



October 10, 2012

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

Air and Radiation Docket - EPA-HQ-OAR-2012-0632

Submitted via email to: a-and-r-docket@epa.gov

RE: Request for Comment on Letters Seeking a Waiver of the Renewable Fuel Standard

Dear Administrator Jackson:

On behalf of the 600 members of the American Coalition for Ethanol (ACE), I am writing to urge you to deny requests to waive the Renewable Fuel Standard (RFS) submitted by Governor Beebe of Arkansas, Governor Perdue of North Carolina, and subsequent formal petitions from the governors of New Mexico, Georgia, Texas, Virginia and other unofficial waiver requests.

Founded in 1987, ACE is the grassroots voice of the U.S. ethanol industry, uniting ethanol producers, farmers, agriculture and commodity groups, cellulosic and advanced biofuel companies, rural electric cooperatives, and grassroots individuals in support of our mission to make American ethanol the consumer fuel of choice. More information about ACE can be found at our website, www.ethanol.org.

ACE urges EPA to deny the requests to waive the RFS based on a range of compelling factors, including; statutory thresholds for triggering a waiver, precedent established in 2008 when the Agency denied a request by the state of Texas, data which proves waiving the RFS won't remedy the harm of the drought, existing market fundamentals, and the built-in flexibility of the RFS which ensures compliance without straining the corn or ethanol marketplace.

Statutory Thresholds

The Clean Air Act includes specific requirements regarding EPA's consideration of any waiver of the RFS schedule. Section 211(o) (7) sets out the specific criteria and process that the Agency must follow while considering a waiver. Statutory text relating to the criteria for granting a waiver is as follows:

(7) Waivers

(A) In general

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by one or more States, by any person subject to the requirements of this subsection, or by the Administrator on his own motion by reducing the national quantity of renewable fuel required under paragraph (2)—

(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply.

The statute is undeniably clear about the substantive thresholds which must be met before a waiver may be granted. EPA must determine, in consultation with the Secretaries of Agriculture and Energy, that the requirement would either 1) severely harm the economy or environment of a State, region, or the United States, or, 2) that there is an inadequate domestic supply of renewable fuel. Letters to EPA from the governors of Arkansas, North Carolina, et al. have complained about high corn and feed prices but have failed to provide *prima facie* evidence proving “severe harm” to the economy as a result of the RFS. On this basis alone, ACE believes the Agency must deny the waiver requests.

Precedent

In addition, EPA’s decision to deny the Texas waiver RFS waiver request in 2008 established the precedent for interpreting what constitutes “severe harm” to the economy and how the Agency will evaluate the current waiver requests from the governors of Arkansas, North Carolina, et al.

Based on the Texas precedent, EPA has interpreted the statute as providing narrow waiver authority and requiring that:

- (a) Implementation of the RFS *itself* would severely harm the economy. It is not enough to determine that implementation of the RFS would *contribute* to such harm. EPA has interpreted the statutory language to require that the RFS program itself must be *the* cause of the severe harm arguing that any other interpretation would “amount to a very open-ended and wide ranging waiver provision” that has the potential to undermine Congress’ overall desire to promote the use of renewable fuels under the RFS.
- (b) There must be a generally high degree of confidence that there *will be severe harm as a result of the RFS*. EPA specifically notes use of the term “would harm” in this waiver authority versus “will likely result in significant adverse impacts” in other waiver provisions as evidence of the high standard Congress required. EPA also stated that this high standard limits waivers to circumstances where the waiver is expected to provide relief.
- (c) Use of the term “severely harm” indicates that Congress set a high threshold for granting of any waiver. EPA looked at the plain meaning of severe as well as its use elsewhere in the Clean Air Act to determine that “severe” harm (directly as a result of the RFS) means more than marginal, moderate, or serious, though less than extreme.
- (d) EPA stated in denying the Texas waiver that “it would be unreasonable to base a waiver determination solely on consideration of impacts of the RFS program to one sector of an economy, without also considering the impacts of the RFS program on other sectors of the economy or on other kinds of impact.” That means EPA must conduct a much broader review of the impacts to the economy to determine if the RFS is causing “severe harm” generally taking in to account positives and potential negatives.

