Comments of HollyFrontier Corporation on Environmental Protection Agency's Supplemental Notice of Proposed Rulemaking, "Renewable Fuel Standard Program: Standards for 2020, 2021, and 2022"
Docket No. EPA-HQ-OAR-2021-0324
[84 Fed. Reg. 57,677]

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, 2021, and 2022" 86 Fed. Reg. 72,436 (Dec. 21, 2021) ("RVO") Docket No. Docket No. EPA-HQ-OAR-2021-0324. As detailed below, HollyFrontier opposes unrealistic ethanol blending obligations under the RFS program and believes EPA should lower the 2022 conventional obligation to align more closely with actual gasoline consumption.

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. HollyFrontier rarely has the opportunity to export fuels into foreign markets which would result in a smaller overall obligation. 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. Specifically, HollyFrontier believes that the ethanol mandates in the program, which exceed the current blendwall, are creating an unstable Renewable Identification Number ("RIN") market which is leading to speculation and market manipulation. This unnecessarily drives up the costs of RINs and imposes costs which cannot be completely passed through to the consumer. These annual compliance costs caused by the ethanol mandate are unreasonable under any regulatory program, and cause severe economic harm to HollyFrontier, particularly its small refinery. 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 which may include renewable projects. HollyFrontier fully understands that the United States is in the midst of an energy transition. To that end, HollyFrontier has made investments in lower carbon fuels through its two renewable diesel units and one pretreatment unit. HollyFrontier does not oppose the RFS but rather urges EPA to make the program workable for both consumers and obligated parties. 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.

EPA Should Lower the Conventional Volumes of the 2022 RVO

EPA's proposed volumes for 2022 continue to require renewable fuel blending that is not feasible. The volumes far exceed the E10 blend-wall and assume that renewable diesel will be able to bridge that gap. EPA acknowledged as much in the proposed rulemaking and stated "the use of E10 alone has not been sufficient to achieve the 15 billion gallons of ethanol use due to declining gasoline demand."

Additionally, EPA is issuing this proposal late into the 2022 compliance year which does not allow obligated parties sufficient time to make business decisions based on this unreasonably burdensome mandate. The agency's proposal to stagger four compliance deadlines over the course of a single year is particularly challenging. Given today's RIN prices, it requires a refiner like HollyFrontier to retire over $1 billion in RINs in a single year rather than spaced out over 4 years.

The EPA proposed volumes for 2022 compliance year continue to lower the liquidity in the RIN Bank. The RIN Bank is a vital compliance mechanism that ensure an adequate number of RINs are available for obligated parties to purchase to achieve compliance with the RFS obligations. An insufficient RIN bank causes arbitrarily inflated RIN prices. Though EPA is projecting a constant RIN bank of 1.85 billion RINs for 2020 through 2022, this amount becomes insufficient as annual obligations rise. Over time this RIN bank volume represents ever decreasing liquidity, from 10.8 percent of obligation in 2020, to 10 percent in 2021 and, alarmingly, 8.9 percent in 2022. If EPA adds half of the remand volume to 2022, the RIN bank volume drops further to 7.9 percent of obligation. EPA's own analysis for 2019 shows that the RIN market used 17.4 percent of previous-year RINs in reaching compliance. The market has historically had a RIN Bank representing 12 to 18 percent of obligation in the 2016 through 2019 compliance years. EPA's proposed volumes would cut the historic RIN bank volume in half. Consequently, the conventional 2022 RVO should be adjusted lower to allow the RIN Bank to return to the historical norm, including any remand volumes.

SREs Should, and Must, Be Granted by EPA

As discussed in HollyFrontier's comment on EPA's Notice of Opportunity To Comment on Proposed Denial of Petitions for Small Refinery Exemptions, 86 Fed. Reg. 70,999 (Dec. 14, 2021), which is incorporated by reference, EPA should continue to grant small refinery exemption petitions. Since HollyFrontier commented extensively on EPA's proposed denial, it will reiterate its concerns summarily here.

First, EPA's proposed denial of pending petitions and reversal of the exemption petitions it granted based on the promulgation of a new statutory interpretation constitutes an impermissible retroactive application of a new rule or an adjudication. EPA owed small refineries a decision on the pending petitions within 90 days of submittal under the statute. 42 U.S.C. § 7545(0)(9)(B). Instead of adhering to its statutory obligation, EPA proposed the equivalent of a rulemaking effort that will impose new qualification criteria retroactively. This approach is unlawful and unduly prejudicial to small refineries.

