Comments of HollyFrontier Corporation on Environmental Protection Agency's Supplemental Notice of Proposed Rulemaking, "Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, and Response to the Remand of the 2016 Standards"
Docket No. EPA-HQ-OAR-2019-0136
[84 Fed. Reg. 57,677 (October 29, 2019)]

HollyFrontier Corporation ("HollyFrontier") is pleased to provide the following comments on Environmental Protection Agency's ("EPA") Supplemental Notice of Proposed Rulemaking, "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") Docket No. EPA-HQ-OAR-2019-0136-0021. 84 Fed. Reg. 57,677 (October 29, 2019). As detailed below, HollyFrontier opposes upward adjustments of the 2020 standards based on estimated projections of the volume of gasoline and diesel that will be exempt in 2020 due to small refinery exemptions. The basis for this proposal is EPA's belief that it must "ensure" a specific volume of renewable fuel is consumed annually. But EPA has no duty to ensure a specific volume of renewable fuel is consumed if, as it does each year, the Agency exercises its waiver authority to reduce statutory volumes. Notwithstanding this legal issue, EPA's proposal offers to fix a problem that does not exist. Annual data shows that, in general, the renewable fuel volumes are met. In any year a theoretical shortfall may exist, it is substantially less than the volume equivalent for exempt small refineries. Accordingly, adjusting the formula to account for potential small refinery exemptions will result in the imposition of a renewable volume obligation ("RVO") that is inconsistent with EPA's statutory obligations.

HollyFrontier also opposes EPA's proposed change regarding the grant of small refinery exemption decisions. EPA has indicated that it has authority to grant partial relief to a small refinery if the Department of Energy recommends 50% relief. Congress, however, instructed EPA to extend to a qualifying small refinery the exemption set forth in Section 211(o)(9)(A), which is a complete blanket exemption from the renewable fuel mandate. Thus, the statute leaves no room for partial relief.

In addition to the comments below, HollyFrontier, a member of the American Fuel and Petrochemical Manufacturers ("AFPM"), incorporates via reference the association's comments on the proposed rule that are not inconsistent with the statements herein.

I. About HollyFrontier

HollyFrontier is an independent or "merchant" petroleum refining company operating across the 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 Renewable Fuel Standard ("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 us by the regulation. Since EPA first began mandating an annual Renewable Volume Obligation ("RVO") in excess of the E10 blendwall, the cost of purchasing Renewable Identification Numbers ("RINs") to meet compliance obligations, has been one of HollyFrontier's largest operating costs—in some years even larger than U.S. payroll. These annual compliance costs are unreasonable under any regulatory program, and impose substantial 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 Rescind This Proposal

A. EPA's Proposal Lacks Legal Support

EPA's proposal to change two terms used to calculate the annual RVO is premised on a legal requirement that is not applicable when EPA exercises its waiver authority as part of determining the annual volume standard. Though EPA claims it has a duty to "ensure" statutory volumes are met, that requirement is inapplicable and illogical in years where EPA has waived the statutorily prescribed biofuel volumes. Additionally, EPA's proposed change to the percentage formula fails to account for the renewable fuel that would be used by exempt small refineries, which should reduce the overall RVO. Such a failure contradicts the plain language of the statute.

EPA contends that Clean Air Act sections 211(o)(2)(A)(i), (2)(A)(iii)(I), and (3)(B)(i) impose upon the agency a duty to ensure the renewable volumes are met. 84 Fed. Reg. at 57,680. These provisions direct EPA to promulgate regulations that "ensure that transportation fuel sold or introduced into commerce in the United States . . . , on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined *in accordance with subparagraph (B)*"[1] and to set standards in a manner that "the renewable fuel obligation that ensures that the *requirements of paragraph (2) are met*."[2] The requirements referenced in each of the cited provisions, of course, are the ones in paragraph (o)(2) that contain the renewable fuel volumes statutorily prescribed by Congress.[3] Thus, when EPA imposes upon obligated parties the obligation to satisfy the default statutory volumes, it should ensure these volumes are met.

