner that conflates the terms "supply" and "domestic supply," rendering them indistinguishable and "domestic" superfluous. Generally, when EPA has discussed its waiver authority, it repeatedly couches its analysis based on available "supply," and not "domestic supply."[54]

EPA's interpretation of domestic supply to include imported volumes of renewable fuel also conflicts with other interpretations of similar provisions. For example, Congress used the term "domestic supplies" in the National Energy Conservation Policy when referencing only domestic production, stating "the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand."[55] In this example, the interpreting authority read domestic supply to exclude foreign-produced or imported products.

The D.C. Circuit recently discussed EPA's interpretation of inadequate domestic supply and the factors EPA could weigh in exercising its general waiver authority. In *Americans for Clean Energy v. EPA*, the court addressed whether EPA could "consider factors, such as distribution capacity, affecting the supply of renewable fuel available to ultimate consumers for use in their vehicles [or] demand-side constraints on the consumption of renewable fuel when determining the available renewable fuel supply."[56] While the court allowed EPA to consider any number of factors related to supply, including among others the amount of renewable fuel available for import, it held that EPA could not consider demand-side factors that impaired delivery to downstream actors such as retailers and consumers.[57] Because the issue before the court was limited to the legality of EPA's inclusion of demand-side factors, not its inclusion of imported renewable fuels, any commentary on whether EPA may consider imports as part of "domestic supply" is necessarily dicta. Even assuming the court's statement constitutes judicial precedent, EPA could change its interpretation nonetheless; and a court must adopt the agency's interpretation – and disregard the court's prior precedent – if the agency's interpretation is reasonable.[58] Because interpreting domestic supply to exclude imported volumes of renewable

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[54] 80 Fed. Reg. at 77,435 ("interpreting this waiver provision as authorizing EPA to consider the adequacy of *supply* of renewable fuel to the ultimate consumer appropriately allows consideration of upstream supply constraints to all of the relevant parties, including the adequacy of *supply* of biofuels to obligated parties and blenders, as well as the ability to deliver qualifying renewable fuels to the consumer"). In setting volumes for 2017, EPA also indicated that it did not differentiate between domestically produced and imported renewable fuel. 81 Fed. Reg. at 89,766.
[55] 42 U.S.C. § 8201.
[56] *Americans for Clean Energy v. Environmental Protection Agency*, --- F.3d ----; Slip Op. at 25 (July 28, 2017).
[57] *Id.* at 29 ("Therefore, it is evident that the 'inadequate domestic supply' waiver provision refers to the supply of renewable fuel available to refiners, blenders, and importers to meet the statutory volume requirements. Under that reading, EPA may consider factors affecting the availability of renewable fuel to refiners, blenders, and importers. Those factors may include, for example, the availability of feedstocks used to make renewable fuel, the production capacity of renewable fuel producers, the amount of renewable fuel available for import from foreign producers, or the infrastructure capacity needed to get renewable fuel from producers to refiners, importers, and blenders.").
[58] *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005).

fuel is reasonable, a court would be bound to uphold EPA's revised interpretation. Further, while the court recognized imports as a permissible factor to evaluate "domestic supply," neither the court nor the statute identify imports as a necessary factor.

ii. Purpose of the RFS is Promoting Domestic, Not Foreign, Production

Interpreting "domestic supply" to include imported renewable fuel is also contrary to the purposes of the RFS. Congress enacted the RFS program to promote energy security by reducing America's dependence on fuel imports; it also sought to promote growth in domestic energy jobs and domestic renewable fuel production. Congress was specifically concerned with the fact that "[n]early five decades ago, energy demand in the United States began exceeding domestic supply" and continues to do so.[59] As a result, Congress sought to enact a policy "aimed at closing the supply and demand imbalance … to ensure the country's continued growth and prosperity and to protect our national security."[60] Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application.[61] Thus, when assessing "domestic supply," EPA should rely solely on projected domestic renewable fuel production so as to avoid requiring domestic refiners to purchase foreign renewable fuels. The RFS should promote domestic renewable fuel production – not create a market for foreign-produced renewable fuel.

Contrary to Congressional intent, EPA's current approach to its general waiver authority has created a market for foreign producers at the expense of the domestic industry. Congress designed the RFS to prevent such a situation by instituting mechanisms, such as the waiver provision, that allow EPA to adjust statutory renewable fuel volumes that cannot be achieved through domestic production. As noted above, the waiver provision authorizes EPA to reduce statutory volume requirements when the projected domestic supply is inadequate to fulfill the mandated volumes in the statute. This provision is designed to effectively prevent obligated parties from having to rely on imports to fill the gap between statutory volumes and the level of domestic production, thereby realizing the statutory goal of energy security. But EPA has failed to exercise its waiver authority as Congress envisioned.

EPA's failure to decrease the renewable fuel volume requirements to match the domestic supply has forced obligated parties to purchase imported renewable fuel. In fact, the amount of imported biofuel has increased significantly over the last few years as EPA has incentivized foreign production to the detriment of domestic producers. In 2016, 46 million gallons of ethanol and 731 million gallons of advanced biodiesel and renewable diesel were imported into

[59] Senate Report for the 2005 EPAct, PL 109-78 at 6.
[60] *Id.* at 6.
[61] *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 255 (2010).

the United States.[62] Between 2014 and 2016, imports of biodiesel increased 331% and imports of renewable diesel increased by 32%.[63] As reported by the U.S. International Trade Commission, domestic production of biodiesel has declined in terms of relative market share to foreign producers in the last three years – domestic production accounted for 86.2% of the market in 2014, 76.7% in 2015, and 68.0% in 2016.[64] In dollar terms, U.S. companies spent over $2 billion on foreign renewable fuel. The RFS is such a boon to foreign producers that they have submitted comments urging EPA to increase the volumes of advanced biofuels to help ensure the growth of their industry.[65] According to a recent study prepared by the biodiesel industry, if the RFS volumes for biodiesel were "produced entirely in the U.S., [it] would lead to $4.9 billion greater U.S. economic impact, 26,100 more U.S. jobs, and $1.0 billion more paid in U.S. wages."[66]

Giving effect to the term "domestic" by exercising the general waiver authority based on an inadequate supply of domestically produced renewable fuel would promote – and certainly not conflict with – the purposes of the statute.[67] Congress intended the RFS to promote energy security and independence while developing a domestic renewable fuels industry. Indifference to the statutory language specifying "domestic supply," not just "supply," undermines Congress' intent to promote energy security and independence by fostering *domestic* production of renewable fuels. EPA should exercise its waiver authority to reduce the total volumes of renewable fuel so that it reflects the volume that is projected to be produced domestically, rather than the total volume of imported and domestic renewable fuel. This not only is the best interpretation of the statute but also best reflects the intent of the RFS program.[68]

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[62] 82 Fed. Reg. at 34,212.
[63] *Id.* at 34,224.
[64] *See* USITC, *Biodiesel from Argentina and Indonesia*, Investigation Nos. 701-TA-571-572 and 731-TA-1347-1348 at 22 (May 2017) (hereinafter "USITC Report").
[65] UNICA's Comments on "Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Proposed Rule," 81 Fed. Reg. 34,788 (May 31, 2016), Docket No. EPA-HQ-OAR-2016-0004-1741 at 21 (July 11, 2016) ("UNICA urges EPA to consider raising the volumes of advanced biofuels to ensure that sugarcane ethanol can continue to play such an important role in fostering compliance.").
[66] The Economic Impact of the Biodiesel Industry of the U.S. Economy, LMC International for National Biodiesel Board (June 2016).
[67] *See, e.g., Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001) (interpretation of statutory provision should not conflict with overall purpose of the statute). To the extent EPA believes that the term "domestic" clarifies that EPA need only consider the amount of renewable fuel available in the United States rather than global production, such an argument is a nonstarter. Given that there is a presumption against the extraterritorial application of the law, *Morrison v. National Australia Bank Ltd.*, 561 U. S. 247, 255 (2010), Congress would have no reason to clarify that supply was limited to the volumes projected to be available in the United States. This further supports reading "domestic supply" to be limited to the amount of supply in the United States that was produced domestically.
[68] Moreover, the current program also rewards foreign biofuel producers who explicitly have not met the greenhouse gas reduction requirements. Two Indonesian biodiesel producers were grandfathered into the RFS program, meaning that they qualify for RINs despite their biodiesel generally not meeting the RFS program's minimum

iii. Excluding Imports from the "Domestic Supply" Promotes RFS Stability

EPA's inclusion of imported renewable fuel in the amount of available domestic supply subjects the RFS program to unnecessary supply risks and does not further the goal of greenhouse gas emission reductions. EPA also lacks the expertise to predict quantities of foreign-produced renewable fuel and lacks the jurisdiction and resources to ensure foreign produced renewable fuel achieves the greenhouse gas reductions and other requirements mandated by the statute.

EPA also cannot predict with precision the quantity of renewable fuel that can be imported. Unpredictable regulatory and market forces can have significant impacts on the levels of imports. For example, the current antidumping and countervailing duty proceeding before the U.S. International Trade Commission ("USITC") could significantly reduce the volume of imported biodiesel and increase its price. The USITC preliminarily determined that there is a reasonable indication that biodiesel imports from Argentina and Indonesia are being sold in the United States substantially below fair market value and are thereby materially injuring the domestic biodiesel industry. On August 28, 2017, the Department of Commerce issued a preliminary countervailing duty determination that directs U.S. Custom and Border Protection "to suspend liquidation of all entries of biodiesel from Indonesia that are entered, or withdrawn from warehouse, for consumption, on or after [August 28, 2017], and to require a cash deposit equal to the subsidy rates indicated" in the notice.[69] The same order was issued with respect to biodiesel from Argentina. The tariffs imposed on the imports range from 41.06% to as much as 68.28%. As a result of this decision, the price of imported biodiesel from these countries will increase substantially and the volume of the imports likely will decrease or even cease altogether. Eliminating these imports would reduce the available D4 RINs by approximately 400 million in 2018.

Small changes in global supply or demand can also have a significant impact on whether foreign producers sell fuel into the United States. Foreign producers choose where and how much biofuel to export based on the availability of renewable fuel feedstocks, global prices for biofuels, tariffs, and demand for foreign biofuel in different countries. The expiration of the U.S. biodiesel blenders tax credit is also likely to reduce the volume of imports significantly. Table IV.B.2-1 in the proposed rule identifies a dramatic variability in the volumes of imported biodiesel and renewable diesel, where year-over-year increases can be as high as 349 million

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greenhouse gas reduction threshold. Allowing these fuels to qualify for RINs serves none of the purposes of the RFS.

[69]Biodiesel from the Republic of Indonesia: Preliminary Affirmative Countervailing Duty Determination, 82 Fed. Reg. 40,746 (Aug. 28, 2017).

gallons and year-over-year decreases can be as low as 42 million gallons.[70] Given this level of fluctuation, EPA cannot conclude that any particular volume of imports is reasonably attainable.

D. The Volume Mandates Must be Lowered Until EPA Completes its Analysis of Potential Negative Air Quality Impacts

EPA requested comment on the Energy Independence and Security Act's ("EISA's") stated goals, including "[increasing] the production of clean renewable fuels."[71] As described below, EPA has failed to determine whether the RFS is incentivizing the production of "clean" renewable fuels and, as a result, EPA should use its waiver authorities to reduce the annual renewable fuel mandates until it makes such a determination.

To meet EISA's goal of incentivizing the production of clean renewable fuels, EPA issued regulations stating that conventional biofuel (*i.e.*, corn ethanol) is required to reduce GHG emissions by 20 percent when compared with petroleum fuels and advanced biofuels are required to reduce GHG emissions by at least 50% when compared with petroleum fuels.[72] Despite the statutory purpose and express regulatory mandate, the substantial majority of conventional ethanol is not meeting EPA's GHG reduction targets.

In a 2016 report, EPA's Office of Inspector General ("OIG") concluded that EPA had failed to adequately study the environmental impacts of the RFS program. The OIG report stated that "…EPA, Congress, and other stakeholders lack key information on biofuel impacts needed to make science-based decisions about RFS."[73] Specifically, OIG concluded that EPA failed to provide triennial reports to Congress on the environmental and conservation impacts of the RFS program, conduct an anti-backsliding study of the impacts of the RFS on air quality, and determine whether measures are necessary to mitigate any impacts on air quality.[74] EPA's triennial report was due in December 2014 and again in December 2017. Similarly, EPA's anti-backsliding study and determination of mitigation measures were due in June 2009 and December 2010, respectively.[75] In response to the OIG report, EPA agreed to complete the required triennial report by October 2017, but could not provide an estimated completion date for the anti-backsliding analysis and the determination of mitigation measures.[76]

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[70] 82 Fed. Reg. at 34,224.
[71] 82 Fed. Reg. at 34,207.
[72] 40 C.F.R. § 80.1401.
[73] U.S. EPA OFFICE OF INSPECTOR GENERAL, EPA HAS NOT MET CERTAIN STATUTORY REQUIREMENTS TO IDENTIFY ENVIRONMENTAL IMPACTS OF RENEWABLE FUEL STANDARD, Report No. 16-P-0275 4 (Aug. 18, 2016), *available at* https://www.epa.gov/sites/production/files/2016-08/documents/_epaoig_20160818-16-p-0275.pdf [hereinafter "OIG Report"], provided here as Attachment 1.
[74] OIG Report at 4.
[75] OIG Report at 6.
[76] OIG Report at 14-15.

Congress also expressed bipartisan interest during a June 2016 congressional hearing in receiving more information from EPA on the environmental impacts of the RFS to help them assess whether the original intent of the law is being achieved and at what cost. In its report, OIG stated:

> The EPA does not have an assessment that meets the requirement to identify whether RFS creates any impacts on air quality and, thus, take required measures to mitigate impacts. This information is needed to fully inform the EPA, Congress and other stakeholders of the environmental impacts of U.S. biofuel policy.[77]

While EPA has failed to study the impacts of the RFS program on air quality, other groups have. Studies have concluded that ethanol increases GHG emissions, rather than reducing them. For example, Friends of the Earth, citing a study by the National Academy of Sciences, concluded that, on a per-gallon basis, conventional ethanol will release 12% more GHGs than gasoline in 2017.[78]

In addition to required GHG emissions reductions, only those renewable fuels that are produced from biomass harvested from lands that were agricultural in nature before Congress enacted the RFS2 program qualify as renewable fuels.[79] This statutory limitation seeks to prevent entities from clearing grasslands, forests, and other uncultivated lands in order to produce renewable fuels for the RFS program. Clearing uncultivated lands and converting them to agricultural lands releases a significant amount of GHGs, disrupts wildlife habitat, and inflicts other harmful environmental impacts.

While EPA has issued regulations to prevent the conversion of uncultivated lands to cropland for the production of renewable fuels, its "aggregate compliance approach" to measure and prevent land-use changes has not been effective or enforced. In fact, studies have concluded that the RFS program has resulted in the conversion of grasslands, forests, and wetlands to

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[77]OIG Report at 9.

[78]KATE MCMAHON & VICTORIA WITTING, FRIENDS OF THE EARTH, CORN ETHANOL AND CLIMATE CHANGE: HOW THE RENEWABLE FUEL STANDARD MANDATES THE CONSUMPTION OF BIOFUELS THAT CONTRIBUTE TO CLIMATE CHANGE, (July 2011) *available at*: http://www.foe.org/system/storage/877/80/0/542/Corn_ethanol_and_climate_change.pdf, provided here as Attachment 2; *see also* EMILY CASSIDY, ENVIRONMENTAL WORKING GROUP, CORN ETHANOL IS NOT A RENEWABLE FUEL (Mar. 17, 2016) *available at*: http://www.ewg.org/agmag/2016/03/corn-ethanol-not-renewable-fuel, provided here as Attachment 3; *see also* DAVID DEGENNARO, NATIONAL WILDLIFE FEDERATION, FUELING DESTRUCTION: THE UNINTENDED CONSEQUENCES OF THE RENEWABLE FUEL STANDARD ON LAND, WATER, AND WILDLIFE (2016) *available at*: http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2016/12-15-2016-Fueling-Destruction.aspx, provided here as Attachment 4.

[79]42 U.S.C. § 7545(o)(1)(I).

cropland.[80] In a recent report by the University of Wisconsin – Madison, researchers explained that croplands in the United States increased by 2.9 million acres between 2008 and 2012.[81] Approximately 77% of this new cropland came from grasslands, many of which were considered long-term unimproved grasslands that had remained untouched for over 20 years, 3% came from forests, and 2% came from wetlands.[82] The researchers also found that approximately 51% of the 2.9 million acres converted is now used to produce corn, making it clear that the RFS is incentivizing a large portion of this conversion.[83] Conventional ethanol produced from converted land does not meet the definition of "renewable fuel" and may not legally participate in the RFS program.

Further, Congress never intended for the ethanol concentration in gasoline to E10. When Congress enacted the Energy Independence and Security Act of 2007, EIA projected that the United States would consume 159 billion gallons of gasoline in 2016. Simple math shows that Congress believed the full 15 billion gallon conventional biofuel mandate would be capable of being consumed as E10, since 159 billion gallons would allow for 15.9 billion gallons of ethanol consumption. With declining gasoline consumption, full adoption of E10 nationwide would only allow for about 14 billion gallons of ethanol consumption. Fuels with ethanol content greater than 10%, E15 and E85, are being pushed because structural flaws in the rule have failed to incentivize other, less GHG emitting advanced biofuels. As a result, mandating volumes that exceed the E10 blendwall violates Congress' intent of increasing the use of clean renewable fuels and harms the environment.

The Clean Air Act, as amended by the Energy Policy Act of 2005 and EISA, provides EPA with authority to waive the volume targets based on severe harm to the economy or the environment.[84] Without having completed the required studies or developing a program that effectively prevents land conversion for the production of renewable fuels, EPA and stakeholders have no ability to determine whether EPA should be using its statutory waiver authority to reduce the volume targets to avoid severe harm to the environment. Until EPA completes the required studies and revises its program to evaluate land conversion, EPA should use its waiver authorities to reduce the 2018 volume mandates to avoid harm to the environment.

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[80] TYLER J. LARK, J MEGHAN SALMON & HOLLY K GIBBS, UNIVERSITY OF WISCONSIN – MADISON, CROPLAND EXPANSION OUTPACES AGRICULTURAL AND BIOFUEL POLICIES IN THE UNITED STATES (Apr. 2, 2015), *available at* http://iopscience.iop.org/article/10.1088/1748-9326/10/4/044003/meta;jsessionid=2B43DD22611FEFF1FD1642F6542E87CE.c5.iopscience.cld.iop.org, provided here as Attachment 5.
[81] *Id.* at 3.
[82] *Id.* at 5.
[83] *Id.* at 6.
[84] 42 U.S.C § 7545(o)(7).

II. The RIN Trading Structure Encourages Manipulation, Speculation and Fraud in the RIN Market, Undermining the RFS Program

EPA has requested comment on: (1) whether and how the current RIN trading structure provides opportunities for market manipulation; and (2) potential changes to the RIN trading structure to address these concerns. For the reasons described below, the RIN trading structure is uniquely susceptible to manipulation, speculation and fraud and must be changed to avoid further harm to obligated parties and promote the goals of the RFS.

A. The RIN Trading Structure Encourages Manipulation, Speculation and Fraud Because its Structure Violates the Clean Air Act

The Clean Air Act directed EPA to promulgate regulations creating a credit trading program pursuant to which obligated parties could generate credits by over complying with their annual obligation and could use the credits they generate for compliance or transfer them to another obligated party for purposes of compliance.[85] Instead, the RIN program allows any person to participate, generating credits for blending at any level they choose, and selling credits to anyone for any purpose, including purely for profit. The departure of the RIN program from both the Clean Air Act and the bedrock principles that are present in EPA's other fuels credit trading programs is the root cause of the manipulation, speculation, and fraud in the RIN market; the resulting harm to captive participants in the RIN market; and the market constraints preventing more renewable fuel use.

i. RINs Can Only be "Generated" by Obligated Parties that Over Comply

The Clean Air Act required EPA to promulgate regulations establishing a "credit program" providing for the "generation" of credits when renewable fuel is blended with gasoline in quantities exceeding the annual renewable fuel standards. It says:

> (5) **CREDIT PROGRAM**—
> (A) **IN GENERAL**— The regulations promulgated under paragraph (2)(A) shall provide—
> (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2) …[86]

[85] 42 U.S.C. § 7545(o)(5).
[86] 42 U.S.C. § 7545(o)(5)(A)(i) (emphasis added).

"Paragraph (2)" contains the nationwide renewable fuel mandates for each category of renewable fuel.[87]

In 2006, when it was promulgating the regulations implementing the "credit program," EPA acknowledged that the Clean Air Act required EPA to create a credit program to facilitate the trading of credits among obligated parties from those that "over complied" with "their annual obligation" to those that could not satisfy "their annual obligation" through blending. EPA said:

> The [Clean Air] Act requires [EPA] to promulgate a credit trading program for the RFS program whereby an obligated party may generate credits for over complying with their annual obligation. The obligated party can then use these credits or trade them for use by another obligated party. . . . Under the credit trading program required by the Act, each obligated party is allowed to satisfy its obligations either through its own actions or through the transfer of credits from others who have more than satisfied their individual requirements.[88]

In a 2011 report for Congress, the Department of Energy described the Clean Air Act's requirement for the "credit program" in the same manner as EPA:

> The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.[89]

Although EPA and DOE each described how an obligated party would "generate" RINs consistent with the Clean Air Act – by "over complying" with their annual obligation – neither DOE nor EPA explained how a party with no annual obligation could satisfy the Clean Air Act

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[87] 42 U.S.C. § 7545(o)(2).

[88] Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program; Proposed Rule, 71 Fed. Reg. 55,556, 55,556, 55,576 (Sep. 22, 2006) (emphasis added).

[89] U.S. DEP'T OF ENERGY, OFFICE OF POLICY AND INT'L AFFAIRS, SMALL REFINERY EXEMPTION STUDY: AN INVESTIGATION INTO DISPROPORTIONATE ECONOMIC HARDSHIP at 2 (March 2011) (emphasis added) [hereinafter "DOE Study"]; U.S. DEP'T OF ENERGY, OFFICE OF POLICY AND INT'L AFFAIRS, *ADDENDUM TO THE* SMALL REFINERY EXEMPTION STUDY: AN INVESTIGATION INTO DISPROPORTIONATE ECONOMIC HARDSHIP (May 2014) provided here as Attachment 6 (emphasis added).

requirement that RINs can only be "generated" for gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2).

Without an annual obligation, non-obligated parties are free to blend at whatever level they choose, or not blend at all, and there is no measure of "over compliance" or determining whether any blending of renewable fuel with gasoline exceeds the quantities in paragraph 2. Paragraph 2 contains the nationwide volume mandates, but blenders are not required to demonstrate whether the gasoline they control across the rack, blend, or sell to retail is above or below the levels in paragraph (2). Under the regulations, parties with no annual obligation can "generate" RINs by blending renewable fuel in quantities below the levels in paragraph (2), which is expressly prohibited by the Clean Air Act.