Second, EPA's proposal runs contrary to the plain language of the Clean Air Act that is the basis for the RFS. The provision at issue, 42 U.S.C. § 7545(o)(9)(B), authorizes EPA to grant exemptions "for the reason of disproportionate economic hardship" which is based on a determination by the agency in "consultation with the Secretary of Energy," and consideration of "other economic factors." There is no statement in the statutory text indicating that EPA should consider only a single factor in making this determination, and that the only factor in the analysis is whether the cost of RINs is captured in fuel prices. To the contrary, Congress rebuked the Department of Energy's initial finding that small refineries were not likely to suffer hardship under this program because it superficially studied the issue. Upon taking a deeper dive, the Department changed its view and extended the exemption for a number of small refineries for an additional two years. EPA's proposal is quite like the earlier Department of Energy study that Congress criticized and asked to be redone.

Finally, the underlying premise behind EPA's passthrough theory and the claim that RFS program places a proportional burden on all obligated parties is flawed. EPA improperly conflates average economic factors for the overall industry as applicable to small refineries. In doing so, EPA has shirked its responsibility under the RFS to do a refinery-specific analysis to determine disproportionate economic hardship. Small refineries face geographic and structural limitations that exacerbate the impact of RFS compliance: (i) located in areas without access to export markets; (ii) smaller regional markets with fewer options for blending renewable fuel; (iii) constraints with capital investments in renewable fuel production facilities; and (iv) constraints to produce and sell sufficient volumes of jet fuel to mitigate the burdens of RFS compliance during periods of volatility and increasing RIN prices. EPA's proposal glosses over these factors and ignores the obvious – small refineries are closing their doors in the face of rising RFS compliance costs.

In sum, EPA should continue to grant SREs in accordance with its past practice.

HollyFrontier Supports EPA's Proposed Decision to Lower the 2020 and 2021 Volumes

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 percent and overall refinery utilization fell below 70 percent. EPA is justified in lowering these volumes.

EPA Should Find an Alternative Method to Address the 2016 Remand

HollyFrontier believes the additional burden imposed upon obligated parties by retroactively reinstating the 2016 volumes would not result in additional biofuel blending, in light of falling fuel demand, and would only serve to significantly drawdown the carryover RIN bank.

EPA estimates the total volume of carryover RINs is approximately 10.8 percent of the proposed total renewable fuel volume requirement for 2020. EPA is projecting the carryover RIN amount to be constant through 2020 and 2021 as the blending requirements are set to match actual production. While this 1.85 billion RIN Bank is projected to hold constant, the increased 2022 standard results in far less liquidity as this RIN Bank represents only 8.9 percent of the total 2022 requirement. Adding one half of the 2016 remanded volume to the 2022 requirement as proposed would cause a corresponding RIN bank drawdown to a level of 7.7 percent of the proposed 2022 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. HollyFrontier suggests EPA maintain the RIN Bank above 12 percent of a future year's blending requirement when proposing future volumes of blending to preserve a well-functioning RIN market. Such an analysis should include special known situations such as the remand volumes.

