

**HollyFrontier Corporation Comments on EPA’s  
Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume  
for 2020, Docket ID No. EPA-HQ-OAR-2018-0167**

HollyFrontier submits these comments in response to the Environmental Protection Agency’s (“EPA” or the “Agency”) proposed rule entitled *Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020*.<sup>1</sup> HollyFrontier is regulated as an obligated party under the Renewable Fuel Standard (“RFS”) and will be substantially affected by the final rule. As detailed below, HollyFrontier requests that EPA take three specific actions: (1) further reduce the renewable volume obligation (“RVO”) using the general waiver authority given the inadequate volume of domestically produced renewable fuel available to obligated parties; (2) implement Renewable Identification Number (“RIN”) market reforms to increase RIN liquidity and decrease RIN prices; and (3) continue granting small refinery disproportionate economic hardship exemptions as required by the Clean Air Act (“CAA”) when circumstances demonstrate a disproportionate economic harm. Additionally, HollyFrontier offers comments on the point of obligation issue and issues regarding reallocation of small refinery RVOs.

**I. About HollyFrontier**

HollyFrontier is an independent or “merchant” petroleum refining company operating across midcontinent and western states. Our operations are focused on refining and wholesale marketing of petroleum-based products, principally gasoline and diesel. As a wholesale marketer at terminals connected to major product pipelines, our sales mix of blended versus unblended fuels is dictated by our customers, many of whom blend biofuels into our products post-sale. Given that we are an obligated party under EPA’s regulations, HollyFrontier has a vested interest in both the RFS program structure and the volumes established annually by EPA.

HollyFrontier routinely comments on issues regarding the RFS due to the substantial compliance costs imposed on HollyFrontier by the regulation. For 2017, HollyFrontier spent nearly \$300 million on Renewable Identification Numbers (“RINs”). To put this figure in perspective, it is one of HollyFrontier’s largest operating costs—even larger than its U.S. payroll. These annual compliance costs are unreasonable under any regulatory program, and cause severe economic harm to HollyFrontier and similarly situated merchant refiners. The costs of the RFS program impede HollyFrontier’s ability to invest in creating jobs, to undertake capital improvement projects, and to improve the company’s operations. We urge EPA to reduce the RFS compliance burden for obligated parties and to implement an approach that is sustainable for HollyFrontier and other similarly situated parties.

**II. EPA Should Exclude Imports of Renewable Fuel from the Standards for 2019 and 2020 and Reduce the RVO by Exercising Its Waiver Authority**

HollyFrontier requests that EPA exercise its general waiver authority to reduce the applicable volumes due to an inadequate domestic supply of advanced and cellulosic biofuel. As noted in the proposed rule, EPA relies on the importation of foreign cellulosic and advanced biofuels to conclude that the volumes it proposes are reasonably attainable. Congress did not intend for its

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<sup>1</sup> 83 Fed. Reg. 32,024 (July 10, 2018), referred to as “proposed rule” or “2019 RFS.”

renewable fuel mandate to require reliance on foreign-manufactured fuel. On the contrary, Congress intended to reduce U.S. reliance on fuel imports when it promulgated the RFS. Thus, EPA should interpret “domestic supply” to encompass only domestically produced renewable fuel. In doing so, EPA must omit the cellulosic fuel produced in Canada and Brazil as part of its estimate of the available supply of cellulosic biofuel. EPA must do the same when calculating the advanced biodiesel volumes, and omit the imported volumes from Brazil, Argentina, Indonesia, Canada, and any other country that exports renewable fuel to the United States. A proper estimate of potential domestic supply of renewable fuel would require EPA to exercise its general waiver authority to reduce the RVO, because domestic companies do not produce sufficient volumes to make EPA’s proposed volumes reasonably attainable.

### **A. Purpose of the EPA’s Waiver Authority for Inadequate Domestic Supply**

In 2005, Congress passed the Energy Policy Act (the “Act”) to address the Nation’s growing energy trade deficit. This deficit began in the 1950s when “energy demand in the United States began exceeding *domestic supply*” and persisted for decades.<sup>2</sup> Our energy trade imbalance was particularly troubling in the early 2000s because “U.S. oil production [was] at a 50-year low and [was] continu[ing] to decline,” forcing our country to rely increasingly on imports, “often from unstable regimes.”<sup>3</sup> The level of oil imports was staggering—it “accounted for roughly 60 percent of U.S. consumption in 2002, and nearly a third of the current trade deficit.”<sup>4</sup> Congress predicted that this situation would continue to worsen, as our estimated demand for oil in the transportation sector was expected to grow to more than 20 million barrels per day by 2025.<sup>5</sup> Based on these estimates, the country was facing the prospect of an even larger trade deficit and a greater reliance on foreign imports.<sup>6</sup>

When Congress completed its analysis of the U.S. transportation sector, it identified two major concerns: “energy security issues related to increasing dependence on foreign oil, and environmental concerns over emissions of air pollutants and greenhouse gases resulting from increased oil usage.”<sup>7</sup> Congress sought to remedy these issues in the Energy Policy Act of 2005. The Act promoted domestic energy production by relying on the “wealth of *domestic resources* that [were] currently untapped” in our country.<sup>8</sup> With regard to the transportation sector, the Act encouraged not only the development of a domestic renewable fuel industry but also increased production of domestic oil and gas resources. The focus of this legislation was clear—Congress

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<sup>2</sup> Committee on Energy and Natural Resources Report for the Energy Policy Act of 2005, Report 109-78 at 6 (June 9, 2005) (emphasis added) (Attachment A).

<sup>3</sup> Committee on Energy and Natural Resources Report for the Energy Policy Act of 2005, Report 109-78 at 6 (June 9, 2005).

<sup>4</sup> Committee on Energy and Natural Resources Report for the Energy Policy Act of 2005, Report 109-78 at 6 (June 9, 2005).