The fact that harm must be found in more than one sector of the economy is a key element of the precedent established by EPA in 2008. A cursory assessment of economic conditions in any of the states seeking a waiver reveals that widespread harm in more than one sector of the economy as a result of the RFS cannot be found. In fact, such a review uncovers very positive economic news in many of the states.

For example, while North Carolina Governor Perdue asserts in her August 14, 2012 waiver request letter to EPA that “severe economic harm is being experienced by the State of North Carolina and many of its agricultural regions, as well as important economic sectors in the state, as a direct result of the implementation of the applicable volume requirements of the RFS,” the governor also proclaims “great news for our state as North Carolina continues to thrive as a global economic leader” in a press release issued August 20, 2012, citing export data from the U.S. Department of Commerce’s International Trade Administration (ITA) that North Carolina merchandise exports increased in the first half of 2012, growing from \$13.4 billion to \$14 billion from the same period in 2011.¹ Furthermore, in a July 3, 2012 news report on agriculture exports by the Southern Farm Network, North Carolina Agriculture Commissioner Steve Troxler declared “We are booming with our exports. It’s a good thing for farmers, it’s a good thing for North Carolina. If it weren’t for our agricultural exports, we would have a big surplus of all the products we are producing in North Carolina. These export opportunities are in lumber, cotton, tobacco, nursery plants, soybeans, corn...even the sweet potato industry has grown to be number one because we are exporting so many products.”²

A nearly identical argument is made by Virginia Governor McDonnell in his waiver request letter to EPA on August 28, 2012: “Altogether, economic harm is being experienced by Virginia livestock and poultry producing regions and important economic sectors of the state as a direct result of the implementation of applicable volume requirements of the RFS.” However, according to an August 30, 2012 economic analysis by JPMorgan Chase and Co., “Virginia has fared better than the national economy for the past decade and the state’s economy merely stalled when the nation slipped into a recession. Virginia’s economy is forecast to continue to pace the national economic recovery. Virginia has made considerable progress recovering or restoring jobs it lost in the recession. The state’s job market outlook is relatively rosy. Stable unemployment is a sign that the economy is expanding again.”³

During consideration of the Texas waiver, EPA looked at the likelihood that a waiver of the RFS would impact the amount of ethanol produced and consumed over the relevant corn marketing year, and thereby factors such as the price of corn during that time period. Using the same timeframe, EPA reviewed impacts and potential degree of harm from implementation of the RFS on key parameters such as U.S. corn prices, livestock feed costs, and consumer fuel prices. EPA reviewed modeling of the impact that a waiver would have on ethanol use, corn prices, feed prices, food prices, and fuel prices in addition to empirical evidence. EPA determined that how the RFS was implemented during “the

¹ North Carolina Office of the Governor. (2012, August 20). North Carolina’s Export Industry Thriving in 2012 [press release]. Retrieved from http://www.nccommerce.com/news/press-releases?udt_4733_param_detail=14590.

² Staff reports. (2012, July 3). “NCDA works with companies to increase ag exports.” SFNToday.com. Retrieved from <http://www.sfnoday.com/audio/default.aspx?yyyy=2012&MM=07&audioID=8431>.

³ Glassman, J.E. (2012, August 30). Regional Perspectives, Virginia Economic Outlook. Presentation of JPMorgan Chase and Co. Retrieved from <https://www.chase.com/online/commercial-bank/document/Virginia.pdf>.

2008/2009 corn marketing season” would have no impact on ethanol production volumes in the relevant timeframe, and therefore no impact on corn, food, or fuel prices. EPA also noted that even if a waiver of the RFS directly resulted in reduction of ethanol production during the time period, the impact on corn prices as a result of the RFS would be minimal and would not satisfy the high threshold of harm needed to be considered severe.

The standard is clear. EPA has interpreted the waiver provision narrowly, ensuring that the safeguards put in place by Congress result in a thoughtful and factual determination of whether the RFS by itself is causing severe economic harm to the *overall* economy that could be rectified by a national waiver of the RFS for a given year. Based on this precedent and data from various states undermining the claims of economic harm, the Agency should deny the requests to waive the RFS.

