



July 26, 2013

The Honorable Fred Upton  
Chairman  
House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Henry Waxman  
Ranking Member  
House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Upton and Ranking Member Waxman:

On behalf of the 600 members of the American Coalition for Ethanol (ACE), I appreciate the opportunity to comment on the Committee's fifth Renewable Fuel Standard (RFS) White Paper, this time focusing on implementation issues.

ACE was founded in 1987 by advocates who believed ethanol would revitalize rural America by enabling farmers sustainably harness resources to help reduce U.S. dependence on foreign oil. Today ACE includes farmers, ethanol producers, Main Street businesses, science and technology firms, engineers and manufacturers, and industry suppliers who have stood shoulder to shoulder to innovate and grow the domestic ethanol industry in communities throughout the U.S.

The RFS wasn't enacted by Congress to make life comfortable for oil companies or vertically-integrated food conglomerates who managed to operate quite comfortably before the RFS and continue to generate handsome profits today. The RFS was enacted to dramatically improve the way we produce and use transportation fuel, to reduce our dangerous dependence on foreign oil, to create jobs, to reduce gas prices and greenhouse gases, and to spark innovation in new technologies. In its wisdom, Congress provided EPA with appropriate authority and flexibility to implement the RFS, and EPA has judiciously and exercised that authority. We appreciate the opportunity to explain how the RFS is a classic American success story. Below please find our responses to your questions.

Sincerely,

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

**1. Does EPA's annual RVO-setting process work well or are there concerns? If there are problems, are they correctable by EPA? Are any statutory changes needed?**

Congress provided an appropriate level of authority and flexibility to EPA to establish annual renewable volume obligations (RVOs) under the RFS given the need to balance the push for advanced and cellulosic biofuels while also ensuring realistic volumes are set as these sectors ramp up production. Recent decisions in the DC Court of Appeals, which ACE intervened in, have provided EPA with additional guidance on how to set these annual levels to ensure that they are not unduly putting their thumb on the scale.

It is important to note that no obligated party has had to buy RINs for gallons of cellulosic biofuel that was not produced. And EPA is working diligently to set realistic levels of cellulosic production for 2013 and 2014 that accurately reflect the volume of cellulosic biofuel that will be produced by engaging and taking input from all parties who have a stake in the RFS and annual RVOs, from obligated parties to renewable fuel producers to environmental groups and NGOs. In addition, EPA has sufficient authority to address the total and advanced volume requirements as well if the shortfall of cellulosic biofuels is such that a reduction in other schedules is merited. No legislative changes are needed at this time as Congress gave EPA proper authority when it crafted the statute in 2007.

**2. Are the cellulosic biofuel provisions in the RFS working well or do they need to be changed? Has EPA modified its cellulosic biofuel standard-setting process for 2013 and future years appropriately, following the DC Circuit's decision to vacate EPA's 2012 standard? If not, what further changes are needed? Should EPA be required to reduce the advanced biofuel and total renewable fuel volumes when it lowers the cellulosic biofuel volume? What would be the consequences of such a change?**

Congress had the wisdom to understand that a legislative body is incapable of adequately accommodating the daily and monthly changes which impact the development and commercialization of cellulosic biofuel projects. Practical on-the-ground conditions change rapidly with respect to financing, construction, and production of these facilities. That's why Congress provided significant flexibility to EPA in the event that cellulosic production did not keep pace with the schedule called for in RFS2. EPA has the responsibility and flexibility to deal with these changing conditions and EPA has appropriately used their statutory to modify the cellulosic targets. Under challenging conditions, EPA has judiciously used this authority and engaged all parties with a stake in the cellulosic biofuel standards. The first cellulosic facilities are coming on line in 2013, with more to follow in 2014 and 2015. The RFS is the most critical component to ensuring that commercial cellulosic facilities are financed, constructed, and brought on line. Any risk of legislative change will jeopardize investor confidence in continuing to build out this sector.