<sup>5</sup> Committee on Energy and Natural Resources Report for the Energy Policy Act of 2005, Report 109-78 at 6 (June 9, 2005).

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *Id.* at 7; *see also id.* at 6 (“The widening gap between supply and demand, accompanied by reliance on foreign sources to close that gap, ha[d] created profound concerns in the Congress over the Nation’s energy security.”).

<sup>8</sup> Committee on Energy and Natural Resources Report for the Energy Policy Act of 2005, Report 109-78 at 7 (June 9, 2005) (emphasis added).

wanted to “clos[e] the supply and demand imbalance . . . to ensure the country’s continued growth and prosperity and to protect our national security.”<sup>9</sup>

Congress supplemented the Energy Policy Act of 2005 with the Energy Independence and Security Act of 2007 (“EISA”). The goal of EISA remained the same as its predecessor—to improve our national security and economy by reducing our reliance on foreign sources of energy.<sup>10</sup> In fact, Congress stated the purpose of EISA was “to increase federal investment in energy technologies that we know will lessen the environmental impact of our energy use, decrease our reliance on foreign fuels and still maintain the quality of life we enjoy today.”<sup>11</sup> Throughout the development of EISA, numerous Representatives explained that it “represent[ed] another effort toward reducing our country’s dependence on foreign sources of oil, and building a *domestic industry* for clean renewable fuels.”<sup>12</sup> Regarding the RFS, EISA increased the mandated volumes for blending renewable fuel into transportation fuel and allowed renewable fuel used for heating oil and jet fuel to qualify for credits under the RFS.

Since 2005, our energy trade deficit has declined dramatically. Instead of increasing oil consumption and declining domestic production, our country has reduced its oil consumption and increased domestic production. The Energy Information Administration (“EIA”) now predicts that we likely will be a net exporter of energy by 2022.<sup>13</sup> Our petroleum consumption in 2025 is now projected to be well under the 20 million barrels per day Congress believed would be consumed when it passed the Energy Policy Act of 2005.<sup>14</sup> By relying on domestic supplies of energy instead of imports, our country will continue to reduce its dependence on foreign fuels and increase our energy security.

## **B. “Domestic Supply” Means Domestically Produced Biofuel**

The RFS empowers EPA to waive some or all of the statutorily mandated renewable fuel volumes upon a determination that there is an “inadequate domestic supply” of renewable fuel.<sup>15</sup> Congress did not define “domestic supply” in the statute and EPA did not define the term in its regulations; but the meaning of this term is straightforward—the domestic supply is the volume of domestically produced renewable fuel. Congress designed the general waiver provision to authorize EPA to reduce the statutorily mandated volumes to the projected volume of domestically produced renewable fuel whenever there is an insufficient supply of domestically produced renewable fuel for obligated parties to satisfy the statutory volume requirements.

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<sup>9</sup> *Id.* at 6.

<sup>10</sup> Committee on Science and Technology Report for the Biofuels Research and Development Enhancement Act, Report 110-302 at 11 (Aug. 3, 2007) (Attachment B).

<sup>11</sup> *Id.* at 23 (Statement of Rep. Lampson).

<sup>12</sup> Committee on Science and Technology Report for the Biofuels Research and Development Enhancement Act, Report 110-302 at 61 (Aug. 3, 2007) (Statement of Rep. Lampson) (emphasis added); *see also id.* at 67 (“And our security in transportation fuels, we need to look at all of our domestic resources, both renewable and alternative.”) (Statement of Rep. Hall); *see also id.* at 79 (“[I]t is imperative for our country to get off our dependency upon foreign oil.”) (Statement of Rep. Hill).

<sup>13</sup> U.S. EIA, Annual Energy Outlook 2018 at 21, available at <https://www.eia.gov/outlooks/aeo/>.

<sup>14</sup> *Id.* at 43-44.

<sup>15</sup> 42 U.S.C. § 7545(o)(7)(A), (D).

EPA, however, has not applied the plain language meaning of inadequate domestic supply. Instead, EPA has interpreted “domestic supply” to mean the full volume of renewable fuel “that is available for use by the person or place at issue,” including both domestically and foreign produced renewable fuel.<sup>16</sup> EPA had also found ambiguity in the term and interpreted it so as to accounts for both factors that limit the supply to obligated parties, as well as demand-side factors that affect the amount of renewable fuel available to consumers, such as vehicle engine warranties.<sup>17</sup> The D.C. Circuit rejected EPA’s interpretation of “supply” to include demand-side factors, finding that use of the waiver authority based on “inadequate domestic supply” was appropriate only for factors directly affecting supply—“[w]hen the supply of renewable fuel is ‘inadequate’ to allow refiners, blenders, and importers to introduce enough renewable fuel to meet the statutory volume requirements.”<sup>18</sup> In so holding, the D.C. Circuit has reversed EPA’s only interpretation of any part of “inadequate domestic supply” and wiped the slate clean for EPA to revisit how the term is applied.

EPA now has an opportunity to consider the broader context of the RFS and read the term as Congress intended—that the mandate to blend a specific volume of renewable fuel into transportation fuel applies only where and to the extent that domestic supplies are sufficient to meet the statutory requirements. EPA should not find ambiguity in the term “domestic supply.” The dictionary definition of domestic resolves any doubt as to its meaning; it means “of, relating to, or *originating within* a country and especially one’s own country.”<sup>19</sup> Domestic supply, therefore, references the supply of renewable fuels that originates within the United States. This plain reading precludes EPA from considering imported volumes of biofuel when determining whether to exercise its general waiver authority based on an inadequate domestic supply.