Drought is the cause of harm, not the RFS

Letters submitted to EPA by every governor requesting a waiver of the RFS make note of the significant drought causing damage to crops and pastures and stressing livestock herds in the U.S. Arkansas Governor Beebe’s letter alleges “While the *drought* (emphasis added) may have triggered the price spike in corn, an underlying cause is the federal policy mandating ever-increasing amounts of corn for fuel.” North Carolina Governor Perdue similarly claims in her letter that “While the severe *drought* (emphasis added) that our nation has experienced is an underlying factor in current economic conditions, the direct harm is caused by the RFS.” New Mexico Governor Martinez requests “To help alleviate the negative impacts caused by severe *drought* (emphasis added) conditions, I urge you to consider granting an immediate waiver from the RFS.”

However, Arkansas Governor Beebe undercuts the RFS allegation by confirming drought *is* the cause of harm to his state in a July 10, 2012 letter to U.S. Department of Agriculture (USDA) Secretary Vilsack seeking a Secretarial Disaster Designation for the entire state.⁴ “Arkansas has suffered agricultural devastation, including damage and losses to crops and pastures. This is due to the effects of a severe drought throughout the entire State, beginning April 1, 2012, and continuing...I now request a Secretarial Disaster Designation for all 75 Arkansas counties, each of which has experienced significant damage and losses to crops and pastures because of the unrelenting severe drought.” Governor Beebe’s letter makes no reference to ethanol or the RFS.

Moreover, a study by the University of Arkansas contradicts claims by Governor Beebe that a shortfall of corn and high corn prices due to the RFS caused economic loss to Arkansas ranchers, instead specifying a short supply of hay and rising hay costs.⁵ The study states, “ranchers in Arkansas lost at least \$128 million due to drought conditions from August, 2011 through July, 2012. The losses were mostly the result of a short supply of hay and rising hay costs. It became too expensive to feed cattle, and ranchers were forced to sell their cows.”

⁴ Letter from Mike Beebe, Governor, State of Arkansas, to U.S. Secretary of Agriculture Tom Vilsack, July 10, 2012. Retrieved from <http://aad.arkansas.gov/Documents/Gov%20Beebe%20Letter%20to%20USDA%20Sec%20Vilsack.pdf>.

⁵ Smith, S.A., Popp, M.P., and Kemper, N. (n.d.). Estimate of economic impact of drought on commercial beef cow/calf operations in Arkansas: A comparison of August 2011 to July 2012 with a typical production year. University of Arkansas, Division of Agriculture Research and Extension. Retrieved from http://www.uaex.edu/depts/ag_economics/publications/Ark_Drought_Report_Comm_Beef_September2012.pdf.

It is well-documented that drought is causing harm to the U.S., and many ACE members operate farms, ranches, and businesses which are experiencing the effects, so we empathize with those who are under financial stress. But we also understand that waiving the RFS, in whole or in part, will not remedy the harm already done to crops and hay supplies as a result of the drought. As previously noted in our comments, in denying the Texas waiver request in 2008 EPA said the RFS by itself must cause severe harm to the economy, indicating “it is not enough to determine that implementation of the RFS would contribute to such harm.”

USDA has utilized the tools at its disposal to provide relief to drought-stricken states. For example, according to a map of 2012 Secretarial Drought Designations released on September 26, 2012, all of the counties in Arkansas, New Mexico, and Texas, among dozens of other states, have been declared drought disaster areas by USDA, making farmers and ranchers eligible for emergency assistance.⁶

RFS has increased corn production

Petitioners for a waiver widely neglect the fact that the RFS has helped lead to more corn acres and improved yields-per-acre than would have been the case without it. According to USDA’s World Agricultural Supply and Demand Estimates (WASDE) report released in May 2012, 95.9 million acres of corn were planted this spring for the 2012-2013 marketing year, the most corn planted by U.S. farmers since 1937. Based on this planted acreage, had the U.S. experienced typical weather conditions, nearly 15 billion bushels of corn, an all-time record, would have been produced, resulting in more than enough corn for all end-use sectors. Arguments over corn rationing would have been replaced by discussions of what to do with a huge surplus.

