HollyFrontier Corporation Comments on EPA's Notice of Receipt of Petitions for A Waiver of the 2019 and 2020 Renewable Fuel Standards, Docket ID No. EPA-HQ-OAR-2020-0322; FRL 10011-04-OAR

HollyFrontier submits these comments in response to the Environmental Protection Agency's ("EPA" or the "Agency") Notice of Receipt of Petitions for a Waiver of the 2019 and 2020 Renewable Fuel Standards. 86 Fed. Reg. 5,182 (Jan. 19, 2021). As EPA indicated in its notice, the Agency received petitions requesting EPA to invoke its authority under Clean Air Act section 211(o)(7)(A) and waive the 2019 and 2020 Renewable Fuel Standard ("RFS") obligations to prevent severe harm. As noted below, HollyFrontier supports the petitions and agrees that imposition of the Renewable Fuel Standard ("RFS") mandates would cause severe economic harm regionally and nationally. Accordingly, it requests EPA use its authority to waive the 2019 and 2020 Renewable Volume Obligations ("RVOs") to alleviate such harm.

As detailed below, HollyFrontier believes a waiver of the 2019 and 2020 RVOs is warranted given the severe economic harm caused by (1) the RFS in light of the COVID-19 pandemic ("COVID-19") and (2) the RVO specifically in PADD ("Petroleum Administration for Defense District") 2 and PADD 4. As EPA considers these petitions, it is important for the Agency to understand that the RFS has exacerbated the disruption in fuel markets over the past year and created a truly unique situation where it has necessitated the EPA Administrator ("the Administrator) to exercise general waiver authority under the Clean Air Act ("CAA").

I. About HollyFrontier

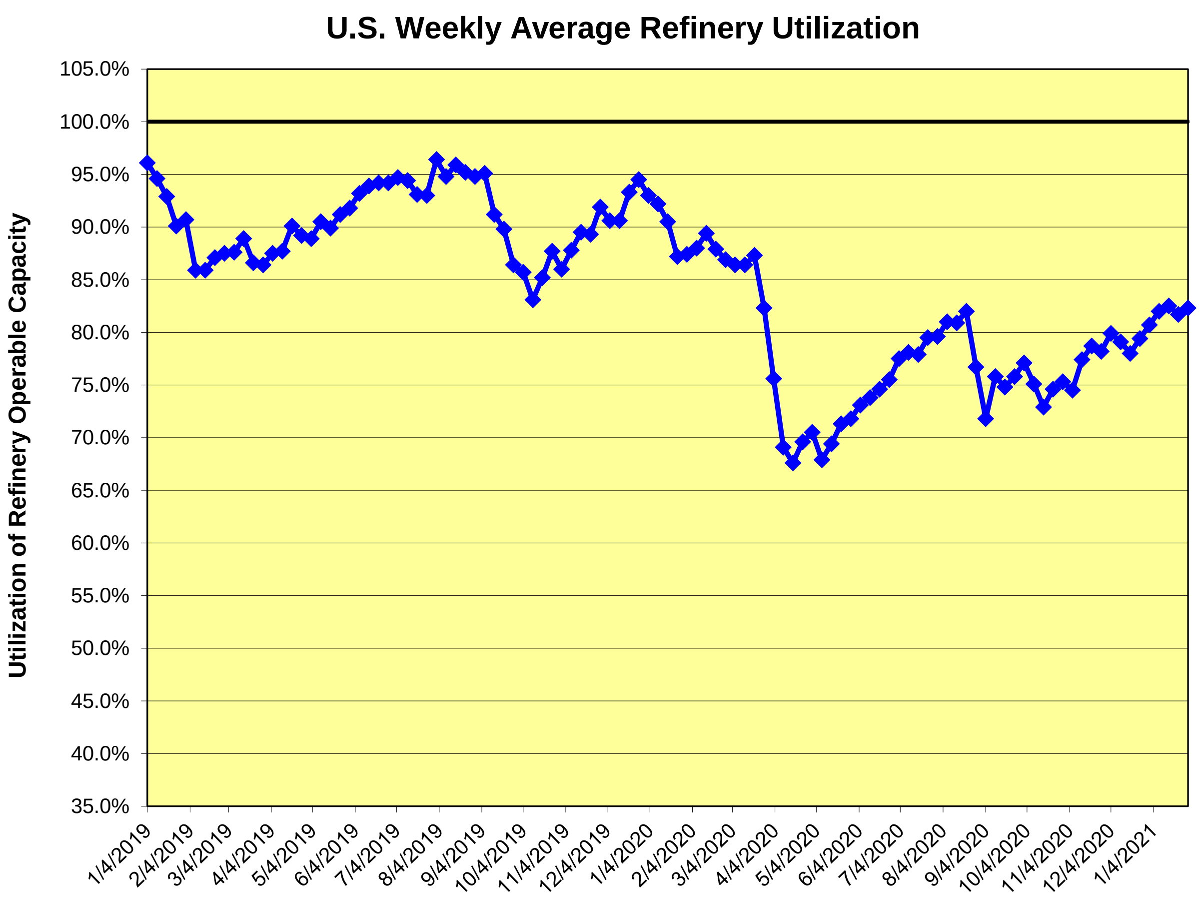
HollyFrontier is regulated as an obligated party under the RFS program. Additionally, HollyFrontier is poised to become a producer of renewable fuels this year. HollyFrontier is an independent or "merchant" petroleum refining company operating across the midcontinent and western states. Our operations 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 the RFS program and the RVOs established by EPA.