Not only is the plain language of this provision clear, but canons of statutory construction also warrant construing “domestic supply” to encompass only domestically produced renewable fuel. In construing a statute, an agency must interpret a provision in a manner that avoids treating any term as redundant or superfluous.<sup>20</sup> This requires an agency to “give effect, if possible, to every clause and word of a statute.”<sup>21</sup> Adhering to this principle, EPA must interpret its general waiver authority in a manner that differentiates “domestic supply” from “supply.” Any reading that permits imported biofuel to constitute available domestic supply improperly conflates the terms “supply” and “domestic supply.” Generally, when EPA has discussed its waiver authority, it

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<sup>16</sup> Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017, 80 Fed. Reg. 77,420, 77,435 (Dec. 14, 2015); *see also* *Americans for Clean Energy v. Env’tl. Prot. Agency*, 864 F.3d 691, 706 (D.C. Cir. 2017) (“EPA concluded that the best reading of the “inadequate domestic supply” provision is that it refers to the supply of renewable fuel available to consumers for use in their vehicles—not to the supply of renewable fuel available to refiners, blenders, and importers for use in meeting the statutory volume requirements.”).

<sup>17</sup> *Americans for Clean Energy v. Env’tl. Prot. Agency*, 864 F.3d 691, 702 (D.C. Cir. 2017).

<sup>18</sup> *Id.* at 708.

<sup>19</sup> “Domestic,” Merriam-Webster.com, Merriam-Webster, n.d. Web. (Aug. 8, 2017) (emphasis added).

<sup>20</sup> *Gustafson v. Alloyd Co.*, 513 U.S. 561, 574–75 (1995).

<sup>21</sup> *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017) (citation omitted); *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 550 (1996) (“Speculation loses, for the more natural reading of the statute’s text, which would give effect to all of its provisions, always prevails over a mere suggestion to disregard or ignore duly enacted law as legislative oversight.”).

repeatedly couches its analysis in available “supply,” and not “domestic supply.”<sup>22</sup> This interpretation blurs any distinction between “supply” and “domestic supply” and renders the term “domestic” superfluous. Thus, EPA should construe domestic supply to mean only domestically produced renewable fuel.

Similar uses of “domestic supply” in other legal contexts also counsel in favor of excluding imports. For example, Congress used the term “domestic supplies” in the National Energy Conservation Policy to refer to only domestically produced energy, stating “the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand.”<sup>23</sup> The Food and Drug Administration (“FDA”) also has used the term “domestic supplies” to mean only the amount of substances or drugs produced domestically. The relevant regulation allows the FDA Administrator to issue an import license “where *domestic supplies* of such substance or drug are found to be inadequate.”<sup>24</sup> The U.S. International Trade Commission (“USITC” or the “Commission”) also has used the term “domestic supply” to distinguish domestically produced goods from imports. For example, the Commission determined in one of its decisions that the market for a specific good in the United States could be expanded only through reliance on imports “due to the lack of *domestic supply*.”<sup>25</sup> In each of the above examples, the interpreting authority properly read domestic supply to exclude foreign-produced or imported products.

### **C. The Purpose of the RFS Requires Excluding Imports When Calculating Domestic Supply**

The purpose of the RFS also merits interpreting “domestic supply” as excluding imported volumes of renewable fuel. As noted above, Congress’s primary motivation in passing both the Energy Policy Act of 2005 and EISA was to reduce our reliance on foreign fuel so that we could enhance our energy security and independence. By setting an RVO that requires obligated parties to rely on foreign imported biofuel to satisfy their obligations, EPA has created a market for foreign producers at the expense of the domestic industry. In fact, the amount of imported biofuel has increased significantly over the last few years as EPA has incentivized foreign production to the detriment of domestic producers. In 2016, “954 million gallons of advanced biodiesel and renewable diesel were imported into the U.S. . . . and 854 million gallons of these fuels were imported in 2017.”<sup>26</sup> In addition, 77 million gallons of sugarcane ethanol from Brazil

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<sup>22</sup> See, e.g., *Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017*, 80 Fed. Reg. 77,420, 77,436 (Dec. 14, 2015) (“interpreting this waiver provision as authorizing EPA to consider the adequacy of *supply* of renewable fuel to the ultimate consumer appropriately allows consideration of upstream supply constraints to all of the relevant parties, including the adequacy of *supply* of biofuels to obligated parties and blenders, as well as the ability to deliver qualifying renewable fuels to the consumer”). In setting volumes for 2017, EPA also indicated that it did not differentiate between domestically produced and imported renewable fuel. *Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018*, 81 Fed. Reg. 89,746, 89,766 (Dec. 12, 2016).

<sup>23</sup> 42 U.S.C. § 8201.

<sup>24</sup> See 21 C.F.R. § 1312.13 (emphasis added).

<sup>25</sup> See *Color Picture Tubes from Canada, Japan, Korea, & Singapore*, USITC Inv. No. 731-TA-367 (Apr. 2000) (emphasis added); see also *id.* (“High definition CPTs will be necessary for the eventual expansion of the U.S. high definition TV market. This will likely require that high definition CPTs be imported at least initially due to lack of domestic supply.”).

<sup>26</sup> 83 Fed. Reg. at 32,047 n.103.

was imported in 2017.<sup>27</sup> Since 2012, imports of advanced biodiesel have increased 1,105% and imports of renewable diesel increased by 589%.<sup>28</sup> In 2012, there were no imports of conventional biodiesel or renewable diesel; but in 2017 imports rose to 144 million gallons.<sup>29</sup> As reported by the U.S. International Trade Commission, domestic production of biodiesel has declined in terms of relative market share to foreign producers—domestic production accounted for 86.2% of the market in 2014, 76.7% in 2015, and 68.0% in 2016.<sup>30</sup> In dollar terms, U.S. companies spent over \$2 billion on foreign renewable fuel in both 2016 and 2017. The RFS is such a boon to foreign producers that some have submitted comments urging EPA to increase the required volumes of advanced biofuels to help ensure the growth of their own country’s industry.<sup>31</sup>

Congress designed the RFS to prevent an obligation to purchase foreign renewable fuel by incorporating a waiver provision that permits reducing the statutory renewable fuel volumes when they cannot be achieved through domestic production. This ensures that domestic obligated parties do not need to rely on imports to fill the gap between statutory volumes and the level of domestic production. Absent the inadequate domestic supply waiver authority, Congress would have promulgated a law that could undermine rather than promote U.S. energy independence and security.