Indeed, under a scenario in which drought persists exclusive of an RFS, there would be fewer corn bushels available for all end-use sectors and painful rationing would need to occur. According to the National Corn Growers Association, without the RFS, farmers would have planted only about 84 million acres of corn this year, not 95.9 million acres, resulting in a “pre-drought deficit” of nearly 4 billion bushels of corn assuming no corn was used for ethanol production. Consider the corn shortfall the U.S. would be facing absent the RFS, whereby a drought shrinks crop yields from a starting point of just 80-some million acres of corn. This is but more proof that absent the drought, there is no harm. In fact, given the acreage planted and corn produced in the U.S. over the past six to ten years in response to the RFS, it is reasonable to argue that not implementing the RFS would have led to far greater economic harm to the petitioners.

To underscore how the RFS has helped make more corn available for all end-users, consider that U.S. corn production during the last major drought, in 1988, was less than 5 billion bushels. USDA’s WASDE report issued September 12, 2012 projects a 10.72 billion bushel corn crop for 2012-2013. On October 2, 2012, INTL FCStone forecast that corn production would total 10.824 billion bushels. Either way, the 2012 corn crop is likely to be twice as large as the drought-ravaged crop of 1988. This additional production as a result of the RFS lessens the impact of the drought.

Waiving the RFS won’t remedy the harm because of built-in flexibility

Economists at Iowa State University, the University of Illinois, Purdue, and others have examined the impact of an RFS waiver on crop, biofuel, and Renewable Identification Number (RIN) markets. Their

⁶ 2012 Secretarial Drought Designations – All Drought. (2012, September 26). USDA Farm Services Agency, Production, Emergencies and Compliance Division. Retrieved from <http://www.usda.gov/documents/usda-drought-fast-track-designations-092612.pdf>.

analyses indicate waiving the RFS for the 2012-2013 marketing year would just modestly reduce corn prices because of current marketplace conditions and the built-in flexibility of the RFS. Data also strongly suggests consumer fuel prices could increase as a result of an RFS waiver.

In a paper released on August 2, 2012, Scott Irwin and Darrel Good with the University of Illinois noted “EPA does not necessarily have the ability to substantially ease the plight of livestock producers in 2012-13 at the stroke of a pen. Waiving the RFS may have a smaller impact on the price or quantity of corn available for feed than many expect.”⁷

A similar conclusion was reached by Bruce Babcock of Iowa State University’s Center for Agricultural and Rural Development (ISU-CARD). EPA relied upon the ISU-CARD model when evaluating and eventually denying the Texas RFS waiver request in 2008. After releasing data in July 2012 indicating a waiver of the RFS would result in just a 4.6 percent drop in corn prices, Babcock conducted an updated run of the model in August.⁸ The revised estimate forecasts that a full waiver of the RFS in calendar year 2013 would result in a 7.4 percent reduction in corn prices and just a 500 million gallon decline in ethanol production for the 2012-2013 marketing year.⁹

Waiver petitioners have attempted to frame the RFS as an inflexible mandate that requires corn ethanol to be produced and used no matter what. This ignores the flexibility Congress built into the RFS program to ensure compliance in the event physical gallons of ethanol and other renewable fuels are not available. Under the RFS program, obligated parties (refiners) earn a credit or RIN for each gallon of renewable fuel they blend into gasoline, diesel, or heating fuel. The RINs are tracked by EPA to determine if refiners comply with their annual renewable volume obligations (RVOs). EPA has exercised its statutory discretion to put this flexibility to work by allowing refiners to “bank” and “carryover” RINs to ensure compliance with the RFS. In the final rulemaking for RFS2, EPA determined that as much as 20 percent of obligated parties’ annual RVO can be met with RINs generated in the previous year. These blending credits can be used by refiners to comply with the RFS in the event physical gallons of ethanol are not available.

Economists who have examined the impacts of a waiver discuss how flexibility built into the RFS allows obligated parties to carry over these RINs or blending credits from previous years significantly lowers the economic impacts of a drought-stricken corn crop. According to Babcock’s August 2012 analysis, “The desire by livestock groups to see additional flexibility (i.e. an RFS waiver) may not result in a large drop in feed prices as they hope.”