When EPA finds the statutory volumes are not appropriate, however, its duty to ensure those volumes are met ceases. This occurs when EPA utilizes its waiver authorities in section 211(o)(7). Since 2014, EPA has used its waiver authority to reduce the default statutory volumes for cellulosic, advanced and total renewable fuels, finding them to be unachievable. The suspension of the requirement to ensure specific volumes are met is logical in such

[1] 42 U.S.C. § 7545(o)(2)(A)(i)
[2] 42 U.S.C. § 7545(o)(3)(B)(i)
[3] 42 U.S.C. § 7545(o)(2)(B).

circumstances given that there is either insufficient biofuel production to meet the default statutory standards or because ensuring the standards would result in severe economic harm.[4] Imposition of an RVO above the percentage standards EPA set through its waiver authority would result in the precise harm that use of the waiver authority sought to avoid.

EPA's proposal to increase the RVO to account for small refinery exemptions without reducing the RVO by the amount of renewable fuel used by those small refineries also contradicts the plain language of the Clean Air Act. Section 211(o)(3)(C)(ii) requires EPA to adjust the RVO "to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (9)." By reinterpreting the percentage standard formula, however, EPA fails to balance volume of gasoline and diesel produced by exempt small refineries with the volume of renewable fuel those exempt small refineries used notwithstanding their exemption. This is particularly problematic given that the fuel produced by exempt small refineries more than likely is blended with renewable fuel. As EPA stated in the final rule establishing the 2019 standard, "nearly all gasoline contains 10 percent ethanol."[5] Accordingly, the agency's decision to adjust the formula to remove the anticipated volume of diesel and gasoline produced by exempt small refineries without deducting the volume of renewable fuel used by exempt small refineries in the previous year is contrary to the statute. It is worth nothing that based on data submitted to EPA, HollyFrontier produces gasoline that will ultimately be blended with biofuels.

B. EPA's Proposal Lacks Factual Support

In addition to lacking a sound legal foundation, EPA's proposed rule grossly over corrects the error EPA perceives to exist. As indicated in the Supplemental Notice, EPA contends that the grant of small refinery exemptions has resulted in a failure of meeting the annual volumes. But EPA has not provided factual support for finding that the exemptions are the sole cause of any shortfall. In past years, EPA has exempted small refineries and the annual volume requirements were still satisfied. EPA's EMTS data indicates that the volume of RINs retired for a compliance year exceeded both the projected volumes used to establish annual percentage standards as well as the actual volumes associated with the percentage standards from 2012 through 2015. For 2016 through 2018, RIN retirements were nearly equivalent to the actual RVO. Though EPA contends there was a 1.43 billion RIN shortfall in 2018, there is no data indicating that such a shortfall actually exists.[6] EPA's own data for 2018 indicates that the net RIN generation for 2018 was 19.493 billion RINs and the total RINs retired for 2018 was 19.331 billion RINs – resulting in less than a 200 million RIN difference. A table depicting this data is below. *See* Table 1.

A comparison of the theoretical RIN shortfalls compared to the exemptions for small refineries appears in Table 2 below. As this table indicates, the number of RINs associated with the exemption for small refineries grossly exceeds the difference between the RVO volumes and the number of RINs retired in each year of the RFS dating back to at least 2012.

[4] *See* 42 U.S.C. § 7545(o)(7)
[5] 83 Fed. Reg. 63,704, 63,731 (Dec. 11, 2018).
[6] *See* 83 Fed. Reg. at 57,679 ("These SREs reduced the obligated volume of gasoline and diesel for 2018 by 13.42 billion gallons, effectively reducing the required volume of total renewable fuel for 2018 by 1.43 billion RINs.").