HollyFrontier routinely comments on issues regarding the RFS due to the substantial compliance costs imposed on HollyFrontier by the RFS program. In some years, RFS compliance has been one of HollyFrontier's largest operating costs—even larger than its U.S. payroll. Specifically, HollyFrontier believes that the ethanol mandates in the program, which exceed the current blend-wall, are creating an unstable Renewable Identification Number ("RIN") market which is leading to speculation and market manipulation. These annual compliance costs caused by the ethanol mandate are unreasonable under any regulatory program, and cause severe economic harm to HollyFrontier and similarly-situated merchant refiners. The costs of the ethanol mandate impede HollyFrontier's ability to invest in creating jobs, to undertake capital improvement projects, and to improve the company's operations.

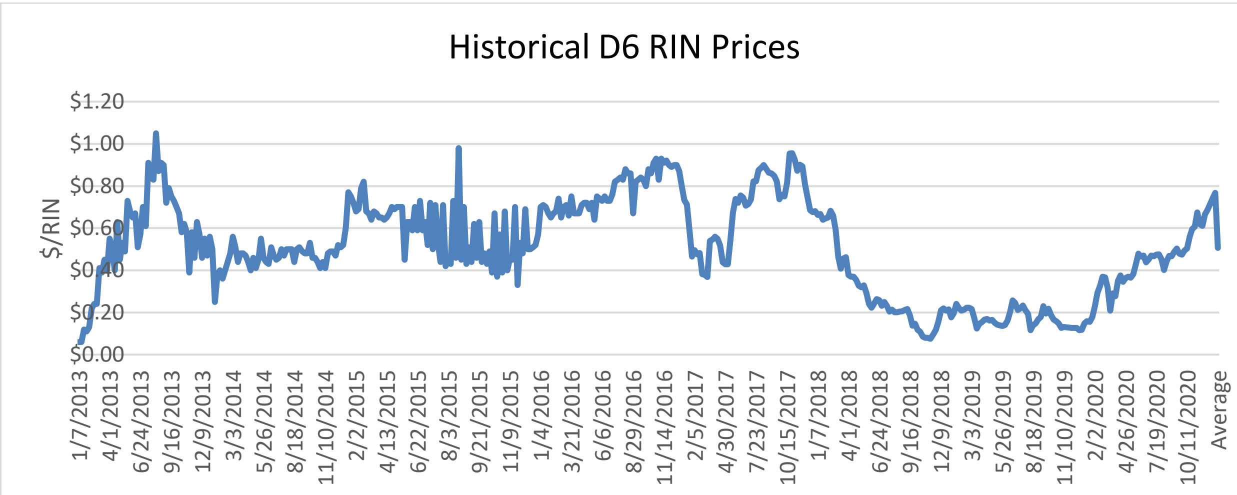
RFS compliance costs for 2020 imposed a substantial burden on the Company. These compliance costs imposed severe economic harm in light of the demand destruction associated with COVID-19. We detail this issue below.