⁷ Irwin, S. and Good, D. (2012, August 2). Ethanol – Does the RFS matter? Department of Agricultural and Consumer Economics, University of Illinois. Retrieved from http://www.farmdocdaily.illinois.edu/2012/08/ethanoldoes_the_rfs_matter.html.

⁸ Babcock, B. (2012, July). Preliminary assessment of the drought’s impacts on crop prices and biofuel production. Center for Agricultural and Rural Development, Iowa State University. Retrieved from http://www.card.iastate.edu/policy_briefs/display.aspx?id=1167

⁹ Babcock, B. (2012, August). Updated assessment of the drought’s impacts on crop prices and biofuel production. Center for Agricultural and Rural Development, Iowa State University. Retrieved from <http://www.card.iastate.edu/publications/dbs/pdffiles/12pb8.pdf>.

In a paper by the Farm Foundation and Purdue University published in August 2012, economists Wally Tyner, Farzad Taheripour, and Chris Hurt discuss how the use of RINs by refiners, oil prices, corn prices, and octane blending economics impact the outcome of a potential waiver of the RFS.¹⁰ Tyner et al. describe how refiners' ability to carry-forward RINs from 2012 to 2013 implicitly reduces corn prices next year without the need for a waiver, saying "In other words, with no EPA action, the carry-forward RINs could result in the corn price falling about 67 cents per bushel."

Because ethanol has been economically attractive to refiners, they have blended significantly more than required by the RFS. As a result, there are approximately 2.5 billion surplus RIN credits on the market. Even if refiners choose to "retire" some of these RINs to demonstrate compliance with the RFS in 2012, there would still be an enormous surplus of RINs available for use in 2013. These excess RINs represent a cushion of more than 900 million bushels of corn demand and effectively reduce the physical demand for ethanol without the need for EPA to waive the RFS.

Finally, there is a significant volume of ethanol stocks for refiners to draw on to comply with the RFS. According to the most recent figures from the U.S. Department of Energy, 789 million gallons of ethanol are in storage. These stocks of ethanol represent 282 million bushels of corn that are not only providing refiners additional flexibility with which to comply with the RFS, but also serving as a cushion to ration demand for corn.

Waiving the RFS would merely increase oil companies' leverage to drive down the price paid for ethanol. Livestock producers would see little benefit, but ethanol producers would be further harmed at the expense of oil companies profiting even more than they are today from blending ethanol.

Ethanol's value in the octane market

Purdue's Tyner and Iowa State's Babcock also present considerable discussion to the value proposition of octane in ethanol. Both papers question whether refiners would make the necessary technical changes to reduce demand for ethanol in the event of a waiver. Tyner notes that "Much of the regular gasoline that is produced today is 84 octane, and must be brought up to 87 octane for retail sale. It is brought up to 87 octane by blending 10 percent ethanol. According to refinery and industry sources, it may take three to six months for refineries to adjust to producing 87 octane instead of 84 octane. The time lag would only begin once it is economically attractive to make the change. Whether it was economically attractive to continue using ethanol would depend to a significant degree on how the price of ethanol compared with the price of other octane and oxygen sources. Even if technically and economically feasible to make the change, it is not clear if refineries would make the change if they perceived the waiver to be a one-time event only for 2013."

An August 2012 report by Morgan Stanley analyst Vincent Andrews and colleagues similarly found that, *currently* (emphasis added), ethanol demand is largely a function of economics.¹¹ Echoing Tyner's paper,

¹⁰ Tyner, W., Taheripour, F., & Hurt, C. (2012, August). Potential impacts of a partial waiver of the ethanol blending rules. Purdue University and Farm Foundation. Retrieved from <http://www.farmfoundation.org/news/articlefiles/1841-Purdue%20paper%20final%208-14-12.pdf>.

¹¹ Andrews, V., Allidina, H., Meier, B., and Drangula, T. (2012, August 7). Ethanol demand a function of economics, not RFS. Morgan Stanley Research, North America. Retrieved from http://www.farmersagencyinc.com/uploads/MS_Ethanol_Report_8-7-12.pdf.

