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November 29, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building Mail Code: 1101 A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, and Response to the Remand of the 2016 Standards; Supplemental Notice of Proposed Rulemaking; Docket ID No. EPA-HQ-OAR-2019-0136; FRL–10001–36–OAR

PBF Holding Company LLC, a subsidiary of PBF Energy Inc. ("PBF"), respectfully submits these comments in response to the Environmental Protection Agency's (EPA's) "Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, and Response to the Remand of the 2016 Standards; Supplemental Notice of Proposed Rulemaking" (EPA-HQ-OAR-2019-0136;FRL–10001–36–OAR) (the "proposed supplemental RVO" or "proposed supplemental"). PBF is a member of and acknowledges the comments submitted by the American Fuel & Petrochemical Manufacturers (AFPM) (the "AFPM comment letter"). PBF's comments are intended to complement and emphasize those raised in the AFPM comment letter. In addition, this document addresses relevant issues from the unique perspective of PBF's role as a merchant refiner.

PBF is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. The company currently owns and operates five domestic oil refineries in five states – Delaware, New Jersey, Ohio, Louisiana and California - and related assets with a combined processing capacity of approximately 900,000 barrels per day. PBF employs more than 3,000 people nationally. As one of the largest U.S. merchant refiners - with the most East Coast refining capacity - the Renewable Fuel Standard (RFS) has a significant, negative impact on PBF.

I. The proposed supplemental is unnecessary, as small refiner exemptions (SREs) have had no impact on biofuel consumption.

As noted in the AFPM comment letter, SREs have had no impact on ethanol demand. Independent economists and Administrator Wheeler have acknowledged this fact.[1] U.S. Department of Agriculture Secretary Sonny Perdue even said recently, "Most of the macroeconomic issues we've had with ethanol this year have been because of lower exports – not small refinery waivers. I'll say that. I've got the facts

[1] See comments from the American Fuel & Petrochemical Manufacturers (AFPM)(Docket No. EPA-HQ-OAR-2019-0136; FRL–10001–36–OAR)

to prove it."[2] Government data also verifies this reality. U.S. Energy Information Administration (EIA) data shows that the percentage of ethanol blended into the nation's fuel supply – or the "blend rate" – through August is 10.14 percent, compared to 10.05 percent over the same period from last year.[3] EIA elaborated on their data in writing specifically about SREs. The agency noted:

> Although these SREs lessen the number of tradable compliance credits that refineries can use to comply with the RFS program, actual biofuel consumption is influenced by additional market factors.
>
> Because SRE waiver approval is uncertain and retroactively applied, small refineries may consider other factors when making decisions on blending renewable fuels. Key market factors include the cost of blending renewable fuels relative to the cost of motor gasoline and diesel. In the United States, most motor gasoline contains 10% fuel ethanol, or E10, which is the most cost-effective method to boost the fuel's octane content to meet fuel specifications.[4]

The piece goes on to point out that the number of Renewable Identification Numbers (RINs) used for RFS compliance has increased since 2014 and that the Agency sees biofuel consumption remaining stable for the rest of this year and next.[5]

PBF's comments submitted for the proposed 2020 RFS Renewable Volume Obligation (RVO) also detail the lack of any historical correlation between Renewable Identification Number (RIN) prices or SREs and ethanol blending.[6] EPA's most recent data provides even more proof that SREs have not impacted biofuel demand. The Agency's Moderated Transaction System (EMTS) shows more than 301 million more RINs have been generated through October of 2019 than during the same time period last year.[7] The biofuel industry itself indicates that SREs are not impacting the growth of mid-level ethanol blends like E15 (which contain 15 percent ethanol). As Growth Energy recently pointed out:

> …summer sales of E15 – a fuel with 15 percent renewable biofuel often sold as Unleaded 88 at the pump – are up 46 percent in 2019 compared to 2018 on a per-store basis. Additionally, for the first time, this past summer saw the number of stores offering Unleaded 88 increase.[8]

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[2] Zimmerman, Chuck. "Sec. Perdue Comments on Ethanol and SREs." Energy.Agwired.com. November 18, 2019. Available at: http://energy.agwired.com/2019/11/18/sec-perdue-comments-on-ethanol-and-sres/

[3] U.S. Energy Information Administration (EIA). Monthly Energy Review. September 25, 2019. Available at: https://www.eia.gov/totalenergy/data/monthly/ ; U.S. EIA. Petroleum Supply Monthly. October 31, 2019. Available at: https://www.eia.gov/petroleum/supply/monthly/

[4] U.S. EIA. "EPA small refinery exemptions in the Renewable Fuel Standard explained." *Today In Energy.* November 14, 2019. Available at: https://www.eia.gov/todayinenergy/detail.php?id=41995

[5] Ibid.