In proposing its regulations to establish the RIN trading program, EPA explained that "[o]ur proposed program provides additional flexibility in that it would permit all RINs to be transferred between parties before they were deemed to be in excess of a party's annual RVO at the end of the year," but EPA's trading rationale does not explain how a party that has no annual obligation could generate credits in the first instance.[90] The regulations implementing the RFS credit program violate the Clean Air Act because it is a legal impossibility for a party that has no annual obligation to "over comply" or, using the words of the statute, "blend a quantity of renewable fuel that is greater than the quantity required under paragraph (2)." Therefore, the RIN trading program violates Section 211(o)(5)(A) of the Clean Air Act by allowing exempt parties, with no annual obligation, to "generate" RINs.

In addition, EPA's trading rationale cannot be reconciled with the clear statutory mandate that RINs can only be generated when gasoline contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2). In other words, RINs were only to exist for the small increment of over compliance with an obligated party's annual obligation, like the ultra-low sulfur gasoline ("ULSG"), ultra-low sulfur diesel ("ULSD") and mobile source air toxics ("MSAT") credit trading programs. In fact, the Clean Air Act provisions creating the credit trading program for MSAT, for example, are identical to the Clean Air Act's RFS credit trading provisions.

> (7) **Credits**.—
>
> (A) The regulations promulgated under [the MSAT program] shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

[90] 71 Fed. Reg. at 55,577 (emphasis added).

(ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).[91]

MSAT regulates the maximum amount of benzene that may be present in gasoline. Parties that reduce the benzene concentration in their gasoline below the standard (over comply) may generate credits. Obligated parties that "over comply" with the benzene standard can generate and sell credits to parties that need them for compliance (under comply). As an extra layer of protection for regulated entities, EPA restricted the number of times benzene credits could be traded.

By allowing RINs to be generated when gasoline contains a quantity of renewable fuel that is less than the quantity of renewable fuel required under paragraph (2), the estimated annual value of the RIN market is $15 billion – rather than a small market representing just the increment of over compliance. As described in section II.B. below, the sheer size of the RIN market is one of the primary causes of the manipulation, speculation, and large-scale fraud in the RIN market.

ii. It is Illegal for Non-Obligated Parties to Use, Transfer or Sell RINs

With respect to the "use of credits," the Clean Air Act provides that only a person "that generates [RINs] under subparagraph (A) may use the [RINs] or transfer all or a portion of the [RINs] to another person …"[92] As described above, to generate RINs under subparagraph (A), gasoline must contain a quantity of renewable fuel that is greater than the quantity required under paragraph (2), which EPA described as an obligated party's annual obligation. Because non-obligated parties are exempt from the volume mandates in paragraph (2), they have no annual obligation and cannot "generate" RINs in accordance with subparagraph (A), which then prohibits them from using, transferring or selling RINs. In other words, it is impossible for a non-obligated party to generate RINs, and therefore illegal for a non-obligated party to use, transfer or sell RINs.

Section 211(o)(5)(B) is an express statutory prohibition; it is not directed at EPA's obligation to promulgate regulations like section 211(o)(2)(A). Therefore, irrespective of the RFS implementing regulations, non-obligated parties that generate and/or transfer or sell RINs are violating the Clean Air Act. Because the implementing regulations allow non-obligated parties to generate, transfer and sell RINs, EPA has lost one its key enforcement tools to prevent the manipulation, speculation, and large-scale fraud that is occurring in the RIN market.

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[91] 42 U.S.C. § 7545(k)(7)(A)(ii).
[92] 42 U.S.C. § 7545(o)(5)(B).

iii. It is Illegal to Buy and Sell RINs for Profit

Section 211(o)(5)(B) of the Clean Air Act allows RINs to be transferred or sold only to a person that needs them for compliance. It states:

> (B) **USE OF CREDITS**— A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).[93]

EPA's implementing regulations allow anyone to participate in the RIN market. As a result, less than 10% of the RIN market participants are obligated parties, which violates the clear language of the Clean Air Act, and, as described in section III.B below, the Commodity Exchange Act.

iv. The RIN Market Structure Violates the Clean Air Act Because it Prevents the Statutory Volumes From Being Met

The RIN market structure also violates Clean Air Act sections 211(o)(2)(A)(i) and 211(o)(2)(A)(iii)(I), both of which require EPA to promulgate regulations to ensure that the volume mandates are met on an annual average basis. Section 211(o)(2)(A)(i) states:

> … the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B).[94]

Allowing non-obligated parties to participate in the RIN market, blending at whatever level they choose, does not ensure that gasoline sold in the United States contains the applicable volume of renewable fuel. As explained in section II.G. below, non-obligated blenders/distributors act in their best economic interest to maximize their profits without regard to statutory mandates to increase renewable fuel use.[95] The same is true for global commodity traders that participate in the RIN market purely for profit. They have no ability to or interest in ensuring that gasoline contains mandated volumes of renewable fuel.

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[93] 42 U.S.C. § 7545(o)(5)(B) (emphasis added).
[94] 42 U.S.C. § 7545(o)(2)(A)(i) (emphasis added).
[95] DALLAS BURKHOLDER, OFFICE OF TRANSP. AND AIR QUALITY, AN ASSESSMENT OF THE IMPACT OF RIN PRICES ON THE RETAIL PRICE OF E85 (Nov. 2015) [hereinafter "BURKHOLDER REPORT II"], provided here as Attachment 7.

In addition, the regulations promulgated by EPA must contain "appropriate" compliance provisions applicable to refineries, blenders, distributors, and importers, to ensure that the annual standards are met.[96] Rather than ensuring that the annual standards are met, the regulations implementing the RIN trading program create disincentives to more renewable fuel blending. In EPA's words, exempt parties are retaining the profits from selling RINs rather than passing them along in the form of discounts to encourage the use of higher ethanol blends. EPA acknowledged this result in its final rule setting the volume standards for the 2014-2016 compliance years. In its proposed 2014-2016 rule, EPA concluded that high RIN prices would incentivize increased blending and consumption of renewable fuels in the United States.[97] However, in the final 2014-2016 rule, EPA concluded that:

> E85 wholesalers and/or retail station operators appear to be seeking to maximize their profits from E85 sales, rather than seeking to maximize E85 sales volumes. The result is that retail E85 prices only partially reflect the potential discount enabled by higher RIN prices.[98]

Distributors and retailers are not passing along RIN revenue to encourage higher ethanol blends because they are able to generate RINs blending at whatever level they choose. Therefore, the decision to blend or not blend, invest or not invest in blending and distribution infrastructure, or pass along RIN revenues to increase higher ethanol blends, will be driven by maximizing profits without regard to whether the annual volumes are met.

The Report for Growth Energy, a beneficiary of the status quo, agrees with EPA that the goal of non-obligated blender/distributors is to maximize their profits, "which does not necessarily align with the goal of selling increasing quantities of E85 under current market conditions."[99] But, rather than recommending aligning the blender/distributors' incentivizes with the RFS program goals as required by the Clean Air Act, the report suggests that blenders should instead be incentivized by supranormal profits. The theory is that at some point, the profits will be so extraordinary that "… the profit maximizing goals of the distributor <u>will begin to align with the goals of the RFS program</u>."[100]

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[96] 42 U.S.C. § 7545(o)(2)(A)(iii)(I).
[97] DALLAS BURKHOLDER, OFFICE OF TRANSP. AND AIR QUALITY, A PRELIMINARY ASSESSMENT OF RIN MARKET DYNAMICS, RIN PRICES, AND THEIR EFFECTS 2-3 (May 14, 2015) [hereinafter "BURKHOLDER I"], provided here as Attachment 8.
[98] BURKHOLDER REPORT II.
[99] Peeking Over the Blendwall, An Analysis of the Proposed 2017 Renewable Volume Obligations, at page 15, Marc Chupka, J. Michael Hagerty, Nicholas Powers, and Sarah Germain, The Brattle Group (June 11, 2016) [hereinafter "BRATTLE REPORT FOR GROWTH ENERGY"], provided here as Attachment 9.
[100] BRATTLE REPORT FOR GROWTH ENERGY at 15 (emphasis added).

The Report for Growth Energy notes, however, that the blender/distributor's supranormal profits are not needed to incentivize infrastructure investments. The infrastructure to blend and distribute E85 already exists.[101] The supranormal profits for blender/distributors are needed because EPA's implementing regulations allow key participants in the distribution supply chain to choose whether to maximize their profits or pass them through to meet the RFS program goals. What the Report for Growth Energy failed to consider is the impact on critical U.S. energy infrastructure – U.S. refineries and important American jobs – that would be impacted and eliminated by $2/RINs or, conversely, how quickly and efficiently E85 volumes would increase if blender/distributors needed to generate RINs for compliance.

Cumberland Farms is another example of the illegality of the RIN trading mechanism. Cumberland Farms owns one of the largest retail convenience store chains in the country. It describes itself as "fuel agnostic" and views its job as safely and legally supplying the fuels that its customers demand "without particular regard to what that fuel is made from."[102] Cumberland Farms has the luxury of being "fuel agnostic" because of the structure of the RIN market and EPA's decision to leave the parties with control over whether blending occurs – free to blend at whatever level they choose or not blend at all.

Because E85 is less fuel efficient, EPA acknowledges that retailers will need to offer discounts to incentivize its use. But "fuel agnostic" retailers have no interest in doing so; instead, they offer discounts for customer loyalty. Through Cumberland Farms' SmartPay program, its customers receive discounts of up to 10 cents/gallon for customer loyalty, not for buying E15 or E85. Those discounts could be passed along to customers to encourage them to buy higher ethanol blends – to "ensure that the statutory volumes are met" – but under EPA's regulations Cumberland Farms has no legal obligation or financial incentive to do so.

The same is true for Murphy USA ("MUSA"). MUSA, an exempt (non-refining) blender, continues to be a big winner in the RIN market. MUSA brazenly boasted that it made $117 million (85% of its profits) in 2015 from selling RINs to obligated parties.[103] In 2016, MUSA reported that its 2016 net income increased compared to 2015 due primarily to higher RIN sales and prices and other factors, but this time MUSA didn't report how much of its profits were attributed to selling RINs to independent and small refineries. MUSA added 67 new retail stores in 2016 on top of the 73 stores in 2015 and 60 in 2014. The company reported owning a total of

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[101] *Id.* at 24.
[102] 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, excerpt provided here as Attachment 10.
[103] Murphy USA, Inc., Annual Report (Form 10-K) 34-35 (Feb. 26, 2016), and excerpt is provided here as Attachment 11.

1,401 retail stores as of December 31, 2016, offering E85 at only 9 of its 1,401 retail outlets according to the Department of Energy.[104]

Although companies like MUSA, Cumberland Farms and other non-obligated blenders and retailers control the downstream blending and distribution of a significant portion of the transportation fuel supply, they act in their best economic interest – to maximize profits – without regard to nationwide targets, annual percentage standards, or the needs of upstream obligated parties to secure RINs for compliance. Aligning the blender/distributor and retailers' incentives with the RFS program goals is not an option; it is compelled by sections 211(o)(2)(A)(i) and (o)(2)(A)(iii)(I) of the Clean Air Act.

B. The RIN Market has Attracted Large-Scale Fraud Due to its Extraordinary Size

As described above, the Clean Air Act mandated the creation of a credit market in which credits could be generated for the increment of compliance above an obligated party's annual obligation.[105] However, the implementing regulations allow credits to be generated by any party from any amount of renewable fuel blending. This departure from the Clean Air Act resulted in the creation of what is believed to be the largest unregulated commodity market in the world, with an estimated annual value of $15 billion. Because of its extraordinary size, the market has attracted unprecedented, large-scale fraud, costing taxpayers nearly $1 billion to date.[106] The fraudulent schemes have become more complex as the size of the market and lack of regulation have become more widely known, which has started to attract organized crime with potential international links.[107]

The extraordinary size of the RIN market is a function of EPA's departure from the Clean Air Act by allowing parties to generate RINs from blending below statutory levels. Had EPA, in accordance with Section 7545(o)(5)(A)(i), allowed RINs to be generated only for volumes blended in excess of their annual obligation, the RIN market would be a small fraction of its current size and would not be attracting large-scale fraud.

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[104]U.S. Department of Energy, Energy Efficiency & Renewable Energy, Alternative Fuels Data Center, www.afdc.energy.gov.
[105]42 U.S.C. § 7545(o)(5)(A)(i).
[106]Doug Parker, President, E&W Strategies, White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future at 2, September 4, 2016 [hereinafter PARKER I], provided here as Attachment 12.
[107]*Id* at 8.

C. The High Price of RINs and Extreme Market Volatility are Signs of Speculation in the RIN Market

In what has been described by the press as "RIN-sanity," the price of RINs has been inflated and wildly volatile since mid-2012 when EPA signaled its intent to set the 2013 volume targets above the E10 blendwall. Since then, market reports concerning obligated parties' RIN holdings and access to RINs, EPA's intent to change or not change the definition of obligated party, and predictions of EPA's intent to increase or lower the volume mandates, have all caused the price of RINs to be highly volatile and increase by 4-5000%.

While the price of RINs has been wildly volatile, the price of ethanol has not, proving that the wild volatility in the RIN market is due, in part, to the participation of market speculators. Speculation in the RIN market is expressly precluded by the Clean Air Act, which only allows the transfer or sale of RINs for compliance.

D. There is Also Evidence that the RIN Market is Being Manipulated to Keep Prices High

The RIN market is highly susceptible to manipulation. Captive buyers in the RIN market have observed RIN-long parties and market speculators entering the market to buy RINs when the price of RINs start to fall. By entering the market to buy RINs when the price of RINs starts to fall, RIN-long parties and market speculators are able to maintain artificially high prices for RINs.

This type of "trade-based" manipulation was described in a paper by the Brattle Group entitled, "A Framework for the Analysis of Market Manipulation."[108] According to the report, this type of trade-based manipulation can be discerned from examining three components: the trigger, the target and the nexus. The trigger is the price-making trade used to inject false information into the market as to the value of the asset to cause a directional price movement. In the RIN market this would be the offer to buy RINs when the price starts to fall, to stop the downward pressure on the price of RINs. The target is the price-taking position held by the trader that will benefit from the directional price movement, *i.e.*, sustaining the high price of RINs. The nexus is the link between the trigger and the target – the higher price of the RIN resulting from the trade-based manipulation.

By breaking the manipulation into these three components, the Brattle Group report suggests that it may be possible to prove the manipulative behavior, but it is a "thorny issue":

[108]Shaun D. Ledgerwood and Paul R. Carpenter, The Brattle Group, Review of Law and Economics, 2012 [hereinafter "BRATTLE REPORT ON MARKET MANIPULATION"], provided here as Attachment 13.

> … seemingly uneconomical behavior could be rationalized in the context of different information sets, such that a trader can always attempt to explain its behavior as economically rational when viewed through the appropriate lens. … Without more dispositive evidence of intent (such as emails, voice recordings or whistleblower testimony), proof of the manipulative trigger using trading data alone may present a very difficult challenge.[109]

In other words, while trade-based manipulation may be occurring every day in the RIN market, proving that the manipulation is occurring would be complex and it would take a motivated and dedicated prosecution to prevent.

Although EPA established the RIN market and obligated parties are subject to substantial civil penalties if they fail to buy RINs in the market, EPA is powerless to protect the entities that it regulates. This type of market manipulation does not violate the Clean Air Act even though setting an artificially high price floor for RINs increases the compliance costs for captive RIN buyers, merchant refiners, and the windfall profits for RIN-long parties and market speculators. Manipulation of the RIN market for the benefit of RIN-long parties and market speculators defeats the purposes of the statute, to increase renewable fuel use, and defeats the purposes of the RIN market, which was to provide a compliance mechanism for regulated entities. Because the RIN market is wholly unregulated by EPA, there are no Clean Air Act rules preventing insider trading, cornering, or squeezing the market to increase RIN prices, or any other form of market manipulation.

E. <u>The Market for Cellulosic RINs is Cornered</u>

In its 2014-2016 proposed and final rules, EPA acknowledged that RINs are not evenly distributed among obligated parties.[110] This uneven distribution is a function of RIN-long entities generating more RINs than they need for compliance because they are obligated on the volume of transportation fuel they produce and not the volume of transportation fuel they control across the rack and have the ability (but not the obligation) to blend. Because of the lack of transparency in the RIN market, the extent to which a small number of obligated and unobligated parties control the majority of the RINs generated through blending is hidden from the market. On information and belief, three or four entities control all of the cellulosic RINs.

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[109] *Id.* at 260.

[110] Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Proposed Rule, 80 Fed. Reg. 33,100, 33,108 (June 10, 2015); Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Final Rule, 80 Fed. Reg. 77,420, 77,486 (December 14, 2015).

Securing a dominant position in RINs, whether due to structural flaws in the rule or deliberate actions by the RIN owners, gives the parties holding the RINs unique market power to set the price. RIN-short independent and small refiners cannot simply enter into contracts to secure the RINs they need for compliance to avoid paying high prices for RINs. As the Brattle Group report describes, "[t]raditional market power with attendant high market share is needed to resist competitive forces and cause a directional price movement that benefits its holder on a stand-alone basis."[111] EPA's notion that obligated parties have had sufficient time to enter into contracts to secure the RINs they need for compliance[112] ignores the reality that a contract to purchase RINs does not reduce the risk of having to pay uneconomic prices when a small number of parties hold market power, but rather could have the opposite effect.

Therefore, while the RIN market may be liquid, liquidity in the RIN market does not mean that the market is not cornered or that captive buyers are able to buy RINs at or near their intrinsic value.

F. Foreign Entities are Extracting Windfall Profits Through Speculation in the RIN Market

As described in section II.A.ii. above, numerous parties buy and sell RINs solely for profit, which is illegal under the Clean Air Act.[113] The extraordinary size of the RIN market has attracted global commodity trading companies. Gunvor USA, LLC is a wholly owned indirect subsidiary of Gunvor Group, Ltd. According to press reports, Gunvor USA opened a RIN trading desk in Houston in 2016.[114] One of the co-founders of Gunvor was placed on a sanctions list by the U.S. on March 20, 2014 because of links to Russian president Vladimir Putin.[115] Gunvor is not the only global commodity trader attracted to the wholly unregulated RIN market.

By allowing non-obligated parties to participate in the RIN market, including foreign entities, the RFS regulations are forcing U.S. refiners to buy their compliance from foreign entities, which is inapposite to the program's goals of increasing energy independence and security and increasing renewable fuel use.

G. Non-Obligated Parties are Engaged in Legally Sanctioned RIN Theft

The windfall profits from the sale of RINs have encouraged a practice of RIN theft by non-obligated parties. Specifically, independent and small refineries that have made investments

[111] BRATTLE REPORT ON MARKET MANIPULATION at 265.
[112] 80 Fed. Reg. 77,486.
[113] 42 U.S.C. § 7545(o)(5)(B).
[114] BIOFUELS UPDATE: GUNVOR ADDING BIOFUELS, RINS TO NEW U.S. TRADING PORTFOLIO, OPIS (Oct. 19, 2016).
[115] Financial Times, Gunvor Boss Used $1b Payout to Sever Ties with Russian Oligarch, May 31, 2016, provided here as Attachment 14.

to blend renewable fuel have been displaced from their blending positions or forced to disgorge RIN value to exempt (non-refining) blenders/distributors. For example, large blender/retailers are building competing blending facilities proximate to an obligated refiner's blending facility, and then refusing to buy blended fuel from the refiner. Unable to generate RINs from blending, the refiner is forced to buy RINs in the secondary market, notwithstanding their investment in blending infrastructure. Another example is non-obligated blenders only willing to buy blended fuel if the obligated refiner agrees to discount the fuel to allow the blender/ distributor to capture the RIN value. A typical contract rate is the spot price, less 80% of the RIN value. These contracts are confidential, to prevent EPA from learning of one of the many flaws in the RIN trading program facilitated by allowing blenders/distributors to remain unobligated. Contrary to EPA's theory that RIN costs are passed through in higher prices paid for transportation fuel, RINs or RIN value are captured by non-obligated blenders/distributors when the independent or small refinery does not control the retail sale of their fuel.

The rule structure allows this theft of RIN value, discouraging merchant refiners from investing in renewable fuel blending and forcing obligated parties into the RIN market even when they make investments to blend renewable fuel. EPA's analysis of the RIN market and pass through fails to consider the lack of market power of merchant refiners to generate and retain the RINs they need for compliance.

H. The RIN Market has Attracted Large-Scale Fraud Due to the Extended Chain of Custody

The RIN market has attracted large-scale fraud. As explained in a paper published by Doug Parker, the former director of EPA's Criminal Investigation Division, the current structure of the RIN market and the current definition of obligated party have led to significant fraud in the RIN market due to the extended chain of custody between the producer, the blender and the refiner.[116] Mr. Parker updated his paper in February 2017, noting that the fraud would continue without more transparency and direct engagement and responsibility by aligning the compliance obligation with the point of compliance, and thereby shortening the chain of custody and the amount of activity in the RIN market.[117] Ramon Benavides, a RIN trader, concluded that the lack of transparency in the RIN market is allowing speculators to abuse the market and that

[116] *See* PARKER I.
[117] Doug Parker, E&W Strategies, *Update to: September 4, 2016 White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* (Feb. 3, 2017) [hereinafter "Parker II"], provided here as Attachment 15.

revising the definition of obligated party would increase transparency and reduce market abuse.[118]

Rampant fraud in the RIN market has cost regulated entities and taxpayers over $1 billion over the past several years. RIN fraud cases that have formally been pursued by the United States have resulted in approximately $271 million in documented fraud losses and an additional $71 million in seizures of illicit profits by federal authorities.[119] EPA should be highly motivated to address this issue by reforming the current structure of the RIN market and shortening the chain of custody of RINs.

I. The Small Number of Obligated Parties Makes the RIN Market Uniquely Vulnerable to Manipulation

The secondary market in RINs was intended to serve as a clearinghouse for obligated parties that generated more RINs than they need for compliance (over comply) to trade RINs for use by other obligated parties that could not generate enough RINs for compliance (under comply).[120] To facilitate this market and to ensure sufficient liquidity, EPA opened the RINs market to third parties and permitted RINs to be transferred an unlimited number of times.[121]

Therefore, within the RIN market, only some of the participants are obligated parties. And, among obligated parties, only a subset have the ability to generate sufficient RINs to satisfy their annual obligation. As a result, one category of participant in the RINs market, *i.e.*, the obligated independent refiner, is effectively a "captive" buyer. At the same time, EPA allows various other entities to participate in the RIN market that have no RVO (non-obligated) or excess RINs (RIN-long parties). These entities' only basis for buying and selling RINs is to make markets (*i.e.*, brokering) or to speculate.

Given this market structure, there is an obvious opportunity for non-obligated parties and RIN-long parties to secure a dominant long position in RINs, to hold that position from the market knowing that the independent refiners must purchase RINs by year-end to meet their annual obligation, and thereafter to force the independent refiners that do not have the ability to generate RINs, to buy the credits at exorbitant and artificially high prices. Allowing third parties to participate in the RIN market to increase liquidity has not, as EPA intended, served to protect

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[118] RAMON M. BENAVIDES, GLOBAL RENEWABLE STRATEGIES AND CONSULTING, LLC, THE US RENEWABLE IDENTIFICATION NUMBER: RINS TRADING MARKET at 8, provided here as Attachment 16.
[119] Parker I at 7.
[120] Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 71 Fed. Reg. 55,552, 55,556, 55,576 (Sep. 22, 2006).
[121] *See* Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 72 Fed. Reg. 23,900, 23,944 (May 1, 2007).

