March 17, 2021

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C.
204060

Dear Administrator Regan,

Congratulations on being confirmed as the new Administrator of the U.S. Environmental Protection Agency (EPA). The Renewable Fuels Association (RFA) looks forward to working with you as the Agency carries out its mission to protect human health and the environment.

I am writing today to share our perspective on the near-term path forward for the Renewable Fuel Standard (RFS), and to respond to the letter sent to you on March 15 by the American Fuel & Petrochemical Manufacturers (AFPM).[1]

Just as COVID-19 has created difficult market conditions for petroleum refiners, the pandemic also has presented extraordinary economic challenges for renewable fuel producers. Over the course of several weeks in late March and early April 2020, ethanol production and demand collapsed by nearly 50 percent as travel restrictions and lockdowns significantly reduced vehicle travel and fuel consumption.[2] More than half of the 204 ethanol biorefineries in the country were forced to shut down or significantly reduce output last spring. Many of those facilities remain idled today and some have permanently closed.

Pandemic-related renewable fuel demand destruction would have been even worse if not for the RFS. The program helped keep a "floor" under ethanol demand, prevented the biofuel marketplace from entering a complete freefall, and ensured consumers would maintain access to lower-cost, cleaner fuel options at the pump. At the same time, the self-correcting nature of the RFS program's annual renewable volume obligation (RVO) allowed the refiners' actual renewable fuel blending requirements to adjust lower with reduced gasoline and diesel consumption. In short, the RFS program's built-in adaptabilities have performed exactly as intended during the pandemic to simultaneously provide flexibility and certainty to both refiners and renewable fuel producers alike.

While U.S. ethanol consumption remains well below pre-pandemic levels, demand has strengthened in recent months and optimism is returning to our sector. As values for Renewable Identification Number (RIN) credits have risen, so too has the production and blending of

[1] Letter to The Honorable Michael Regan, Administrator, U.S. Environmental Protection Agency from Chet Thompson, President & CEO, American Fuel & Petrochemical Manufacturers (March 15, 2021).
[2] U.S. Energy Information Administration. "U.S. fuel ethanol production and inventory changes have largely followed motor gasoline." (June 8, 2020) https://www.eia.gov/todayinenergy/detail.php?id=44015

renewable fuels. The share of U.S. gasoline comprised of ethanol hit record levels of 10.78 percent and 10.81 percent in November and December (the last month for which data is available), respectively.[3]

Clearly, elevated RIN values are driving increased blending and consumption of higher-level ethanol blends like E15 and flex fuels like E85. When increased sales of E15 and E85 are combined with the ubiquitous use of E10 nationwide, the gasoline marketplace is demonstrating in real-time that it can readily accommodate at least 11 percent ethanol on average. Higher RIN values are also causing some petroleum refiners to repurpose their facilities to produce renewable diesel.[4] This is exactly the sort of market transformation the RFS program and its RIN mechanism were intended to stimulate.

However, just as it has always done whenever RIN values have risen in the past, AFPM is claiming again that higher RIN values are "threatening the viability of many refineries." But, as usual, they do not explain how or why. In reality, refiners who comply with the RFS by purchasing RIN credits (i.e., rather than blending renewable fuels) are passing the cost of those credits along to wholesale purchasers of their refined products.

Indeed, according to EPA, "…refiners are generally able to recover the cost of RINs in the prices they receive for their refined products, and therefore high RIN prices do not cause significant harm to refiners."[5] The Agency also stated that, "All obligated parties, including merchant refiners, are generally able to recover the cost of the RINs they need for compliance…"[6] The Courts, financial analysts, academia, the American Petroleum Institute, Marathon Petroleum Company and many others have reached similar conclusions.

Contrary to the refiners' claim that higher RIN values are a sign the RFS program is "broken," elevated RIN values are, in fact, a sign that the RFS is finally being allowed to work as intended to transform the transportation fuels marketplace.

AFPM alleges that it will be "impossible" for refiners to comply with the statutory RFS requirement for conventional renewable fuels in 2021. That assertion is patently false; obligated parties have multiple options available for complying the RFS in 2021, as enumerated below.

1. **Blend more flex fuels**. AFPM's letter entirely failed to mention flex fuels: the most obvious "pressure-relief valve" for elevated RIN prices. More than 5,000 U.S. retail stations in 45 states sell E85 and other flex fuels (containing 51 to 83 percent ethanol) today. Those low-carbon fuels are approved by EPA for use in more than 21 million flex fuel vehicles (FFVs) on American roadways. If those FFVs refueled with E85 even *one-quarter of the time*, ethanol consumption would rise by more than 2.2 billion gallons.