[6] See comments from PBF Holding Company LLC (PBF)(Docket Item No. EPA–HQ–OAR–2019–0136; FRL–9996–53–OAR)

[7] EPA Moderated Transaction System (EMTS) data for 2018 and 2019. Available at: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard

[8] Growth Energy. *E15 Summer Sales Up 46 Percent in 2019.* Press Release. November 18, 2019. Available at: https://growthenergy.org/2019/11/18/e15-summer-sales-up-46-percent-in-2019/

Given the overwhelming evidence highlighting the fact that biofuel consumption remains robust despite SREs, there is no logical justification for the proposed supplemental RVO.

II. The proposed supplemental RVO essentially increases the RFS volume requirement by whichever RIN equivalent volume the Agency finalizes (either 580 or 770 million RINs). In doing so, it threatens to exacerbate the potential for severe economic harm that the proposed 2020 RVO creates.

Since all empirical evidence proves that SREs have had no impact on biofuel demand, the proposed supplemental RVO has the practical effect of increasing the overall mandate by whichever RIN equivalent volume EPA finalizes, which will be either 580 or 770 million based on the proposal. In doing so, it simply amplifies an already overly aggressive proposed 2020 RVO, threatening to further raise RFS compliance and consumer costs, while putting refining jobs at risk.

PBF's comments submitted for the proposed 2020 RVO detail the potential for severe economic harm due to EPA's underlying proposal.[9] Other recent events heighten the concern for such harm; specifically, issues associated with the corn crop and uncertainty over the biodiesel tax credit.

A. A poor planting season is impacting corn supply and raising its price, adversely impacting ethanol margins, which could threaten fuel available for RFS compliance.

In relation to ethanol, companies representing nearly 20 percent of domestic ethanol production noted in a letter to President Trump earlier this year:

> It is certainly accurate to say that the U.S. ethanol industry has faced a challenging environment in the past year from: an oversupplied market, the continuing global trade disputes, and the historic Midwest flooding. All of these issues are real for our industry and have led some companies to update their operations to reflect market conditions.[10]

RFS compliance costs could skyrocket if such market conditions hamper the production of domestic ethanol needed to achieve overly aggressive biofuel mandates. Recent experience suggests such a situation may be on the horizon. While ethanol production is on par with last year, and the blend rate in gasoline is up compared to 2018, a poor planting season has contributed to a high corn basis price and farmers withholding corn supply from ethanol producers. In addition to driving feedstock costs up on domestic ethanol producers at a time when trade disputes have shut off their largest export market, this situation has prevented some ethanol producers from getting enough corn to make their product.

A September Bloomberg article summed up the situation well in stating, "American farmers in disbelief over the U.S. Department of Agriculture's relatively lofty projections for crop production are vowing to put off harvest-time sales until prices recover from recent lows."[11] In discussing farmers' belief that the corn crop may not come in, one Iowa grower was quoted as saying, "We are going to make them beg for (corn). We are going to lock the bin doors and weld them shut." Insufficient corn supply has

[9] See comments from PBF Holding Company LLC (PBF)(Docket Item No. EPA–HQ–OAR–2019–0136; FRL–9996–53–OAR)

[10] Gorder, J.W., Heminger, G.R., & Ramsey, J. Letter to President Trump. August 28, 2019.

[11] Hirtzer, Michael. "Farmers Who Don't Trust U.S. Data Vow to Hoard Until Prices Rise." Bloomberg. September 12, 2019.

resulted in some ethanol producers curtailing operations. A South Dakota company blamed insufficient corn supply for interrupting its ethanol production.[12] PBF is aware of other ethanol producers experiencing similar circumstances.