The legislative history of a similar proposed waiver provision offers insight into the purpose of the RFS waiver provision. When it amended the Clean Air Act in 1990, Congress also sought to address the growing imbalance in energy trade by shifting gasoline formulations. One particular proposal incentivized producers to replace imported aromatic compounds with domestically produced alcohols made from corn, wheat, or other crops (i.e., reformulated gasoline).<sup>32</sup> The bill would have required all gasoline sold in all serious, severe, and extreme nonattainment areas to be reformulated gasoline.<sup>33</sup> The bill contained a waiver provision authorizing EPA to waive the restriction if there was “insufficient domestic supply” of the fuel additives.<sup>34</sup> Congress explained: “[t]o insure that we don’t rely more heavily on foreign imports, the Richardson-Madigan provision provides waivers if there is insufficient domestic supply. In short, by reducing our reliance on imported oil and aromatic compounds, our balance of trade is sure to improve.”<sup>35</sup>

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<sup>27</sup> 83 Fed. Reg. at 32,040-41.

<sup>28</sup> *Id.* at 32,043.

<sup>29</sup> *Id.* at 32,044.

<sup>30</sup> See USITC, *Biodiesel from Argentina and Indonesia*, Investigation Nos. 701-TA-571-572 and 731-TA-1347-1348 at 22 (May 2017) (hereinafter “USITC Report”).

<sup>31</sup> Brazilian Sugarcane Industry Association’s (“UNICA”) Comments on “Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Proposed Rule,” 81 Fed. Reg. 34,788 (May 31, 2016), Docket No. EPA-HQ-OAR-2016-0004-1741 at 21 (July 11, 2016) (“UNICA urges EPA to consider raising the volumes of advanced biofuels to ensure that sugarcane ethanol can continue to play such an important role in fostering compliance.”).

<sup>32</sup> Leg. History of the Clean Air Act Amendments of 1990; P.L. 101-549, 104 Stat. 2399 1990 at 2745-46 (Nov. 15, 1990) (Attachment C).

<sup>33</sup> 136 CONG. REC. H2546-47 (daily ed. May 21, 1990) (Attachment D).

<sup>34</sup> Leg. History of the Clean Air Act Amendments of 1990; P.L. 101-549, 104 Stat. 2399 1990 at 2745-46 (Nov. 15, 1990).

<sup>35</sup> Leg. History of the Clean Air Act Amendments of 1990; P.L. 101-549, 104 Stat. 2399 1990 at 2745-46 (Nov. 15, 1990).

The RFS general waiver provision contained in Clean Air Act Section 211(o)(7)(A), mirrors the Richardson-Madigan waiver provision, and serves the same purpose—to prevent the RFS program from mandating the purchase of foreign produced fuels. EPA should acknowledge the purpose of this provision and put it to use when finalizing the rule so that it does not obligate parties to subsidize foreign renewable fuel production.<sup>36</sup>

It is important to note that EPA’s exclusion of imported renewable fuel as part of the available domestic supply would not prevent foreign-produced renewable fuel from participating in the RFS program or generating RINs. By excluding imports from EPA’s general waiver authority analysis, EPA will not hinder obligated parties’ abilities to meet their compliance obligations or raise concerns about impermissible barriers to trade. This approach would continue to allow obligated parties to meet their obligations through the least-cost alternative for their businesses while avoiding the circumstance wherein obligated parties must necessarily rely on foreign imports of renewable fuels.

### **III. EPA Should Exercise Its Waiver Authority to Reduce the RVO Based on a Finding of Severe Economic Harm to HollyFrontier and Similarly Situated Refiners**

The RFS will impose severe economic harm on HollyFrontier and other similarly situated refiners if EPA does not reduce the required volumes from the proposed levels. EPA needs to perform an accurate assessment of the amount of ethanol that can be blended into the domestic transportation fuel market, as this is critical to preventing severe economic harm. As EPA has recognized, there are constraints limiting the increased use of ethanol, such as: (1) the declining rate of growth of ethanol use as the gasoline market has become saturated with E10, (2) the use of gasoline without ethanol, and (3) the remaining substantial barriers to the use of E15, including infrastructure limitations, legal constraints on its use, and practical constraints on its use in newer vehicles due to manufacturer warranties.<sup>37</sup> The total renewable fuel RVO must be set so that the ethanol mandate (the difference between the total and advanced biofuel RVO) is no greater than the amount of ethanol that could be blended into domestic transportation fuel. Any greater amount will result in a RIN shortage and price spike, which will cause severe economic harm. EPA should reduce the total renewable fuel RVO for 2019 to be consistent with such a calculation.

EPA’s full use of the cellulosic waiver authority is appropriate and necessary—but not sufficient. In the proposed rule, EPA sets the total renewable fuels volume at 19.88 gallons by subtracting the full amount of the cellulosic reduction from the statutory volume. EPA indicates that 19.88 billion gallons is reasonably attainable given assessments of biodiesel, renewable diesel,

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<sup>36</sup> *Americans for Clean Energy v. EPA* does not affect EPA’s ability to interpret “domestic supply” as encompassing only domestically produced biofuel. The court held that EPA could not consider demand-side factors that impaired delivery to downstream actors such as retailers and consumers, but allowed EPA to consider any number of other factors directly related to supply, including among others the amount of renewable fuel available for import. *Am. for Clean Energy v. EPA*, --- F.3d ----; *Slip Op.* at 12 (D.C. Cir. July 28, 2017).