RIN Costs are not Fully Passed Through to the Consumer

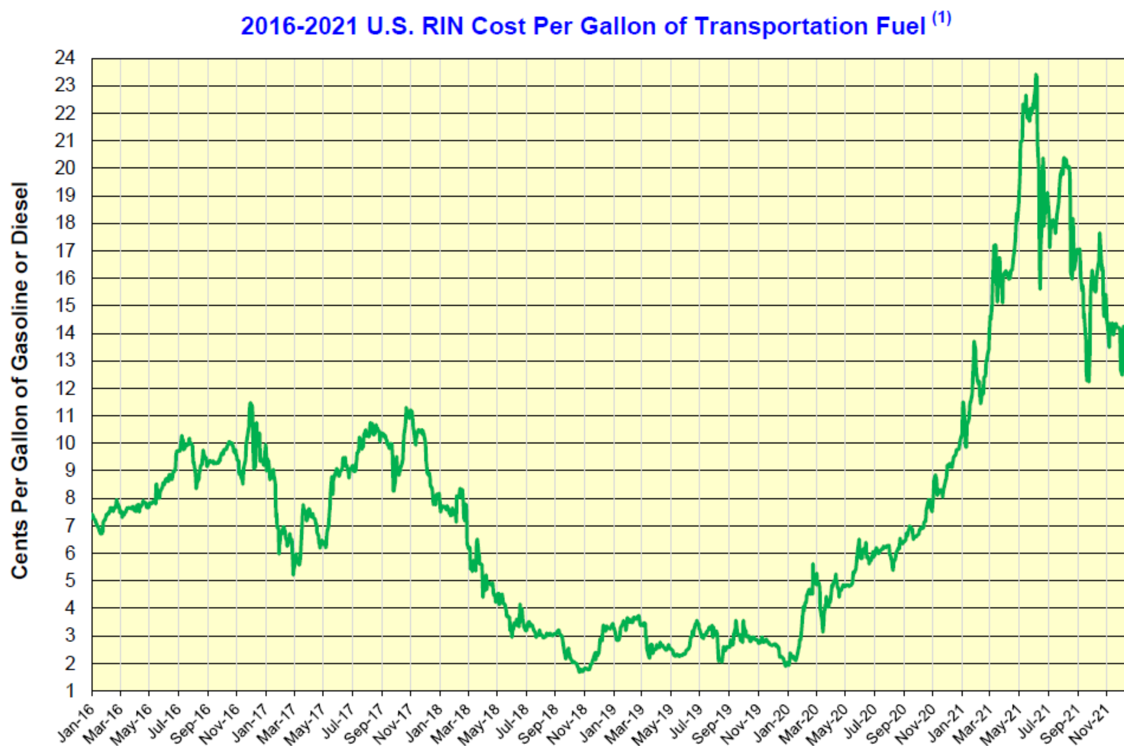
While HollyFrontier acknowledges that in some markets "RIN pass-through" cost may be applicable to fully integrated refining companies, smaller merchant refineries in certain geographic areas cannot pass on that cost. HollyFrontier's Woods Cross refinery and, prior to its conversion to renewable diesel, HollyFrontier's Cheyenne refinery are examples. These refineries lack pricing power due to their small size and the fact they are obligated parties under the RFS while many of their customers are not. Consequently, these refineries have to make concessions to their customers, including giving up some of the RIN value, in order to sell blended gasoline. Additionally, when facing rising RIN costs, these refineries are not able to increase the price of clear gasoline to account for higher RFS compliance costs. This limitation is widely accepted in the industry and even the Renewable Fuels Association admitted during testimony in the House Energy and Commerce Committee that "the gasoline market is highly competitive and market actors are compelled to match, or undercut, the wholesale selling prices of their competitors. Thus, a refiner who has purchased RINs on the open market cannot markup the selling price of its gasoline to recoup RIN expenses if it wishes to remain competitive with other refiners who profited from the sale of detached RINs".

The disparity in market power between small obligated refineries and non-obligated fuel distributors and retailers is also evident from RIN market dynamics. A number of the Cheyenne refinery's customers demanded clear gasoline so that they can blend the product with ethanol and obtain RINs. Rather than sell those RINs in the market to obligated parties, these companies engage in speculation and can hold RINs to create shortages and drive up the price. Certain companies have admitted to this practice recently. During Casey's General Stores Q4 2021 earnings call, for example, the company stated, "[w]ith respect to selling the RINs, our team monitors the RIN market closely every day and the fact of the matter was RIN prices were going up pretty ratably throughout the entire quarter, so we did not see a need to sell into a rising market. So, we held on to them. We're waiting to opportunistically assess when those RIN values were kind of leveling out, and then we do protect ourselves on the downside as they start to slide back, we can sell them at a certain price. So that's kind of how we've approached it. We'll continue to do that opportunistically". During Casey's Q1 2022 earnings call, the company

announced it had benefited nearly $19 million from the sale of RINs, specifically noting that they were taking advantage of high RIN market prices.

This practice by non-obligated parties to use RINs as a profit center at the expense of small refineries continues to exacerbate the economic hardship caused by the RFS. Wall Street Analysts have noted that HollyFrontier specifically is a disadvantaged party under EPA's proposal. Read, Roger *Independent Refiners: Eliminate Ethanol RINs, an Idea Whose Time Has Come* (June 13, 2021).

As a result of industry drawing down from the RIN bank, and a widening of the spread between biodiesel and petroleum diesel, RIN prices climbed to all-time high values in 2021. The chart below demonstrates the significant run-up in prices through the middle part of last year. While values have abated from their mid-2021 highs, prices remain elevated when compared against historical averages.



NOTE: (1) EPA has not finalized the 2021 standard; currently calculating 2021 RIN costs using 2020 RVO percentages.

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

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.

HollyFrontier Supports EPA's Modifications to the Biointermediates Provision

As the market for the renewable fuels continues to grow, feedstock availability will be a primary hurdle for continued expansion. The enhanced flexibility proposed by the EPA to the biointermediates provision facilitates a market that can optimize feedstocks amongst renewable fuels producers as production capacity increases. In addition, it supports the development of new technologies by supporting cost-effective infrastructure for creating usable finished feedstocks. Additionally, this supports the Administration's goals to expand lower carbon fuels.

HollyFrontier Agrees With EPA Studying E-RINs in More Detail

HollyFrontier believes the RFS should be a program for liquid fuels producers. As we have previously mentioned, the RFS and RIN trading is ripe for fraud and market manipulation. As such, adding additional parties into the program can further complicate compliance, trading, and RIN generation adding an additional burden on EPA staff and resources.