Andrews et al. wrote “[t]here are significant structural impediments to moving away from ethanol. First, blenders cannot simply switch to using more gasoline blendstock, as this would not meet industry octane/oxygenate requirements. *At present* (emphasis added), ethanol is the most available and least expensive source of both. Switching from ethanol blending to conventional gas requires retooling refineries and finding cost competitive alternative octane/oxygenate sources, which we believe would be challenging given the sheer size of the ethanol market vs. alternatives markets such as toluene. This is not to mention that the cost of substitutes is already in excess of ethanol.”

For example, toluene, a toxic hydrocarbon which can be used to boost octane levels in gasoline, is nearly identical in octane to ethanol, yet consistently costs 150-200 percent more than ethanol. In an August 17, 2012 Bloomberg report, toluene cost \$4.20 per gallon on the U.S. Gulf Coast, while the Oil Price Information Service (OPIS) listed the Gulf Coast ethanol price at \$2.67 per gallon on the same day. Based on this price differential, substitution of toluene for ethanol, on a volume basis alone, would add 15 cents per gallon to the cost of gasoline at the pump. Nationwide, the price differential would be larger and constitute an increase of more than \$50 million per day to gasoline buyers. This does not take into account the fact that ethanol is a clean source of octane whereas toluene is a toxic aromatic that increases public health costs.

The Food and Agricultural Policy Research Institute (FAPRI) also concluded in an October 4, 2012 report that waiving the RFS would have a negligible effect on corn, feed, and food prices. According to the authors of the FAPRI report, “Reducing the overall RFS has a small negative effect on the corn price in the 2012/2013 marketing year relative to the baseline because overall ethanol use and production are projected to be motivated mostly by crop and fuel market conditions in the current marketing year, not the RFS. Waiving the mandate, a minimum use requirement, has limited market impact if people were going to use almost as much as the mandate anyway.”¹² FAPRI economists found that waiving the RFS in the 2012-2013 marketing year would reduce corn prices by just 4 cents per bushel and ethanol production by 1.3 percent.

Tyner’s analysis concludes that “If the 2013 average corn price is \$8 per bushel or higher and crude oil remains at \$100 per barrel or lower, a waiver would likely have little or no near-term impact on ethanol demand and corn prices.”

A CNBC.com news story on August 3, 2012 refers to a report Societe Generale analysts Michael Wittner and Christopher Narayanan wrote on July 27: “Our analysis indicates that a waiver of the RFS is not necessary. Increased ethanol stockdraws, lower ethanol exports, the use of RINs, and higher ethanol output will combine to increase ethanol supply and reduce corn demand, which will balance both markets. We do not believe there is an actual crisis that requires an RFS waiver.”¹³

¹² Thompson, Wyatt. Whistance, Janet. Westhoff, Pat. Binfield, Julian. (2012, October). Renewable Fuel Standard Waiver Options during the Drought of 2012. Food and Agricultural Policy Research Institute at the University of Missouri. Retrieved from http://www.fapri.missouri.edu/outreach/publications/2012/FAPRI_MU_Report_11_12.pdf

¹³ Jegarajah, S. (2012, August 3). Surging US Corn Prices Spark ‘Food Versus Fuel’ Debate. *CNBC.com*. Retrieved from http://www.cnbc.com/id/48477352/Surging_US_Corn_Prices_Spark_Food_Versus_Fuel_Debate%C2%A0.

Over the long-term, the RFS is absolutely critical to ensure market access and a level playing field for renewable fuels and to help commercialize advanced and cellulosic biofuel. An interruption to the RFS caused by a waiver would put long-term market access and investment in advanced biofuels in serious jeopardy. However, because ethanol delivers valuable octane and is considerably less expensive than gasoline today, many refiners are *currently* using ethanol by choice. In short, a waiver would not significantly impact ethanol demand or corn prices in the near-term, but would undoubtedly undermine long-term efforts to commercialize advanced biofuels and further lessen our dependence on foreign oil.

The data, economic analyses, market dynamics, and built-in flexibility prove that waiving the RFS would not remedy the harm caused by the drought and would not significantly reduce corn prices or ethanol demand.