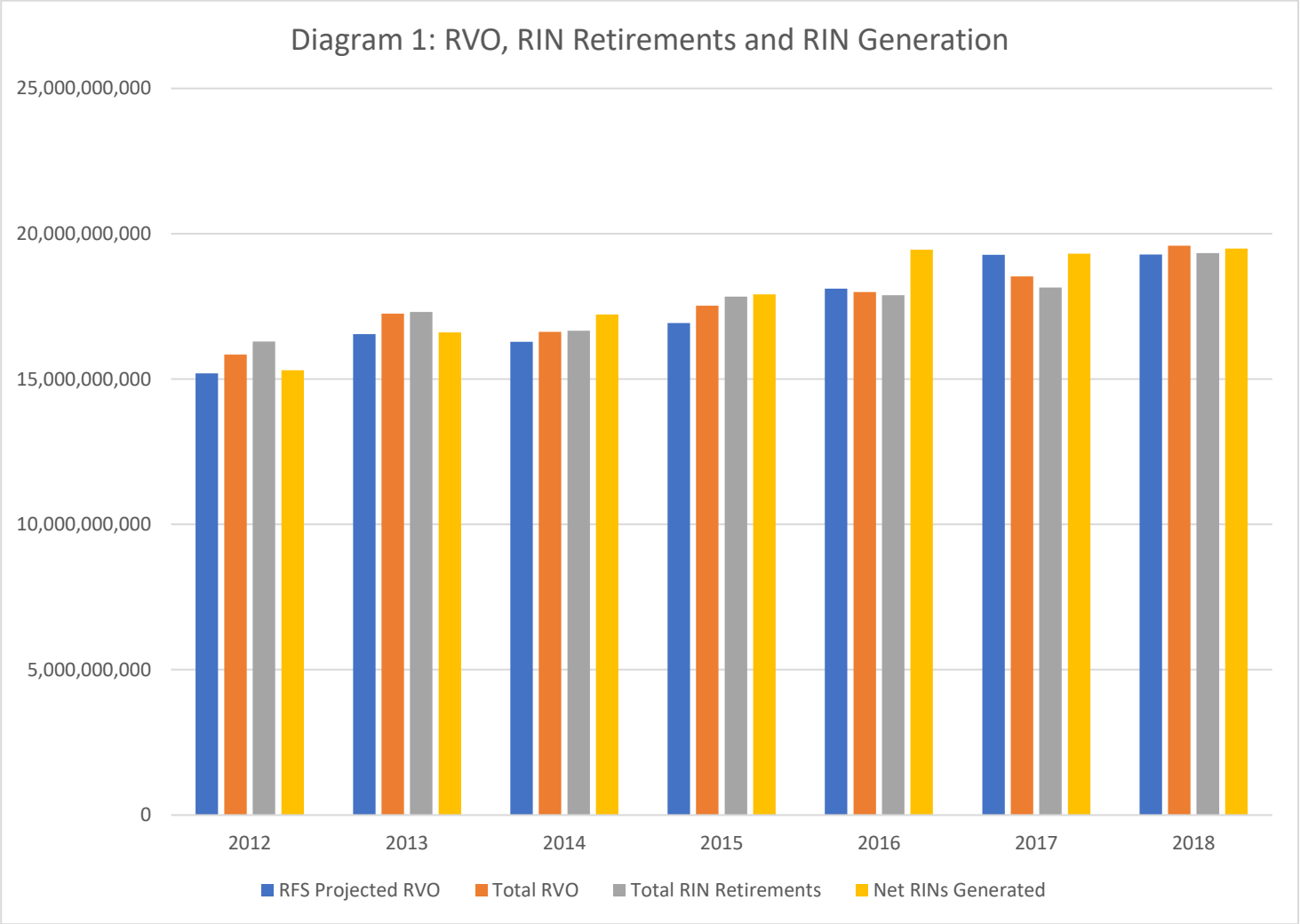


Table 1: RVO, RIN Retirements and RIN Generation Data

Compliance Year	RFS Projected RVO[7]	Total (Actual) RVO[8]	Total RIN Retirements[9]	Net RINs Generated[10]
2012	15,200,000,000	15,842,551,323	16,296,553,703	15,306,658,432
2013	16,550,000,000	17,254,626,853	17,311,269,123	16,609,005,677
2014	16,280,000,000	16,623,251,178	16,660,418,629	17,224,097,782
2015	16,930,000,000	17,525,732,172	17,838,472,400	17,921,649,436
2016	18,110,000,000	17,996,776,264	17,888,987,566	19,448,965,124
2017	19,280,000,000	18,529,596,042	18,152,769,160	19,315,518,280
2018	19,290,000,000	19,587,528,005	19,331,866,499	19,493,110,409

[7] Data from EPA EMTS Renewable Volume Obligation tab, Table 2
[8] Data from EPA EMTS Renewable Volume Obligation tab, Table 2
[9] Data from EPA EMTS Renewable Volume Obligation tab, Table 4
[10] Data from EPA EMTS RINs Generated tab