<sup>37</sup> See “Market impacts of biofuels in 2019,” memorandum from David Korotney to docket EPA-HQ-OAR-2018-0167.

ethanol and other renewable fuels.<sup>38</sup> As a result of this finding, EPA declines to use its general waiver authority to reduce further the total renewable fuel volume requirement.

### A. General Waiver Authority

HollyFrontier believes that a *further* reduction in the level of the total renewable fuel volume for 2019 is justified under the factors that EPA analyzed for this rulemaking. EPA has the ability to set volume requirements below statutory levels through its general waiver authority if “implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States.”<sup>39</sup> Absent further reductions in the total renewable fuel volume requirement for 2019, the proposed volumes will likely cause severe economic harm. Specifically, there has been little growth in E15 or E85 utilization, which is needed to support the total renewable fuel volume EPA has proposed. In addition, while EPA has improved its methodology for calculating E0 usage, it still underestimates the consumer market for this fuel and its use in many types of vehicles and nonroad equipment. Failing to account for these factors properly has caused EPA to overestimate the market’s ability to blend ethanol into gasoline. Imposing these volumes will cause severe economic harm to HollyFrontier and other similarly situated merchant refiners, as well as to the states and markets they serve.

#### E0 Demand and Limited Availability of E15 and E85 Exacerbate Blend Wall Issues and Drive Up RIN Prices

The E10 blend wall places significant constraints on the ability to blend ethanol in an amount greater than 10% in gasoline. This limitation results in a shortage of ethanol RIN, which drives up their price. The E10 blend wall is not a fiction, as EPA stated it currently “believe[s] that there are real constraints on the ability of the market to significantly exceed an average nationwide ethanol content of 10%.”<sup>40</sup> Consumer demand for E0 and the unavailability of E15 and E85 are the largest constraints on exceeding the 10% blend wall.

In setting the 2019 RVO, EPA erroneously concludes that consumer demand for E0 will decrease to 200 million gallons.<sup>41</sup> EPA made this mistake in 2016, when actual E0 consumption of 700 million gallons far exceeded EPA’s estimated consumption of 200 million gallons of E0.<sup>42</sup> In its most recent analysis, EPA failed to provide numbers for E0 consumption in 2017.<sup>43</sup> Nonetheless, EPA claims without any supporting data that demand for E0 will decrease approximately 70% over the span of three years. It should be readily apparent to EPA that the gasoline market has not “transitioned” away from E0. We urge EPA to further consider the level

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<sup>38</sup> David Korotney, Market impacts of biofuels in 2019, (memorandum from to docket EPA-HQ-OAR-2018-0167).

<sup>39</sup> 42 U.S.C. § 211(o)(7)(A)(i).

<sup>40</sup> David Korotney, Market impacts of biofuels in 2019, (memorandum from to docket EPA-HQ-OAR-2018-0167).

<sup>41</sup> David Korotney, Market impacts of biofuels in 2019, (memorandum from to docket EPA-HQ-OAR-2018-0167).

<sup>42</sup> David Korotney, Market impacts of biofuels in 2018, at 4 (memorandum from to docket EPA-HQ-OAR-2018-0167).

<sup>43</sup> David Korotney, Market impacts of biofuels in 2019, at 4 (memorandum from to docket EPA-HQ-OAR-2018-0167).



of E0 use it projects in the final 2019 RFS and reduce the proposed percentage standards to accurately account for the substantial use of E0 in the fuel marketplace.

Constraints on the increased use and availability of E15 and E85 will further limit growth in the availability of renewable fuel in 2019 and will not offer a solution to the high costs of compliance under the RFS. As EPA notes, both the number of automobiles that can use E15 and E85 and the retail stations that offer E15 and E85 have not increased as predicted. For example, as of June 2018, there were 1,065 retail stations offering E15 and 3,571 offering E85.<sup>44</sup> These numbers are substantially less than the EPA projections in the made in the 2017 final rule, which predicted 1,892 E15 stations (approximately 44% less) and 4,535 E85 stations (approximately 21% less). As a result of these few retail stations, HollyFrontier has limited options to blend more than ethanol. HollyFrontier's sales of blended gasoline greater than E10 remain essentially unchanged over the past several years—despite EPA mandating a conventional biofuel requirement of greater than 10% of the gasoline pool. Currently our sales of E15, flex fuel, and E85 collectively represent less than 0.014% of our total gasoline sales. Setting high RFS standards, in and of itself, will not propel additional use of higher ethanol blends. Without additional avenues to blend fuel, obligated parties lack affordable compliance options and will be forced to purchase RINs in a depleted RIN market and at a higher price. Additionally, the nested nature of the statutory tables require that any shortfall of the transportation system in blending sufficient conventional biofuels to meet EPA's mandate will increase demand on advanced and biomass-based diesel, further tightening those RIN markets and prices.

Given the above limitations, EPA should not presume that ethanol will be blended into gasoline at an average rate of 10.11% for 2019. If EPA sets the RVO at a high volume, it will certainly drive up RIN prices as it did last year. A RIN price increase produces a comparable increase in HollyFrontier's compliance costs. If the price increase is substantial, it will impose severe economic harm on our company as well as other merchant refiners. EPA should alleviate this severe economic harm by exercising its waiver authority in to substantially reduce the RVO.

## **B. Cellulosic Waiver Authority**

EPA's reduction of the total renewable fuel volumes for 2019 through the cellulosic waiver provision in an amount equal to its reduction of the cellulosic biofuel requirement is fully justified. The statute plainly provides that, whenever EPA reduces the applicable volume for cellulosic biofuel, it "may also reduce the applicable volume of renewable fuel and advanced biofuels requirement . . . by *the same* or similar volume."<sup>45</sup> The D.C. Circuit's recent decision in *Americans for Clean Energy* also supports this approach:

The text of the cellulosic waiver provision, the structure of the Renewable Fuel Program, and this Court's decision in *Monroe Energy* all point in the same direction: The cellulosic waiver provision grants EPA "broad discretion" to consider a variety of factors – including constraints on the demand for advanced biofuel – when determining "whether and in what circumstances" to

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<sup>44</sup> David Korotney, Market impacts of biofuels in 2019, at 3-4 (memorandum from to docket EPA-HQ-OAR-2018-0167).