RIN-short refiners from having to pay exorbitant prices for RINs because of the disparate market positions of the participants.

III. The RIN Market Must be Fixed to Stop the Harm to Independent and Small Refineries

EPA must have authority to administer and enforce the market that it created. The only way this can happen is if EPA changes the structure of the RIN market to comply with the Clean Air Act, by only allowing RINs to be generated by obligated parties, and only for the increment of over compliance. This requires EPA to add blenders to the definition of obligated party.

A. The RIN Market Structure Must be Changed to Comply With the Clean Air Act

EPA chose to allow non-obligated parties to participate in the RIN market to ensure liquidity.[122] Obligated parties expressed concerns that this would invite speculators trading strictly to profit. Speculation has, in fact, caused wild volatility in prices and dislocation between the price of RINs and the intrinsic value of RINs. Participants may also be engaged in manipulation of prices, including by cornering the available supply of RINs. Even if manipulation is not occurring (or difficult to prove) and only speculation is occurring, speculation is causing price volatility and high prices of RINs. Speculative activity violates the Clean Air Act and speculative transactions in RINs would cause those transactions to be classified as financial transactions, in which case the transactions are not being executed in accordance with the Commodity Exchange Act ("CEA").

The purpose of the RIN market is solely to facilitate compliance by obligated parties. One of the "guiding principles" in establishing the RIN market was to "… preserve existing business practices for the production, distribution, and use of both conventional and renewable fuels."[123] Instead of preserving existing business practices, the RIN market is facilitating a wealth transfer from merchant refiners to RIN-long parties and blender/distributors incentivized to generate supranormal profits, rather than increase renewable fuel use. The supranormal profits are the direct result of the supernormal size of the RIN market and the fact that it is wholly unregulated and attracting manipulation, speculation, and fraud.

Approximately 80% of blending is done by obligated parties or their affiliated marketing arms. Approximately 20% of blending is done by unobligated blenders/distributors and retailers. Large integrated refiners generate excess RINs from blending because they are obligated on the volume of fuel they produce and not the volume they control across the rack and have the

[122] Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, Summary and Analysis of Comments at 5-21 to 5-23 (Apr. 2007), available at: https://www.epa.gov/sites/production/files/2015-08/documents/420r07006.pdf.
[123] 71 Fed. Reg. at 55,557.

opportunity to blend. Non-obligated blenders/distributors have no annual obligation and sell the RINs they generate for windfall profits. These RIN-long entities are incentivized to maximize their profits from selling RINs without regard to the RFS program goal of increasing renewable fuel use.

RIN-short independent and small refiners are incentivized to increase blending, but lack the capital and/or opportunities to do so; existing blenders/distributors are not interested in being displaced from their lucrative rack positions and the cost to build new infrastructure for blending is an insurmountable obstacle. Refiners that have made the infrastructure investments have been displaced from those investments by RIN value disgorgement or competition from non-obligated blenders, as described in section II.G. Retailers are "fuel agnostic." They supply the fuel their customers desire and offer discounts for customer loyalty, not to increase renewable fuel use, and without regard to upstream obligated parties' need to secure RINs for compliance.

To regain control of the RIN market and align the RFS regulations creating the RIN market with the Clean Air Act statutory authority, EPA must include the parties that control the decision whether or not to blend in the definition of obligated party. In its 2010 rulemaking, EPA acknowledged that its initial administrative-ease rationale for obligating refiners and importers, but not blenders, was "no longer valid" and that imposing the obligation on "alternative" points in the fuel-supply chain would "more evenly align a party's access to RINs with that party's [RFS Program] obligations."[124] Nonetheless, EPA left the definition of "obligated party" unchanged. The Agency pledged to "continue to evaluate the functionality of the RIN market," and to consider revisiting the definition of obligated party if the Agency determined that "the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers."[125] For all the reasons described above, the RIN market is very clearly not operating as EPA intended and is driving up prices for merchant refiners.

Revising the definition of obligated party will fix the problems with the RIN market. Once all blenders are obligated parties under the RFS program, the parties that are separating RINs will be the parties that need them for compliance. This means that there will be significantly fewer RIN transactions each year and the market for RINs will shrink dramatically, reducing the incentive for speculators to enter the market. Similarly, if EPA revises the definition of obligated party to include all blenders, it will be able to implement the requirement in the Clean Air Act that RINs only be generated for volumes blended above the mandated volumes. This will dramatically shrink the size of the RIN market and reduce the opportunities for manipulation and fraud.

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[124]Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010).
[125]*Id.*

To honor its commitment in 2010 and to ensure that the RIN market complies with the requirements in the Clean Air Act, EPA must reevaluate the definition of obligated party as part of the 2018 rulemaking. The importance of revising the definition of obligated party was raised in detail in comments submitted to EPA in February 2017. Comments submitted on behalf of CRRM and WRC on this issue are attached and incorporated by reference here.[126]

B. The RIN Market Structure Must be Changed to Comply with the Commodity Exchange Act

A RIN falls squarely within the definition of a "commodity" under the CEA.[127] The Commodity Futures Trading Commission ("CFTC") confirmed that environmental credits, like RINs, are a form of intangible commodity.[128]

The CEA and the rules of the CFTC establish a framework for the regulation of transactions involving commodities. Generally, financially-settled commodity transactions are subject to regulation; physically-settled transactions are largely excluded from regulation under the CEA. Transactions that fit within the former category include transactions which are capable of being settled through the exchange of cash. Transactions in the latter category typically include transactions that result in the transfer of the actual commodity between a buyer and a seller. Examples of transactions capable of being financially settled are futures and swaps.

Using futures as an example, in a typical contract, the buyer agrees today to pay a prescribed amount in return for receipt of a defined amount of an underlying commodity on a date certain in the future. To the extent that the buyer does nothing else, it will take delivery of the physical commodity on the contractually agreed-upon date. However, a buyer (or seller) of a futures contract may offset its futures position rather than go to physical delivery to the extent it uses the futures contract to manage price risk. It is common for buyers and sellers to exit their futures position prior to going to delivery on the contract. They do so by entering an equal and offsetting position in the same commodity by selling (or buying) the same contract. In this instance, the buyer "cash" settles, meaning it receives (or pays) the difference between the price at which it originally bought the futures contract and the price at which it later sold the same futures contract.

Using futures contracts as an example, the CEA and the rules of the CFTC require that (1) counterparties not negotiate futures transactions bilaterally off of an exchange, and (2) exchanges that list futures contracts for trading be registered with the CFTC. To be

126Comments on behalf of CVR Energy, Inc., Docket ID No. EPA-HQ-OAR-2016-0544-0396, provided here as Attachment 17.
[127]7 U.S.C. § 1a(9).
[128]*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).

registered with the CFTC, for example, as a designated contract market, an exchange must comply with a variety of regulatory requirements.

A certain type of physically-settled commodity transaction shares a number of characteristics with a futures contract. In a physical "forward" transaction, the buyer agrees today to pay a prescribed amount in return for receipt of a defined amount of an underlying commodity on a date certain in the future. However, unlike a transaction involving a futures contract, the expectation is that the buyer intends to, and will, go to delivery – that is, take possession of the contracted-for physical commodity. The CFTC has concluded that physical forward transactions are different from, and should not be regulated as, futures. To achieve this end, the CFTC set forth a test to distinguish physical forward transactions from futures transactions (and swaps transactions). This test is known as the forward contract exclusion. To the extent that a forward transaction meets the criteria of the forward contract exclusion, it is exempt from regulation like any other physical commodity transaction. To the extent that a forward transaction does not satisfy all of the criteria of the forward contract exclusion, it is treated as a future (or potentially a swap) and regulated as such.

As the CFTC explained, "[t]he underlying postulate of the [forward contract] exclusion is that the [CEA's] regulatory scheme for futures trading simply should not apply to commercial merchandising transactions which create enforceable obligations to deliver but in which delivery is deferred for reasons of commercial convenience or necessity."[129] In order to fall within the forward contract exclusion, a transaction must: (1) involve the sale of a nonfinancial commodity, (2) for deferred shipment or delivery, (3) that is intended to be physically settled.[130] Intent to make or take delivery of the physical commodity is often viewed as the critical factor in determining whether a transaction qualifies as an exempt forward. This is the case because "[t]he primary purpose of a forward contract is to transfer ownership of the commodity and not to transfer solely its price risk."[131] Consistent with this view, courts have held that the "forward contract exclusion does not apply to speculative transactions in which delivery obligations can be extinguished under the terms of the contract or avoided for reasons other than commercial convenience or necessity."[132]

Given the way in which EPA implemented the RFS Program, it inadvertently invited participants in the secondary market for RINs to engage in physical forward commodity transactions without an intent to physically settle the transactions. To the extent that participants are engaging in such transactions, these transactions, arguably, do not qualify for the forward

[129] *Id.* at 48,228 (citations omitted).
[130] *Id.* at 48,227 (citation omitted).
[131] *Id.* at 48,228.
[132] *Id.* at 48,228 n.213 (citing with approval *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 676 (S.D.N.Y. 1979)).

contract exclusion set forth by the CFTC and may be characterized either as futures or potentially swaps. To the extent that any such transactions are characterized as futures, it is a violation of the CEA for the counterparties to negotiate the transactions bilaterally (*i.e.*, directly with each other) and to execute the transactions off of a registered exchange. Currently, RINs transactions are not being executed on a registered exchange. Further, counterparties routinely, if not exclusively, bilaterally negotiate the terms of these RINs transactions.

EPA originally described the RFS credit trading program as an environment "whereby *an obligated party* may generate credits for over complying with their annual obligation. The *obligated party* can then use these credits or trade them for use *by another obligated party*."[133] However, to ensure sufficient liquidity in the RIN market, EPA did two important things: (1) it opened the RIN market to non-obligated Parties, and (2) it permitted RINs to be transferred an *unlimited* number of times, amongst *any* party.[134]

This broad access to the RINs market has resulted in market participants trading RINs that have no commercial need for RINs – that is, they do not require RINs to satisfy a renewable volume obligation. Entities trading RINs that do not have a compliance obligation, almost by definition, can only be trading RINs for one of two purposes: (1) to act as a market maker between obligated parties that have excess RINs and obligated parties that need RINs to comply, or (2) to speculate on the direction of RIN prices to make a profit. To the extent that either of these purposes apply to a specific transaction, the transaction falls within the CEA's regulatory regime and market participants are not complying with the CEA.

C. Putting the RIN Market on an Exchange Will Not Cure the Legal Infirmities

In prior rulemakings, commenters suggested that RINs could be traded on an exchange to reduce the risk of manipulation. There are a number of limitations with this proposed solution. First, changing the locus of the secondary market without changing the nature of the trading that occurs on the market would not address the spectrum of legal infirmities created by the existing RINs trading structure – namely, as long as EPA allows participants to speculate in RINs, the RIN market will run afoul of the Clean Air Act. Second, even if speculation were consistent with the mandates of the Clean Air Act, moving the market to a formalized trading venue like an exchange (which would address the CEA problem outlined above) would not alleviate the economic unfairness that results from the current market structure – that is, the fact that certain participants (RIN-long and non-obligated parties) have an inherent advantage over merchant refiners even when the market is operating without the influence of otherwise illegitimate forces.

[133]Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 71 Fed. Reg. 55,552, 55,556 (Sep. 22, 2006) (emphasis added).
[134]72 Fed. Reg. at 23,910(stating: "[o]nce a RIN is separated from a volume of renewable fuel, it can be used for compliance purposes, banked, or traded to another party. Separated RINs can be transferred to any party any number of times.").

While commodities exchanges generally operate in a regulated space, the nature of the regulation is tied to the integrity of the marketplace, not to the relative advantages that may exist between different participants in that market.

Speculative RINs transactions that constitute financial commodity transactions, will be regulated, in certain instances, in the form of restrictions on who can execute such transactions (*e.g.*, sophisticated parties for swaps), where such transactions may be executed (*e.g.*, exchanges) and how such transactions are executed (*e.g.*, openly and competitively, not bilaterally). The CEA further regulates the exchanges whereon such transactions are executed, requiring them to abide by various core principles such as ensuring: (i) access to their markets, (ii) that contracts listed on the exchanges are designed to avoid manipulation, (iii) that rules are implemented to prevent market disruption, (iv) that transactions are executed openly and competitively, (v) that limits are imposed on the size of positions held in a given contract, where appropriate, and (vi) that information about trading on the exchanges (*e.g.*, prices, volume, open interest) is made available to the public.

By virtue of this collection of regulatory requirements, exchanges are well positioned to (i) understand who the participants are in a given contract, for what purpose they are trading a given contract, how much they are trading, and how they effectuate their trading in a given contract, (ii) monitor for situations where a given contract is under distress (*e.g.*, where a given participant or group of participants have secured a potentially dominant position) or where the market is being disrupted (*e.g.*, potentially manipulative activities), and (iii) implement rules to mitigate potential disruption (*e.g.*, through imposition of position limits and rules on how orders are entered and filled). But, as highlighted by the above, the focus of the exchange, and by extension the requirements of the CEA and the CFTC directed to the exchange, is on ensuring the integrity of the operation of a marketplace. The exchange is not tasked with balancing the competitive advantages that one participant on the exchange may have over another participant on the exchange. For example, the rules of an exchange do not impose different limits on a given participant because of the size of the participant's business. Similarly, an exchange does not require different levels of transparency depending on the purpose for which a participant seeks to access the exchange (*e.g.*, speculators versus hedgers). Quite the contrary, an exchange is designed to encourage all type of participants (*e.g.*, hedgers, speculators, market makers) on the premise that a central location for trading a given product provides for liquidity and price discovery and results in prices that reflect a broad spectrum of the market.

In short, while subjecting RIN trading to the rules and requirements of an organized exchange might lessen the volatility of RIN prices, cause RIN prices to go down somewhat, and potentially avoid violations of the CEA, trading in RINs would still suffer from the fact that certain participants (RIN-long and non-obligated parties) have an inherent advantage over other participants (RIN-short merchant refiners) even when the market is operating without the influence of otherwise illegitimate forces.

Given the importance of the RIN market operation to the integrity of the RFS program as a whole, and the importance of merchant refiners that are captive participants in the RIN market, to U.S. energy independence, security, and important American jobs, EPA should not take comfort in any suggested on-exchange solution. Rather, it should revert to Congress's original intent that RINs trading take place solely among obligated parties in order to avoid further violations of the Clean Air Act and CEA.

D. EPA Should Shrink the Size of the RIN Market to Reduce Speculators' Interest in the Market

If EPA is not prepared to also obligate the parties that control the blending of renewable fuel by including blenders in the definition of obligated party, it should reduce the volume mandates to stay safely below the E10 blendwall. Substantially lower volumes will reduce RIN prices and reduce the extraordinary harm that is threatening the viability of independent and small refiners for the benefit of profit maximizing RIN-long and non-obligated parties and market speculators. Lower RIN prices will attract fewer instances of manipulation, speculation, and fraud, and reduce the harm to merchant refiners, but it will not advance the goals of the RFS, which can only be accomplished by aligning the obligation to comply with the ability to do so.

E. EPA Should Not Rely on Other Government Entities to Administer and Enforce the RIN Trading Program, in Lieu of Fixing the Regulations

In the proposed rule, EPA notes that it has entered into a memorandum of understanding with the CFTC to facilitate coordination and sharing of information in the investigation of alleged misconduct in the RINs market. While the CFTC has authority to enforce alleged manipulation of RIN prices under the CEA and speculative transactions in RINs may violate the CEA, the CFTC has not expressed a clear intent to do so. Rather, the CFTC made clear that while it "stands ready to assist the EPA in its analysis of the RINs market," activity in RIN futures is non-existent and there were fewer than 300 open swaps based on RINs, suggesting that the CFTC does not view the RIN market as a particular fit or priority for its limited resources.

i. State Attorneys General May be Able to Enforce Certain Provisions of the CEA

The Commodities Exchange Act permits a state Attorney General to enforce certain aspects of the CEA.[135] For example, the Attorney General could enforce prohibitions on manipulation in the RINs market. Like the CFTC, state Attorneys General may have other priorities, state enforcement could vary among states, and state enforcement should not act as a substitute for EPA being able to administer and enforce its own program. Therefore, the best

[135] 7 U.S.C. § 13a-2.

way to fix the RIN market is to ensure that EPA has the ability to administer and enforce its own program.

ii. The FTC May be Able to Enforce Manipulation of the RIN Market and May or May Not be Willing to do so

As described in section II.B., RIN-long parties and market speculators may be engaged in trade-based market manipulation by intentionally losing money on anomalous price-making trades to benefit the value of the trader's related price-taking positions.[136] This type of trade-based manipulation likely violates the Federal Trade Commission's "Prohibitions on Market Manipulation Rule," implemented in 2009 under Section 811 of Subtitle B of Title VIII of the Energy Independence and Security Act of 2007.[137] The Prohibitions on Market Manipulation Rule prohibits manipulative conduct undertaken "in connection with" the purchase or sale of crude oil, gasoline or distillates at wholesale, which includes renewable fuels and other products if there is a sufficient nexus between conduct involving those products and wholesale petroleum markets. According to the FTC, the "in connection with" language in the rule should be interpreted broadly.[138]

Accordingly, the FTC may have jurisdiction to prevent manipulation of the RIN market, but there is no certainty that it will do so. In 2015, several refiners asked the FTC to investigate the RFS and the market distortion in favor of large, integrated refiners and unobligated parties.[139] The FTC has not taken action in response to refiners' requests.

Given the importance of the RIN market operation to the integrity of the RFS program as a whole, and the importance of obligated parties that are captive participants in the RIN market to U.S. energy independence and security and important American jobs, EPA should not rely on the FTC to prevent manipulation of the RIN market in lieu of reforming the program to enable EPA to administer and enforce its own program.

F. Buying and Selling RINs for Profits is Illegal and Should Be Stopped

It violates the Clean Air Act, and likely the CEA, for parties to buy and sell RINs for profit as described in sections II.B.iii. and II.C.i. If EPA believes that it has statutory authority to allow non-obligated parties and market speculators to participate in the RIN market, then it should highly regulate and restrict their trades. RIN-long obligated parties with excess RINs and non-obligated blenders should be compelled to sell any RINs they generate from blending within

[136] *See* BRATTLE REPORT ON MARKET MANIPULATION.
[137] 42 U.S.C. §§ 17001-17386.
[138] Prohibitions on Market Manipulation; Final Rule, 74 Fed. Reg. 40,686, 40,695 (Aug. 12, 2009).
[139] Letter from LeAnn Johnson Koch to Louis Silvia, Assistant Director, Antitrust I, Federal Trade Commission (Oct. 14, 2015), provided here as Attachment 18.

five business days of generating them and should only be permitted to sell their RINs to obligated parties who need them for compliance. Speculators have no place in the RIN market. If EPA nevertheless allows them to participate, they too should be highly regulated and only allowed one trade, within five business days of acquiring the RIN. The market should be highly regulated, requiring parties buying and selling RINs for profit, and not compliance, to disclose the source of the RINs, their positions and the value thereof, their trades and their counterparties. EPA can add protections to avoid circumvention of this request.

This approach is a band-aid and no substitute for changing the definition of obligated party to include blenders. More obligated participants would assist in the proper functioning of the RIN market and would avoid the disparity for RIN-short captive participants described in section II.I.

G. EPA Should Remove the Diesel Disparity or Lower the Volume Mandates to Avoid the Harm Caused by Retaining the Diesel Disparity

In 2010, EPA revised the renewable fuel standard regulations, adding diesel to the transportation fuels required to be blended with renewable fuel. In doing so, EPA created four separate renewable fuel standards – cellulosic biofuel, advanced biofuel, biomass-based diesel, and renewable fuel. EPA considered two options for implementing this change to the program: basing each standard on the sum of all gasoline and diesel fuel produced by each refinery or splitting the standards and creating gasoline-specific and diesel-specific standards. For administrative convenience, EPA chose not to split the standards into gasoline- and diesel-specific standards. This structure misaligns the obligation to comply with the ability to do so and harms refineries that produce more diesel than the industry average.

In its 2011 small refinery study, DOE explained the diesel disparity:

> 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.[140]

The "more difficult compliance pathway" refers to the refinery's ability to blend and generate RINs for compliance and the relative cost of generating those RINs. A refinery that produces little or no gasoline is ill-equipped to blend it, forcing that refinery into the RIN market

[140] DOE Study at 34.

and resulting in a higher cost of compliance. Further, because biodiesel is blended at lower rates than ethanol, refineries that can blend biodiesel generate fewer RINs for compliance than refineries that blend ethanol with gasoline. More complex, large, vertically integrated refineries generally produce more gasoline and less diesel than the industry average and generate more RINs than they need for compliance.

Further, because biodiesel is more expensive than ethanol, it is more expensive to produce blended diesel than it is to produce blended gasoline. As a result of the diesel disparity, refineries that disproportionately produce diesel have to purchase more RINs for compliance and have a higher cost of compliance. This outcome is embedded in the implementing regulations and is not prescribed by the Clean Air Act.

To address this issue, EPA must fix the rule to remove the diesel disparity, lower the volumes to reduce the cost of RINs to reduce the diesel disparity, or revise the definition of obligated party to align the compliance obligation with the ability to comply.

IV. Full RIN Market Transparency Would Compound the Harm to RIN-Short Merchant Refiners, but Partial Transparency May Help in Several Ways

A. EPA Should Increase Transparency in the RIN Market

Additional transparency in the RIN market would be extremely beneficial. Additional transparency must be thoughtfully accomplished with certain goals in mind. Disclosing the market positions of parties that buy and sell RINs for profit (not for purposes of compliance) would serve several purposes. First, it would discourage manipulation of the RIN market and speculative trading. Second, it would help to determine if the RIN market is functioning as EPA intended, as a compliance tool for obligated parties, without driving up their costs of compliance.[141] Finally, it would help to determine whether the billions of dollars in RIN transactions are promoting the program goals of increasing renewable fuel use, or are ending up in the pockets of RIN-long and non-obligated parties and market speculators.

Because there are a small number of RIN-short captive participants in the RIN market with a fixed compliance deadline, granting full transparency into the RIN market by disclosing their transactions and/or their market positions would compound the harm, rather than avoid it. Armed with this information, RIN-long parties, unobligated blenders, and Wall Street and foreign speculators would be better able to "corner" the market, withholding RINs until the compliance deadline to secure higher prices in a classic "short squeeze," making manipulation of the RIN market even easier than it is now.

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[141] 75 Fed. Reg. at 14,722.

Under the Clean Air Act, "[a] person that generates credits under subparagraph (A) may use the credits, or transfer all of a portion of the credits to another person, for the purpose of complying with paragraph (2)."[142] To create additional transparency in the RIN market without running the risk of compounding the harm to RIN-short captive buyers, EPA should make public the market positions and trades of parties buying and selling RINs for profit, rather than for purposes of complying with paragraph (2). This would include RIN-long obligated parties that buy and sell RINs for profit as well as non-obligated parties, including blenders, traders, and market speculators. These parties should be required to report, and EPA should disclose, the profits they derive from buying and selling RINs for profit and the extent to which they used their profits to increase renewable fuel blending.