II. Unique Economic Conditions Caused by COVID-19 and Significant RFS Compliance Costs Have Created Severe Economic Harm and Justify a Waiver of the RVOs for 2019 and 2020

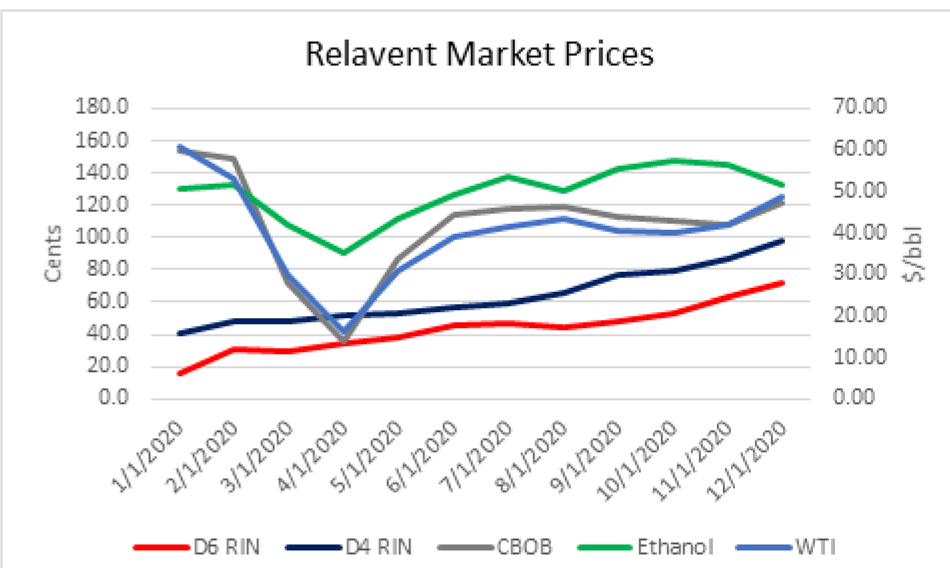
On May 13, 2020, former President Trump declared a national emergency related to control of the novel coronavirus known as COVID-19. As part of COVID-19 mitigation efforts, Governors around the United States began issuing "Stay At Home" orders, which included areas where HollyFrontier either operates or markets fuels. The macroeconomic impacts of COVID created unprecedented demand destruction for fuels and refined products such as jet fuel, gasoline and diesel. For example, in the month of April 2020, in PADD 2 and PADD 4, the areas where HollyFrontier primarily markets fuels, demand for refined products dropped by approximately 50% and overall refinery utilization dropped below 70%.



Furthermore, due to uncertainty related to fuel markets as a result of COVID-19 and EPA's policy directed to the RFS program, RIN prices rose to historically high levels. According to the Oil Price Information Service, at the beginning of 2020, D6 RIN prices averaged just under 15 cents. By the end of the year, however, D6 RIN prices rose over 400% to approximately 79 cents. This sudden and substantial increase in RIN prices is beyond normal levels of volatility and makes accounting for such compliance costs increasingly difficult. Because EPA has no process in place to appropriately regulate these markets and impose price controls, this causes merchant refiners such as HollyFrontier to suffer substantial economic harm, which in turn severely harms the economies of states and regions where our operations are located.



CBOB or conventional gasoline blendstock for oxygenate blending, which is a common grade of gasoline, ethanol, and WTI crude prices all sharply dropped in early March and April during the height of pandemic. Remarkably, the D6 RIN price increased in value during the same time period and continued to rise throughout 2020. The disconnect between ethanol-blended gasoline and D6 RIN prices proves that the price of D6 RIN is not driven by fundamental economics, making it impossible to pass the cost through to consumers. Simply put, prior to the COVID-19 pandemic, RINs were approximately 20% of the cost of a gallon gasoline. According to Oil Price Information Service data, RINs are now more than 60% the cost of a gallon of gasoline impacting both obligated parties and consumers.