<sup>45</sup> 42 U.S.C. § 211(o)(7)(D)(i) (emphasis added).

reduce the advanced biofuel requirement . . . . [T]he provision does not “prescribe any factors that EPA must consider in making its decision” to lower the advanced biofuel or total renewable fuel volume requirements.<sup>46</sup>

HollyFrontier supports EPA’s use of its cellulosic waiver authority to make contemporaneous and identical reductions in the volumes of both total renewable fuels and advanced biofuels for 2018. This proposed decision is perfectly logical and recognizes real-world constraints on obligated parties’ ability to use other conventional and advanced biofuels to compensate for inadequate production of cellulosic biofuels.

EPA should further reduce the cellulosic RVO because it imposes an economic strain on all obligated parties. As EPA’s calculations for cellulosic fuel production in 2019 demonstrate, approximately 94% of this fuel is expected to be natural gas or biogas obtained from landfills.<sup>47</sup> This fuel cannot be blended into the gasoline or diesel that refiners produce. Thus, refiners must hunt for D3 RINs in the marketplace or purchase waiver credits from EPA to satisfy compliance obligations. Absent purchasing landfills and extracting natural gas from those facilities, refiners lack any access to an alternative compliance strategy. Congress did not intend for this result. Accordingly, EPA should reduce the cellulosic RVO based on economic harm if it determines that the available domestic supply of cellulosic biofuel cannot be blended into the transportation fuel produced by obligated parties.

#### **IV. EPA Should Continue Granting Small Refinery Exemptions Where Warranted**

As an operator of two facilities that classify as small refineries (daily throughput of less than 75,000 barrels per day each), HollyFrontier is very familiar with the small refinery hardship petition process. The exemptions help HollyFrontier’s small refineries continue to operate when faced with escalating RFS compliance costs. We request the EPA not impose restrictions on the manner in which it reviews the petitions and encourage EPA to continue granting the hardship petitions as required by the Clean Air Act where the facts warrant relief.

Recently, EPA has been criticized for granting exemption petitions at the close or even after the compliance year. Given the financial information EPA requires small refineries to submit as part of the petition and the fact that the statute allows hardship petitions to be filed “at any time,” EPA should not place limits on when hardship exemptions can be sought.

EPA also has been asked to make the small refinery hardship petition more transparent. HollyFrontier agrees that some transparency is warranted, but requests that EPA take care to not reveal sensitive confidential business information of the applicants. We would support EPA’s effort to publish limited factual information regarding the number of petitions being reviewed any decision to grant a hardship exemption.

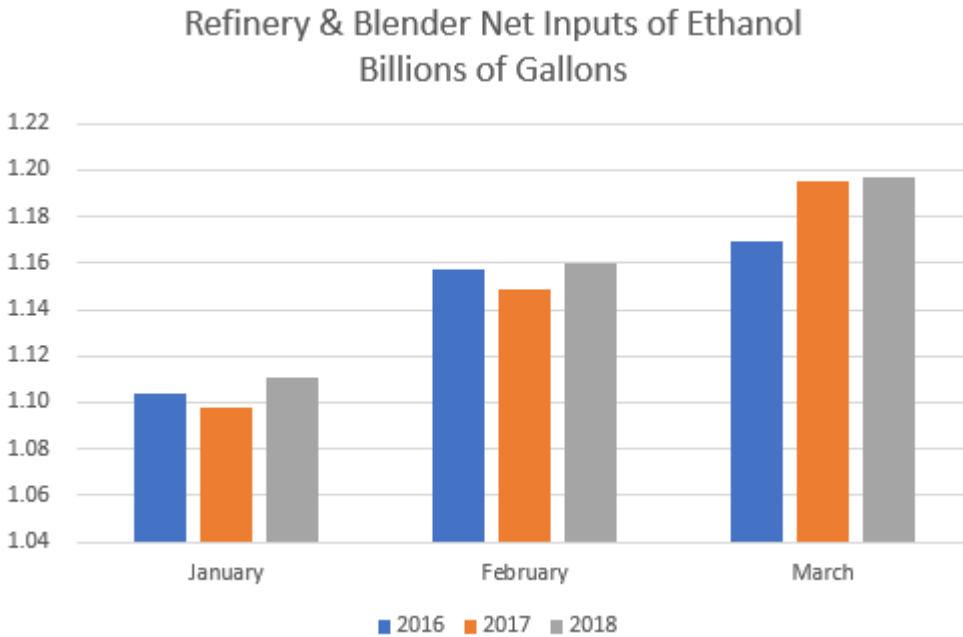
Finally, HollyFrontier believes it important to note that EPA’s recent granting of small refinery exemptions has not resulted in the failure to achieve the annual RVOs in any of the past years or in any so called “demand destruction.” EIA data, as well as data from the EPA Moderated