EPA should also require disclosure of the capture of RIN value. Downstream distributors have discovered the value of the RIN and, in many instances, will only buy blended fuel from obligated parties if they can secure all or a portion of the RIN value. As a result, even when obligated refiners invest in blending and distribution infrastructure, they are forced to give away the value of the RIN they need for compliance to the downstream distributor when they do not control their fuel to retail, as described in section II.G. These RIN market beneficiaries should be required to disclose their RIN revenues and the extent to which they used their RIN revenues to increase renewable fuel blending.[143]

All non-obligated RIN market participants should be required to report the benefits they derive from their participation in the RIN market. This could be very easily accomplished by expanding the EMTS registration requirements to define a "RIN owner" as anyone who participates in any way in the RIN market – by disgorging RIN value from obligated parties, as a kick-back to the retailer or producer, or in any other manner. Since the high price of RINs is intended to incentivize increased investments in blending and distribution infrastructure, any party that is a RIN market beneficiary should be required to disclose their RIN market benefits to the public. This will help everyone better understand in whose pockets the $15 billion annual RIN revenues are ending up and whether the wealth transfer from RIN-short merchant refiners to RIN-long and non-obligated parties and spectators is advancing the goals of the RFS program.

It may also help to explain the resistance of certain renewable fuel producers to obligating the parties that control the decision whether or not to blend by adding them to the definition of "obligated party." Joe Jobe, the former CEO of the National Biodiesel Board, concluded that revising the definition of obligated party would be beneficial to renewable fuel

[142] 42 U.S.C. § 7545(o)(5)(B).
[143] Platts, Rising RINs price picks winners and loser among US refiners: analysts (Mar. 13, 2013), https://www.platts.com/latest-news/oil/newyork/rising-rins-price-picks-winners-and-losers-among-6258093.

producers by removing the market constraints preventing more renewable fuel use.[144] The current definition of obligated party is clearly a market constraint on more renewable fuel blending,[145] yet certain renewable fuel producers oppose moving the obligation to the position holder at the rack. Instead they propose to overcome the obvious market constraints through means that would be greatly injurious to critical U.S. energy infrastructure and wildly inefficient (supranormal profits to encourage voluntary pass through of discounts on E15 and E85 use) compared to aligning the obligations with the incentives.[146] It may be that certain renewable fuel producers are somehow benefiting from high RIN prices and that changing the definition of obligated party would divest those profits. Requiring all market participants to disclose any benefits they derive from the RIN market will help to assess the effectiveness of the RIN market in meeting the goals of the RFS.

RIN market participants will argue that this public disclosure will needlessly complicate the program, impose burdens on small entities, and create confusion. These arguments should be seen for what they are – attempts to obscure the egregious manipulation of the RIN market and gross distortion of competition caused by the inappropriate definition of obligated party that is threatening critical U.S. energy infrastructure and American jobs. Anyone sophisticated enough to be a beneficiary of the RIN market, is sophisticated enough to disclose the benefit they derive. If they exit the market to avoid the public disclosure, so much the better. The market will operate as Congress intended.

In addition, by increasing transparency in the RIN market and requiring the public disclosure of RIN market participants, manipulation, speculation, and fraud would be reduced and EPA, rather than other government entities, would be able to administer and enforce its program.

B. Do Not Require Obligated Parties to Replace Invalid RINs

EPA should reexamine how the Agency treats "invalid RINs" for the purpose of enforcement. As the Agency is well aware , a very large number of RIN transactions occur each year between obligated and non-obligated parties. While the Agency has taken some steps to improve validation methods for RINs, it is clear that invalid RINs continue to make their way into the marketplace. EPA should therefore limit requirements to replace RINs *to the party or parties who caused the invalidity to occur*. We adopt the Comments of the American Fuel & Petrochemical Manufacturers and the American Petroleum Institute on this issue, filed in this docket.

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[144]Letter from Joe Jobe, Rock House Advisors, LLC to EPA, Office of Air and Radiation (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0271, provided here as Attachment 19.
[145]Comments on behalf of CVR Energy, Inc., Docket ID No. EPA-HQ-OAR-2016-0544-0396.
[146]*See* BRATTLE REPORT FOR GROWTH ENERGY.

V. Exempt Small Refinery and Small Refiner Volumes Should Continue to be Treated as They Have in Prior Years

In the proposed rule, EPA requested comment on how it should account for small refinery[147] hardship exemptions in setting the annual percentage standards for 2018.[148] EPA addressed this issue in prior RFS rulemakings and determined that it was not appropriate to adjust the annual percentage standards to account for gasoline and diesel volumes exempted from the RFS program under the small refinery exemption provision where EPA granted those exemptions *after* it issued a final rule establishing the annual percentage standard. EPA also determined that it was not appropriate to adjust the annual percentage standards for a given year to "make up for" any small refinery exemptions granted in the previous year. For the reasons EPA articulated in its earlier rulemakings, EPA should continue to follow this approach in the 2018 rule.

A. Current Year Exemptions

EPA determined in prior RFS rulemakings that it was not appropriate to adjust the annual percentage standards to account for small refinery exemptions that were granted *after* EPA issued the final rule establishing the annual percentage standards for that year. EPA considered this issue in its final rule establishing the 2011 annual percentage standards and explained that factoring these volumes into the annual rulemaking would be inconsistent with the Clean Air Act. EPA stated:

> If any small refinery exemptions for 2011 are approved after this final rulemaking, the parties in question would be exempt but we would not intend to modify the applicable percentage standards and announce new standards for 2011. EPA believes 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. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.[149]

EPA further stated that:

> If, subsequent to announcing the 2011 standards, we make a determination that one or more hardship petitions should be approved, we do not intend

[147]This section refers to small refineries and small refiners collectively as "small refineries" for ease of reference.
[148]82 Fed. Reg. 34,241.
[149]75 Fed. Reg. at 76,804.

> to revise the 2011 standards applicable to other obligated parties to require that they make up for volumes that will not be attained by the exempt refineries.[150]

EPA took a similar approach in subsequent annual rulemakings.[151]

B. Prior Year Exemptions

EPA also determined in prior RFS rulemakings that it was not appropriate to adjust the annual percentage standards for a given year to "make up for" any small refinery exemptions granted in the previous year. EPA considered this issue in its final rule establishing the 2012 annual percentage standards. In that rulemaking, EPA considered whether to adjust the 2012 standards to account for hardship exemptions from the 2011 compliance requirements. The 2011 exemptions at issue were granted as a result of DOE's 2011 Study and were granted *after* EPA issued the final 2011 rule. These exemptions were therefore not accounted for in the 2011 rulemaking. One commenter suggested that "the volumes waived in 2011 as a result of the small refiner waivers be 'made up' in setting the 2012 standards."[152] EPA rejected this suggestion and explained that:

> In addition, we are not required to ensure that the biofuel volumes in the statute are precisely met. We are required to use the specified volumes to set the percentage standards, but there are no provisions for ensuring that the percentage standards actually result in the specified volumes actually being consumed. This outcome is evidenced by the fact that we use projections of gasoline and diesel volume for the next year which might turn out to be too high or too low. Insofar as those projections are wrong, the percentage standards will not produce a demand for biofuels that exactly corresponds to the volumes in the statute. Thus Congress allowed for some imprecision to exist in the actual volumes of renewable fuel that are consumed as a result of the percentage standards that we set each November, and did not provide a means for correcting the percentage standards after November to ensure that the applicable volumes of renewable fuel are exactly met in a given compliance year.[153]

As EPA explained, in drafting the RFS program, Congress allowed for some imprecision to exist in the actual volumes of renewable fuel that are consumed each year in favor of

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[150] 75 Fed. Reg. at 76,805.
[151] *See e.g.,* 77 Fed. Reg. 1320, 1340 (Jan. 9, 2012) (establishing the annual percentage standards for 2012); 78 Fed. Reg. 49,794, 49,826 (Aug. 15, 2013) (establishing the annual percentage standards for 2013).
[152] 77 Fed. Reg. at 1340.
[153] *Id.*

providing certainty to the regulated community. As EPA recognized, this flexibility applies to accounting for small refinery hardship exemptions and dictates that EPA not address small refinery exemptions granted after it issues a final rule establishing the annual percentage standard.

C. Considering Exemptions in the 2018 Rule

Under the current RFS hardship process, EPA cannot issue decisions on RFS hardship petitions before it sets the annual percentage standard for the year. EPA requires small refineries to submit information related to the refinery's performance over the three years prior to the year in which the refinery seeks hardship relief. As a result, small refineries cannot begin the process of applying for an exemption for the 2018 compliance year until early 2018, several months after EPA has issued the final rule establishing the 2018 annual percentage standards. Further, once EPA receives a small refinery hardship petition, EPA is allowed under the Clean Air Act to take up to 90 days to issue a decision on that petition.[154] As a result, there is no practical way for EPA to account for 2018 small refinery hardship exemptions in the 2018 annual renewable fuel volume rulemaking.

EPA's approach to this issue has been consistent throughout the RFS program and there is no reason to change that approach now.

* * *

Thank you for your consideration of these comments.

Very truly yours,

/s/ John R. Walter

John Walter
Senior Vice President, General Counsel and Secretary
Coffeyville Resources Refining & Marketing, LLC
Wynnewood Refining Company, LLC

Attachments

cc: Allen Jones, Esq. (via electronic mail w/ attachments)
LeAnn Johnson Koch, Esq. (via electronic mail w/ attachments)
Krista Hughes, Esq. (via electronic mail w/ attachments)

[154] 40 U.S.C. § 7545(o)(9)(B)(iii).

VALERO

Submitted Via eRulemaking Portal

August 31, 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

Dear Administrator Pruitt:

The Valero Energy Corporation and its subsidiaries (collectively, "Valero") hereby submit comments on EPA's proposed renewable volume obligations ("RVOs") for 2018 and for biomass-based diesel for 2019 under the renewable fuel standard ("RFS") program. In the proposal, EPA seeks comment on several issues in the RFS program in addition to the RVO. Valero's unique position as a refiner, importer, exporter, marketer and biodiesel and ethanol producer means that Valero views the RFS program from several perspectives that can be particularly helpful to EPA on the issues raised in the proposal. Valero urges EPA to consider Valero's unique frame of reference in evaluating the views and recommendations presented in these comments.

As the largest petroleum refining company in the U.S. and the world's largest independent refiner, Valero employs approximately 10,000 employees and operates 15 petroleum refineries in the U.S., Canada and the U.K. Valero therefore has a large RFS obligation and has the perspective of an obligated party and a merchant refiner. Valero is also a fuel importer, exporter, and a major fuel wholesaler. Important also from Valero's perspective is Valero's experience as a biofuel producer. Valero was the first traditional petroleum refiner to enter large-scale ethanol production and has 11 state-of-the-art plants making Valero the third largest ethanol producer in the U.S. Valero's investment in Diamond Green Diesel makes Valero also the largest renewable diesel producer in the U.S.

Due to these diverse business interests, Valero is a member of several different trade associations that themselves represent diverse interests. To the extent that these associations submit comments on this proposal, they should not be construed as necessarily representing Valero's viewpoints, particularly when such comments (or lack of comments) may conflict with our statements herein.

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Valero Comments on EPA's Proposed Rule for Renewable Fuel Standard Program: Standards for 2018 and Biomass-based Diesel Volume for 2019
Docket ID No. EPA-HQ-OAR-2017-0091

In these comments, we identify corrections to the RFS that will substantially improve the program and ensure that it continues to meet the statutory goals set by Congress: to support growth in renewable fuels in the U.S. and to enhance U.S. energy security and independence. Several of these recommendations are consistent with recommendations made by the Bipartisan Policy Center in 2014.[1]

I. EPA must consider the point of obligation each time it establishes the annual percentage standards.

EPA states that it is not reopening the docket for the proposed denial of the petitions related to the point of obligation.[2] However, EPA does not have the option to exclude such comments where they are directly relevant to issues EPA raised in the proposal. An agency is required to respond to comments that are "relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule [because they] cast doubt on the reasonableness of a position taken by the agency."[3] EPA's failure to satisfy a required element of this rulemaking by not considering the point of obligation not only "cast[s] doubt on the reasonableness" of the proposal, it renders it unlawful. Valero's comments on the point of obligation are not outside the scope of this rulemaking and must be given full consideration by EPA despite the Agency's insistence that it is not "reopening" this issue. The D.C. Circuit in *Americans for Clean Energy v. EPA*[4] ("*ACE v. EPA*") did not address this issue because the court had already decided to remand the 2014-2016 RVO rule to EPA. The fact that the court left EPA with only the choice of venue for its consideration of the point of obligation—on remand or in response to a rulemaking petition[5]—indicates that the court does not consider the point of obligation outside the scope of the RVO.

As presented in the various administrative petitions submitted to the agency and in briefs to the D.C. Circuit, the statute requires that EPA (1) regulate entities "as appropriate" to ensure transportation fuels contain renewable fuels and (2) consider the appropriateness of the entities regulated under the RFS every time it sets the RVO. The statute provides that the primary goals of the RFS are "greater energy independence and security and increasing production of clean renewable fuels."[6] To meet these goals, the statute assigns EPA certain duties. First, it requires EPA to promulgate regulations that regulate the appropriate parties to ensure that transportation fuel introduced into commerce contains renewable fuel.[7] Second, it assigns EPA an annual, mandatory duty to evaluate whether the appropriate parties are regulated:

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[1] Bipartisan Policy Center, Options for Reforming the Renewable Fuel Standard at 30 (Dec. 2014), *available at* https://cdn.bipartisanpolicy.org/wp-content/uploads/2014/12/BPC-Options-for-Reforming-the-RFS1.pdf.
[2] 82 Fed. Reg. 34,206, 34,211 (July 21, 2017).
[3] *Home Box Office, Inc. v. FCC,* 567 F.2d 9, 35 n. 58 (1977); *cert. denied,* 434 U.S. 829 (1977).
[4] No. 16-1005, slip op. at 84 (D.C. Cir. July 28, 2017) ["*ACE v. EPA*"].
[5] *Id.* at 85.
[6] Energy Independence and Security Act of 2007 ("EISA"), Pub. L. No. 110-140, tit. X, § 1001-1002, 121 Stat. 1492 (2007).
[7] 42 U.S.C. § 7545(o)(2)(A)(iii).

- Not later than November 30 of each calendar year, EPA "shall determine and Publish . . . the renewable fuel obligation that ensures the requirements of paragraph (2) are met."[8]
- The renewable fuel obligation shall "be applicable to refineries, blenders, and importers, *as appropriate.*"[9]

It is clear that this is not a one-time requirement, but rather, an annual duty because EPA cannot fulfill its duty to ensure that the renewable volumes prescribed by the statute for a given year are met without considering whether it has regulated the appropriate parties at that point in time. It is not sufficient to regulate the parties that were appropriate at one point in time or continue with the parties regulated at one time when a change would improve the performance of the program. EPA acknowledged the need to reevaluate the appropriateness of the regulation related to "appropriate" parties when EPA committed to reevaluate the point of obligation as circumstances change.[10] It is equally clear that EPA must fulfill its annual duty to consider the point of obligation within sufficient time to publish a final rule every November.[11] EPA has not fulfilled its duty with regard to the annual percentage standards for 2018 in this proposal.

Considering the point of obligation each time EPA sets the annual percentage standards serves the statute's goals of "increasing production of clean renewable fuels" and "greater energy independence and security." EPA cannot ignore the positive effect that changing the point of obligation would have on consumption of all renewable fuels. Nor can EPA ignore how the current point of obligation promotes fuel exports and supports biofuel imports. Neither can EPA continue to rely on a regulation that amounts to restructuring a segment of the U.S. economy on the basis of administrative convenience or because some economic sectors are profiting from the regulatory structure in a way that does not serve the statutory purposes. When EPA "lay[s] claim to extravagant statutory power over the national economy while at the same time strenuously asserting that the authority claimed would render the statute unrecognizable to the Congress that designed it," such an announcement should be greeted with skepticism.[12]

Moreover, EPA itself has recognized a "guiding principle" of the RFS is that "the program should preserve existing business practices for the production, distribution, and use of both conventional and renewable fuels."[13] In failing to consider the point of obligation, EPA has flouted this principle, preferring instead to try to force merchant refiners to change their business practices in order to add blending facilities and risk further consolidation in the fuel industry rather than fix the underlying flaws in the structure of the RFS.

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[8] *Id.* § 7545(o)(3)(B)(i).
[9] *Id.* § 7545(o)(3)(B)(ii)(I).
[10] 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010) ("We will continue to evaluate the functionality of the RIN market. Should we determine that the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers, we will consider revisiting this provision in future regulatory efforts.").
[11] 42 U.S.C. § 7545(o)(3)(B)(i); 40 C.F.R. § 80.1405(b).
[12] *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014) (internal citations omitted).
[13] 71 Fed. Reg. 55,552, 55,557 (Sept. 22, 2006).

II. EPA's consideration of the impact of market constraints is incomplete without also considering the point of obligation, and EPA should not increase the RVO as long as the point of obligation constrains the market.

In prior rulemakings, Valero responded to EPA's concerns about market constraints and described the direct connection between the point of obligation and the ability of renewable fuels to further penetrate the market. In the current proposed rule, EPA continues to disregard the importance of this connection as it relates to a well-functioning market. As long as the current RFS structure (i.e. the placement of the point of obligation) remains unaddressed, the many-identified constraints on the ethanol market will remain. [14] EPA cannot increase the RVO for total renewable fuel under such circumstances. EPA must evaluate the severe economic harm that would result from the impact on RIN prices as a result of these unaddressed constraints. High RIN prices will continue to cause disproportionate economic harm to merchant refiners, small fuel retailers, and U.S. consumers. In short, high RIN prices constitute precisely the sort of severe economic harm contemplated in EPA's general waiver authority.

EPA states that the constraints in the ethanol market discussed in the 2014-2016 RVO rulemaking remain relevant for 2017 and 2018.[15] According to EPA, those constraints include:

- the blendwall.
- the number of retail stations that offer higher blends such as E15 and E85.
- the number of vehicles that can legally and practically consume E15 and/or E85.
- relative pricing of E15 and E85 versus E10 and the ability of RINs to affect this relative pricing.
- the supply of E0.[16]

EPA has failed to acknowledge the role of the RFS structure in reinforcing these constraints or how the proper alignment of the point of obligation could help to reduce them.

In a report acknowledging significant and persistent challenges in the implementation of the RFS, the Bipartisan Policy Center recommended that EPA consider a change in the point of obligation as an option that could improve the RFS.[17] Valero urges EPA to undertake a serious evaluation of how a change will improve the RFS. In its Petition for Rulemaking of June 13,

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[14] *See, e.g.*, Valero Energy Corp., Comments on Proposed Renewable Fuel Standards for 2014, 2015 and 2016 and Biomass-Based Diesel Volume at 16 (July 27, 2015), Docket ID No. EPA-HQ-OAR-2015-0111-2765 (citing Ronald E. Minsk statement that "The current point of obligation is a significant factor inhibiting greater amounts of E85, and perhaps biodiesel, from reaching the market due primarily to the lack of properly aligned incentives and the resulting shortfall in blending infrastructure expansion"), provided here as Attachment 1; Valero Energy Corp., Comments on Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018, Proposed Rule at 2 (July 11, 2016), Docket ID No. EPA-HQ-OAR-2016-0004-1746 ("The current Point of Obligation is a structural deficiency that prevents the RFS program from functioning as intended."), provided here as Attachment 2; Comment submitted by Richard Alonso, Partner, Bracewell LLP (Feb. 23, 2017) (providing commenters in support of change in point of obligation), Docket ID No. EPA-HQ-OAR-2016-0544-0189.
[15] 82 Fed. Reg. at 34,230.
[16] *Id.*
[17] Bipartisan Policy Center *supra* note 1 at 43.

2016 Valero described how the current point of obligation inhibits the RIN market from increasing renewable fuels.[18] The disparity in the RIN market between the RIN-long parties and RIN-short parties impairs the ability of the RFS program to incentivize increasing renewable fuel use and setting prices to encourage consumption of renewable fuels.

In comments submitted on EPA's Proposed Denial of the Petitions for Rulemaking, Valero responded to EPA skepticism that aligning the point of obligation with the RFS compliance point would improve incentives for E85.[19] Valero describes the effect of aligning the point of obligation would be to compel RIN-long refiners to compete for E85 market share because they will now have a proportional obligation. As a result, E85 retail prices would have the best opportunity to compete with E10 and gain penetration into the market with increased availability of E85 at retail stations. Ron Minsk, former Special Assistant to President Obama for Energy and Environment and former Special Assistant to President Clinton for Economic Policy reached a similar conclusion in a letter submitted to EPA in 2015[20] and in a report summarizing research findings in February 2017.[21] Valero continues to urge EPA to reduce the impact of these constraints by aligning the point of obligation with the point of compliance. Not only does the statute require this but it remains unreasonable for EPA to avoid correcting the program while seeking to limit the RVO to avoid the harms created by the constraints. Absent the proper alignment of the point of obligation, higher RVOs will cause economic harm.

EPA asserts that the standards set under the RFS program provide incentives to overcome the ethanol-related constraints. However, EPA has adjusted its calculation of the demand and supply of E0. After the D.C. Circuit decision in *ACE v. EPA*, EPA cannot consider the demand for E0 or any of these demand-side constraints for determining the adequacy of renewable fuel supply under its general waiver authority. However, the demand for E0 along with other demand constraints contributes to the limited supply of RINs since EPA only allows RINs for renewable fuels consumed in the U.S. This constrained supply of RINs is causing severe economic harm as the RIN bank is depleted, the RVO increases, and disproportional impacts greatly distort the market. Absent alignment of the point of obligation, to avoid severe economic harm, EPA must limit the RVO to ensure that the RIN supply is not depleted.

III. EPA should exclude biofuel imports in determination of "domestic supply" when setting the RVO.

EPA has requested comment concerning biofuel imports, including any "inherent authority or other basis consistent with general construction of authority in the statute to reduce

[18] Valero Energy Corp., Petition for Rulemaking: Renewable Fuel Standard Definition of Obligated Party - 40 C.F.R § 80.1406 at 12, 19-20 (June 13, 2016), provided here as Attachment 3.
[19] Valero Energy Corporation, Comments on EPA's Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation at 39-40 (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0274 (discussing pass-through of RINs) ["Valero Point of Obligation Comments"], provided here as Attachment 4.
[20] Ronald E. Minsk, Comments on Proposed Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017 (July 24, 2015), Docket ID No. EPA-HQ-OAR-2015-0111-1307 ["Minsk 2015 Comments"], provided here as Attachment 5.
[21] Ronald E. Minsk, Comments on Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0195, provided here as Attachment 6.

the required volume of advanced biofuel (with a corresponding reduction to the total renewable fuel requirements) below the level proposed for 2018."[22] As EPA notes, the goals of the RFS include promoting "greater energy independence and security," and statutory provisions concerning biomass-based diesel require an assessment of the impact of renewable fuels on the energy security of the United States. EPA states that, in recent years, increasing volumes of renewable fuels have been imported to comply with the RFS mandates. In the past, EPA has used these volumes as part of its RVO calculations, however, EPA's proposed rule acknowledges that "[d]ue to their origin outside of the United States, imported renewable fuels may not have the same impact on energy independence as those produced domestically."[23] EPA therefore requests "stakeholder views on this topic and on what steps EPA might take to ensure energy independence and security."[24]

How EPA defines "domestic supply" for purposes of evaluating the adequacy of domestic supply in the process of setting the annual RVO is fundamental to how EPA addresses biofuel imports. Valero agrees with AFPM's comments stating that imported renewable fuel cannot be considered to constitute part of the "domestic" supply of renewable fuel. As AFPM has previously explained to EPA, "[r]elying on imports to satisfy the advanced biofuel requirement runs contrary to the intent of Congress," which was to foster domestic energy independence.[25] Valero also agrees with the joint comments of API and AFPM on this proposal (hereinafter "AFPM comments") that even though EPA may not consider available foreign-sourced renewable fuels in establishing the volumetric requirements under the RFS program or in determining whether there is "inadequate domestic supply" for purposes of using the general waiver, Congress specifically contemplated that imported renewable fuels *can* be used for demonstrating compliance with the volumes EPA establishes (*i.e.*, for the generation of RINs).