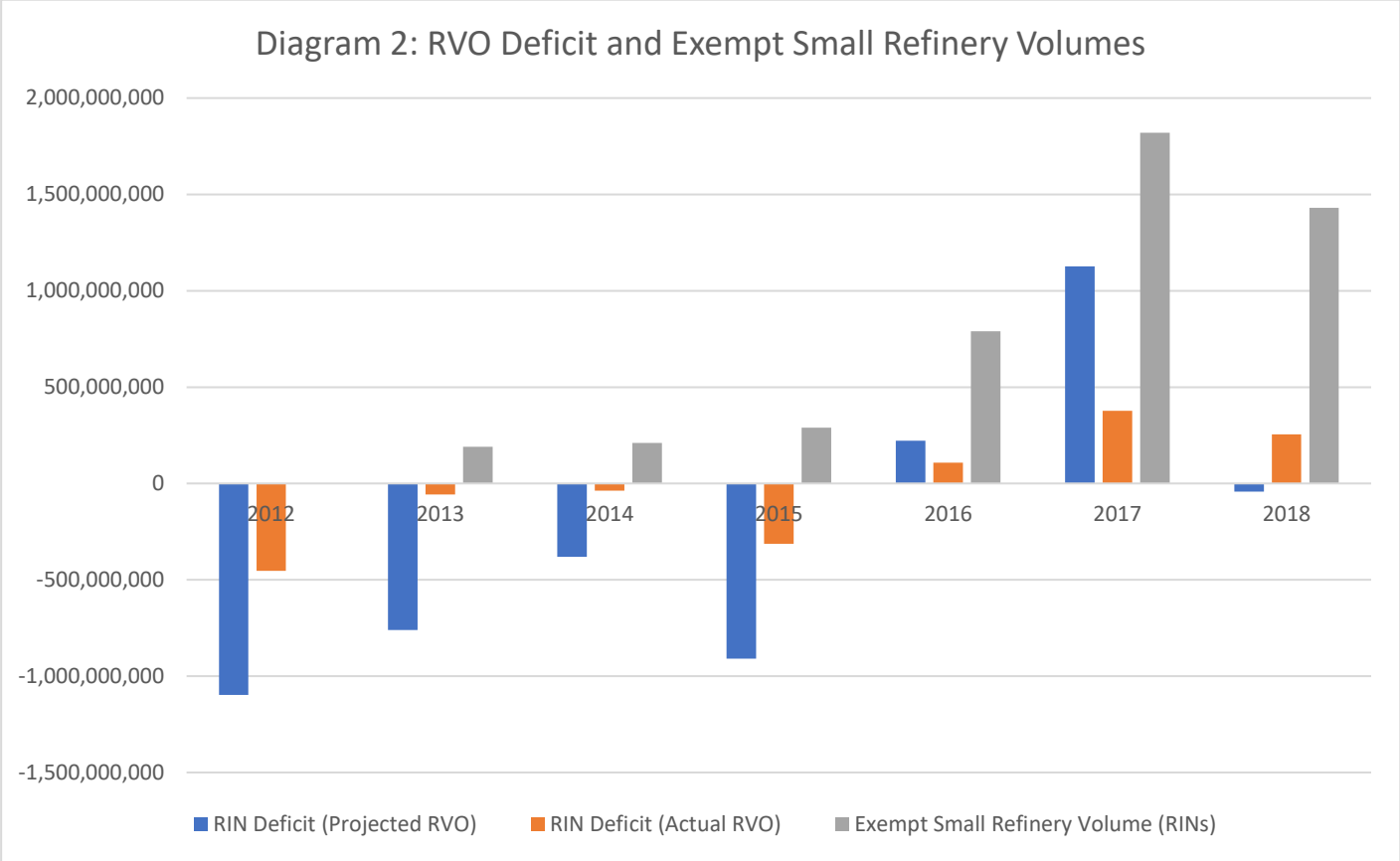


Table 2: RVO Deficit and Exempt Small Refinery Volumes

Year	RFS Projected RVO	Actual RVO	Total RIN Retirements	RIN Deficit (Projected RVO)[11]	RIN Deficit (Actual RVO)[12]	Exempt Small Refinery Volume (RINs)[13]
2012	15,200,000,000	15,842,551,323	16,296,553,703	-1,096,553,703	-454,002,380	N/A
2013	16,550,000,000	17,254,626,853	17,311,269,123	-761,269,123	-56,642,270	190,000,000
2014	16,280,000,000	16,623,251,178	16,660,418,629	-380,418,629	-37,167,451	210,000,000
2015	16,930,000,000	17,525,732,172	17,838,472,400	-908,472,400	-312,740,228	290,000,000
2016	18,110,000,000	17,996,776,264	17,888,987,566	221,012,434	107,788,698	790,000,000
2017	19,280,000,000	18,529,596,042	18,152,769,160	1,127,230,840	376,826,882	1,820,000,000
2018	19,290,000,000	19,587,528,005	19,331,866,499	-41,866,499	255,661,506	1,430,000,000

[11] The difference between the projected RVO volumes and RIN retirements for the year.
[12] The difference between the actual RVO volumes and RIN retirements for the year.
[13] EPA EMTS data Small Refinery Exemption tab.

