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August 30, 2019 Your Comment Tracking Number: **1k3-9bwq-1xxl**

U.S. Environmental
Protection Agency, EPA Docket Center,
Office of Air and Radiation Docket,
Mail Code 28221T,
1200 Pennsylvania Avenue NW,
Washington, DC 20460.

RE: Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes

Docket: [EPA–HQ–OAR–2019–0136; FRL–9996–53– OAR]

INTRODUCTION:
The New England Fuel Institute (NEFI) is the nation's largest heating oil trade association. Nationwide, our industry delivers a safe and reliable fuel that provides warmth and comfort to more than 6.5 million homes. 80 percent of these homes are in in the Northeast and Mid-Atlantic region. Our small Main Street businesses also install, maintain and repair both residential and commercial heating and cooling systems. The proposed RFS rulemaking impacts NEFI members who blend biodiesel with heating oil and those who participate in the RINs market. Moreover, NEFI members support stable and strong RIN values as a key incentive for blending biodiesel into heating oil.

COMMENTS:
The Impact of Small-Refinery Waivers on Rin Values, Blending Incentives and the Heating Fuel Industry
Over the past three years, the EPA has increasingly used its authority under the RFS to issue volumetric blending waivers to small-refineries that demonstrate an economic hardship resulting from compliance with annual blending mandates. The EPA issued 35 small-refinery waivers from compliance with renewable fuel volumetric obligations in 2017 and 31 waivers for 2018. Thus far, the waivers have displaced 4.2 billion gallons of renewable fuel since 2016. It is estimated that 2.54 billion of those lost gallons can be attributed to bio-mass based diesel costing the industry $7.7 billion in gross revenue since 2016.[1] The sheer volume of waivers issued by the Agency have caused RIN values to fall precipitously as demand for renewable fuel, and BBD in particular, plummeted. As recent as the first week of August 2019, Renewable fuel (D6) credits dropped from an already low 20 cents value to just 12 cents in one day, as traders learned of the impending 31 small refinery waivers the EPA planned to issue for 2018 volumetric obligations[2]. Renewable fuel credits for 2019 traded at 15.75 cents apiece on August 26, 2019, far below 88.75 cents each in 2017[3]. Moreover, RIN holders can carry over a percentage of unsold

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[1] Irwin, S., *Small Refinery Exemptions and Biomass-Based Diesel Demand Destruction. Farmdoc daily* (9):45, Department of Agriculture and Consumer Economics, University of Illinois at Urbana-Champagne, March 14, 2019.

[2] Kelly, S., *U.S. Renewable Fuel Credits Fall Ahead of EPA's Small Refinery Waiver Decisions,* Reuters Business Blog (August 9, 2019) https://www.reuters.com/article/us-usa-ethanol-epa-rins/u-s-renewable-fuel-credits-fall-ahead-of-epas-small-refinery-waiver-decisions-idUSKCN1UZ2AZ?il=0

RINs from previous years, which has led an overabundance of RIN credits depressing the market even further. According to EPA estimates, there were 2.19 billion carryover RINS from 2018 for use for compliance in 2019, compared to 2.59 billion for 2018, 2.22 billion for 2017 and 1.54 billion for 2016[4]. While the carryover RINs bank is vital to preventing price spikes, the current surplus also artificially suppresses RIN values. NEFI believes the current surplus of carry over RINS from 2018 is due largely to the overall drop in demand for renewable fuel resulting from the increasing use of small-refinery waivers.

Falling RIN values create a significant disincentive for blending renewable fuel, particularly bio-mass based diesel/heating oil blends. In the heating fuel industry, the value received from separating and trading RINS is vital in order to offset the cost of blending and to keep prices for bio-mass based diesel/heating oil blends on par with non-blended heating oil. Moreover, the importance of maintaining strong RIN values has grown more important for the heating fuel industry since the $1.00 per gallon biodiesel blender credit expired on December 31, 2017. Not only are falling RIN prices a disincentive for continued bio-mass based diesel/heating oil blenders, they also defeat the overall goal of the RFS to increase renewable fuel blending in order top reduce the carbon footprint of burning fossil fuels.

Carrying Forward Renewable Fuel Volumes Displaced by Small-Refinery Waivers.

The small-refinery waivers create a significant shortfall in achieving annual mandatory volumetric blending obligations. It is essential for the health of the biofuels/heating oil industry and RINS market, and for attainment with volumetric blending obligations set forth by Congress, that displaced blending volumes are not permanently lost to small-refinery waivers. There is nothing in the RFS enabling statute, EPA regulations or controlling legal precedent preventing the Agency from accounting for blending volumes lost to the small-refinery waivers. In fact, failure to account for these gallons not only undermines the goal of the RFS itself, but also is an abrogation of the Agency's duty to carry out the blending directives established by Congress pursuant to the Clean Air act.