A. Purpose of the RFS is promoting domestic, not foreign, production.

i. Definition of "domestic supply."

The EPA Administrator may waive the RFS statutory applicable volume requirements upon a determination that there is an "inadequate domestic supply" of renewable fuel.[26] The logical corollary is that EPA must consider the adequacy of domestic supply when setting the RVO each year. Neither Congress nor EPA has defined "domestic supply." In the past, EPA has interpreted "domestic supply" to mean the amount of fuel available in the United States for consumption by the consumer.[27] The D.C. Circuit recently invalidated EPA's interpretation of

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[22] 82 Fed. Reg. at 34,212.
[23] *Id.*
[24] *Id.*
[25] API & AFPM, Comments on Proposed Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017 at 25 (July 29, 2015), Docket ID No. EPA-HQ-OAR-2015-0111-1948; *see also Nat'l Petrochem. & Refiners Ass'n v. EPA*, 630 F.3d 145, 156 (D.C. Cir. 2010) (EISA should be interpreted in view of its purpose); *HCA Health Servs. of Okla. v. Shalala*, 27 F.3d 614, 620 (D.C. Cir. 1994) (statute should be interpreted in light of congressional purpose).
[26] 42 U.S.C. § 7545(o)(7)(A), (D).
[27] 80 Fed. Reg. 77,420, 77,435 (Dec. 14, 2015).

"supply" to mean "supply to the ultimate consumer."[28] Because Congress chose to include the term "domestic" to modify "supply," EPA must consider giving some meaning to "domestic" rather than assuming all "supply" of renewable fuel means "domestic supply." In light of the D.C. Circuit's views limiting EPA's overreach in defining "supply", EPA should consider how to define "domestic" to align with the purposes of the statute. EPA includes within its estimation of the available domestic supply projected volumes of imported renewable fuel.[29] EPA's interpretation of "domestic supply" to include imported renewable fuel is contrary to the statutory purpose of the RFS.[30]

Congress enacted the RFS program in an effort to promote energy security by *reducing* America's dependence on fuel imports; it also wanted to promote growth in domestic energy jobs and domestic renewable fuel production.[31] Given those goals, including foreign production of renewable fuels in the calculation of the domestic supply makes no sense, because foreign production and imports are an obstacle to energy independence, not an aid to such independence. Consequently, when assessing the adequacy of the domestic supply of renewable fuel, EPA should focus only on domestic production so that it does not obligate domestic refiners to purchase foreign renewable fuel. Failing to do so could lead to unintended consequences, as previously described by API:

> A direct implication of setting renewable fuel volume standards that exceed the ethanol blendwall is that it encourages imported biodiesel that is produced from palm oil. EPA's own analysis finds that biodiesel produced from palm oil fails to meet GHG emission reduction requirements of the RFS, except it is allowed if it meets grandfathering provisions of [the Energy Independence and Security Act of 2007 ("EISA")]. Biodiesel imports into the U.S. from Indonesia, a leading palm oil producing country, have increased from zero in 2012 to 73 million gallons in 2015. This outcome of increased palm oil biodiesel consumption in the U.S. is another inconsistency with EISA's stated purpose to [sic] "…to increase the production of clean renewable fuels . . . ."
>
> In the 2017 RFS proposal, EPA set the conventional volume at 14.8 billion RINs or 10.42% of the gasoline pool if all conventional biofuel were ethanol, hence breaching the E10 blendwall. In Table IID.1 of the proposal, EPA assumes 400 million gallons of conventional biodiesel/renewable diesel are included in the conventional D6 pool. This

[28] *ACE v. EPA*, No. 16-1005, slip op. at 25.
[29] *See, e.g.*, 81 Fed. Reg. 89,746, 89,783 (Dec. 12, 2016).
[30] This assertion is not counter the court's statement in ACE v. EPA that its "interpretation of supply allows EPA to consider the amount of renewable fuel available through import . . . ." *ACE v. EPA*, No. 16-1005, slip Op at 33. There, the court was construing the term "supply" as it relates to the person being supplied. In addressing an argument by EPA, the court pointed out that interpreting "supply" to mean supply to the obligated party does not make "supply" synonymous with "production." *Id.* The court noted that, "for example," "supply" could include imported fuel and not only fuel production. *Id.* The court was not construing the term "domestic" and did not have before it any question as to the appropriateness of including imported fuel in a determination of "domestic" supply. *Id.* at 34-35. The court's comment is dicta and has no bearing on the construction of statutory terms not before it in that case.
[31] *See* Energy Independence Security Act ("EISA"), Pub. L. No. 110-140, tit. X, § 1001-1002, 121 Stat. 1492 (2007); Energy Policy Act of 2005 ("EPAct"), Pub. L. No. 109-58, tit. I, § 134, 210, 119 Stat. 594 (2005).

continued practice of EPA to encourage imports from grandfathered facilities, including palm based biodiesel/renewable diesel results in significant increases in GHGs, contrary to the stated intents of the Agency to lower GHGs.[32]

ii. Foreign supply available for import is difficult to predict and to oversee.

Reliance on imports subjects obligated parties to unnecessary supply risks. The quantity of renewable fuel that can be imported is very difficult to predict. Market forces could direct volumes of exported renewable fuels to countries other than the United States. Additionally, a decision from the U.S. International Trade Commission and Department of Commerce to impose duties on renewable fuel, specifically biodiesel, produced in Argentina and Indonesia could impact the quantity available in the United States.[33] When projecting available supplies of renewable fuel for future compliance years, EPA typically relies on production in previous years. Thus, inclusion of foreign supplies in the volumetric requirements for any one year tends to increase the volume of renewable fuel that EPA projects is available in the future. Relying on past performance as indicative of future performance risks improperly "locking in" such production, increasing future dependence on that foreign production.

Furthermore, EPA lacks the ability to oversee production outside of the United States and thus, cannot confirm that the renewable fuel produced abroad satisfies the greenhouse gas reduction and other requirements in the statute. It furthermore could not enforce the requirements of the statute against the foreign producer even if it discovered a violation. Despite this, at least two Indonesian biodiesel producers qualify for RINs even though their biodiesel generally does not meet the RFS program's minimum greenhouse gas reduction threshold.[34]

iii. The current structure incentivizes foreign production to the detriment of domestic producers.

As EPA's proposed rule cites, in 2016, 46 million gallons of ethanol and 731 million gallons of advanced biodiesel and renewable diesel were imported into the United States.[35] Domestic biodiesel production has declined in terms of relative market share—domestic production accounted for 86.2% of the market in 2014, 76.7% in 2015, and 68.0% in 2016.[36] When assessing the available domestic supply of renewable fuel, EPA should exclude imported renewable fuel.

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[32] API, Comments on Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018 at 23 (Aug. 10, 2016), Docket ID No. EPA-HQ-OAR-2016-0004-3512 (internal citations omitted).
[33] Biodiesel From the Republic of Indonesia: Preliminary Affirmative Countervailing Duty Determination, 82 Fed. Reg. 40,746 (Aug. 28, 2017); Biodiesel From Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part, 82 Fed. Reg. 40,748 (Aug. 28, 2017).
[34] Biodiesel From Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part, 82 Fed. Reg. 40,748 (Aug. 28, 2017).
[35] 82 Fed. Reg. at 34,212.
[36] *See* US Int'l Trade Comm., *Biodiesel from Argentina and Indonesia*, Investigation Nos. 701-TA-571-572 and 731-TA-1347-1348 at 22 (May 2017), *available at* https://www.usitc.gov/publications/701_731/pub4690.pdf.

B. Excluding imports from the "domestic supply" promotes RFS stability

Including foreign-produced renewable fuel within the domestic supply of such fuel provides an incentive for additional foreign production in the future. This is inconsistent with the statute's stated purpose of promoting American energy independence. This situation is exacerbated where there may be instances of product dumping and unfair subsidization of imports, as reflected in the pending Department of Commerce investigation of imports of biodiesel from Argentina and Indonesia.[37]

Setting the RVO based only on domestically produced biofuel but allowing the use of imported biofuel for compliance (as required by the World Trade Organization) provides more stability in the RIN market by ensuring the availability of renewable fuel to maintain sufficient RINs in the market. Given EPA's express solicitation of comment in this area, we encourage the Agency in the final rule to recalculate both advanced biofuel and total renewable fuel volumes by excluding foreign production.

IV. EPA must consider that the loss of the blender tax credit will shrink the supply of biofuel and exacerbate economic harm.

EPA acknowledged that the expiration of the blender tax credit is expected to reduce the domestic supply of biodiesel. EPA should also recognize that a reduction in the domestic supply of biodiesel will result in higher RIN prices and exacerbate economic harm.

Not only are current biofuel producers faced with non-economic conditions due to the current status of the blender tax credit, the future of favorable tax treatment is in doubt. The Administration and allies in Congress have supported "fuel neutral" tax reform proposals under which specialty credits may not be restored or may cease altogether. While the future of tax reform is difficult to predict with precision, EPA must take into account the fact that supportive credits and production they incentivize might not be a reality in the future. Should such support not materialize, then there is a significant likelihood that there will be biodiesel production in the U.S. that will be forced out of the market. It is also clear that absent the subsidy, biodiesel will be priced well above the D6 RIN and the cost of biodiesel D4 RINs will increase, which limits their utility for compliance with the total renewable fuel obligation.

Similarly, lower prices for petroleum derived diesel (due to lower crude oil prices) also place pressure on smaller biodiesel producers, with crude prices not expected to rebound in at least the near term. Indeed, truck stops that blend biodiesel are reducing blending because biodiesel cannot compete with petroleum derived diesel. These market and regulatory realities must be considered by EPA in revising the RVO.

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[37] Fact Sheet: Commerce Preliminary Finds Countervailable Subsidization of Imports of Biodiesel from Argentina and Indonesia, U.S. Department of Commerce, International Trade Administration, *available at* http://enforcement.trade.gov/download/factsheets/factsheet-multiple-biodiesel-cvd-prelim-082217.pdf.

V. Absent a change to the Point of Obligation, EPA should reduce the RVO to account for small refinery exemptions.

EPA seeks comment regarding how to account for small refinery exemptions in the 2018 RVO.[38] A change to the RFS structure would eliminate the need for small refinery exemptions. Without a change to the point of obligation, Valero agrees with EPA's past approach to not adjust the current RVO percentage obligations for other obligated parties to account for small refinery exemptions. Moreover, EPA should fix the problems with the RFS program identified throughout these comments so that small refineries no longer need hardship exemptions. Otherwise, the increasing harm to the 59 or more small refineries[39] subject to the RFS will make meeting the RFS or statutory goals of the RFS more problematic. Furthermore, evidence of economic harm to small refineries indicates that the RFS also causes economic harm to other obligated parties.

In the proposal, EPA seeks comments on how EPA should account for small refinery exemptions in setting the annual percentage standards in light of repeated congressional direction to both DOE and EPA in 2016 and 2017 indicating the extent to which Congress intended small refineries to receive relief from RFS compliance when necessary.[40] In both cases, Congress indicated that compliance with the RFS program can cause "disproportionate economic hardship" to small refineries even where a small refinery remains profitable, and even directed DOE to recommend that EPA grant a partial small refinery exemption under some circumstances.[41] Congress's 2017 statement further indicates that DOE has previously recommended partial exemptions to small refineries for hardship.[42] Similarly, the Tenth Circuit has pointed out to EPA that it must consider small refinery hardship.[43]

As a result of the congressional directives, DOE's recommendations for partial exemptions, and now a federal appeals court, in addition to the increasingly burdensome RVOs, it is reasonable to expect that many of the 59 or more small refineries might seek exemptions from the 2018 RVO. In prior RVOs, EPA concluded that it was not appropriate to adjust the annual percentage standards to account for small refinery exemptions that were granted *after* EPA issued the final rule establishing the annual percentage standards for that year. EPA stated:

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[38] 82 Fed. Reg. at 34,242.

[39] DOE identified 59 small refineries in its 2011 study. *See* DOE, 2011 Small Refinery Exemption at vii (2011), *available at* https://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=595. Based on EIA data, there may be additional refiners that could qualify for a small refinery exemption: 62 refineries have an operable daily capacity of 75,000 barrels or less; 10 additional refineries have an operable daily capacity of 75,001-90,000 barrels, and 6 additional refineries have operable daily capacity of 90,001-100,000. *See* EIA, Refinery Capacity Report, Tbl 5 (Refiners' Total Operable Atmospheric Crude Oil Distillation Capacity by Individual Refinery as of January 1, 2017), *available at* https://www.eia.gov/petroleum/refinerycapacity/table5.pdf.

[40] Sen. 114-281, 114th Cong. (2016); Explanatory Statement to Consolidated Appropriations Act, 2017, Pub. L. 115–31, 131 Stat. 135 (2017), *available at* https://rules.house.gov/sites/republicans.rules.house.gov/files/115/OMNI/DIVISION%20G%20-%20INT%20SOM%20FY17%20OCR.pdf.

[41] *Id.*

[42] *See* Explanatory Statement to Consolidated Appropriations Act, *supra* note 40.

[43] *Sinclair Wyo. Ref. Co. v. EPA*, No. 16-9532 (Aug. 15, 2017).

> If any small refinery exemptions for 2011 are approved after this final rulemaking, the parties in question would be exempt but we would not intend to modify the applicable percentage standards and announce new standards for 2011. EPA believes 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. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.[44]

EPA further stated that:

> If, subsequent to announcing the 2011 standards, we make a determination that one or more hardship petitions should be approved, we do not intend to revise the 2011 standards applicable to other obligated parties to require that they make up for volumes that will not be attained by the exempt refineries.[45]

EPA took a similar approach in subsequent annual rulemakings.[46]

This is still the best approach to provide regulatory certainty and avoid unnecessary disruption to the RINs market in the current compliance year. However, EPA should account for any exempted small refinery volumes by reducing the next year's RVO. EPA should not raise the RVO to make up for exempted volumes in the past, but should instead ensure that future RVOs reflect reality when the RVO has created a hardship. Doing so would avoid setting an overly aggressive RVO that assumes that all of the prior year's volumes were met *and* uses that faulty assumption as the basis of even more aggressive volumes.

VI. An adequate RIN bank is crucial to a more functional and stable RIN market.

A. EPA must preserve the RIN bank to ensure compliance flexibility.

Valero agrees with EPA 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, and in providing a liquid and well-functioning RIN market . . . ."[47] EPA should not take any action in the final rule that would increase RFS volumes on the basis that RINs generated in a prior year that are still available for compliance, *i.e.*,

[44] 75 Fed. Reg. 76,790, 76,804 (Dec. 9, 2010).
[45] *Id.* at 76,805.
[46] *See e.g.*, 77 Fed. Reg. 1,320, 1,340 (Jan. 9, 2012) (establishing the annual percentage standards for 2012); 78 Fed. Reg. 49,794, 49,826 (Aug. 15, 2013) (establishing the annual percentage standards for 2013).
[47] 82 Fed. Reg. at 34,213.

"carryover RINs," may be available to obligated parties. Instead, EPA should exclude all such carryover RINs—the "RIN bank"—from consideration when setting annual RFS standards.

Valero agrees with AFPM's comments that EPA must preserve the RIN bank to ensure compliance flexibility for the RFS program. In the final 2017 rule, EPA observed that "the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves."[48] EPA also noted that many obligated parties lack the ability to separate RINs through blending and that a significant drawdown in the RIN bank "may stop the market from functioning in an efficient manner, even where the market overall could satisfy the standards."[49] These conditions will only worsen in 2018 and successive compliance years, and they support EPA's proposed determination to preserve the full amount of the RIN bank. In addition, the continuing volatility in the RIN market demonstrates that banking RINs is and will remain a prudent compliance strategy.

B. The RIN bank must not drop below 10 percent and should be maintained at 14 percent or higher.

In the proposal, EPA has noted that the RIN bank "balance" is currently approximately 11 percent of the proposed total renewable fuel standards.[50] This level is far below the 20 percent "rollover" limit specified in EPA regulations. EPA has previously determined that such a limit is consistent with the structure of the RFS while recognizing that credits *must* be available in the year generated and the year thereafter. When EPA set the 20 percent limitation, EPA stated that "the 20 percent cap provides the appropriate balance between, on the one hand, allowing legitimate RIN carryovers and protecting against potential supply shortfalls that could limit the availability of RINs, and on the other hand ensuring an annual demand for renewable fuels as envisioned by the Act."[51] Valero does not dispute the 20 percent limit but recommends that EPA consider that the stability of the RIN market requires the RIN bank to hold at 14 percent or higher, the level of the bank in 2013.[52]

i. The RIN bank has been drawn down, there is a RIN deficit carryover and the RIN bank is not likely to recover in 2017 or 2018.

Despite drawing down the RIN bank for compliance, obligated parties began 2017 with the largest RIN deficit carryover in the history of the RFS—a shortfall of 500 million RINs. This deficit effectively increases the 2017 standards from 19.28 billion to 19.78 billion and may result

[48] 81 Fed. Reg. at 89,755.
[49] *Id.*
[50] 82 Fed. Reg. at 34,213.
[51] 72 Fed. Reg. 23,000, 23,934-35 (May 1, 2007) (emphasis added).
[52] EPA calculates the RIN bank based on the projected RVO and carry-over RINs and also based on the actual data; in 2013, EPA calculated that the carry-over RIN bank based on actual data was at 14.6%. *See* EPA, Carryover RIN Bank Calculations for 2018 NPRM at 7 tbl 9, Docket ID No. EPA-HQ-OAR-2017-0091-0067.

in a significant further drawdown of carryover RINs. Under current conditions, the RIN bank is not likely to rebuild to prior levels. Yet, a healthy RIN bank is needed for RIN market stability.

Several factors that led to the earlier buildup and maintenance of the RIN bank simply no longer apply. For example, in 2016, an increase in biofuels production ahead of the expiration of the blender tax credit resulted in a surge in biofuel production and the generation of biomass-based diesel RINs. That surge in renewable fuel production will not be repeated this year because the tax credit has expired, reducing expected RIN generation. Similarly, imports of palm oil biodiesel from Indonesia are uneconomical in the absence of the tax credit.[53] There also is a concern that without the tax credit, many small US biodiesel production facilities will close, putting further pressure on RIN supply. The anti-dumping and countervailing duty actions initiated by the National Biodiesel Board are likely to reduce biodiesel imports and the availability of RINs.

ii. EPA should consider that the RIN bank needs to be higher than 11%.

In 2016, obligated parties met the 2016 RVO using 91 percent 2016 vintage RINs and 9 percent prior year RINs from the RIN bank. In 2015, 10 percent of the obligation was met using prior year RINs.[54] It is reasonable to expect that all prior year RINs available for use are used, and the declining use of carryover RINs suggests the balance in the RIN bank will not be sufficient to offset the supply reductions discussed above. RIN prices have been volatile since 2013 and a declining RIN bank aggravates volatility. Valero agrees that the RIN bank should be above 10 percent but up to 20 percent might be better in light of limited RIN liquidity. EPA should improve the RFS so that the RIN bank consists of 14.6% or more of the RVO, reflecting the RIN bank levels of 2013.[55]

C. A sufficient volume in the RIN bank does not necessarily reduce economic harm.

The RIN bank accounts for RINs that RIN-long parties and unobligated parties might still hold. As long as RIN-long parties and unobligated parties hoard RINs, the amount in the RIN bank does not reduce economic harm of the RFS. To improve the functioning of the RIN bank to relieve the economic harm under the RFS, EPA must address the RIN market problems that are due to the inequitable distribution of RINs among obligated parties. EPA could right the RFS and eliminate the inequitable distribution of RINs by adjusting the point of obligation. Short of the correction to the program, EPA must consider additional measures recommended below to reduce the harm that comes from RIN hoarding and other market manipulation. Without a market correction and an adequate RIN bank, the RFS will cause severe economic harm that justifies EPA reducing the RVO through use of the general waiver.

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[53] According to EPA EMTS data, D6 imports in 2017 constitute ~0.1% of total D6 RINs generated in 2017 versus ~3% in previous years.
[54] *See* EPA, Carryover RIN Bank Calculations for 2018 NPRM, *supra* note 52 at 1 tbl 1.
[55] *Id.* at 7 tbl 9.

VII. RIN market operational problems.

In the proposal, EPA expressed interest "in further assessing whether and how the current trading structure provides an opportunity for market manipulation. To that effect, EPA seeks comment and input on potential changes to the RIN trading system that might help address these concerns."[56] EPA also said it "has continued to explore additional ways to increase program transparency in order to support the program and share data with all stakeholders."[57] EPA is "interested in providing more information, to the extent consistent with our obligations to protect confidential business information. EPA seeks comment on specific data elements and posting frequency that stakeholders believe would be useful to help with market transparency and liquidity."[58]

Understanding the nature of the RIN market requires realization that the RIN market is virtually unregulated. This stands in stark contrast to trading markets for commodities and securities. A RIN is simply a representation of fuel that is blended; a RIN has no value outside of the RFS market. However, due to the structure of the RFS, obligated parties—particularly RIN-short parties—are a captive market for RINs. They must purchase a government mandated and publicly known quantity of RINs every year regardless of the price. Thus, RIN-short obligated parties are captive buyers while sellers can dictate trade terms.

A fundamental characteristic of the RIN market is that a very small number of companies control the vast majority of unobligated RINs. Until 2013, the RIN market was relatively stable—RIN prices were low.[59] After 2013, when the RVO approached the level that would begin to breach the blendwall, the market became vulnerable to price volatility[60] and structural deficiencies became apparent.[61] The structural deficiencies include:

- The RIN market is unregulated.
- The market is easily moved—by speculation, news, purchasing or selling efforts—causing price volatility.
- There is a small number of sophisticated market participants that control a large number of the surplus RINs—making the market extremely "thin" and illiquid.
- Among RIN-long parties, there is an ability to actively drive the market.
- There is not a centralized or uniform platform for trading.
- There are no limitations on who can participate in the market, resulting in pure speculatory participants in the market.