As a result of unprecedented demand destruction in 2020-2021, coupled with the increase in RFS compliance costs, HollyFrontier was forced to run refineries at reduced rates, defer maintenance, and reduce headcount at the refinery and corporate levels.

HollyFrontier believes that the unique circumstances outlined above satisfy the "severe economic" hardship threshold of CAA section 211(o)(7)(A), and necessitate waiver of 2019 and 2020 RFS obligations to prevent severe harm to state, regional and national economies. HollyFrontier notes that RFS costs were a major contributing factor to these harms, notwithstanding the fact that its operations were also impacted by COVID-19. However, the CAA does not preclude waiving all or a portion of the RVO if the imposition of the RFS mandates is a contributing cause to severe economic harm. Additionally, a waiver of the RVOs for 2019 and 2020 would alleviate the harm suffered by HollyFrontier and other similarly situated refiners, and in turn alleviate the severe economic harm to states and regions in which these refineries operate.

III. The RFS Coupled With COVID-19 is Creating Severe Economic Harm in Specific Regions

As previously mentioned, demand for refined products was suppressed significantly during the COVID-19 pandemic. As a result of demand destruction, economic conditions, and RVO compliance, eight U.S. refineries have been idled since 2019.[1] HollyFrontier estimates that 1.23 million BPD (barrels per day) of refining capacity has been idled resulting in a job loss of approximately 3,500 employees.

We believe PADD 2 and PADD 4 have been harmed more than other regions due to negative ethanol blending economics for most of 2020, and low market acceptance of biodiesel blending. Ultimately, the region saw three refineries cease crude operations causing severe economic harm to not only the local communities in which they operated but more broadly the states in which they reside.

Specific to HollyFrontier, on August 3, 2020, the Cheyenne Refinery ceased operations as a crude refinery due in part to uncertainty related to the RFS program, the Tenth Circuit Court of Appeals' January 2020 decision directed to small refinery exemptions, and poor economics associated with the COVID-19 pandemic. As a result of this operational change, the refinery experienced a headcount reduction of approximately 200 employees as well as contractors. Along with job losses, the economic impact of the Cheyenne refinery closure represents a significant loss to local and state tax revenues and an overall harm to the regional economy, especially that of State of Wyoming.

