

Testimony, Michael McAdams
President, Advanced Biofuels Association
House Energy & Commerce Committee, Environment Subcommittee
“Hearing on Discussion Draft: the 21st Century Transportation Fuels Act”

Tuesday, December 11, 2018

Executive Summary

The members of the Advanced Biofuels Association strongly support efforts by the House Energy and Commerce Committee to update and reform the RFS program. Specifically, we appreciate Chairman Shimkus and Representative Flores leadership in providing a draft package to accomplish RFS reform.

Ten years have passed since this program was originally designed and a great deal has been learned about the strengths and weaknesses of the RFS. Since 2007, EPA has been forced to grapple with challenges applying the statute to a wide range of circumstances that could not be considered when the law was first passed. Today, there are far broader technology options than the first-generation ethanol or biodiesel processes available at the program’s inception. This must be kept in mind in order to produce the advanced and cellulosic fuels of the future. On the success front, biodiesel production is three times what was originally anticipated. If a rules-based system is used as the basis for the annual RVO and the small refinery exemptions are used appropriately, biodiesel will continue to be the largest source of high GHG-reduction fuels in the short and medium term. Not to mention that these fuels have created good competition in the marketplace and reduced fuel costs for millions of truck drivers across the country.

ABFA believes that comprehensive reform will actualize the vision for advanced renewable fuels that this Committee and Congress as a whole overwhelmingly supported when it passed the RFS2 in 2007.

ABFA members support top-line provisions including:

1. **A rules-based process for setting the annual RVO mandates** that bases the RVO on actual gallons produced in the previous compliance year. Mid-year and end-of-year adjustments would account for increases or decreases in production.
2. **Expanding the definition of renewable biomass**, replicating the approach allowed for first generation biofuels by allowing feedstocks to comply on a mass balance basis rather than imposing burdensome mapping restrictions on those feedstocks. Naturally re-regenerated trees, as long as they are under sustainable forest management practices, should be available for use under the program. We support the discussion draft’s effort to pivot and focus on the development of the fuels of the future by providing some regulatory certainty for advanced and cellulosic biofuels and biodiesel through 2032.
3. **Encourage EPA to address the bio-intermediate issue** in the upcoming reset rules being proposed this year. Currently, three of ABFA’s members are building plants and would not qualify for a RIN under the program unless the bio-intermediate issue is resolved. These steps at a minimum will send a strong signal to the financial institutions that the federal government supports the development of these fuels of the future by guaranteeing the RIN over a longer time frame.

WRITTEN TESTIMONY OF MICHAEL MCADAMS
PRESIDENT, ADVANCED BIOFUELS ASSOCIATION

HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT

**HEARING ON “DISCUSSION DRAFT: THE 21ST CENTURY TRANSPORTATION
FUELS ACT.”**

TUESDAY, DECEMBER 11, 2018

Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee:

My name is Michael McAdams and I am the President of the Advanced Biofuels Association. I appreciate the opportunity to be with you this morning to testify on the importance of federal policy in furthering the development of the next-generation, renewable fuels that can provide a more sustainable path for our future.

ABFA represents over 35 companies across the entire biofuels supply chain who produce, distribute, and market advanced biofuels under the RFS program. Our member companies currently produce over 4 billion gallons a year of advanced and cellulosic fuels that achieve a minimum of a 50% greenhouse gas reductions. While the RFS has fostered the development of alternatives to petroleum-based fuels, we acknowledge it has not always worked as Congress originally intended, and we support your comprehensive reform efforts to maximize future volumes of advanced and cellulosic fuels.

To that end, on behalf of our membership, we want to personally thank you, Chairman Shimkus and Congressman Flores, for your courage and leadership in providing an RFS draft reform package. The countless hours that all of the members on both sides of the aisle have spent attempting to craft a middle ground to update and revise the focus of delivery in the future of this program is long overdue. The focus on advanced and cellulosic fuels is well founded, given the volume of gallons currently available under the program. This conversation on the future of advanced and cellulosic fuels is particularly timely, less than two weeks after the Trump administration published a grave warning on the impacts of climate change, and the containment

of the most destructive wildfire in California's history. With the transportation sector now the greatest contributor to U.S. greenhouse gas emissions, and with the volume of air traffic doubling every 15 years, we need to ensure that we have a sufficient supply of alternative, low-carbon fuels.