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[56] 82 Fed. Reg. at 34,211.
[57] *Id.*
[58] *Id.*
[59] Minsk 2015 Comments, *supra* note 20 at 2.
[60] Numerous media outlets reported on this "RINsanity." *See e.g.,* Gretchen Morgenson, *Wall St. Exploits Ethanol Credits, and Prices Spike*, Wall St. Journal (Sept. 14, 2013), http://www.nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike.html?pagewanted=all&_r=0 ("For now, companies like Valero say that they are eating the cost of high RIN prices, which are still eight times more expensive than they were in January.").
[61] Paul Bernstein, NERA Economic Consulting, *Effects of Moving the Compliance Obligation under RFS2 to Suppliers of Finished Products* (July 27, 2015), ["NERA Report"], previously submitted to EPA with Valero's Petition for Rulemaking and provided here as Attachment 7.

- The market is not transparent—prices are not disclosed and there is no obligation to accurately report prices.
- As an environmental trading mechanism, the market fails to provide the option to comply through blending rather than through purchasing of RINs. This is due to the placement of the obligation separate from the place of compliance and other market structure issues.

A. RIN market manipulation.

i. Types of market manipulation.

Manipulation in the RIN market is possible due to the lack of market controls, lack of market regulation and the lack of a centralized clearinghouse. The unregulated RIN market allows for disruptive trading practices. RIN market trading takes place largely on Yahoo Instant Messenger not through a clearinghouse. Thus, records of trading practices are not preserved and activity in the market occurs over very short periods of time—via instant messaging.

Disruptive trading practices include:

- Violation of bids or offers: Traders put offers to sell RINs at a specific price and when a buyer takes the offer, the seller refuses to sell. Because the market is unregulated, this practice is not illegal but it is disruptive and it is manipulative.

- Spoofing: Traders place bids or offers with intent to cancel before the orders are filled. The flurry of activity around the buy or sell orders is intended to attract other high-frequency traders to induce a particular market price.

- Setting artificial price floors: RIN-long dominant parties post blanket offers to purchase RINs below a certain target price. This message/offer is sent to all known large sellers of RIN and is used to set an artificial pricing floor.

The practices listed above fall into three types of market manipulation described by the Brattle Group: uneconomic trades, outright fraud, or the exercise of market power. The Brattle Group identifies each as illegal market manipulation for securities but describes the difficulty in identifying and enforcement particularly for uneconomic trades. "Uneconomic trading has also provided the basis for several enforcement actions brought by the agencies empowered with anti-manipulation authority."[62] They define uneconomic trading as "loss-based manipulative behavior: intentionally losing money on anomalous price-making trades to benefit the value of the trader's related price-taking positions, where losses are measured relative to the trader's opportunity costs."[63] But where the Brattle Group makes recommendations for identifying and

[62] Shaun D. Ledgerwood, The Brattle Group, *A Framework for the Analysis of Market Manipulation* at 256 (2012) ["Brattle Group Report"], provided here as Attachment 8.
[63] *Id.*

enforcing against market manipulation that occurs in the regulated markets, the RIN market cannot be fixed by the framework recommended because the RIN market is unregulated.

ii. The RIN market is vulnerable to manipulation.

First, because there is no centralized clearinghouse or exchange for RINs and no requirement for accurately reporting RIN trading information, information is spread thin and across many brokers contributing to chaotic trading with no natural order to trade flow. The lack of a centralized clearinghouse means also that there is no centralized validation of RIN volumes or RIN prices and no trader accountability. Because of the lack of a centralized trading exchange, RIN trading requires bilateral agreements between traders; this is a transactional barrier to acquiring or trading RINs. A RIN purchaser acquiring RINs from one party could have no way to verify RINs that have come through a third party and no ability to directly purchase RINs from that third party because agreements are not in place with the third party. Similarly, some RIN sellers may be forced to sell RINs to a RIN-long party because they lack direct contractual agreements with enough other RIN purchasers.

Second, the market is not regulated. Due to the lack of transparency of information and the lack of regulation, RIN traders face no repercussions for doing things that are illegal in other markets or that might be considered manipulative. Some actions by traders might constitute collusion or market manipulation under other existing law, but EPA has taken no action to investigate.

Third, the volume of RIN trading, due to the disparity between those who need RINs and those who have RINs, contributes to the profitability of manipulative practices.

Fourth, misalignment of the point of obligation with the natural compliance point creates the fundamental market flaw that is the existence of RIN-long parties controlling large numbers of RINs.

This thin and unregulated environment together with high volatility in RIN prices makes the RIN market prone to manipulation. Participants that control large numbers of RINs can hold RINs to short the market. The dominance of these parties makes the RIN market far less liquid. As explained in a report by the Brattle Group,[64] liquidity in the market plays a critical role in the success or failure of manipulations. Manipulation in thin markets is more likely to be profitable.

> Inelastic demand or supply is symptomatic of illiquid bids or offers, respectively, thus making a manipulation more likely to be profitable if price movements are directionally aimed at the thin side of the market. If an agent's private information set gives it the ability to predict times when such thinness is likely to occur, it can coordinate its price-making efforts accordingly to trigger a manipulation. If markets are efficient, other market participants will perceive the opportunity and arbitrage away future efforts. Conversely, if the pattern of thinness is irregular or, more likely, if the manipulator can influence when and whether such illiquidity emerges (by the exercise of market power,

[64] *See generally* Brattle Group Report, *supra* note 62.

the execution of uneconomic trades, or the commission of outright fraud), the ability to successfully repeat the manipulation over time increases. This possibility may support the logic of investigating and bringing enforcement actions against attempted manipulations, for the failure of such attempts might only reflect that the would-be manipulator misjudged or was testing the depth of market liquidity it faced at particular moments in time.[65]

A paper by Ramon Benavides, a RIN trader and biofuel professional, describes how speculation and manipulation takes place in the RIN market at the expense of RIN-short obligated parties and to the advantage of investors, large retailers, and RIN-long refiners.[66] Mr. Benavides describes how speculators benefit even as RIN prices increase without any corresponding increase in renewable fuels. Charles River Associates ("CRA"),[67] a global economic consulting firm; Doug Parker,[68] a federal enforcement expert; and Joe Jobe,[69] the former director of the National Biodiesel Board; and others agree that the RFS program is vulnerable to market manipulation, speculation and fraud.

B. Other RIN market operational problems.

EPA acknowledges other concerns about the RIN market, stating that EPA is working with appropriate market regulators to analyze targeted concerns of some stakeholders.

Several comments were submitted in EPA RFS rulemaking dockets addressing RIN market problems. Valero indicated that potential RIN speculation and fraud might undermine the RFS program.[70] Valero included references to experts who described the failure of the RIN system to function as intended. In February 2017 comments, Valero described harms under the current RFS arising from RIN fraud, RIN speculation and volatility and the impacts on small and independent refiners and small retailers and the harm to the program, renewable producers, and ultimately consumers.[71]

C. Recommendations.

The Brattle Group report demonstrates that identifying and preventing market manipulation is very difficult. Thus, EPA's priority should be to fix any part of the RFS structure that makes it susceptible to manipulation, including by moving the point of obligation or

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[65] *Id.* at 279.
[66] Ramon M. Benavides, Global Renewable Strategies and Consulting, LLC, *The US Renewable Identification Number: RINs Trading Market* at 8, 13-14 (Mar. 6, 2017), Docket No. EPA-HQ-OAR-2016-0544-0412, provided here as Attachment 9.
[67] Charles River Associates, *Market Frictions and the RINs Point of Obligation* (Feb. 2017), provided here as Attachment 10.
[68] Doug Parker, E&W Strategies, *Update to: September 4, 2016 White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future* (Feb. 3, 2017), provided here as Attachment 11.
[69] Letter from Joe Jobe, Rock House Advisors, LLC to EPA, Office of Air and Radiation at 7 (Feb. 22, 2017), Docket ID No. EPA-HQ-OAR-2016-0544-0271, provided here as Attachment 12.
[70] Valero Petition for Rulemaking, *supra* note 18 at 24.
[71] *See* Valero Point of Obligation Comments, *supra* note 19 at 9, 15, 26.

lowering the RVO. Valero firmly believes that EPA can only truly resolve the problems with the RIN market by (1) restructuring the obligation, as Valero petitioned, to align it with the point of compliance, (2) adjusting the RVO to limit the mandates to correspond with the blend wall and domestic biofuel supply, (3) provide greater liquidity to the RIN market and lowering RIN prices, or (4) changing the program to provide greater RIN liability to limit manipulation. Absent these fundamental changes, EPA may help curb hoarding, speculation and manipulation that artificially raises RIN prices by implementing at least some of the following measures:

- Mandate accurate reporting of prices and volumes of RINs to EPA.
- Limit RIN purchasing to obligated parties and in relative proportions to their obligations.
- Impose position limits, trading limits, or require position/trading disclosures.
- Prohibit parties from taking actions to set artificial price floors (as described in A.i. above).
- Provide for market price surveillance and investigate manipulation.
- Set limitations on holding carry-over RINs by unobligated parties and RIN-long parties.
- Set a target RIN price and provide EPA-issued RINs when that target is exceeded.

VIII. EPA should adjust its treatment of biofuel exports under the RFS.

EPA requested comments regarding the treatment of imported biofuels relative to domestically produced biofuels and the statutory goals. We have included above our thoughts on the treatment of imported biofuels. A logical outgrowth of treatment of imported biofuels for the purposes of meeting statutory goals is the treatment of domestically produced exported biofuels and the same statutory goals. EPA should revise the RFS to allow all domestically produced biofuel to be used for compliance under the RFS, including ethanol exported for use as transportation fuel and exported biodiesel. EPA should eliminate the export RVO, eliminate the denaturant prerequisite for RINs for renewable fuel, and allow RINs for all exported biofuels. These revisions will increase available RINs for compliance and will promote the purposes of the RFS by supporting domestic renewable fuel production.

A. EPA should eliminate the export RVO and allow RINs generated by all domestically produced renewable fuel to be used for compliance with the RFS.

EPA devised a system under which exports of renewable fuel are burdened with a separate export RVO ("ERVO") that requires exporters to retire the RINs attached to the exported renewable fuels.[72] This ERVO penalizes domestically-produced, exported renewable fuel in comparison to foreign-produced, imported renewable fuel. It is well within EPA's discretion to eliminate the ERVO—thereby allowing RINs generated from all renewable fuels produced in the U.S. to be used for compliance. Critically, its elimination would support several important national goals. It would support job creation by expanding the market for domestically produced renewable fuels, improve our trade balance by increasing exports, enhance our energy and economic security by reducing net fuel imports and reinforcing our growing role as an

[72] 40 CFR §§ 80.1427(c), 80.1430.

energy superpower, and reduce greenhouse gas emissions by replacing petroleum with fuel with lower lifecycle carbon emissions. Moreover, each of these policy goals are consistent with the goals of the RFS as enacted under the Energy Policy Act of 2006 ("EPAct") and as amended under EISA, which are: (1) job creation;[73] (2) "greater energy independence and security"; and (3) "increase[d] . . . production of clean renewable fuels."[74] It also makes sense as a matter of public policy because it would correct EPA's punitive treatment of exports under the current program rules, which has contributed to the increase in renewable fuel imports in recent years, and would add much-needed liquidity to the RIN market.

Moreover, this system is inconsistent with the plain language of the statute, which requires only that transportation fuel "*sold or introduced into commerce* in the United States" contains annually increasing minimum amounts of renewable fuel.[75]

i. EPA has the discretion to eliminate the ERVO and it would be reasonable and good policy to do so.

Section 211(o) gives EPA the interpretive room to revise the RFS program to eliminate this provision so long as the change is permissible under the statute and based on a reasoned explanation.[76] Such a change in policy can be based "on a reevaluation of which policy would be better in light of the facts," and "[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal" of its regulations and programs.[77] There is nothing in the text of the statute that forecloses this interpretation. Nor does the legislative history of the adoption of the statute give any indication that Congress intended to manage domestically produced volumes of renewables that are exported as any different from volumes used in the United Sates.

Eliminating the ERVO is not only permissible, it is good public policy because it better serves the purposes of the RFS—domestic job creation, energy independence and security, and increased domestic production of renewable fuels—than the program's current punitive treatment of exports. Even though imported renewable fuel does not serve the purposes of EPAct and EISA, EPA still endows it with the benefit of a RIN that can be separated to demonstrate compliance or traded as a potential revenue stream. Meanwhile, exported renewable fuel, which does serve the statutory purposes, receives no such benefits. Instead, EPA has decided export RINs must be retired to offset the fictional ERVO. Domestic renewable fuel that is later exported is similarly disadvantaged in comparison to renewable fuel produced and consumed in the U.S. The latter gets the benefit of a useable, tradeable RIN while the former does not—even though it serves the purposes of EPAct and EISA just as well as domestically consumed renewable fuel.

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[73] EPAct, Pub. L. 109-58, 119 Stat. at 659.
[74] *See ACE v. EPA*, slip op. at 5 (quoting Preamble to EISA, Pub. L. No. 110-140, 121 Stat. at 1492.)
[75] 42 U.S.C. § 7545(o)(2)(A).
[76] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).
[77] *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox,* 556 U.S. at 514-15 (Rehnquist, J., concurring in part and dissenting in part)).

Eliminating the ERVO and allowing RINs associated with exported renewable fuel to be used for compliance with the RVO would remove this burden on exports and enable them to meaningfully contribute to satisfying the statute's mandates, and to the programs goals of creating jobs, enhancing our energy security, and increasing production of renewable fuels. Such a change has already been suggested by the Bipartisan Policy Center in a 2014 report, which suggested that "eliminat[ing] the exporters' RVO" could allow "the export of biofuels [to] meaningfully contribute to satisfying the RFS mandates."[78]

a) Allowing RINs attached to renewable fuel exports to be used for compliance would incentivize further domestic production of renewable fuels as required by the statute's design and provide benefits to the U.S. renewable fuels industry.

EPA recognizes that there are numerous market constraints that will limit increases in domestic renewable fuel production. What EPA fails to recognize is that—through the ERVO—the Agency has constrained domestic production, one of the key purposes of the RFS. The ERVO penalizes the production of renewable fuels in the U.S. if the fuel is exported by keeping RINs associated with those volumes from being used in the program. This is contrary to how the RFS program is supposed to work—incentivizing increased renewable fuel production year-over-year. As the D.C. Circuit recently observed, "[T]he Renewable Fuel Program'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."[79] EPA's interpretation of Section 211(o) to treat consumption as the measurement of compliance with the statutory volumes "flouts that statutory design" because instead of forcing greater production, the ERVO creates a disincentive for further domestic production.[80] EPA cannot continue with such a "goal-defying (much less that text-defying) statutory construction."[81] Designed correctly, the RFS can promote continued growth in domestic biofuel production. Eliminating the ERVO would remove the burden on exports and incentivize further increases in production—a conclusion supported by a recent report issued by CRA.[82]

Eliminating the ERVO also would make exporting more attractive to domestic producers by giving them access to additional markets for their products without the burden of retiring the RIN just because they export. EPA acknowledged that the "rate of growth in the supply of ethanol to the U.S. market has decreased in recent years as the gasoline market has become saturated with gasoline that contains 10 volume percent ethanol (E10), favorable blending economics have diminished, and efforts to expand the use of higher ethanol blends such as E15 and E85 have not been sufficient to maintain past growth rates in total ethanol supply."[83]

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[78] Bipartisan Policy Center *supra* note 1 at 30.
[79] *ACE v. EPA*, slip op. at 31.
[80] *Id.*
[81] *Id* (quoting *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1662 (2017).
[82] Charles River Associates, *Balancing the Treatment of Ethanol Exports, Imports, and Consumption in the Renewable Fuel Standard* at 2 (Aug. 2017) ["CRA Ethanol Exports Report"], provided here as Attachment 13.
[83] 82 Fed. Reg. at 34229.

Removing the ERVO would eliminate a non-tariff barrier to increasing ethanol exports, resulting in a positive impact on this sluggish growth.

Having additional markets would also improve domestic producers' competitiveness with foreign renewable fuel imports. Domestic producers that export would hold separated RINs that they can sell in the RIN market and will level the playing field in international markets consistent with the WTO. Foreign producers importing renewable fuels already have these benefits—domestic producers that export should not be penalized in comparison.

In addition, exporting renewable fuels positively impacts the U.S. economy and protects jobs in the biofuels industry, which helps to satisfy the RFS program's goal of job creation under EPAct. The Renewable Fuel Association ("RFA") estimates that ethanol exports have resulted in 14,940 direct, indirect, and induced jobs.[84] RFA also estimates ethanol exports have contributed about $3 billion to GDP and reduced the U.S. trade deficit by $4 billion.[85] U.S. ethanol exports rose to more than one billion gallons in 2016.[86] CRA recently concluded that the increase in exports that is likely to result if the ERVO were eliminated would represent over 26,000 jobs, mostly within the agriculture and services sectors.[87]

Moreover, the ethanol and farming communities have long recognized the benefits of export promotion for ethanol. Some examples:

> "The United States exported 900 million gallons of ethanol in 2014, supporting both U.S. farmers and the ethanol industry. We know that, going forward, ethanol exports have the potential to grow and become equally beneficial for our customers overseas. [U.S. Grains Council], Growth [Energy] and RFA are committed to launching initiatives . . . to build demand for U.S. ethanol and address barriers to ongoing [ex]ports."[88]

> "U.S.-produced ethanol continues to be the lowest-cost, cleanest octane source on the planet. Our industry produced 15.2 billion gallons of ethanol last year, and while we continue to meet our domestic needs, ethanol exports are essential for future growth."[89]

Allowing domestic producers of renewable fuels that are later exported to benefit from the value of a RIN would further encourage exports and result in further benefits to the U.S. economy, our national and economic security, and the industry.

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[84] Renewable Fuels Association, *2017 Ethanol Industry Outlook at 7* (2017), provided here as Attachment 14.
[85] *Id.*
[86] *Id.* at 8.
[87] CRA Ethanol Exports Report, *supra* note 82 at 3.
[88] U.S. Grains Council, Growth Energy and RFA Participate in Exploratory Market Development Mission to Japan, U.S. Grains Council (May 26, 2015), available at https://www.grains.org/news/20150526/us-grains-council-growth-energy-and-rfa-participate-exploratory-market-development (quoting Tom Sleight, President and Chief Executive Officer, U.S. Grains Council).
[89] Emily Druckman, *RFS Has Been 'Tremendous Success' Since Adoption, According to RFA Analysis*, Renewable Fuels Association (June 7, 2017), available at http://www.ethanolrfa.org/2017/06/rfs-has-been-tremendous-success-since-adoption-according-to-rfa-analysis/ (quoting Bob Dineen, President and Chief Executive Officer, Renewable Fuels Association).

b) Eliminating the ERVO would help to correct the imbalance in imports identified by EPA that undermine the United States' energy independence and security.

Given that one of the goals of the RFS is to enhance the United States' energy security, it is difficult to imagine that Congress intended the program to replace import of petroleum with imports of renewable fuel, reinforcing the nation's dependence on foreign fuel. Allowing RINs associated with exported renewable fuel to be used for compliance with the RVO would restore the proper balance between renewable fuel imports and exports in the market and support the RFS program's purpose of increased energy independence and security. EPA is concerned that "[i]n recent years, increasing volumes of renewable fuels have been imported and used by obligated parties to comply with their RFS obligations."[90] The Agency notes correctly that "[d]ue to their origin outside the United States, imported renewable fuels may not have the same impact on energy independence as those produced domestically."[91] EPA also notes that the U.S. Department of Commerce has instituted countervailing duty and antidumping duty investigations regarding alleged subsidized and dumped imports of biodiesel.[92] EPA seeks public comment on "this topic" and "on what steps EPA might take to ensure energy independence and security."[93]

EPA's discussion of energy security and the RFS treatment of renewable imports necessarily implicates the program's treatment of renewable fuel exports. EPA is concerned that increased dependence on imported renewable fuel to meet the RVO—totaling 777 million gallons in 2016,[94] for example—may not serve the nation's energy security goals. EPA should also be concerned with how the corresponding 800 million gallons of renewable fuel expected to be exported from the U.S. in 2017 may impact the nation's energy security.[95] EPA should consider giving U.S. producers favorable regulatory treatment for the potential energy security benefit of enhancing exports of U.S. produced renewable fuels. As the proposed rule notes, ensuring energy security through the RFS "is embedded in [the] statutory provisions."[96] At the highest levels of the Administration, it is now recognized that the capacity for energy exports is inextricably linked to underlying U.S. energy security. EPA Administrator Pruitt, writing together with Energy Secretary Perry and Interior Secretary Zinke, wrote a month before the publication of the Proposed Rule, that,

> our abundant domestic energy resources and technological innovations [can be used] for good, both at home and abroad. An energy-dominant America means a self-reliant and secure nation, free from the geopolitical turmoil of other nations that seek to use energy as an economic weapon. An energy-dominant America will export to markets around the

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[90] 82 Fed. Reg. at 34,212.
[91] *Id.*
[92] *Id.* (citing 82 Fed. Reg. 22,155 (May 12, 2017).
[93] 82 Fed. Reg. at 34212.
[94] *See* 82 Fed. Reg. at 34212 (noting that "data from EPA's EMTS system show that in 2016, 46 million gallons of ethanol and 731 million gallons of advanced biodiesel and renewable diesel were imported into the United States.").
[95] EIA, Independent Statistics and Analysis, *U.S. ethanol exports exceed 800 million gallons for second year in a row* (March 10, 2016) https://www.eia.gov/todayinenergy/detail.php?id=25312.
[96] 82 Fed. Reg. at 34212.

> world, increasing our global leadership and influence. Becoming energy dominant means that we are getting government out of the way so that we can share our energy wealth with developing nations. For years, Washington stood in the way of our energy dominance. That changes now.[97]

In turn, the President has recently re-committed the federal government to ensuring the energy independence and security of the nation—specifically through increasing U.S. energy exports.[98]

This continues a longstanding bipartisan acknowledgement of the U.S. energy security benefits generated by increased exports of U.S. produced energy sources. For example, in July 2015, The Atlantic Council's Global Energy Center issued a report co-chaired by Senator Lisa Murkowski (R-AK) and Senator Mark Warner (D-VA) that states:

> The linkage between US energy and security interests, and the embrace of multiple paths to advance these interests, is both bipartisan and long standing. We can agree that increased availability of US energy supplies on the global market increases price competition, boosts countries' purchasing power, and strengthens resilience during uncertain times.[99]

Accordingly, eliminating the ERVO will help meet the statute's key goals of energy independence and security. International trade laws may require RINs for imported renewable fuels, but there is no such mandate for placing a separate RVO on exported domestically produced volumes.

c) Allowing RINs attached to renewable fuel exports to be used for compliance would improve the liquidity of the RIN market while transitioning through the blendwall or otherwise resolving other market constraints identified by EPA.

Given the significant volumes of renewable fuel exported in recent years (described above), allowing the use of RINs associated with that renewable fuel to be used to comply with the RVO would improve the liquidity of the RIN market. CRA concluded that adding RIN value to exported renewable fuel could have an impact of 1.2 billion gallons in 2020.[100] This influx of RINs would provide substantial relief in the RIN market by reducing RIN price volatility and reducing the costs of the RFS program while also providing incentives for continued domestic biofuel production.

