

**TESTIMONY OF THE  
RENEWABLE FUELS ASSOCIATION  
IN RESPONSE TO THE ENVIRONMENTAL PROTECTION AGENCY PROPOSED RULE:  
“RENEWABLE FUEL STANDARD PROGRAM: RFS ANNUAL RULES (2020, 2021, 2022)”  
(86 FED. REG. 72436; DEC. 21, 2021)  
DOCKET NUMBER EPA–HQ–OAR–2021–0324**

**GEOFF COOPER, PRESIDENT AND CEO**

As Prepared for Delivery

Good morning. My name is Geoff Cooper, and I am President and CEO of the Renewable Fuels Association, the leading national trade association for producers of low-carbon renewable fuels like ethanol. We appreciate the opportunity to comment on EPA’s proposed Renewable Volume Obligations for 2021 and 2022, as well as EPA’s proposal to retroactively adjust the already-finalized RVO for 2020.

With the exception of the proposal to reopen the final 2020 standards, RFA believes the proposed rule represents an important and long-awaited step toward restoring order, integrity and stability to the Renewable Fuel Standard program.

RFA supports the proposed volumes for 2022 for all categories of renewable fuel, and we specifically commend EPA for proposing to set the implied requirement for conventional renewable fuels at the statutory level of 15 billion gallons.

We also support EPA’s proposal to account for projected exempt volumes from small refineries when setting RVO percentages. And, RFA agrees with EPA that, “in the interest of transparency,” the Agency should release basic information about entities seeking exemptions from RFS compliance. On a related note, while we understand EPA’s proposed denial of 65 pending small refinery exemption petitions is not the subject of this hearing, we also want to voice our strong support for that decision.

Further, as a party to the *Americans for Clean Energy v. EPA* litigation, RFA strongly supports EPA’s proposed approach to addressing the D.C. Circuit Court’s vacatur and remand of the 2016 standards. By spreading a supplemental obligation over two years, EPA is taking a balanced and reasonable approach that provides sufficient lead time and flexibility for obligated parties, while sufficiently addressing the Court’s remand. We agree with EPA that this proposal represents “an appropriate response” to the Court decision, and we believe the supply of RINs available will be more than sufficient to achieve compliance with the supplemental obligation.

As for the 2021 RVO and the proposed revision to the 2020 RVO, we have serious concerns about EPA’s questionable use of its “reset” authority. While we understand EPA has a statutory obligation to consider resetting future RFS volumes when certain thresholds are met, it does not appear that Congress intended for EPA to use its reset authority for the purpose of retroactively addressing unforeseen market anomalies like COVID or weather-related disasters. Indeed, Congress gave EPA other waiver authorities to address such events, but only when certain stringent criteria are satisfied. Moreover, we fail to see how the

required analysis of certain statutory factors conducted by EPA relates to, or justifies, the proposed revisions to the RVOs for 2020 and 2021.

Notwithstanding our concerns about EPA's potential misuse of its reset authority, the proposed conventional renewable fuel requirement of just 13.32 billion gallons for 2021 is far below "actual use." The Energy Information Administration's latest data suggest 13.73 billion gallons of conventional ethanol were consumed domestically in 2021; and EPA's own data show that, through November, net generation of conventional (D6) RINs was on pace for more than 14.1 billion in 2021. The latest data justify a much higher conventional renewable fuel requirement for 2021, and we were pleased to see that EPA is committed to revising the 2021 RVO based on more current data.

Our most significant concern is EPA's proposal to retroactively revise the 2020 RVO. As you know, EPA issued the final 2020 RVO more than two years ago. In response to that final rule, renewable fuel producers, most obligated parties, farmers, fuel retailers, and other market participants made necessary investments and developed plans to achieve compliance.

Revising the 2020 RVO now would unfairly penalize those market participants who invested and acted in good faith to comply with the original RVOs, while only benefitting those oil refiners who purposely avoided blending sufficient volumes of biofuel or purchasing RIN credits during the pandemic. Those refiners argue that an adjustment to the 2020 RVO is necessary because COVID caused a substantial drop in gasoline and diesel consumption during the 2020 calendar year. However, by converting volumetric obligations to percentage standards, the annual RVO process already includes a self-correcting mechanism that causes actual renewable fuel volume requirements to adjust lower with reduced gasoline and diesel consumption.

A retroactive revision to a final RVO rule would set a dangerous precedent and would be wholly inconsistent with the Agency's past practices and statements. EPA has repeatedly stated that "Congress...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." The Agency has also previously taken the position that "...periodically and retroactively altering the standards would...inappropriately render the standards a moving target."

RFA believes the proposal to revise the 2020 RVO should be eliminated from the upcoming final rule, and obligated parties should be required to comply with the 2020 standards that were finalized in 2019.

Finally, RFA generally supports the proposal to add biointermediates to the RFS program, and we will be providing more detailed recommendations on that aspect of the proposed rule.

Thank you, and I look forward to your questions.

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