EPA's data also indicates that the proposed reallocation of exempt small refinery volumes not only would result in a significant over correction of any purported RVO shortfall, but it would also impose upon obligated parties an RVO greater than the market could sustain. For example, an increased RVO for 2018 that was approximately equivalent to the average volume of exempt small refineries over the previous 3 years (approximately 967 million RINs) would result in a compliance mandate greater than the number of RINs generated in 2018. Such a result would significantly increase RIN prices and impose substantial and unwarranted costs on obligated parties. Additionally, if EPA increases the RVO above the volumes the current market can sustain, the agency likely will incentivize increased renewable fuel imports, which is contrary to the intent and purpose of the RFS.

Table 3

Compliance Year	**Total RIN Retirements[14]**	**Net RINs Generated[15]**	**Carryover RINs[16]**	**Exempt Small Refineries (RINs)**
2012	16,296,553,703	15,306,658,432	-989,895,271	N/A
2013	17,311,269,123	16,609,005,677	-702,263,446	190,000,000
2014	16,660,418,629	17,224,097,782	563,679,153	210,000,000
2015	17,838,472,400	17,921,649,436	83,177,036	290,000,000
2016	17,888,987,566	19,448,965,124	1,559,977,558	790,000,000
2017	18,152,769,160	19,315,518,280	1,162,749,120	1,820,000,000
2018	19,331,866,499	19,493,110,409	161,243,910	1,430,000,000

C. EPA's Proposal Would Harm Obligated Parties

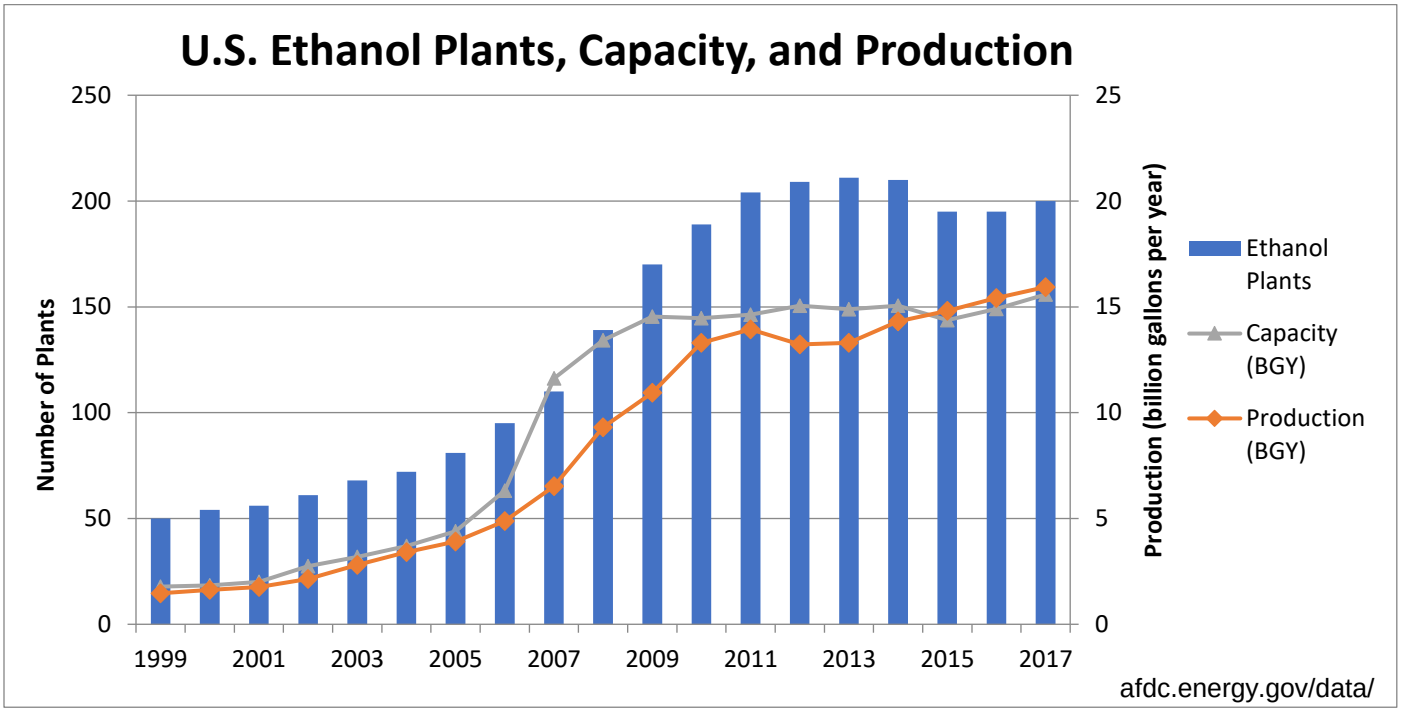
EPA's supplemental proposal continues to require renewable fuel blending in amounts over the E10 blendwall. The blendwall reflects the amount of blended fuel that the domestic marketplace can utilize. An RVO above the blendwall imposes an obligation that the marketplace cannot meet, resulting in a shortfall of available credits obligated parties can use for compliance. Consequently, RIN prices will increase and refiners will face tremendous compliance costs.