Additionally, plants that are able to secure corn are paying significantly more for it given planting concerns. The corn basis price – which is the amount ethanol producers have to pay above the futures contract prices that establishes the corn spot price – has been as high as 70 cents per bushel in the eastern Midwest. Such a price is nearly 40 percent of the current spot price for ethanol and is placing significant strain on less efficient ethanol plants that rely on feedstock from the region to operate. More recently, a fuel shortage prompted the Federal Energy Regulatory Commission (FERC) to approve emergency propane shipments to the Midwest in order for farmers to be able to dry the corn harvest.[13]

Since there is no correlation between the RIN price or the mandate and ethanol price, the higher requirement associated with the proposed supplemental will do nothing to alleviate the plight of ethanol producers that either cannot even get corn to make their products or are forced to pay exorbitant prices. However, if the ethanol supply needed to meet the mandate does not materialize due to such issues, the higher RVO will certainly exacerbate the potential for severe economic harm associated with the excessive aggressiveness of the underlying proposed 2020 RVO – let alone with the additional requirements of the proposed supplemental.

B. Uncertainty over the biodiesel tax credit, coupled with overly aggressive volume requirements will force refiners to rely on more foreign biofuel for compliance at a significantly higher cost.

As stated in PBF's 2020 RVO comments, given the limitations of the blend wall and flat to declining gasoline demand – which also limits the potential for E15 to generate significantly more RINs – the RFS ends up becoming a de facto foreign bio and renewable diesel mandate. The supplemental will not only increase the need to use foreign biofuel for compliance, but will threaten to send compliance costs higher given the fact that these fuels cost anywhere from $0.74 to $1.23 per gallon more than petroleum diesel.[14] Cost concerns are amplified given current uncertainty of the biodiesel tax credit, which, if not renewed, would send bio and renewable diesel prices (and, thus, RFS compliance costs) skyrocketing.

Since there is an approximately 700 million gallon gap between the 15 billion gallon conventional requirement and the amount of ethanol that can physically be blended into gasoline (the "blendwall" gap, which will continue to exist even with year-round E15), refiners need to essentially over-comply with the RFS' bio and renewable diesel (e.g. D4) requirement to meet the *conventional* portion of the mandate. As a result, the 2020 RVO as originally proposed created a de facto biodiesel/renewable diesel mandate of nearly 3.3 billion gallons. As noted in PBF's RVO comments, despite tariffs on what were previously the largest foreign biodiesel suppliers to the U.S. (Argentina and Indonesia), domestic bio and renewable diesel producers are not projected to make enough fuel to meet the biodiesel and advanced RFS

[12] Voegele, Erin. "Rex: South Dakota plant negatively impacted by corn availability." Ethanol Producer Magazine. September 4, 2019. Available at: http://www.ethanolproducer.com/articles/16504/rex-south-dakota-plant-negatively-impacted-by-corn-availability

[13] Bade, Gavin. "FERC approves emergency propane shipments to Midwest." Politico Pro. November 20, 2019.

[14] See Cost Impacts of the Final 2019 Annual Renewable Fuel Standards, Table 2-2. EPA-HQ-OAR-2019-0163- 0027.

requirements for 2019, let alone additional volumes needed to cover the blendwall gap. The result is that large volumes of foreign biofuel are *still* needed to comply with the RFS.[15]

EPA's latest EMTS data verifies this reality. Through October, while domestic bio and renewable diesel RIN generation is up compared to last year, so is foreign RIN generation. In fact, nearly 22 percent of total bio and renewable diesel RIN generation comes from foreign sources, totaling more than 796 million RINs. This volume represents a greater than two percent increase in foreign bio and renewable diesel RIN generation from the same period last year. The proposed supplemental will do nothing other than to increase this reliance on foreign biofuel.

The impacts associated with mandating more costly bio and renewable diesel will be extremely severe if Congress fails to reauthorize the biodiesel tax credit. The inability to renew the credit for nearly two years is already having an adverse impact on American biodiesel producers. Earlier this month, the National Biodiesel Board sent Congressional Leadership a letter stating:

> Since the start of the year, ten biodiesel plants have closed or cut back production, furloughing several hundred workers; the states impacted include Connecticut, Georgia, Indiana, Iowa, Michigan, Mississippi, Missouri, Pennsylvania and Texas…. Immediate extension of the tax credit is needed to prevent more plant closures, more production cutbacks, and more job losses.[16]