Instead, the Agency can replace blending volumes lost to the small-refiner waiver in a number of ways. First, the EPA must issue fewer small-refinery waivers by tightening up the waiver process to ensure that a disproportionate economic hardship from annual volumetric blending mandates exists as claimed by small refiners in the waiver application. In recent years, the agency broadened the availability of the waiver largely as a tool to avoid imposing statutory volumetric blending obligations rather than for genuine economic hardship on the part of small-refineries. Second, the agency can proactively account for waived blending volume in the same year that the small-refinery waivers are granted. This can be easily accomplished by issuing small-refinery waivers *before* annual RVOs are calculated. In this way, the volume lost to the waivers can be recouped by adding them to the annual RVOs in the same year the waivers are granted. In other words, large refiners would be required to make up for blending volume lost to the small-refinery waivers. Finally, if the EPA cannot account for blending volumes lost to waivers proactively, it must do so retroactively by adding the lost volume to the following year's RVO. In fact, NEFI urges the agency to retroactively recoup the 4.2 billion gallons already lost to small-refinery since

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[3] Kelly, S., *Biofuel Credit Surplus Could Blunt RIN Price from Trump Moves,* Reuters Business News Blog (August 26, 2019) https://www.reuters.com/article/us-usa-biofuels-rins/biofuel-credit-surplus-could-blunt-rin-price-impact-from-trump-moves-sources-idUSKCN1VG21F.

[4] Ibid.

2016. The agency should accomplish this by spreading out the 4.2 billion gallons over *multiple years* to reduce any impact on the RINs trading market.

However, NEFI believes the best course of action to recover lost blending volume is not to create them in the first place. The Agency must reform the waiver process by clarifying and tightening the criteria used to demonstrate economic hardship and create mechanisms to more readily confirm that such hardship exists.

Change to Definition of Heating Oil

The EPA is proposing to change the definition of "heating oil" under the RFS regulations in 40 CFR 80.1401. Specifically, the agency is seeking to expand the definition to include heating oil used to cool interior spaces of homes and buildings. NEFI supports amending the definition of heating oil in this way. The current definition is limited to heating applications. Including cooling applications in the definition of heating oil raises no issues for NEFI. Moreover, NEFI does not object to the related modifications the agency proposes to the registration, reporting, product transfer documents and recordkeeping requirements for heating oil used for cooling purposes. Finally, NEFI does not object to the Agency's proposal to make these changes within the current rulemaking rather than under the *Renewables Enhancement and Growth Support Rule*[5] as originally proposed in 2016.

Proposed 2020 and 2021 Renewable Volume Obligations

In this rulemaking the EPA is proposing the applicable volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2020, and biomass-based diesel for 2021. The Agency is also proposing the annual percentage standards for cellulosic biofuel, bio-mass based diesel, advanced biofuel, and total renewable fuel that would apply to all gasoline and diesel produced or imported in 2020. For the reasons stated above, NEFI believes these RVOs should be increased by retroactively recapturing the blending volumes lost to the refinery waivers issued by the agency since 2016.

CONCLUSION:

NEFI supports the general goals of the Renewable Fuels Standard. The RFS is important to the industry because it incentivizes the blending and use of a greener, more renewable heating oil than natural gas. Heating oil, with modest levels of soybean-based biofuel blending (20 to 25 percent), remains a competitive alternative to natural gas for residential heating in terms of overall energy use and greenhouse gas emissions based on conventional 100-year atmospheric lifetime calculations . Moreover, heating oil with even lower levels of biofuel blending (7 percent) remains a competitive alternative to natural gas for residential heating in terms of overall energy use and GHG emissions based on carbon forcing 20-year atmospheric lifetime calculations. This is why it is essential for the sustainability and growth of the heating fuel industry into the 21st century that the statutory renewable fuel volumetric blending obligations are not only met, but surpassed. This goal cannot be met within a regulatory framework that allows refiners to get around their blending obligations by manipulating hardship waivers to their advantage.

[5] *Renewables Enhancement and Growth Support Rule*, 81 Fed. Reg. 80,828 (November 16, 2016).

We support the Agency's actions to the extent these goals are furthered by the proposed rulemaking. However, NEFI urges the Agency to reform the small-refinery waiver process but tightening the criteria required to obtain a waiver, creating a mechanism where economic hardship can be more easily verified by the agency and adopting regulations to recapture renewable fuel blending volumes within either a proactive or retroactive framework. NEFI also supports the proposed amendments to the definition section under 40 CFR 80.1401 to allow heating oil used for cooling purposes to qualify as a renewable fuel blend stock under the RFS.

NEFI appreciates the opportunity to comment on the RFS proposed rule. Should you have any questions or require further information please contact me. Thank you.

Sincerely,

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