In the early years of the RFS, the RVO was below the E10 blendwall and buying RINs was a minimal cost for individual refineries. Despite low RIN prices, biofuel production and consumption continued to grow. However, EPA's RVO mandates over the last several years, including the 2020 proposed volumes above the blendwall, have increased the cost of the RFS

[14] Data from EPA EMTS Renewable Volume Obligation tab, Table 4
[15] Data from EPA EMTS RINs Generated tab
[16] This data calculated by subtracting Total RIN Retirements from Net RINs Generated.

program and created excess volatility in the RIN market. EPA must consider the effects of the E10 blendwall to address renewable fuel volume requirements.

As the charts below demonstrate, ethanol production has risen nearly every year over the past 20 years, with plants producing at or over their capacity since 2015. Accordingly, there is no indication that EPA's implementation of the RFS has caused a decrease in ethanol production.



U.S. Ethanol Plants, Capacity, and Production			
Year	Ethanol Plants	Capacity (BGY)	Production (BGY)
1999	50	1.779	1.465
2000	54	1.840	1.622
2001	56	2.007	1.765
2002	61	2.738	2.140
2003	68	3.190	2.810
2004	72	3.699	3.404
2005	81	4.398	3.904
2006	95	6.317	4.884
2007	110	11.623	6.521
2008	139	13.424	9.309
2009	170	14.541	10.938
2010	189	14.460	13.298
2011	204	14.631	13.929
2012	209	15.047	13.218
2013	211	14.887	13.293
2014	210	15.047	14.313
2015	195	14.369	14.807
2016	195	14.903	15.413
2017	200	15.584	15.936

III. EPA Does Not Have Authority to Grant Partial Small Refinery Waivers

In a memo dated August 9, 2019, the EPA interpreted Clean Air Act section 211(o)(9) in a manner that permits the agency to either grant or deny an exemption request and that the agency could not grant partial relief (i.e. a 50 percent waiver). In the Supplemental Notice, EPA proposes to reverse course and read section 211(o)(9) to authorize EPA to grant partial relief. HollyFrontier opposes this proposal because Congress directed EPA to extend the original full exemption where a small refinery demonstrates disproportionate economic harm.

The statutory language of the RFS contemplates only complete waivers. Congress protected small refineries from the economic burdens of the RFS program by providing all such refiners with a complete exemption, stating that "the requirements of paragraph (2) [renewable fuel blending requirements] shall not apply to small refineries until calendar year 2011."[17] For 2011 and beyond, Congress provided EPA with a mechanism to extend this exemption to small refineries, stating a "small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship."[18]

[17] 42 U.S.C. § 7545(o)(9)(A)(i).

[18] 42 U.S.C. § 7545(o)(9)(B)(i).

The "exemption under subparagraph (A)" is, of course, the full exemption from the blending requirements of the statute. Congress did not authorize EPA to provide any other sort of relief.