Recent court rulings, including the DC Circuit's decision to vacate the 2012 cellulosic level, should not be misconstrued. ACE joined with the Advanced Biofuels Association (ABFA), the Advanced Ethanol Council (AEC), the Biotechnology Industry Organization (BIO), Growth Energy, and the Renewable Fuels Association (RFA) to intervene in the cellulosic RFS case. The U.S. Court of Appeals decision actually reinforced and reaffirmed EPA's discretion when it comes to setting annual cellulosic targets, but directed EPA to set those targets based upon expected volumes. EPA has done that for 2011 and 2012 and provided relief to obligated parties. In addition, EPA is finalizing the RVO for 2013 based upon the guidance of the court and we expect that the final numbers to accurately reflect what will be produced in 2013 and strike the proper balance between driving development of the cellulosic sector while

balancing what that sector is actually doing on the ground. And, as mentioned above, EPA has sufficient authority to address the total and advanced volume requirements as well if the shortfall of cellulosic biofuels is such that a reduction in other schedules is merited.

**3. How can EPA improve its enforcement of the RIN credit trading program? Does EPA have the resources that would be required to oversee RIN production and enforce against production of invalid RINs? What role should obligated parties have in verifying the integrity of RINs and what additional information do they need to exercise due diligence? Will EPA's proposed voluntary third-party quality assurance program address the concerns of all RIN market participants? If not, what else is needed?**

RINs are traded among obligated parties (i.e. oil refiners) or blenders (for example, jobbers) and refiners. Obligated parties are, as the name indicates, obligated to buy and blend renewable fuels and/or buy RINs from companies or individuals that have actually purchased renewable fuels and blended them. A RIN represents a choice to not comply with the physical blending requirement of the RFS, and as such, carries with it the obligation to verify that the RIN seller has complied on the RIN buyer's behalf. Refiners and importers are sophisticated investors and have all of the resources they need to purchase renewable fuels or RINs to satisfy the requirements of compliance.

During development of the RIN trading program, oil refiners encouraged maximum flexibility within the program for compliance purposes. A result of this flexibility within the system is a lack of transparency in the RIN market, meaning no one outside of the oil industry knows the true volume of the RIN trade or whether RIN transactions, which are reported by just one news service (OPIS, the Oil Price Information Service) genuinely represent the market value for RINs. This lack of transparency leaves open the possibility that unscrupulous traders or even obligated parties could create skewed transactions for the purpose of manipulating the RIN market for financial gain or to make a political point.

Upon the purchase of a gallon of renewable fuel an oil company receives a RIN much like a "proof of purchase" seal. The RIN is free. Renewable fuel producers are required to include this proof-of-purchase RIN with the gallon of fuel they produce and sell into the market. If oil companies purchase more renewable fuel than obligated, they acquire free RINs as a reward. Obligated parties have the option of blending increased gallons of biofuel to meet their obligations instead of purchasing RINs from others.

With respect to the proposed RIN Quality Assurance Program (QAP), ACE members support common sense and cost-effective voluntary steps to ensure the authenticity of RINs. In response to activity in the biodiesel market resulting in some invalid and fraudulently-generated biodiesel RINs, the biodiesel industry voluntarily created its own compliance program to assure purchasers of RIN authenticity. In contrast to the younger biodiesel market which also features a number of comparatively small producers, ethanol plants are multi-million-gallon facilities, some of which have been known to refiners for years. As such, obligated parties should have little trouble determining the authenticity of an ethanol RIN.

It is important for the Committee to know that RIN fraud has been confined to biodiesel RINs. Less than 1 percent of all RINs generated in 2010 and 2011 were fraudulent biomass-based diesel RINs. No fraudulent activity has been found in conventional (D6 RIN) markets. The compliance history shows RIN fraud has been isolated to just one category (D4 RINs) and the existing compliance system works. EPA

caught wrongdoers in the biodiesel market while conventional and other advanced biofuel producers have complied with the law.