Continued legislative delays or, worse, Congress' inability to reauthorize the tax credit could result in more domestic biodiesel plant closures. This would further increase refiners' reliance on foreign biodiesel for RFS compliance. In fact, the uncertainty over the tax credit is already having such an effect. While total October bio and renewable diesel RIN generation was up overall this year compared to last, foreign RIN generation for the month represented nearly 24 percent of the total RINs generated in this category, compared to only 8 percent in October 2018. In addition to increasing reliance on foreign biofuel, elimination of the tax credit would also place significant upward market pressure on biodiesel prices, which would be needed to sell the product in absence of the tax credit. Such a situation would result in even more severe economic harm, putting more refining jobs at risk. It would also threaten consumers. As noted in a National Public Radio story from last year:

> "'This is an easy one, economically. Biodiesel is very expensive, relative to petroleum diesel,' says Scott Irwin, an economist at the University of Illinois, who follows biofuel markets closely. He calculates that the extra cost for biodiesel comes to about $1.80 per gallon right now, meaning that the biofuel law is costing Americans about $5.4 billion a year."[17]

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[15] See comments from PBF Holding Company LLC (PBF)(Docket Item No. EPA–HQ–OAR–2019–0136; FRL–9996–53–OAR)

[16] National Biodiesel Board (NBB) letter to House and Senate Leadership. November 14, 2019. Available at: https://biofuels-news.com/news/us-biodiesel-industry-urges-congress-to-extend-expired-tax-credit/

[17] Charles, Dan. "Turning Soybeans Into Diesel Fuel Is Costing Us Billions." National Public Radio. January 16, 2018. Available at: https://www.npr.org/sections/thesalt/2018/01/16/577649838/turning-soybeans-into-diesel-fuel-is-costing-us-billions

In addition to risking manufacturing jobs and increasing reliance on foreign biofuel, EPA would be ignoring its requirement to consider costs when setting the RFS requirement if it finalizes the proposed supplemental.[18]

III. Reallocating biofuel requirements based on SREs is illegal. In fact, EPA has a responsibility to: 1) reduce the RVO for all obligated parties due to the fact that biofuel is being blended with fuel from exempt small refiners and 2) remove the portion of the RVO formula that allows for potential reallocation. The proposed supplemental RVO also creates a redundant obligation, in violation of the statute.

PBF's 2020 RVO comments detail how EPA does not have the authority to reallocate *any* waived volumes in *any* circumstance.[19] Prohibition of reallocation is clear given the statutory language that requires EPA to actually *reduce* the RVO for obligated parties not receiving exemptions, "to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt."[20] EPA'S failure to make such reductions already placed the proposed 2020 RVO on questionable legal footing. The supplemental RVO erodes the case for the proposed 2020 RVO further, as it eliminates the already insufficient justification EPA has used for not making such reductions.

EPA reaffirmed its statutory obligation to reduce the RVO when biofuel is blended with exempt small refiners' product on several occasions. It justified not reducing the RVO despite proof such blending was occurring based on a claim from 2010 that 1) the biofuel volumes attributable to SREs were de minimis and 2) to the extent that biofuel is blended with small refiner petroleum fuel, it will be accounted for through the RIN system.[21] On the latter point, EPA essentially concludes that RINs attributable to exempt small refiner fuel blending act as excess RINs, which functionally serve to ease the RFS' burden on obligated parties. The Agency reinforces this belief in the proposed supplemental by noting, "…any SREs granted after we issue the annual rule containing the percentage standards for that year effectively reduces the required volume of renewable fuel for that year."[22]

PBF's 2020 RVO comments detail why EPA's justification for not reducing the requirement for all other obligated parties due to biofuel blended with exempt small refiner product the previous year was insufficient. However, with the supplemental RVO now proposing to reallocate biofuel volumes associated with potential future SREs, EPA is eliminating its sole justification for not reducing the RVO to comply with Clean Air Act Section 211(o)(3)(C)(ii). In doing so, EPA is essentially admitting it is willfully violating of the statute. Additionally, the proposed supplemental assumes a certain volume of SREs will be issued in 2020. EPA has no basis on which to make such an assumption. EPA does not know how many small refiners may even apply for exemptions. Furthermore, small refiners that do apply have to submit extensive information and undergo a rigorous review process at the Department of Energy (DOE), after which they may or may not qualify for relief. As a result, the volume of small refiner fuel exempt from the RFS could be significantly less than EPA's prediction. Since the facts show that small refiner fuel is blended with biofuel despite SREs, EPA's volume estimates for next year may overestimate actual SREs