Ethanol reduces gasoline prices

While those requesting a RFS waiver narrowly point to concerns about rising corn prices on livestock producers, in conducting a broad review on the impact of the RFS on multiple sectors of the economy, EPA should unmistakably conclude that ethanol saves all consumers at the pump. The moderating effect the RFS has on gasoline prices supersedes the small impact it has on corn or feed prices. Today, on a wholesale level, ethanol is 70 cents cheaper than gasoline, and has been as much as one dollar per gallon less expensive this year.

Gas prices remain a concern for Americans. According to an October 2, 2012 report from the Houston Chronicle's Fuel Fix Blog, "With gasoline hitting \$3.78 a gallon on Monday – 16 cents higher than the previous record for the date on October 1, 2008 – pump prices have been at record levels for 43 days straight. 'They'll break daily records through the end of the year,' said Michael Green, AAA spokesman."¹⁴ The same blog post indicates that at an average of \$3.64 per gallon so far in 2012, the price of gasoline is expected to set a new record-high this year.

According to a study by Louisiana State University, gasoline prices are reduced by six cents for each billion gallons of ethanol added to the supply.¹⁵ Based on their analysis, in 2011, U.S. ethanol production saved Americans 83 cent per gallon on wholesale gasoline prices.

ISU-CARD and the University of Wisconsin-Madison have published a series of working papers over the years to estimate the impact of ethanol production on U.S. and regional gasoline prices at the wholesale level. According to their most recent paper, ethanol reduced wholesale gasoline prices by an average of \$1.09 across the U.S. in 2011.¹⁶ They found the price reduction was even more pronounced in Petroleum Administration for Defense District (PADD) II, where ethanol decreased wholesale gas prices

¹⁴ Sebastian, S. (2012, October 2). Autumn brings little fall in gasoline prices. *Houston Chronicle, Fuel Fix Blog* [Web log post]. Retrieved from <http://fuelfix.com/blog/2012/10/02/gas-prices-on-track-to-break-all-time-record-in-2012/>.

¹⁵ Marzoughi, H. and Kennedy, P. L. (2012). The impact of ethanol production on the U.S. gasoline market. No 119752, 2012 Annual Meeting, February 4-7, 2012, Birmingham, Alabama, Southern Agricultural Economics Association. Retrieved from <http://EconPapers.repec.org/RePEc:ags:saea12:119752>.

¹⁶ Du, X. and Hayes, D.J. (2012). The impact of ethanol production on U.S. and regional gasoline markets: An update to 2012. Working paper 12-WP 528. Center for Agricultural and Rural Development, Iowa State University. Retrieved from <http://www.card.iastate.edu/publications/dbs/pdffiles/12wp528.pdf>.

by an average of \$1.69 in 2011. Finally, ethanol saved more than 70 cents per gallon in PADD I (East Coast) and PADD II (Gulf Coast) wholesale gas prices last year.

We are confident EPA will find, as you did in 2008, that waiving the RFS would harm consumers by increasing gasoline prices.

The market is working, but a waiver sends the wrong signal to farmers and investors

Many ethanol producers have responded to high corn prices by curtailing production or shutting down operations altogether. According to the most recent data from the U.S. Department of Energy, ethanol production averaged 785,000 barrels per day the last week of September, the lowest rate since the department began publishing weekly ethanol data in 2010. By some reports, approximately 25 U.S. ethanol plants representing 1.5 billion gallons of production are not operating today. Moreover, ethanol production is down nearly 15 percent since the beginning of the year.

Beyond the fact that ethanol producers and other end-users of corn are responding to price signals to ration available supplies of corn, it is important to note that grain prices have recently retreated on signs of slowing demand resulting from rationing. Corn futures prices dropped \$1.33 per bushel from the record \$8.49 on the Chicago Board of Trade on August 10, 2012 to close on September 27, 2012 at \$7.16 on the nearby contract. December corn futures prices continue to trade below \$8 per bushel today.