**4. What is responsible for the rise in ethanol RIN prices in 2013? Can future increases in RFS compliance costs be avoided, and if so, how? If the government takes action to limit increases in RFS compliance costs, how might such action affect this market-based program?**

RIN prices have been volatile in 2013. After trading for a few cents per gallon early in the year, RIN prices rose to \$1.00 per gallon in March. Recently RIN prices rose again to \$1.40+ per gallon, and as of July 26 RIN prices had fallen below 90 cents per gallon.

The question isn't what is responsible for the rise in RIN prices, rather, the questions are who is responsible for the rise in RIN prices and why. In short, RIN prices have risen this year because oil companies don't want to comply with the law (RFS). To explain further, RIN prices have increased in 2013 because certain obligated parties (i.e. oil companies) have chosen not to comply with the RFS by purchasing and blending additional ethanol (which costs approximately 70 cents per gallon less than gasoline on the wholesale market today) for E15 or E85 consumption. In other words, while oil companies were reluctantly comfortable with 10 percent ethanol in all gasoline, they prefer to control the remaining 90 percent of the gasoline market by preventing the sale of E15 and other mid-and-high-level blends of ethanol called for under the RFS.

That oil companies are willing to pay \$1 or more for a RIN, just to avoid buying ethanol at 70 cents per gallon less than gasoline and offering consumers safe, tested, and affordable blends such as E15 and E85, should tell Congress everything it needs to know about the RFS: the RFS is needed now, more than ever. As mentioned above, the lack of transparency in the RIN trading marketplace leaves open the possibility that unscrupulous traders or even obligated parties could create skewed transactions for the purpose of manipulating the RIN market for financial gain or to make a political point. Renewable fuel producers support transparency, oil companies do not. That should also help Congress understand the motivations behind oil companies with respect to the RFS. If Congress reduces or repeals the RFS, it rewards oil companies' bad behavior, ensures they will control 90 percent or more of the gasoline market, and forces consumers to pay more for dirty fuel by restricting their access to more affordable and cleaner blends such as E15 and E85.

**5. Are increases in RIN prices likely to affect the production or marketing of renewable fuels? If so, how might this affect implementation of the RFS and RIN prices moving forward?**

It is important for the Committee to understand what a RIN is, what purpose a RIN serves, and who can do what with RINs.

When the RFS was being crafted by Congress, refiners were concerned that there might be insufficient ethanol produced to meet the annual requirements, so they demanded a credit trading (RIN) system. They wanted to be able to carry over credits or RINs from year to year for purchasing more ethanol than required and they wanted to be able to sell their "extra" RINs to other refiners who did not comply. As such, RINs are the currency of the RFS system.

When a renewable fuel producer, such as an ethanol plant, produces a physical gallon of ethanol, that gallon of ethanol is assigned a renewable identification number (RIN), which is a 38-digit code including pertinent information such as where the ethanol was produced and what category of renewable fuel it fits under the RFS. As stated earlier, for oil companies, a RIN is a “proof-of-purchase.” Upon purchasing ethanol and blending it with gasoline, refiners can separate the RIN from the physical gallon of ethanol, and as a result, they have several options; refiners can apply that RIN toward their annual RFS obligation by turning it into EPA for the “proof of purchase,” they can hold or bank the RIN for application toward a future RFS obligation or future sale, or they can immediately trade or sell the RIN to another obligated party or speculative RIN trader. The RIN system was intended to give refiners choices and flexibility with which to meet the requirements of the RFS, but because refiners do not want to see sales of E15 or E85, they have distorted the intent of RINs to support their political motivations.

History shows that most refiners viewed RINs as a reward for blending more ethanol than required by the RFS, and as a result, they kept an oversupply of RINs on hand to be sure that they are able to control the marketplace for ethanol. In fact, refiners rolled over approximately 2.5 billion excess 2012 RINs for compliance with the RFS in 2013. The current Big Oil hue and cry isn’t about ethanol supply or RIN prices, it is fear of actual competition from blends above 10 percent ethanol, and having to let market forces actually decide pump prices.

