Comments of the American Coalition for Ethanol

at the

Public Hearing on Proposed Renewable Fuel Standards for 2019,

and Biomass-Based Diesel Volume for 2020

Docket Number EPA–HQ–OAR–2018–0167

By

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On behalf of the American Coalition for Ethanol (ACE), thank you for the opportunity to testify today.

ACE is a grassroots advocacy organization, powered by rural Americans from all walks of life who have built an innovative industry that delivers homegrown biofuel and food for a growing world. Our 500 members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry.

I would like to use this time to highlight a few of the issues that we will be detailing in our written comments to the proposed rule. I will focus on three issues today: (1) EPA's overall approach to enforcing the Renewable Fuel Standard (RFS); (2) conventional biofuel levels; and (3) the effective working of the Renewable Identification Number (RIN) marketplace. Our full comments will also address our concerns about cellulosic and advanced biofuel targets.

EPA's Approach to the RFS

With the departure of the previous EPA Administrator, I hope EPA will take this opportunity to return to implementing the RFS as intended by Congress. As evidenced by the proposed rule's obsession with small refiner hardship waivers and RINs, the former Administrator Scott Pruitt's seemingly sole focus was on helping merchant refiners ignore or skirt their longstanding obligations under the RFS, and this focus has further shaken the rural farm economy while undermining Congress' goal of increasing renewable fuel use in the United States. EPA should be helping refiners find more and easier ways to meet those obligations, rather than giving greater credit for selling fewer gallons, or trying to erase their obligation altogether.

Conventional Biofuel Levels

It is difficult to know how to respond to a proposed rule containing 33 mentions of "small refiners" and "small refineries" in 12 pages of justification for EPA's decisions to grant "hardship" exemptions to those companies, only to be followed by the statement "EPA is not soliciting comments on how small refinery exemptions are accounted for in the percentage standards formulas," and saying, "any such comments will be deemed beyond the scope of this rulemaking."

That being the case, rather than comment on how EPA plans to restore the 2.25 billion gallons of ethanol demand destroyed through small refinery hardship waivers and the 500 million gallons of biofuel demand lost by EPA's misapplication of the "economic harm" general waiver authority, I will simply point out the RFS <u>requires</u> EPA to do so. The law may allow EPA greater discretion and less oversight in granting small refiner and small refinery hardship waivers, but it does so because those waivers DO NOT reduce the overall annual volume requirements in the RFS.

This Renewable Volume Obligation (RVO) rulemaking is the perfect place for EPA to restore these biofuel volumes under the RFS, allow for E15 and higher blends to be sold year-round, and change its refiner win-at-all-costs mentality.

While some people might be alarmed at a conventional ethanol RVO of 17 billion gallons or more, with a "carryover RIN bank" of 3 billion RINs, the actual amount of conventional ethanol use could be as low as 14 billion gallons, which is less than 10 percent of gasoline sales.

On page 32029 of the proposed rule, EPA notes this fact when it points out a general waiver must be based on a determination by the Administrator, **after public notice and opportunity for comment** that: (1) implementation of the requirement would severely harm the economy or the environment of a State, a region or the United States; or (2) there is an inadequate domestic supply. No such public notice was issued, and no comments were solicited, so the difference between 15 billion gallons and actual gallons in 2017 and 2018 must be added to the 2019 RVO. Based on the section of the law that requires the annual RVO to include the "deficit carryover from the previous year for (each type of renewable fuel), in gallons."

Effective Working of the RIN Marketplace

In its comments on the 2018 RVO, API argued refiners should not have the ability to demonstrate compliance with a prior year RIN if that refiner was exempted in the prior year. API suggested allowing exempt parties to use or sell RINs actually create a windfall for those small refiners rather than a hardship. From an ethanol producer standpoint, the bigger concern is the RINs will reduce actual ethanol sales both in the year obligations were waived and RINs earned were used to replace ethanol purchases the following year.

This proposed rule, it's 222 mentions of RINs, and extensive discussion of what EPA should do – if anything – to more closely regulate the RIN market, is a testament to EPA's recent obsession with and lack of understanding of the role RINs play in the real renewable fuels marketplace. Perhaps the best news in the proposed rule may have been the part that said: "Today's action is not proposing to make any such regulatory changes (to the RIN market)." While concerns about the lack of transparency in the RIN market are legitimate, the biggest problem with RINs came after the previous Administrator began artificially manipulating the RIN market, based on inaccurate information from people who clearly intended to manipulate the RIN market for financial gain.

RINs were created at the behest of obligated parties that were concerned ethanol producers wouldn't make enough ethanol and wanted a way to get credit for buying extra ethanol when it's plentiful or cheap, so they could use those credits for compliance if ethanol wasn't available or the price got too high.

Today, with ethanol priced well below gasoline, a "free market" would be snapping up as much as possible and selling the highest legal ethanol blend. In addition to being a cheap gallon-for-gallon gasoline replacement, ethanol is a ridiculously inexpensive octane source that allows refiners to increase their gasoline yield by making lower octane based gasoline. In a free market, RINs shouldn't even be selling for the 20 cents some refiners are paying today, because obligated parties truly interested in providing the most economical fuel would be selling blends like E15 or flex fuels. We encourage EPA to immediately remove the Reid vapor pressure (RVP) barrier currently limiting E15 sales, and allow them to do so.

Instead, RIN is more accurately described as the refiner "Refusal INdex." The fact some refiners pay lots of money to not buy inexpensive ethanol, is testament to their value of market control over providing the most economical fuel and maintaining clean air.