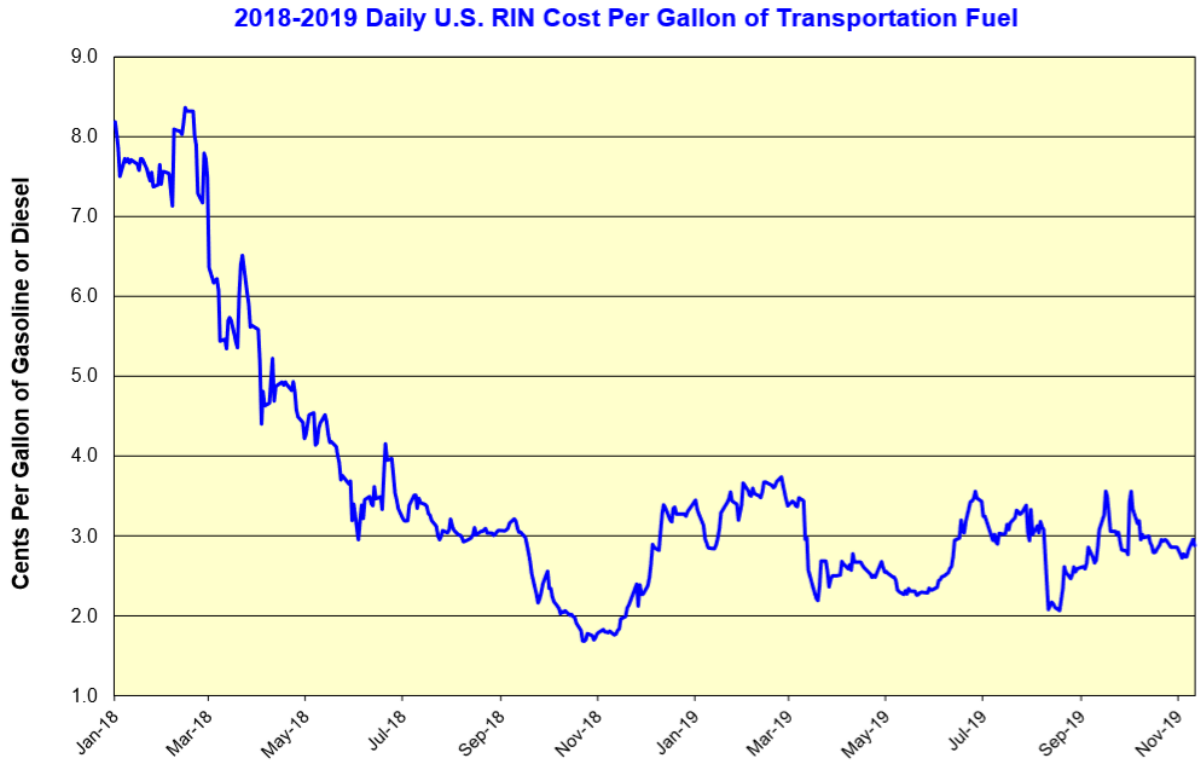
Moreover, if EPA grants a partial exemption, it would read the word "extend" out of the statute. The plain language of the statute authorizes EPA to extend the blanket exemption to a qualifying small refinery. If EPA creates a new category of relief – a 50 percent exemption – then it would be granting a remedy that never existed under the Renewable Fuel Standard and thus could not be extended.

IV. EPA's Proposed Action Regarding the 2016 Remand is Appropriate

HollyFrontier agrees with EPA's proposal to not alter the total renewable fuel volume requirement for 2020 on account of the D.C. Circuit's remand of the 2016 RVO in Americans for Clean Energy v. EPA. HollyFrontier agrees the additional burden imposed upon obligated parties by retroactively reinstating the 2016 volumes would not result in additional biofuel blending and would only serve to significantly drawdown the carryover RIN bank. EPA estimates the total volume of carryover RINs is approximately 11 percent of the proposed total renewable fuel volume requirement for 2020. Adding the 2016 remanded volume would cause a corresponding RIN bank drawdown to a level of 5-6 percent of the proposed 2020 renewable fuel volume requirement. This would remove any buffer in the compliance system, increase speculation in RIN prices, and significantly harm the functioning of the program.

V. EPA Should Provide a Mechanism to Control D6 RIN Costs

EPA should consider changes to the manner in which the RIN market functions. Given extreme volatility in the RIN markets, HollyFrontier supports a mechanism to control RIN costs specifically for the D6 RIN. This program could be implemented similar to the cellulosic waiver credit where there is a fixed price set by EPA. If an obligated party cannot find a D6 RIN in the open market at a fixed price then EPA could sell a waiver credit. These changes could help address market manipulation by non-obligated parties.



SOURCES: U.S. Environmental Protection Agency and *Platts Biofuelscan*.