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[97] R. Perry, R. Zinke and S. Pruitt, *Paving the path to U.S. energy dominance*, Washington Times, June 26, 2017, *available at* http://www.washingtontimes.com/news/2017/jun/26/us-energy-dominance-is-achievable/.
[98] *See* Pres. Donald J. Trump, Remarks at the Unleashing American Energy Event (June 29, 2017 3:31 PM), *available at* https://www.whitehouse.gov/the-press-office/2017/06/29/remarks-president-trump-unleashing-american-energy-event.
[99] Task Force on the U.S. Energy Boom and National Security, The Atlantic Council Global Energy Center *Empowering America: How Energy Abundance Can Strengthen U.S. Global Leadership* at 9 (2015), *available at* http://www.atlanticcouncil.org/images/publications/Task_Force_Report_PDF.pdf.
[100] CRA Ethanol Exports Report *supra* note 82 at 2.

In addition, using ethanol exported for RVO compliance means that there would be continuous incentive to grow ethanol production while the longer term structural changes needed to move through the blendwall are phased in. This would avoid the severe economic harm being experienced in the current RIN-short environment while still providing for growth in the renewable industry.

d) With declining U.S. fuel consumption, growth in the U.S. renewable fuel industry depends on international markets

The long-term forecast projects declining U.S. fuel consumption. Encouraging exports of renewable fuels and forging markets for U.S. renewable fuels will insulate the agriculture and renewable fuel industry from future U.S. consumption decline. Revising the treatment of biofuel exports would provide support for the U.S. renewable fuel industry consistent with the goals of the statute.

e) The regulatory changes needed to enact these changes are straightforward.

The changes to the regulations to implement the correct reading of the statute are straightforward:

- Delete all of 40 CFR § 80.1430 (RVO for exports).
- Delete the export compliance provisions in 40 CFR § 80.1427(c).
- Delete recordkeeping for RINless exported renewable fuel in 40 CFR § 80.1454(a)(6).
- Delete the definition of "exporter of renewable fuel" in 40 CFR § 80.1401.
- Promulgate regulations to prohibit the short term import and re-export of biofuels for the purposes of generating RINs.[101]

ii. Section 211(o) prohibits the ERVO.

Not only does it make sense as a matter of public policy to eliminate the ERVO, the plain language of the statue forecloses EPA's contrary interpretation punishing domestically-produced renewable fuel because the statute does not require consumption of renewable fuel in the U.S. CAA Section 211(o)(2) and (o)(3) require that the renewable fuel be "*sold or introduced into commerce* in the United States."[102] This provision is focused on the introduction into commerce of renewable fuel, not on the geography of disposition or consumption of the renewable fuel. In fact, Congress explicitly prohibited EPA from restricting the geographic areas in which renewable fuel may be used.[103]

[101] EPA should also promulgate regulations to prevent manipulation of this change.
[102] 42 U.S.C. § 7545(o)(2)(A).
[103] *Id.* § 7545(o)(2)(A)(iii)(II)(aa) (prohibiting any regulations that "restrict geographic areas in which renewable fuel may be used.").

That all volumes of renewable fuel must be counted is evident from the definitions Congress employed. Congress broadly defined "transportation fuel" to mean "fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels)."[104] Renewable fuels are, by definition, transportation fuel. If the renewable fuel is produced in the U.S. and transported, stored, and/or sold in the U.S. to anyone, then it is transportation fuel that has been "introduced in commerce in the United States," regardless of whether it is ultimately destined for export and regardless of whether it is denatured or not. As a consequence of this language, EPA cannot refuse to count all volumes of renewable fuel produced in the United States toward compliance.

That the ERVO is not countenanced by the text of Section 211 is also apparent when one considers how Congress amended the RFS in 2007 under EISA. When enacted in 2005 as part of the EPAct, Section 211 mandated that EPA ensure that "*gasoline* sold or introduced into commerce in the United States . . . on an annual average basis, contains" at least the statutory renewable volumes. "Since the gasoline that is blended with renewable fuels under the RFS program must be 'sold or introduced into commerce' within the U.S.," EPA reasoned, "renewable fuels that are exported cannot be claimed by an obligated party for compliance purposes, and therefore would not need to be assigned a RIN."[105] Because, for practical reasons blended gasoline is not exported, there was no reason to challenge this reasoning.

However, in 2007, EISA widened the RFS mandate, requiring EPA to ensure that "*transportation fuel*" (not just gasoline) introduced into commerce contains the applicable volumes of renewable fuel.[106] This change extended the RFS to a full array of renewable fuels produced in the U.S. and as long as these fuels were introduced into U.S. commerce they are entitled to RINs even if ultimately exported in an unblended state. Congress's decision to revise the statute is meaningful and presumed to be deliberate, and should be given effect.[107]

B. EPA must allow RINs to be generated for undenatured ethanol.

Lifting the ERVO is necessary to maintain program integrity and is well within EPA's discretion under the statute. The current definition of ethanol as denatured only, however, must also be adjusted because it is a limiting factor on the number of RINs that can be separated for exports.[108]

Current EPA regulations require a gallon of ethanol to be denatured in order to qualify under the RFS.[109] In the RFS1, EPA established a system where "RINs would represent proof of

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[104] *Id.* § 7545(o)(1)(L).
[105] 71 Fed. Reg. at 55,579.
[106] EISA, Pub. L. No. 110-140, § 202(a)(1).
[107] *ACE v. EPA*, slip op. at 79 (citing *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) ("We take a different approach, instead presuming that 'the legislature says what it means and means what it says.'").
[108] CRA Ethanol Exports Report *supra* note 82 at 4. A review of export data from 2012-2017 indicates a steady increase in exports of undenatured ethanol vs. denatured ethanol.
[109] *See* 40 C.F.R. § 80.1401 (defining "renewable fuel" to include ethanol that is "denatured as required and defined in 27 CFR parts 19 through 21."); 40 C.F.R. § 80.1415(b)(1) (assigning an equivalence value of 1.0 to "[e]thanol which is denatured.").

production which is then taken as proof of consumption as well, since all renewable fuel produced or imported will be either consumed as fuel or exported."[110] As explained above, this is inconsistent with the current language of the statute. Because EPA was focused only on the ethanol used in the U.S. for transportation fuel, it defined "renewable fuel" to include only denatured ethanol because, in the U.S. "ethanol produced for use as a motor vehicle fuel is denatured specifically so that it can only be used as fuel."[111] As a result, EPA limited RIN generation for ethanol to the production of denatured ethanol. This is illustrated in the RFS1 regulations setting equivalence values. As EPA explained, "ethanol is expected to dominate the renewable fuel pool for at least the next several years" and that "it seems likely that it was the intent of the authors of the Act that each physical gallon of denatured ethanol be counted as one gallon for RFS compliance purposes."[112]

Although all fuel ethanol consumed in the United States includes denaturants even today, this is not the case for fuel ethanol that is exported. Many markets outside the United States, such as Brazil, specifically require ethanol to be undenatured. The result of the current denaturant requirements in the RFS is that 51% of the 1.05 billion ethanol gallons exported from the United States in 2016 were RIN-less.[113] Because ethanol export markets in many cases differ in fuel specifications from the U.S. market, it is necessary for EPA to revise the definition of ethanol to include both denatured and undenatured ethanol. Providing RINs for undenatured ethanol allows such fuel to be used by foreign transportation sectors. EPA has previously acknowledged that it must design the RVO "to achieve the Congressional intent of increasing renewable fuel use over time . . . , while at the same time accounting for the real-world challenges that have slowed progress toward these goals."[114] Updating this would align the definition of ethanol with the present day global market realities, which demand both undenatured and denatured ethanol for fuel use.

As discussed above, the current language of Section 211(o) entitles renewable fuels that were introduced into commerce to RINs even if they are ultimately exported in an unblended state. The same concerns that require equal treatment of exports require equal treatment under the RFS of denatured and undenatured ethanol used as transportation fuel or exported for transportation use. Nothing in the statute forecloses including such undenatured ethanol in the RFS. In fact, including undenatured ethanol used as transportation fuel or exported for transportation use in the RFS better serves the purposes of the RFS as expressed in EPAct and EISA—domestic job creation, energy independence and security, and increased domestic production of renewable fuels—than the program currently does by excluding undenatured ethanol. EPA has recognized that "[t]he fact that Congress set volume targets reflecting increasing and substantial amounts of renewable fuel use clearly signals that it intended the RFS program to create incentives to increase renewable fuel supplies . . . ."[115] The D.C. Circuit

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[110] 71 Fed. Reg. at 55,562.
[111] *Id.*
[112] *Id.* at 55,571.
[113] Renewable Fuels Association, *2016 U.S. Ethanol Exports and Imports: Statistical Summary* at 1 (2017), provided here as Attachment 15.
[114] 81 Fed. Reg. at 89,747.
[115] 80 Fed. Reg. 33,100, 33,118 (June 10, 2015).

recently reinforced this point.[116] Providing RINs for such undenatured ethanol would provide precisely the sort of incentive that Congress intended to meet the volumes mandated in the statute.

Changing the definition of "renewable fuel" to include both undenatured as well as denatured ethanol is also consistent with the D.C. Circuit's opinion in *ACE v. EPA*. There, the court assessed EPA's authority to waive the statutory volumes of renewable fuel in Section 211(o)(2) using the statute's "inadequate domestic supply" waiver provision. The court explained that the inadequate domestic supply waiver "does not allow EPA to consider the volume of renewable fuel that is available to the ultimate *consumers* or the *demand-side* constraints that affect the consumption of renewable fuel by consumers."[117] As ACE argued and the court agreed, the domestic supply waiver authority is not about how renewable fuel is consumed by end-users in the U.S., but rather about how renewable fuels like ethanol are produced. The court found that EPA's use of its domestic supply waiver authority to focus on consumption by the end-user, was counter to the goals of the statute. Expanding the definition of renewable fuel to include undenatured ethanol would advance the purposes of the statute by focusing the RFS program as Congress intended on increasing the production of renewable fuel.

The regulatory changes needed to provide RINs for undenatured ethanol can be accomplished largely through the following amendments:

- Amend paragraph (2) of the definition of "renewable fuel" in 40 CFR § 80.1401 as follows:
  (2) Ethanol covered by this definition ~~shall~~ includes ~~be:~~
  (A) ethanol that has been denatured ~~as required and defined in 27 CFR parts 19 through 21. Any volume of denaturant added to the undenatured ethanol by a producer or importer in excess of 2 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.~~; and
  (B) undenatured ethanol used as transportation fuel or exported for use as transportation fuel.[118]
- Amend the ethanol equivalence value in 40 CFR § 80.1415(b)(1) by deleting "which is denatured."

[116] *See ACE v. EPA*, slip op. at 31 ("[T]he Renewable Fuel Program'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.").
[117] *Id.* at 4 (emphasis original).
[118] EPA's prior experience differentiating between quantities of renewable fuel that can generate and separate RINs and those that cannot could be used as a model here. For example, the RFS regulations allow producers of a renewable fuel other than ethanol, biodiesel, or renewable diesel that meets certain ASTM requirements to generate RINs if (among other things), the producer has entered into a written contract for the sale of the fuel that specifies that the fuel will be used in neat form as transportation fuel. 40 C.F.R. § 80.1426(f)(17)(i)(B)(3). The regulations also allow RINs to be separated for neat renewable fuel if the party that procures, sells, imports, owns, or uses the neat fuel designates that fuel as transportation fuel and the fuel is used as such. 40 C.F.R. § 80.1429(b)(4). Similar requirements could be used to help ensure that RINs are generated and separate for undenatured ethanol when used as transportation fuel or exported for transportation use.

- Amend the reporting requirements in 40 CFR § 80.1451(b)(1)(ii) as follows and re-letter the paragraphs that follow it:
  (ii)(I) For denatured ethanol, t~~T~~he volume of denaturant ~~and applicable equivalence value of each batch~~.***
  (N) The applicable equivalence value of each batch.
- Amend the attest engagement requirements in 40 CFR § 80.1464(b)(1)(ii) as follows:
  (ii) Obtain production data for each renewable fuel batch by type of renewable fuel that was produced or imported during the year being reviewed; compute the number of gallon–RINs production dates, types, volumes of added denaturant (if any) and applicable equivalence values, and production volumes for each batch; report the total RINs generated during the year being reviewed; and state whether this information agrees with the party's reports to EPA. Report as a finding any exceptions.[119]

To ensure that increased domestic production meets the goals of the statute, EPA would not make any changes to the requirements related to the lifecycle GHG emissions in the definition of renewable fuel nor to related requirements in 40 C.F.R. § 80.1403.

IX. Valero supports the use of the general waiver on the basis of severe economic harm.

Although EPA has determined that there is adequate supply of renewable fuel and "use of the general waiver authority for 2018 to further reduce the total renewable fuel on the basis of supply considerations would therefore not be necessary,"[120] EPA solicits comments on whether it is appropriate to exercise its general waiver authority based either on supply considerations or on economic harm. EPA invites comment on "use of the general waiver authority to reduce the required volume of renewable fuel in an effort to increase the energy independence impacts of the RFS program."[121] EPA specifically identifies the concern that severe economic harm would result if the standards require the use of ethanol beyond the blendwall.[122] EPA also refers to constraints in the ethanol market described in prior RVO rulemakings.[123]

As reflected in the AFPM comments, the evidence supports EPA's use of the general waiver authority based on severe economic harm. To use the severe economic harm waiver authority, EPA must find that such harm exists on a national, regional, or state level with respect to imposition of the statutory volumes for any of the four required renewable fuels.[124] EPA need only find that such harm "would" occur through imposition of the statutory renewable fuel volumes in order to avail itself of authority to waive volumetric requirements "in whole or in part."[125] Furthermore, EPA's responses to prior petitions requesting EPA issue a waiver based on economic harm suggest that harm to specific economic sectors may be sufficient to justify use of

[119] Additional conforming amendments may be necessary.
[120] 82 Fed. Reg. at 34,228, 34,229.
[121] 82 Fed. Reg. at 34,229.
[122] *Id.*
[123] *Id.*
[124] 42 U.S.C. § 7545(o)(7)(A)(i).
[125] *Id.*

the waiver.[126] Numerous parties have provided evidence to EPA that the increasing RVOs cause economic harm, especially if EPA does not take other action to address RIN prices and disparity in RIN distribution. It is evident that severe economic harm will result if the statutory volumes are imposed for 2018, and EPA may therefore waive those volumes pursuant to this provision.

A. Economic harms from raising RVO with a constrained renewable fuel market.

According to EPA, the constraints in the ethanol market discussed in the 2014-2016 RVO rulemaking remain relevant for 2017 and 2018.[127] Among those constraints, EPA includes:

- the blendwall.
- the number of retail stations that offer higher blends such as E15 and E85.
- the number of vehicles that can legally and practically consume E15 and/or E85.
- relative pricing of E15 and E85 versus E10 and the ability of RINs to affect this relative pricing.
- the supply of E0.[128]

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.

That the RFS causes severe economic harm should also be evident to EPA in that the Agency still regularly considers petitions for small refineries seeking hardship waivers. 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.[129] 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.

B. Severe economic harm to independent refineries, their communities and small businesses.

Numerous parties have described to EPA the economic harms arising from the RFS, particularly due to the current structure that causes disparities both (i) between RIN-long refiners and independent and small refiners who are RIN-short and (ii) between large fuel retailers and small fuel retailers. Incomplete pass-through of the RIN[130] and the illiquidity of the RIN market

[126] *See e.g.*, 77 Fed. Reg. 70,752, 70774-75 (Nov. 27, 2012).
[127] 82 Fed. Reg. at 34,230.
[128] *Id.*
[129] *Sinclair*, No. 16-9532, slip op. at 22, 26.
[130] *See* Valero Point of Obligation Comments *supra* note 19 at 9.

have magnified this disparity. Such harmful disparities are inconsistent with the statutory goals of the RFS program, including energy independence and security, because they threaten small communities with job losses, threaten family businesses, and threaten to change the nature of the retail business in ways that reduce competition and hurt consumers. These disparities have also led to an increasingly larger advantage in the RINs market to large foreign-owned corporations. Also, the lack of a rational purpose for distinguishing among these parties with such disparate treatment may create constitutional concerns regarding equal treatment and procedural due process.

i. EPA's use of its general waiver authority is justified by the severe economic harm to merchant refiners that do not qualify for the small refinery hardship waiver.

As noted above, the Tenth Circuit recently held that, in the context of small refinery exemptions from the RFS, EPA must consider disproportionate economic impacts that fall short of existential threats. In addition, other refineries that may not meet the statutory criteria of a small refinery[131] or that might not seek a hardship exemption are also exposed to significant damage as a result of misalignments in the RFS program particularly as they relate to the RIN market. Valero understands that several of these refiners are also placing comments in the record in support of EPA's use of the general waiver, and we support those comments to the extent they are consistent with statements made herein.

All evidence that support granting small refinery hardship exemptions is evidence that the RFS is not working right and that increasing the RVO will cause severe economic harm. The Tenth Circuit's opinion suggests (albeit in a different context) that the refining sector need not suffer from the highest, most significant order of harm before "emergency valves"—such as the general waiver on the basis of severe economic harm—are triggered. EPA should take the court's decision to heart and find that increasing the RVO will cause severe economic harm to independent or merchant refiners, including those that are not small. The Agency should use its authority to reduce the RVO. This will help all refiners operate within the bounds of RFS and avoid burdening some refiners over others.

ii. The refinery communities are at risk.

The current RFS program with the 2018 proposed volumes poses a significant threat to independent refineries and their communities. 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

[131] The term 'small refinery' means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels." 42 U.S.C. § 7545(o)(1).

> 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.[132]

Holcomb described the economic impacts from loss of a refinery on local businesses and on local jobs. Regarding the impact on local businesses, Holcomb concluded:

> The bankruptcy of any refiner is certain to have a large financial impact on the stakeholders of the refiner (employees and investors), all the other businesses which have dealings with the refiner, and via both these channels on the economic region in which the refiner does business.[133]
>
> Compounding the rise of the price at the pump, will be the resulting loss of employment for the area, as well as the indirect loss of business for the many local entities that supply, maintain, or otherwise interact with the refinery. . . .[A]n analysis released in anticipation of the closure of two refineries in Pennsylvania—the ConocoPhillips-Trainer and Sunoco-Marcus Hook refineries in Delaware County (CPT and SMH refineries) estimated that the loss of every 100 refinery jobs could reduce the output of the local economy by as much as 1 billion dollars (CFWIA, 2012).[134]

Regarding job losses, Holcomb explained:

> Estimates of the total jobs lost as a result of a refinery closure vary substantially (CFWIA, 2012), but we can say with certainty that those employees whom are directly employed by the refinery will be out of work at least temporarily. While the job loss will be an acute negative[135] outcome for the individuals, it is the length of unemployment for displaced workers that will be the most significant impact factor for the local economy. If the employees are quickly able to find re-employment the economic impact on the region could be minimal, but if their unemployment is long term the impact will be more severe. In their analysis of the potential closures of the CPT and SMH refineries, CFWIA (2012) estimates that 39% of the CPT labor force (156 workers) would face a fair to difficult time finding re-employment, while 42% of the SMH labor force (250 workers) would face a fair to difficult time.[136]
>
> With an estimated 10-18 indirect jobs lost for every direct refinery employee laid off during bankruptcy, the total jobs lost in the Southeastern Pennsylvania region could have

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[132] Alex Holcomb, *Market Analysis of the Proposed Change to the RFS Point of Obligation* at 19 (Feb. 22, 2017), ["Holcomb Market Analysis"], provided here as Attachment 16.
[133] *Id.* at 16.
[134] *Id.* at 17.
[135] "Something that should not be overlooked in the analysis of these potential outcomes." *Id.* at 18 n.36.
[136] *Id.* at 18; *see also id.* at 18 n. 37 (noting that employees that would have a more difficult time finding re-employment are those whom hold positions that are more specific to the refinery industry, and thus would find difficulty doing the same job with a different entity).

> approached 15,000-20,000 workers. An extrapolation of the CFWIA (2012) analysis to estimate the impact of closures across the whole set of potentially at risk refiners indicates that the estimated total potential jobs at risk is substantial. Just twelve of these refiners directly employ approximately 7,500 people, and anywhere from 2,000-10,000 daily contract workers. Loss of work for every direct employee, and the multiplier (10-18x) would suggest that 75,000 to 150,000 jobs are potentially at risk. A great many of these jobs will likely be unionized labor, as the majority of these refineries are either entirely unionized or have large union labor bases. Considerably more jobs are at risk if we consider a more limited multiplier effect for daily contract laborers who also lose their employment many of whom are also union members. If an average of 40% of those jobs lost will face a fair to difficult time finding re-employment, the economic cost to the regions in which these refineries operate will be extensive.[137]

Professor Holcomb's research and analysis demonstrates the potential for severe economic harm to any refinery and neighboring communities depending on the refinery, regardless of whether they qualify for a small refinery hardship exemption. The evidence is sufficient to justify EPA's use of its general waiver authority.

iii. Small fuel retail businesses and minority-owned businesses are currently harmed by the RVOs.

There are also myriad studies, data, and other useful resources available to EPA that clearly show that small fuel retailers suffer severe and disproportionate economic harm due to competitive advantage conferred upon larger retailers as a result of the RINs market. Professor Bernard Weinstein, a noted economist at the Maguire Energy Institute at the Cox School of Business at Southern Methodist University, made the following findings in February 2017:

> Reports indicate that large retailers are using the RIN profit stream for retail expansion and acquiring a larger share of a limited market. The acquisition of convenience store chains by cash-rich limited partnerships suggests the chains' market share will continue to grow. The effect of these convenience store chain acquisitions has been detrimental for small retailers. In fact, these retailers are losing both sales volume and stores to large retailers. In other words, small retailers aren't just less profitable than before; rather, they are going out of business due to their growing inability to compete with large retailers and a related loss of sales. As a result, the demise of small 'mom-and-pop' fueling stations has accelerated, with more than 12,000 closing since 2007.[138]

Weinstein further found windfall RINs profits gained by large retailers are not consistent with the statutory goals of the RFS. The benefits conferred on large retailers create no incentives for additional blending:

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[137] *Id.* at 19.

[138] Bernard L. Weinstein, Southern Methodist Univ., *Renewable Identification Numbers Trading Under the Renewable Fuels Program: Continued Unintended Consequences for Small Fuel Retailers* at 7 (Feb. 2017), provided here as Attachment 17.