IV. The CAA General Waiver Authority is Directed At Obligated Parties and Not Those Directly/Indirectly Impacted

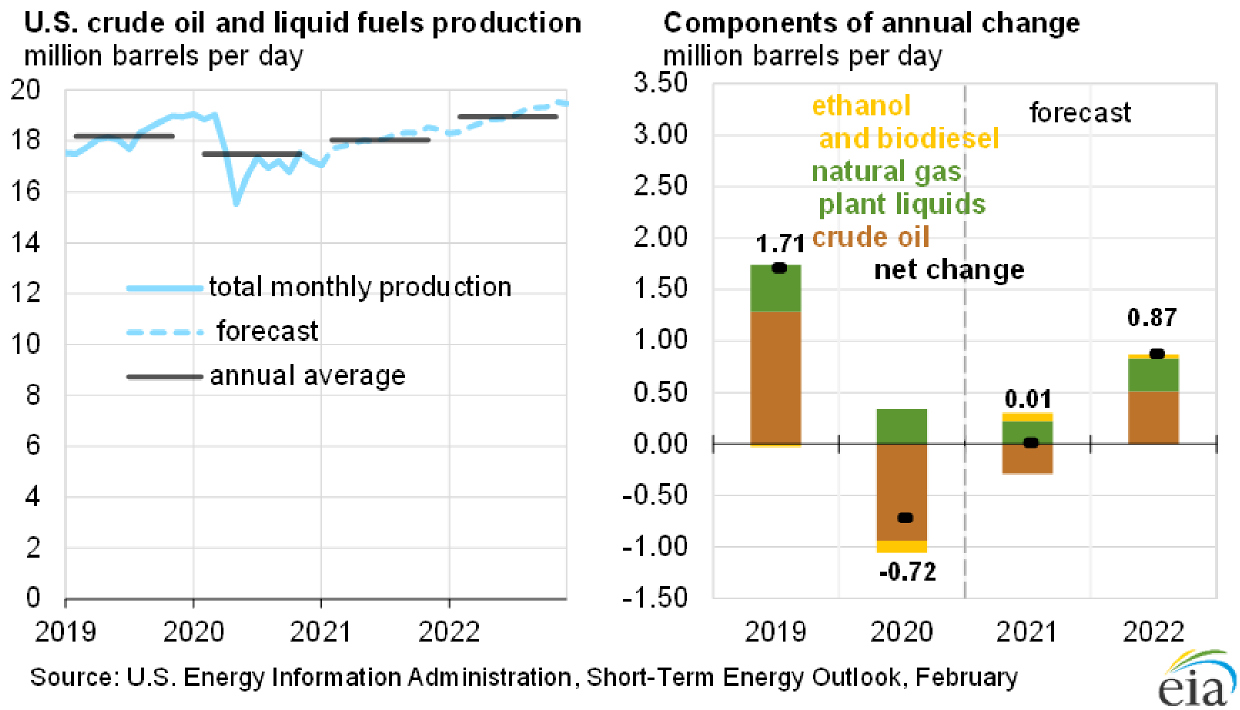
[1] PBF Paulsboro, Marathon Gallup and Martinez, Shell Convent, Philadelphia Energy Solutions, Phillips 66 Rodeo and Santa Maria, and HollyFrontier Cheyenne facilities. https://www.spglobal.com/platts/en/market-insights/latest-news/oil/111220-refinery-news-roundup-refinery-closures-loom-across-the-globe.

In considering whether to use its general waiver authority under CAA section 211(o)(7)(A), EPA should focus on the severe economic harm from implementation of the RFS program, not purported harm from those who would benefit from the biofuel mandates. The plain language of the statute limits the Agency's focus to whether "implementation of the [annual volume] requirement would severely harm the economy or environment of a State, a region, or the United States." If EPA intends to consider harm to renewable fuel producers, then it should acknowledge the following data from EIA Short-Term Energy Outlook (STEO):

1. Ethanol Blending Remains High: In June 2019, ethanol blending sat at 10.22% and in June 2020, even despite COVID-19 and various government mandated mitigation efforts, ethanol blending accounted for 10.66% of the gasoline pool.
2. Biodiesel Production Was Stable Compared to Distillate Demand: In 2020, U.S. biodiesel production only slightly decreased by 2% while distillate demand was off approximately 8%.

V. EPA Should Use The General Waiver Provision to Reduce the RVO and Adjust Future Volumes

HollyFrontier believes that EPA should reduce the 2019 and 2020 RVOs by 10.5% or approximately 1.92 billion gallons and continue to exercise its authority under the general waiver provision of the CAA. In addition to waiving 2019 and 2020 RVOs, EPA should reduce future RVOs by 770 million gallons due to the uncertainty created by the small refinery exemption ("SRE") program. In the 2020 RFS Rulemaking, EPA allocated volumes of "prospective" SRE waivers. To date, EPA has granted only 2 waivers for the 2020 compliance year which equates to approximately 150 million gallons. Currently, there is an ongoing litigation related to the 2019 SREs and until a final legal decision is reached we ask that you waive those "prospective" volumes. Furthermore, we ask that EPA use its general waiver authority for the 2021 compliance year given continued economic headwinds, as noted by EIA STEO forecasts, facing the refining industry.



VI. Conclusion

HollyFrontier maintains that several of the RFS mandates present significant challenge to the refining industry and require substantive reforms. HollyFrontier appreciates the opportunity to provide comments on the governors' petitions for a waiver of 2019 and 2020 RFS obligations. The RFS program presents a significant challenge for HollyFrontier and other refiners across the U.S. For the reasons stated above, EPA must use its general waiver authority to grant the governors' petitions.