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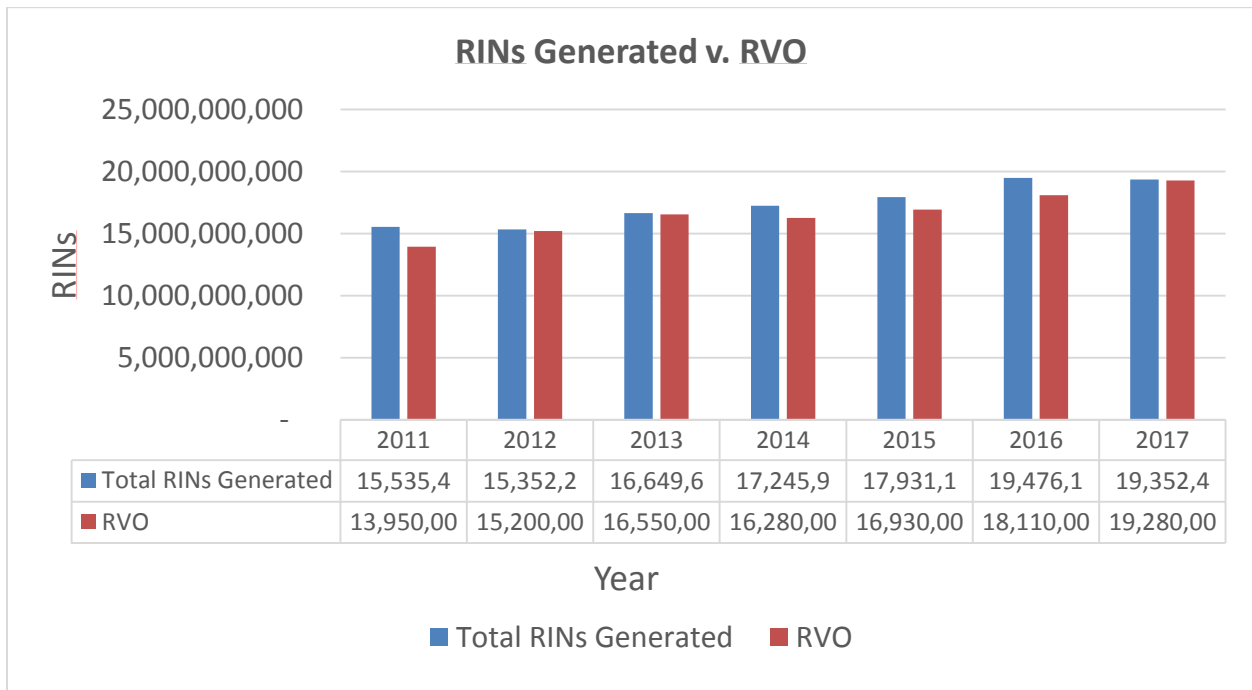
<sup>46</sup> *Slip op.* at 76, citing *Monroe Energy*, 750 F.3d at 915.

<sup>47</sup> 83 Fed. Reg. at 32,037.

Transaction System (“EMTS”) database, shows that ethanol production in 2018 is outpacing that in the previous two years:



Source: American Fuel & Petrochemical Manufacturers (“AFPM”) graph based on EIA data.<sup>48</sup>



Source: EPA’s EMTA data.<sup>49</sup>

<sup>48</sup> Source: <https://blog.afpm.org/fact-check-rfs-waivers-dont-cause-ethanol-demand-destruction-official-data-show/#.W3JIKugzr-g>.

<sup>49</sup> Chart developed using EMTS data.

This is occurring notwithstanding EPA’s decision to grant small refinery hardship waivers. EPA should reject arguments by certain interest groups that exempt small refinery volumes should be reallocated to other obligated parties because such exemptions do not impair achievement of the RVO.

## **V. EPA Should Continue the Past Practice of Not Reallocating Volumes Associated with Small Refinery Exemptions**

HollyFrontier supports EPA’s decision not to reallocate volumes associated with Small Refinery Exemptions in conjunction with this rulemaking. As we have commented previously, EPA’s current practice acknowledges the disproportionate hardship that small refineries across the country face as a result of the RFS mandate and does not further burden larger facilities with a retroactive RVO increase. Additionally, the lack of reallocation has not impeded the market’s ability to satisfy the annual RFS obligations set forth by EPA, and data from EPA’s EMTS demonstrates the market is currently on pace to meeting the 2018 RVO.

Further, the “adjustment” provision in the statute, which states that EPA “shall make adjustments . . . to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt” likely does not authorize an upward adjustment in the RVO.<sup>50</sup> Instead, this provision operates as a safety valve to ensure that obligated parties’ ability to satisfy their blending obligations would not be prejudiced from exempt small refineries use of renewable fuel, which would reduce the available supply to non-exempt parties. EPA clarified the meaning of this provision in promulgating its interpretative regulations, concluding that accounting for the volume of renewable fuel used by exempt small refineries “would reduce the total volume of renewable fuel use required of others, and thus directionally would reduce the percentage standard.”<sup>51</sup>

This interpretation is also logical considering that the concept of RINs did not exist when Congress enacted the statute (it was part of the Energy Policy Act of 2005, not the Energy Independence and Security Act of 2007). In the RFS, Congress directed obligated parties to blend renewable fuel to comply with the statute—credits were envisioned only when a “person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2) [i.e. statutory volumes].”<sup>52</sup> If, however, exempt small refineries blended renewable fuel into their transportation fuel, then they would deplete the total volume available to obligated parties for compliance with the RVO. This is so because neither Congress nor EPA had created a credit program that would allow exempt small refineries to sell the credits generated from blending to other obligated parties. Accordingly, Congress permitted EPA to adjust the RVO downward to prevent potential compliance obstacles resulting from exempt small refineries using renewable fuel.

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<sup>50</sup> CAA § 211(o)(3)(C)(ii).

<sup>51</sup> 72 Fed. Reg. 23,900, 23,911 (May 1, 2007).

<sup>52</sup> CAA § 211(o)(5)(A)(i).