Frankly, RINs are just further proof that the RFS works. Jobbers or petroleum marketers (non-obligated parties who are allowed to blend ethanol with gasoline) who blend a gallon of ethanol with gasoline are also allowed to “separate” RINs from physical gallons of ethanol. (Ethanol plants are prohibited by law from separating RINs from physical gallons of ethanol). It requires a bit more cost and paperwork on the part of petroleum marketers, but they’ve identified the real economic advantage in purchasing ethanol for 70 cents per gallon less than gasoline today, acquiring a RIN for nearly \$1.00 on top of the ethanol savings, using some of that incentive to install new infrastructure for E15 or E85, and passing on a significant pump savings to consumers. Petroleum marketers are able to do what the oil companies suggest cannot be done – overcome the E10 blend wall – and they are doing so by passing the savings onto the consumer. Indeed, petroleum marketer use of RINs is yet more proof we can overcome the blend wall and sell increasing volumes of ethanol to consumers, helping fulfill the RFS.

**6. Should the provisions applicable to obligated parties be modified to provide relief for entities unable to generate sufficient RINs? Would such an approach apply different compliance requirements for refiners that blend ethanol and refiners that do not blend ethanol? What would be the justification for and potential consequences of such a change, including the potential for market distortions?**

No, the RFS should not be modified, because so-called “relief” already exists.

**7. Is the RFS incentivizing refiners to make less gasoline available to the American market, either through increased exports or reduced refinery production? If so, can anything be done to address this?**

Refiners have choices. No law, person, or federal agency is forcing refiners to make less gasoline for the U.S. market, to export fuel, or to reduce refinery production. To the contrary, refiners are rewarded with higher profits for their decision to restrict fuel supplies. In fact, while refiners cite declining

volumes of U.S. gasoline purchases as one of the main justifications behind their anti-RFS campaign, no EPA regulation has led to that reduced volume. High oil, gasoline, and diesel fuel prices are the direct cause of reduced fuel purchases, and history shows that lower fuel prices lead almost immediately to higher fuel sales.

As with every other argument used by oil companies to attack the RFS, even the volume of gasoline sold in the U.S. is largely under their own control. By refining fewer barrels of oil and exporting gallons that could be added to the domestic fuel supply, oil companies are unilaterally reducing their own opportunity to blend renewable fuels and receive the free RINs that come with those gallons at no cost, and they are choosing not to provide enough supply to the market to bring prices down.

The only obligation refiners have under the RFS is to blend increasing percentages of renewable fuels and/or apply RINs toward their annual obligations. They can comply with the law and provide consumers choices such as E15 or E85 alongside straight gasoline. They can also bank, trade, or sell RINs. The fact that they are willingly spending additional dollars and raising fuel prices by refusing to blend ethanol, indicates the lengths oil companies are prepared to go to protect their continued artificial dominance in the marketplace. Only when consumers are able to choose fuels that are not under the control of the oil industry will that artificial dominance face real competition. The way to protect consumers from the oil industry's intentional manipulation of fuel supplies and prices is to stay the course on the RFS. The oil industry can feel their stranglehold on American consumers loosening as real options are finally being offered to consumers, and that is precisely the reason oil companies are putting so much of their efforts and assets behind repealing or reducing the RFS.

Finally, we are pleased that after hearings on the RFS this week, certain members of the Committee have appropriately declared there isn't sufficient support for repeal of the RFS. However, we remain very concerned by comments that reductions and so-called modifications will be made. Reducing the total RVO percentage below 10 percent of the U.S. gasoline market does not constitute reform of the RFS, it rather constitutes a capitulation to oil companies who don't want consumers to have access to low-cost blends such as E15 and E85. Arbitrarily cutting the corn ethanol/conventional biofuel levels, to satisfy demands of vertically integrated food conglomerates such as Tyson, Smithfield, and Perdue, who feel entitled to cheap corn forever, does not constitute RFS reform. Abandoning the cellulose portion of the RFS, when this promising fuel is at the cusp of commercialization and EPA has all the tools it needs to make reasonable adjustments on its own, will drive investment overseas and prevent the U.S. from realizing further reductions in GHGs.