According to the Reuters report “No need for panic over food prices – U.N. FAO Chief,” on September 13, 2012, United Nations Food and Agriculture Organization Director-General Jose Graziano da Silva told a conference in Turkey the latest U.S. crop report had sent “a very good message” and that there was no need for panic over global food prices.¹⁷

While an RFS waiver may reduce corn prices by a small amount for a short period of time, it could also serve as a disincentive for farmers in the U.S. and around the world to plant corn in 2013. Corn is a global commodity, and with South American and African farmers making planting decisions, stable corn demand is essential to continued production of corn worldwide. The role the RFS has played in enabling farmers and technology firms to improve the productivity of corn worldwide cannot be overlooked. From 2000 to 2011, world corn production rose 12 billion bushels. Moreover, global grain production (coarse grains, wheat, and rice) is forecast to reach all-time highs this year while supplies, estimated at 2.71 billion metric tons, will be the second largest-ever according to USDA and the UN FAO. The U.S. ethanol industry is expected to use just 2.9 percent of the global grain supply in the 2012-2013 marketing year. Waiving the RFS would simply discourage farmers around the world from planting corn, which runs contrary to what the meat and livestock groups supporting the waiver want.

Additionally, the RFS is a forward-looking energy policy to help serve as a catalyst for biofuels from a variety of feedstocks and process technologies to displace fossil fuels. The forward-looking nature of the RFS gives confidence to companies investing in the advanced and cellulosic biofuels space that the federal government is committed to biofuels over the long-term. The first commercial gallons of cellulosic biofuel were registered with EPA for RINs this year and commercial-scale facilities are set to break ground or begin operations in the next few months. A waiver of the RFS would undeniably send a chilling signal to advanced and cellulosic biofuel investors that the federal energy policy is no longer

¹⁷ Sezar, C. (2012, September 13). No need for panic over food prices U.N. FAO Chief. *Reuters UK Edition*. Retrieved from <http://uk.reuters.com/article/2012/09/13/uk-food-prices-fao-idUKBRE88COFJ20120913>.

supportive of biofuels. As a result, at a very critical juncture, investments would move away from advanced and cellulosic biofuels and the U.S. may never see these promising fuels commercialized.

Conclusion: The RFS is working

The RFS has played an instrumental role in the build out of more than 200 U.S. ethanol facilities capable of producing nearly 15 billion gallons of clean, high-octane renewable fuel. As a result, the ethanol industry supports more than 400,000 American jobs, \$53 billion in economic activity, and has replaced the need for 485 million barrels of imported oil. Domestic ethanol growth has reduced oil imports from the Persian Gulf region by 25 percent since 2000. Before the RFS was enacted, U.S. dependence on foreign oil was more than 60 percent and on the rise. Today, thanks in large measure to the RFS, U.S. foreign oil imports are less than 50 percent, dropping to 45 percent in 2011.

ACE published an info graphic this year to illustrate the contribution the RFS makes to U.S. energy security and moderating gasoline prices.¹⁸ This info graphic shows it would take all of the annual crude oil production from the Alaska National Wildlife Refuge (700,000 barrels per day according to the Alaska DNR), the Keystone XL pipeline (700,000 barrels per day if built according to the U.S. State Department) and Bakken Shale Formation (535,000 barrels per day at peak according to EIA), plus another billion gallons of crude oil, to make enough gasoline to replace the new sustainable fuel volume that the U.S. ethanol industry has created as a result of the RFS. Put another way, U.S. ethanol production from the RFS is nearly three times greater than the gasoline which could come from ANWR or the Keystone XL pipeline, and nearly four times greater than the gasoline which could be refined from the Bakken.

If left intact, the RFS will continue to work just as Congress intended to enable renewable fuels to reduce our dependence on foreign oil, create jobs, and save Americans money at the pump.

In closing, the statute is clear. The current drought, corn prices, or a smaller-than-expected supply of corn do not meet the burden of proof required to grant a waiver of the RFS. Existing market dynamics and flexibilities built into the system further underscore why a waiver is not warranted. Finally, EPA's rejection of the 2008 Texas waiver request sets a very high standard. ACE is confident that after reviewing the facts, EPA will reject the requests to waive the RFS because they fail to meet the criteria set forth by the law.

Thank you for the opportunity to provide comments on this critically important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Jennings". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Brian Jennings, Executive Vice President
American Coalition for Ethanol (ACE)

¹⁸ "It's Working," RFS Infographic. American Coalition for Ethanol. Retrieved from http://www.ethanol.org/pdf/contentmgmt/ACEInfographic_downloadable-1.pdf