> With higher RIN prices anticipated as mandated RVOs grow year after year, large retailers should increase the blending infrastructure for renewable fuels and promote higher blends by passing on the RIN value to consumers. But because large retailers are not obligated parties, they have no incentive to implement these initiatives. Put differently, higher RIN values won't motivate large retailers to blend higher levels of renewable fuels because, in the current market, their RINs can be sold to generate substantial revenue.[139]

Without policy change, small retailers will face disproportionate and severe economic harm under the proposed volume levels. Professor Weinstein concludes: "Absent a shift in the point of obligation, small retailers will be increasingly driven out of business, which will be harmful to market competition and local economies across the United States."[140]

The squeeze placed on small-business retailers is particularly acute in the minority business community. In December 2016, the National Black Caucus of State Legislators ("NBCSL") observed that "big integrated oil companies and large gasoline convenience store chains are able to earn and sell RINs" and that "the current method the EPA has chosen to demonstrate compliance with that standard, has caused both excessive Wall Street speculation and fraud in the market for renewable fuels, endangering the very purpose of the program."[141] After noting that windfall RIN profits accruing to large retailers "create competitive disadvantages for small gasoline retailers and convenience stores with large numbers of minority owners," NBCSL reported that "people of color own about 42 percent of independent gasoline retail stations, which are often squeezed by these implementation problems."[142] NBCSL passed a resolution calling on EPA "to adopt a rule to address problems in the RINs market by moving the point of obligation in order to eliminate incentives for excessive speculation and fraud."[143]

C. Impacts on fuel supply and reduced competition in the fuel sector harms consumers.

Consumers are likely to feel the impact of the RIN market in two ways. First, any loss of a refinery will directly impact the regional fuel supply. Second, increased consolidation in the fuel sector will decrease competition and ultimately impact fuel choices and fuel prices.

Professor Holcomb described the potential impacts of the RFS dysfunction on regional fuel supply; he found:

> In particular, failure of any of the East Coast refiners could give rise to a significant supply shock in the East Coast fuel market, given that the domestic supply to the East

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[139] *Id.* at 15.
[140] *Id.* at 15-16.
[141] National Black Caucus of State Legislators, Res. BED-17-15: A Resolution Urging the U.S. Environmental Protection Agency to Adopt Rules Addressing Problems Impacting Minority Consumers and Small Businesses in the Renewable Identification Numbers Market (Dec. 11, 2016), *available at* http://www.nbcsl.org/index.php/public-policy/resolutions/item/1908-bed-17-15.
[142] *Id.*
[143] *Id.*

> Coast is already relatively constrained. The Colonial pipeline system is the main artery that transports fuel from the Gulf refiners to the East Coast, and it is already operating at capacity. If one, or more, of the East Coast refiners were to cease production it will likely result in a shortage of fuel along the East Coast, because there is no additional pipeline capacity available to allow for an increase in supply. Consumers in the region are likely to experience a significant increase in the price of fuel, before the supply shortage is filled by foreign refiners either along the European coast or within the Atlantic basin.
>
> Similar shocks to the Central U.S. market are likely to occur if a major refiner filed for bankruptcy in the Mid-con market. Temporary closures of major refineries in the Midwest have resulted in price hikes in Chicago and throughout Illinois, which were severe enough to cause the Mayor and State Attorney General to involve themselves in the local petroleum market (Milne, 2010; Popely, 2015; Cancino, 2015).[144]

The risks of harm to consumers from the RFS risks to refineries are not dissimilar to the impacts felt when refineries curtail production or shutdown during or as a result of severe weather, such as Hurricane Harvey currently actively reducing fuel supply throughout the country. As of August 30, after less than a week from when the hurricane made landfall, thirteen refineries were offline accounting for about 22% of the nation's refining capacity.[145] Fuel prices rose to a two year high.[146] Although some of these refinery shutdowns and the impact on fuel prices are expected to extend a few weeks or longer, the harm to consumers and to local communities will not approach the loss that would be felt from the permanent loss of refineries due to bankruptcy shutdowns and the resulting job losses. Furthermore, this level of temporary refinery curtailment would be made worse by any loss of refinery capacity in other regions. While about 22% of refinery capacity was impacted by hurricane Harvey, the percentage could be greater if the east coast or mid-continent refineries were no longer operating.

Consumers are likely to be impacted by reduced competition in both the retail and wholesale fuel sectors. Reduced competition in the retail sector is not in the best interests of consumers as robust competition including large and small retailers is an essential prerequisite of appropriate pricing. Professor Weinstein observed:

> On a global scale, if profit margins for small, independent retailers continue to narrow in order to "meet the competition" even more of these businesses can be expected to fail in coming years. Fewer small retailers, in turn, will result in higher fuel prices for

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[144] Holcomb Market Analysis, *supra* note 132 at 16.
[145] S&P Global Platts, *Oil factbox: USGC refinery outages, port closures continue to increase Aug 30*, https://www.platts.com/latest-news/oil/newyork/oil-factbox-usgc-refinery-outages-port-closures-26796285 (Aug. 30, 2017 3:20 PM); Jill Horowitz, *Nation's largest oil refinery forced to shut down as Harvey flood Port Arthur*, http://money.cnn.com/2017/08/30/news/harvey-motiva-oil-refinery-shutdown/index.html (Aug. 30, 2017 3:23 PM).
[146] Lucy Nicholson, Reuters, *US crude falls 1%, settling at nearly 6-week low of $45.96, as Harvey keeps refineries offline*, https://www.cnbc.com/2017/08/29/oil-dips-as-us-floods-cause-large-scale-refinery-shutdowns.html (last updated Aug. 30, 2017).

> consumers along with a reduction in the services these businesses provide, such as auto repair and maintenance.[147]

Independent of the impact on retail, pressure applied to the marginal refiner can also be expected to adversely impact consumers. The national consumer organization EmPower Consumers found that, "There can be little doubt that high RINs prices disproportionately impact smaller merchant refiners, placing their much-needed capacity in danger."[148] The organization further cited sources finding that, "Small and medium-size refiners process roughly half the nation's transportation fuels."[149] Further relying on data collected by congressional sources, EmPower Consumers concluded that, "When marginal refiners that serve specific regions exit the marketplace, significant price spikes for consumers result."[150]

Absent addressing the point of obligation or some other significant reform that addresses RIN prices, EPA should exercise its general waiver authority to avoid the severe economic harms described above and to protect the nation's fuel security.

X. Conclusion

Valero greatly appreciates the opportunity to comment and recognizes the challenge that EPA faces in administering the RFS. EPA understands and has already recognized that the structural and market issues that exist are preventing the RFS from achieving its goals—of energy independence and security and promotion of renewable production. Furthermore, the current RFS is actually undermining both of these goals and threatening severe economic harm to the nation and a number of geographic and sector specific parts of our economy. However, EPA has the opportunity to address these structural problems and avoid further harm while implementing congressional intent. EPA must address the current structural disconnect between the point of obligation and the point of compliance. EPA should also look to lifting obstacles to renewable energy exports that limit the growth of domestic renewable transportation fuel production and hurt US renewable producers—most specifically lifting the renewable fuels export RVO. EPA should also look to RIN market reforms that would help curb the rampant manipulation of the RIN market and finally, if EPA cannot immediately relieve the RIN market with the reforms place above, it must tailor the RVO to meet the limits created by the blend wall and impairment of our domestic production by the foreign producers. These actions are necessary to prevent further severe economic harm, protect the nation's refining infrastructure, promote renewable fuel, and protect small retailers and American consumers.

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[147] Weinstein, *supra* note 138 at 15.
[148] EmPower Consumers, Refine the Facts, *Addressing High RINs Prices Essential to Holding the Line on Consumer Prices* at 1, *available at* www.refinethefacts.com/resources/.
[149] *Id.* at 2
[150] *Id.*

Valero Comments on EPA's Proposed Rule for Renewable Fuel Standard Program: Standards for 2018 and Biomass-based Diesel Volume for 2019
Docket ID No. EPA-HQ-OAR-2017-0091

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

One Valero Way • San Antonio, Texas 78249-1616
Post Office Box 696000 • San Antonio, Texas 78269-6000 • Telephone (210) 345-2000

Valero Comments on EPA's Proposed Rule for Renewable Fuel Standard Program: Standards for 2018 and Biomass-based Diesel Volume for 2019
Docket ID No. EPA-HQ-OAR-2017-0091

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Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 8/7/2017 8:17:28 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Meeting with Valero

Thanks Mandy. Alex our schedule is pretty open (more on the later end of this week) so please let us know what works for you.--Chris

-----Original Message-----
From: Gunasekara, Mandy [mailto:Gunasekara.Mandy@epa.gov]
Sent: Monday, August 07, 2017 12:27 PM
To: Parinello, Chris <Chris.Parinello@valero.com>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Re: Meeting with Valero

Yes- Alex can you set something up? Include Sam, Brittany, Ben Hengst and David Orlin.

Sent from my iPhone

> On Aug 3, 2017, at 12:15 PM, Parinello, Chris <Chris.Parinello@valero.com> wrote:
>
>
>> Hi Mandy--As a follow up to recent conversations, are you free next week to meet with Salo, me, and some of the Bracewell team to discuss other RINs-related issues. We are wide open all next week so let us know what works best for you. Thank you.--Chris
>>
>> Sent from my iPhone

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 9/12/2017 8:13:30 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Valero Meeting Request

Ok no worries we'll make that work. Thanks!—Chris

From: Dominguez, Alexander [mailto:dominguez.alexander@epa.gov]
Sent: Tuesday, September 12, 2017 4:12 PM
To: Parinello, Chris <Chris.Parinello@valero.com>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Valero Meeting Request

Mandy is back-to-back Wednesday and traveling Thursday and Friday so it unfortunately needs to be Monday at 10:30 or looking at the week of 25th

Alex

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, September 12, 2017 3:45 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Re: Valero Meeting Request

Alex--Salo is now out Monday so sorry! Would one of those other days work?--Chris

Sent from my iPhone

On Sep 12, 2017, at 3:40 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

> Hey Chris – Let's do 10:30AM on Monday, September 18th.
>
> Location: 1200 Pennsylvania Avenue, NW.
>
> Directions: Please use the William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station.
> https://www.epa.gov/sites/production/files/2013-08/federaltrianglemap5.jpg
>
> EPA Contact: For an escort from Security to the meeting call me at 202-578-5985 or 202-564-3164
>
> **Alex Dominguez**
> *Policy Analyst to the Senior Advisors to*
> *the Administrator for Air and Water*
> U.S. Environmental Protection Agency

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, September 12, 2017 3:04 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Valero Meeting Request
Importance: High

Hi Mandy—Wanted to see if you had time to meet with us next week to follow up on our discussions related to RINs. Salo and I would like to bring in Jeff Holmstead and Lisa Jaeger from Bracewell as well. Would any of the below days/times work? Thank you!—Chris

Monday, September 18th—Any time
Wednesday, September 20th—Afternoon
Thursday, September 21st—Any time
Friday, September 22nd—Any time after 10am.

Chris Parinello
Senior Manager, Federal Government Affairs
Valero Energy Corporation
Phone: (202) 560-5451
Email: chris.parinello@valero.com

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 8/7/2017 2:24:18 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: Fwd: Meeting with Valero

Hi Mandy just wanted to check back in on this. Do you have time for a meeting this week?--Chris

Sent from my iPhone

Begin forwarded message:

> **From:** "Parinello, Chris" <Chris.Parinello@valero.com>
> **Date:** August 3, 2017 at 3:13:27 PM EDT
> **To:** "Gunasekara.Mandy@epa.gov" <Gunasekara.Mandy@epa.gov>
> **Cc:** "Zelermyer, Salo" <Salo.Zelermyer@valero.com>
> **Subject: Meeting with Valero**
>
> Hi Mandy--As a follow up to recent conversations, are you free next week to meet with Salo, me, and some of the Bracewell team to discuss other RINs-related issues. We are wide open all next week so let us know what works best for you. Thank you.--Chris
>
> Sent from my iPhone

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 12/4/2018 5:47:31 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: RE: RIN market reform POCs

Chris Parinello is the best place to start: Chris.Parinello@valero.com

---

From: Hengst, Benjamin
Sent: Tuesday, December 4, 2018 10:17 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RIN market reform POCs

Hi Mandy—we are going to set up some staff level meetings with Valero and HollyFrontier on RIN market reform. I have a few contacts there but I wanted to ask you who your primary POCs at those two companies have been on RFS topics. Can you (or Alex) share them with me so we can reach out to them? Thank you. Ben

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 9/6/2018 2:09:01 PM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: Re: San Antonio Travel

Great- thank you

Sent from my iPhone

> On Sep 6, 2018, at 10:04 AM, Atkinson, Emily <Atkinson.Emily@epa.gov> wrote:
>
> Thank you for the update. I will update your calendar with this itinerary and book both of you for this two day trip with the flights we discussed yesterday.
>
> -----Original Message-----
> From: Gunasekara, Mandy
> Sent: Thursday, September 06, 2018 9:58 AM
> To: Atkinson, Emily <Atkinson.Emily@epa.gov>
> Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
> Subject: San Antonio Travel
>
> Hey Emily,
> I spoke with Valero yesterday and they are working through a final agenda/official invite for Alex and I to visit their HQ. After my AFPM speech, we'll head to Valero and spend 4 hours (10-2) having meetings, visiting their RIN trading floor and touring the HQ. Can you go ahead and book Alex's travel so that it mirrors mine (leave Sunday night, stay at hotel and return Monday evening)? Let me know if you need any additional information.
> Thanks,
> Mandy
>
> Sent from my iPhone

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/28/2017 7:48:07 PM
To: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]

Subject: Accepted: EPA / Valero (re: RINs)
Location: Location: 1200 Pennsylvania Avenue, NW (North) - Room 3528 WJCN

Start: 6/30/2017 5:15:00 PM
End: 6/30/2017 5:45:00 PM

Recurrence: (none)

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 6/27/2017 6:41:38 PM
To: Parinello, Chris [Chris.Parinello@valero.com]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Export Follow Up/Friday Meeting

Thank you for the information. Alex, can you please help set something up from Friday afternoon (the 1 to 1:30 block). Let's include Sam and Brittany as well.

See you both soon.
Mandy

From: Parinello, Chris [mailto:Chris.Parinello@valero.com]
Sent: Tuesday, June 27, 2017 2:08 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Zelermyer, Salo <Salo.Zelermyer@valero.com>
Subject: Export Follow Up/Friday Meeting
Importance: High

Hi Mandy—Thanks for taking the time to chat today. I've attached the document we left Samantha outlining the case for the ethanol export RINs proposal, as well as statistics from RFA on last year's ethanol exports. You mentioned this Friday as a date for us to come in to discuss this and some other issues a bit more. We're wide open that day so please let us know the time that works best. Thanks again.—Chris

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/3/2018 8:09:35 PM
To: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: Re: Hey

Thank you 🙏

Sent from my iPhone

> On Apr 3, 2018, at 2:32 PM, Zelermyer, Salo <Salo.Zelermyer@valero.com> wrote:
>
> Hang in there. Thinking about all of you over there.
>
> Sent from my iPhone

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 4/3/2018 6:41:21 PM
To: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: Re: Hey

Thank you 🙏

Sent from my iPhone

> On Apr 3, 2018, at 2:32 PM, Zelermyer, Salo <Salo.Zelermyer@valero.com> wrote:
>
> Hang in there. Thinking about all of you over there.
>
> Sent from my iPhone

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/7/2017 9:43:37 PM
To: Parinello, Chris [Chris.Parinello@valero.com]
CC: Zelermyer, Salo [Salo.Zelermyer@valero.com]
Subject: Re: Meeting with Valero CEO and Administrator Pruitt

Great- I forwarded this along to the Administrators scheduler Maddy. She should be in touch soon.

Have a great weekend,
Mandy

Sent from my iPhone

On Jul 7, 2017, at 10:49 AM, Parinello, Chris <Chris.Parinello@valero.com> wrote:

> Hi Mandy—Valero's Chairman and CEO Joe Gorder will be in Washington, D.C. next week. Following up on our meeting from last week on export RINs, Mr. Gorder would like to meet with Administrator Pruitt to discuss the topic. Would Administrator Pruitt be available Wednesday morning the 12th for a meeting with Mr. Gorder? If you could let me know (or direct me to the Administrator's scheduler) that would be much appreciated. Thank you!—Chris
>
> Chris Parinello
> Senior Manager, Federal Government Affairs
> Valero Energy Corporation
> Phone: (202) 560-5451
> Email: chris.parinello@valero.com

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 8/11/2017 3:27:50 AM
To: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]

Subject: Accepted: Meeting w/ Valero
Location: 1332 WJCN

Start: 8/15/2017 7:30:00 PM
End: 8/15/2017 8:30:00 PM

Recurrence: (none)

Appointment

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 9/14/2017 1:07:48 AM
To: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]

Subject: Accepted: Valero
Location: 3528 WJCN

Start: 9/18/2017 2:30:00 PM
End: 9/18/2017 3:00:00 PM

Recurrence: (none)

Appointment

From: Jacks, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D4A46EC26B7948BA8D890C8C93FECDFF-LUCENTE, SU]
Sent: 5/15/2019 8:42:07 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Jacks, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4a46ec26b7948ba8d890c8c93fecdff-Lucente, Su]
BCC: DCRoomARN5415PolyPCTB/DC-ARN-OAR [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2c066053]

Subject: Meet w/ Valero Energy (CONFIRMED)
Attachments: Re: Meeting with Valero Energy Corporation; RE: Meeting with Valero Energy Corporation
Location: DCRoomARN5415PolyPCTB/DC-ARN-OAR

Start: 5/29/2019 7:00:00 PM
End: 5/29/2019 7:30:00 PM
Show Time As: Busy

Visiting Participants:

Chris Parinello – Valero Director Federal Government Affairs
Salo Zelermyer – Valero

Re: Meeting with Valero Energy C... RE: Meeting with Valero Energy C...

As of May 15, 2019: Scheduled per AI request.-Susan

Message

From: Parinello, Chris [Chris.Parinello@valero.com]
Sent: 5/15/2019 5:59:51 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]
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]; Jacks, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4a46ec26b7948ba8d890c8c93fecdff-Lucente, Su]
Subject: Re: Meeting with Valero Energy Corporation

Flag: Follow up

Great thank you!

Sent from my iPhone

On May 15, 2019, at 1:55 PM, Idsal, Anne <idsal.anne@epa.gov> wrote:

> Hey Chris,
>
> I've CC'd Susan Jacks to help work out a time to meet. Looking forward to it.
>
> Anne
>
> Sent from my iPhone
>
> On May 15, 2019, at 1:40 PM, Parinello, Chris <Chris.Parinello@valero.com> wrote:
>
>> Hi Anne—I work in Valero's Washington D.C. office, and my colleague Salo Zelermyer and I wanted to come in to introduce ourselves and discuss some of our key policy issues (specifically the Renewable Fuel Standard). Do you have any time on the afternoons of the 22nd, 23rd, 24th, or 29th for a brief meeting? Thank you!—Chris
>>
>> Chris Parinello
>> Director, Federal Government Affairs
>> Valero Energy Corporation
>> Phone: (202) 560-5451
>> Email: chris.parinello@valero.com

Message

From: Jacks, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D4A46EC26B7948BA8D890C8C93FECDFF-LUCENTE, SU]
Sent: 5/15/2019 8:49:31 PM
To: Parinello, Chris [Chris.Parinello@valero.com]
Subject: RE: Meeting with Valero Energy Corporation

Dear Mr. Parinello,
You are confirmed for a 45 min meeting with Anne Idsal on **May 29 at 3:00 PM.**
Directions and procedures to 1200 Pennsylvania Avenue NW:

Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn right. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, North Entrance.

Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left – that is the North Lobby of the William Jefferson Clinton building.

Security Procedures: A government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared and arrive at the meeting room on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. If you are a foreign national entering on a non-US passport, please let us know in advance, as there is a separate clearance process.

Upon arrival, let the guards know that you were instructed to **call 202-564-7404** for a security escort. Please send me a list of participants in advance of the meeting and feel free to contact me should you need any additional information.

Many Thanks,
Susan Jacks

From: Parinello, Chris <Chris.Parinello@valero.com>
Sent: Wednesday, May 15, 2019 2:00 PM
To: Idsal, Anne <idsal.anne@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Jacks, Susan <Jacks.Susan@epa.gov>
Subject: Re: Meeting with Valero Energy Corporation

Great thank you!

Sent from my iPhone

On May 15, 2019, at 1:55 PM, Idsal, Anne <idsal.anne@epa.gov> wrote:

Hey Chris,

I've CC'd Susan Jacks to help work out a time to meet. Looking forward to it.

Anne

Sent from my iPhone

On May 15, 2019, at 1:40 PM, Parinello, Chris <Chris.Parinello@valero.com> wrote:

> Hi Anne—I work in Valero's Washington D.C. office, and my colleague Salo Zelermyer and I wanted to come in to introduce ourselves and discuss some of our key policy issues (specifically the Renewable Fuel Standard). Do you have any time on the afternoons of the 22nd, 23rd, 24th, or 29th for a brief meeting? Thank you!—Chris
>
> Chris Parinello
> Director, Federal Government Affairs
> Valero Energy Corporation
> Phone: (202) 560-5451
> Email: chris.parinello@valero.com

Appointment

From: DCRoomARN5415PolyPCTB/DC-ARN-OAR [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=USER2C066053]
Sent: 5/16/2019 2:41:33 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]

Subject: Accepted: Meet w/ Valero Energy (CONFIRMED)
Location: DCRoomARN5415PolyPCTB/DC-ARN-OAR

Start: 5/29/2019 7:00:00 PM
End: 5/29/2019 7:30:00 PM

Recurrence: (none)

Your request was accepted.

Sent by Microsoft Exchange Server 2016

Appointment

From: Jacks, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D4A46EC26B7948BA8D890C8C93FECDFF-LUCENTE, SU]
Sent: 5/16/2019 2:41:31 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]

Subject: Accepted: Meet w/ Valero Energy (CONFIRMED)
Location: DCRoomARN5415PolyPCTB/DC-ARN-OAR

Start: 5/29/2019 7:00:00 PM
End: 5/29/2019 7:30:00 PM

Recurrence: (none)

Appointment

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 5/15/2019 8:42:09 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]

Subject: Meeting Forward Notification: Meet w/ Valero Energy
Location: DCRoomARN5415PolyPCTB/DC-ARN-OAR

Start: 5/29/2019 7:00:00 PM
End: 5/29/2019 7:30:00 PM

Recurrence: (none)

Your meeting was forwarded

Jacks, Susan has forwarded your meeting request to additional recipients.

Meeting

Meet w/ Valero Energy

Meeting Time

Wednesday, May 29, 2019 3:00 PM-3:30 PM.

Recipients

Lewis, Josh

Jacks, Susan

DCRoomARN5415PolyPCTB/DC-ARN-OAR

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: 5/15/2019 8:51:46 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]

Subject: Meeting Forward Notification: Meet w/ Valero Energy
Location: DCRoomARN5415PolyPCTB/DC-ARN-OAR

Start: 5/29/2019 7:00:00 PM
End: 5/29/2019 7:30:00 PM

Recurrence: (none)

Your meeting was forwarded

Jacks, Susan has forwarded your meeting request to additional recipients.

Meeting

Meet w/ Valero Energy

Meeting Time

Wednesday, May 29, 2019 3:00 PM-3:30 PM.

Recipients

Lewis, Josh

Jacks, Susan

DCRoomARN5415PolyPCTB/DC-ARN-OAR

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: 5/16/2019 2:41:30 PM
To: Idsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-Idsal, Anne]

Subject: Meeting Forward Notification: Meet w/ Valero Energy (CONFIRMED)
Location: DCRoomARN5415PolyPCTB/DC-ARN-OAR

Start: 5/29/2019 7:00:00 PM
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Recurrence: (none)

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Meeting

Meet w/ Valero Energy (CONFIRMED)

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Recipients

Lewis, Josh

Jacks, Susan

DCRoomARN5415PolyPCTB/DC-ARN-OAR

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server