[18] See CAA §211 (o)(B)(ii)(V).
[19] See comments from PBF Holding Company LLC (PBF)(Docket Item No. EPA–HQ–OAR–2019–0136; FRL–9996–53–OAR)
[20] 42 U.S.C. § 7545(o)(3)(C)(ii)
[21] 75 Fed. Reg. at 14,717
[22] 84 Fed. Reg. at 57,679

granted, and the Agency already accounts for SREs in its consideration of the RIN bank[23] each year, finalizing the supplemental RVO will create a redundant obligation in violation of Clean Air Act Section 211(o)(3)(c)(i).[24]

These facts do more than just prove that the proposed supplemental is illegal. They also require EPA to completely remove "GEi" and "DEi" from the formula used to calculate the RFS percentage standard in 40 CFR 80.1405(c). Since, as previously detailed, reallocation is illegal under any circumstance, any mechanism to attempt to account for it in federal regulations violates the statue. EPA should immediately start the process of revising the RFS regulations to eliminate "GEi" and "DEi" in the RVO formula at 40 CFR 80.1405(c).

IV. EPA's revised interpretation of "exemption" is illegal and its stated intent to adhere closer to DOE SRE recommendations runs contrary to court decisions.

EPA goes through a tortured description of why it is reversing a previous opinion which accurately stated that an "exemption" in relation to the small refiner exemption provision in the RFS is exactly what it means: freeing an entity from an obligation. The Agency now suddenly believes that "this is not the only reasonable way to adjudicate exemption petitions," and that, "the statute is silent with respect to EPA's authority to issue partial exemptions."[25] The problem is that the statute is not silent on the matter, because it used the actual word "exemption." Had Congress intended such an exemption to be partial, it could have used the term "waiver," which is used extensively in other parts of the statue to indicate the possibility of partial relief. The title of Clean Air Act Section 211(o)(7) is "Waivers."[26] The small refiner exemption provision of the RFS is not located in this section of the law. EPA's revised interpretation of the term "exemption" is illegal.

Finally, EPA indicates it anticipates "granting partial exemptions where such exemptions are appropriate" due to the fact that it is "an approach (it) could have taken in response to recommendations from DOE in recent years, which included partial exemption recommendations on some applications."[27] The proposal is written in a manner that indicates complete reliance on DOE recommendations, which runs contrary to the decision in *Ergon-West Virginia, Inc. v. U.S. E.P.A*. It that case, the court concluded the Agency acted arbitrarily and capriciously in relying on DOE scoring factors, while also noting that an agency cannot "blindly rely" on the conclusions of a consulting agency.[28]

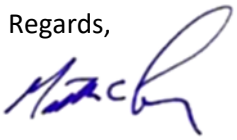
V. Conclusion

In light of the facts presented, EPA must rescind the supplemental RVO and reduce the requirement in the originally proposed 2020 RVO. Reallocation of SRE volumes is illegal under any circumstances. Given this reality, EPA should actually be advancing a regulation that modifies the RVO formula to eliminate elements that make reallocation possible. Additionally, since the facts show that biofuel is being blended with small refiner fuel despite SREs, EPA is also legally required to reduce the RVO

[23] See comments from the American Fuel & Petrochemical Manufacturers (AFPM)(Docket No. EPA-HQ-OAR-2019-0136; FRL–10001–36–OAR)
[24] 42 U.S.C. § 7545(o)(3)(C)(i)
[25] 84 Fed. Reg. at 57,681
[26] 42 U.S.C. § 7545(o)(7)
[27] 84 Fed. Reg. at 57,680
[28] *Ergon-West Virginia, Inc. v. U.S. E.P.A*, 896 F.3d 600 (4th Cir. 2018)

for all other obligated parties to account for such over-compliance. EPA must fulfill its statutory requirements in this manner, not only to comply with the law, but to protect manufacturing jobs across the country, eliminate reliance on foreign biofuel for RFS compliance, and shield consumers from potential fuel cost increases.

Regards,



Matthew Lucey
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