[3] U.S. Energy Information Administration. Petroleum Supply Monthly. The following formula is used to derive average ethanol blend rate: *(Fuel Ethanol Refinery & Blender Net Inputs - Ethanol Supply Adjustments) ÷ Finished Motor Gasoline Product Supplied*. https://www.eia.gov/petroleum/supply/monthly/

[4] HollyFrontier Press Release. "HollyFrontier Announces Expansion of Renewable Business." (June 1, 2020) https://www.hollyfrontier.com/investor-relations/press-releases/Press-Release-Details/2020/HollyFrontier-Announces-Expansion-of-Renewables-Business/default.aspx

[5] U.S. EPA. "Renewable Fuel Standard Program – Standards for 2018 and Biomass-Based Diesel Volume for 2019: Response to Comments." (December 2017) https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100TDDH.pdf

[6] U.S. EPA. "Denial of Petitions for Rulemaking to Change the RFS Point of Obligation." (November 2017) https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100TBGV.pdf

2. **Blend more E15**. More than 2,200 U.S. retail stations sell E15 today, with more stations being announced almost daily. In addition, E15 is now offered at more than 200 fuel terminals across the country. If EPA moves to quickly finalize its proposed rule removing additional E15 barriers, marketplace adoption of the fuel will rapidly accelerate.[7]

3. **Blend more biomass-based diesel**. Obligated parties who do not want to supply E15 or ethanol flex fuels to the market may opt instead to increase their blending of biodiesel, renewable diesel, or other renewable fuels. While ethanol has historically been the most economical option for complying with RFS conventional renewable fuel requirements, *any* renewable fuel may be used to satisfy the conventional standards.

4. **Purchase RIN credits from obligated parties who are blending more biofuels**. Refiners who prefer not to blend any renewable fuel at all have the option to comply with RFS requirements by purchasing RIN credits from those parties who are blending more biofuel than required. As described above, the cost of obtaining RIN credits is passed along to wholesale customers.

5. **Use surplus RIN credits from the record-large carryover RIN bank**. Refiners may use RIN credits generated in 2020 to comply with up to 20 percent of their 2021 obligation. EPA's last estimate of the surplus RIN bank was 3.48 billion RINs, meaning an unusually large reserve of surplus RINs is available.[8] Surplus RIN credits were available for refiners to purchase at historically low average prices of 31 cents in 2018 and just 17 cents in 2019.

6. **Carry forward a compliance deficit.** The RFS regulations allow obligated parties to carry a compliance deficit forward into the next year, providing extra flexibility and more time to comply with the standards.

Put simply, refiners have numerous options and strategies available for compliance with the RFS. Most likely, refiners will use some combination of the above strategies. That optionality is a hallmark of the RFS program; it does not dictate what specific biofuels or strategies must be used to comply with the annual conventional renewable fuel standards. Rather, it allows obligated parties to choose the compliance strategy that is most operationally and economically feasible for them.

Even with the variety of compliance options available to obligated refiners, AFPM is asking EPA to "adjust" (i.e., waive) the renewable fuel volumes required in 2021 based on the false premise that the fuel market cannot absorb the required amounts of conventional renewable fuel. However, even if AFPM's arguments were legitimate, the Courts have rejected past attempts by EPA to reduce annual renewable fuel obligations based on supposed market barriers to increased biofuel consumption. They would most assuredly do so again.

In *Americans for Clean Energy v. EPA*, the D.C. Circuit Court of Appeals in 2017 vacated EPA's decision to reduce the total renewable fuel volume requirements for 2016 based on the misapplication of its "inadequate domestic supply" waiver authority.[9] The Court held that the Clean Air Act does not permit EPA's annual RVO rule to "consider the volume of renewable fuel

[7] 86 Fed. Reg. 5094 (January 19, 2021) https://www.govinfo.gov/content/pkg/FR-2021-01-19/pdf/2021-00203.pdf
[8] 85 Fed. Reg. 7021 (February 6, 2020) https://www.govinfo.gov/content/pkg/FR-2020-02-06/pdf/2020-00431.pdf
[9] No. 16-1005 (D.C. Cir. July 28, 2017).

that is available to ultimate consumers or the demand-side constraints that affect the consumption of renewable fuel by consumers." The standards were remanded back to the Agency for remedy (i.e., to restore 500 million gallons of inappropriately waived conventional renewable fuel volume from 2016). Under the Trump administration, however, EPA continually failed to implement the court's directive. We look forward to working with you to ensure the court's mandated remedy is implemented soon by EPA.

In closing, as you begin your tenure as Administrator, we respectfully encourage you to stay the course on the Renewable Fuel Standard. Even in the face of continued attempts by the oil refining industry to undermine the program, the RFS has been an incredibly effective tool for reducing greenhouse gas emissions, cutting criteria tailpipe pollutants, reducing petroleum imports, and boosting rural economies. We ask that the 2021 and 2022 RVO rules include conventional renewable fuel volumes of at least 15 billion gallons per year, as required by the statute, along with the court-ordered 500 million gallons illegally waived from the 2016 standards.

Thank you for considering our perspective on the RFS. I stand ready to provide further information or answer any questions you may have regarding this matter.

Sincerely,

Geoff Cooper

Geoff Cooper
President and CEO
Renewable Fuels Association