## **VI. EPA Should Maintain the RIN Bank**

HollyFrontier supports EPA's decision not to draw down the RIN bank in order to sustain a higher RVO and suggest a RIN bank that represents 15-20% of the RVO. EPA should continue its past practice of ensuring that an adequate RIN bank exists to buffer against a forced non-compliance issue by setting the RVO based on anticipated production in the future compliance year. If the Agency were to require a drawdown of the RIN bank, then this action would effectively preclude obligated parties from using credits for RFS compliance that were generated in the previous year, consistent with CAA §211(o)(5)(C). It would also be inconsistent with EPA's imposition of a 20% regulatory cap on rollovers, which the Agency described as providing "the appropriate balance between, on the one hand, allowing legitimate RIN carryovers and protecting against potential supply shortfalls that could limit the availability of RINs, and on the other hand ensuring an annual demand for renewable fuels as envisioned by the Act."<sup>53</sup>

## **VII. EPA's Approach To Address the Remand in *American Coalition for Ethanol***

HollyFrontier requests that when EPA addresses the remand from the D.C. Circuit in *American Coalition for Ethanol*, EPA should reissue the RVO for past years based on the actual renewable fuel consumption that occurred in those years. The D.C. Circuit court sanctioned this approach when EPA followed it for the 2014 and 2015 RVO.

## **VIII. EPA Should Institute RIN Market reforms**

EPA has requested comment on the reforms it could institute to bring order and transparency to the RIN market. Because Congress granted EPA significant discretion to create and manage a credit program, EPA could achieve each of these reforms through administrative rulemaking.

1. Restrict ownership of separated RINs to obligated parties. RINs are supposed to operate as a tool for obligated parties to track and ensure their compliance with the RVO, not as a commodity to be traded by non-obligated parties. EPA should prohibit non-obligated parties from purchasing separated RINs. Additionally, EPA should require any non-obligated party that obtains RINs through blending renewable fuel to sell all RINs within 90 days of the date blended and/or separated. The benefits of this solution would be reductions in RIN speculation, market manipulation, RIN transactions and administrative costs of RFS program.
2. Anti-Hoarding provisions. To discourage parties from stockpiling RINs or manipulating RIN prices, EPA should implement RIN inventory limits such as prohibiting obligated parties from holding more RINs than 140% of their year-to-date obligation at the end of any calendar quarter. Such a provision should increase RIN liquidity and reduce manipulation of RIN prices.
3. RIN trading restrictions. EPA should institute limits on the number of times that a RIN can be traded, but only if anti-hording provisions are also implemented. Two trades

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<sup>53</sup> 72 Fed. Reg. at 23,935.

including the initial renewable fuel trade should be workable for most blenders and obligated parties. Three trades would provide additional flexibility if needed. Such a regulation would mirror those EPA implemented governing sulfur and benzene credits. This provision would reduce market manipulation.

**IX. EPA Should Move the Point of Obligation**

EPA’s current regulations fail to obligate parties in a manner that is “appropriate,” that limits “severe economic harm,” and that makes renewable fuel volumes “reasonably attainable” to the extent possible. As a merchant refiner that controls limited downstream infrastructure, HollyFrontier exerts limited ability to dictate the volume and percent of biofuel that is ultimately blended into gasoline and diesel. Yet, under the RFS program, HollyFrontier is required to ensure that proportionate blending occurs. This fundamental mismatch in ability and obligation to blend is one of the great shortcomings of the RFS program.

EPA has chosen not to obligate parties for solely blending renewable fuels into gasoline or diesel. Yet that is precisely the best point in the supply chain to ensure that sufficient volumes are blended to achieve the RFS goals. It also is the point at which meeting that obligation is easiest; the parties incur the obligation as they engage in the activity that will meet it. While obligating refiners and importers for fuels they sell unblended (“clear”) at the rack or already blended with renewable fuel it is “appropriate;” it is not appropriate to obligate them for fuels sold to parties that blend them downstream and are thus able to separate and accumulate RINs. In the latter case, the downstream blenders are able to hold the refiners and importers hostage because they must purchase RINs to achieve their compliance goals.

**X. Support for AFPM Comments and Proposed Renewable Fuel Volumes**

As a member of AFPM, HollyFrontier supports AFPM comments and proposed renewable volumes in the chart below.

	<b>EPA’s Proposal For 2019</b>	<b>AFPM’s Proposal For 2019</b>	<b>EPA’s Proposal For 2020</b>	<b>AFPM’s Proposal For 2020</b>
<b>Cellulosic biofuel (million gallons)</b>	381	222		
<b>Biomass-based diesel (billion gallons)</b>	2.1	1.9	2.43	2.0
<b>Advanced biofuel (billion gallons)</b>	4.88	3.112		
<b>Total renewable fuel (billion gallons)</b>	19.88	17.372		

## **XI. Conclusion**

The RFS has not achieved the goals that Congress intended. It has rendered the U.S. economy dependent on foreign fuel imports and has hurt the economic viability of domestic fuel producers. Though more extensive reform is required to make the program functional and effective again, reducing the renewable fuel volume requirements through EPA's general waiver authority and cellulosic waiver authority would provide much needed relief for heavily burdened refiners. EPA should revise its approach to assessing "domestic supply" to exclude imports, which are inherently not "domestic." It should further account for the severe economic harm the proposed volumes would impose on HollyFrontier and other similarly situated parties, and further use its general waiver authority to reduce the required volumes. In reducing the volumes to avoid severe economic harm, EPA should revise its projections of E0, E15, and E85 consumption to accurately reflect actual market conditions and constraints. Failing to alleviate the regulatory burden on merchant refiners such as HollyFrontier by reducing the required volume percentages will harm not just these companies but the markets and consumers they serve. HollyFrontier therefore respectfully requests that EPA further reduce the 2019 renewable fuel volumes to reflect the economic realities of this program.

HollyFrontier also encourages EPA to institute much needed RIN market and RFS reforms. As outlined above, EPA can make changes that either remove non-obligated parties from the RIN market or shift the point of obligation so that the compliance burden is distributed to the party best positioned to blend renewable fuel and retire RINs. Additionally, EPA should adopt reform measures that will reduce RIN price manipulation.

The RFS is broken and fundamentals suggest RIN prices should only cover the gap between biofuel and conventional fuel costs. The solution to fixing the RFS and restoring fundamentals is to revise the program by addressing the blend wall, maintaining an adequate RIN bank and moving the point-of-obligation to where it belongs. Only then will the RFS program work as intended.