Unfortunately, there are still numerous barriers to entry under the current RFS program that specifically disadvantage these innovative fuels of the future. My written testimony goes into more detail, but I would like to highlight a few potential reforms, as well as offer some comments on the recent draft bill introduced by Congressmen Shimkus and Flores.

First and foremost, as you consider making changes to the RFS, we would urge Congress to take politics out of the equation as much as possible, by making the RFS a rules-based system. For example, we support legislative provisions that would base the annual RVO on the previous year's actual production, queuing up mid-year and end-of-year adjustments to account for increases or decreases in production. This would reduce volatility in the RIN market, and diminish the need for waivers for fuels which do not exist. We should be encouraging the obligated parties to buy available gallons and produced RIN's on a quarterly basis, instead of requesting waivers and undercutting new production facilities by reducing the demand for their fuels.

Any reforms to the RFS should also expand the definition for what constitutes renewable biomass, and replicate the approach that was allowed for first generation biofuels, by allowing feedstocks to comply on a mass balance basis. Imposing unnecessary and counterproductive restrictions on qualifying feedstocks has essentially eliminated most of the biomass available in the U.S. from consideration under the RFS, and taken untold billions of gallons of renewable biofuels off the table.

The Shimkus-Flores bill takes an important step in this direction by redefining renewable biomass to include trees and tree residue, paving the way for increased research, development, and deployment of pyrolysis technologies. We support the bill's effort to pivot and focus on the development of the fuels of the future by providing some regulatory certainty for advanced and cellulosic biofuels and biodiesel through 2032. At a minimum, this would send a strong signal to financial institutions that the federal government continues to support the development of these fuels by guaranteeing the RIN over a longer time frame.

I appreciate the hard work that went into crafting this bill, and I would ask this committee to ensure that any and all RFS reform legislation you consider going forward gives advanced and cellulosic biofuels the chance to compete on a truly level playing field.

On a more general note, I have attached a list of suggestions to address issues with the existing statute that ABFA members believe need to be resolved legislatively. We believe these changes will enhance our collective opportunity to deliver the next generation of advanced biofuels. (See Appendix A.)

ABFA strongly supports this committee's efforts to reform the RFS. We believe that comprehensive reform will actualize the vision for advanced renewable fuels that this Committee and Congress as a whole overwhelmingly supported when it passed the RFS2 in 2007. These fuels will extend our hydrocarbon resources, allowing us to incorporate into our fuel supply renewable resources developed both sustainably and affordably on a standalone economic basis. Proper reform of the RFS will distribute biofuels to all regions of our great country. It will also utilize a far more diverse set of feedstocks and technologies while creating jobs across the entire U.S. It is to that end that we look forward to working with you on your efforts to strengthen the RFS and make the industry even more efficient, economically competitive, and sustainable.

Advanced Biofuels Successes Under the RFS

First, I'll turn to what is without a doubt the overwhelming success story in the advanced biofuels space under the RFS program: biodiesel and renewable diesel. The program originally called for 1 billion gallons of biomass-based diesel; in the last two years, over 2.7 billion gallons has been used annually in the U.S. This year, the market should again approach 3 billion gallons of biomass-based diesel. (See Appendix B for RINs and gallons generated in 2016 and 2017 according to EPA EMTS data.)

For those of you interested in climate change, advanced biofuels deliver the most significant GHG emissions reductions of all the fuels manufactured in the United States. By law, the environmental performance of these gallons deliver reductions of at least 50%, and many of them deliver reductions of 80%. These fuels count toward meeting the biomass-based diesel category, referred to in the program compliance world as the D4 diesel pool, though many of these processes also

produce at least 10% renewable gasoline components that qualify for the general advanced category, referred to as the D5 advanced biofuels pool.

This achievement has been accomplished since 2010 in spite of the uncertainty surrounding the biodiesel blenders tax credit. The on-again, off-again implementation of the credit limits the future investment in the market that is a key driver for growth. This year, the diesel market is unfortunately once again forced to operate without knowing whether the credit will be retroactively renewed for 2018. We strongly support a long-term extension and phase-down of the tax credit to provide the industry the certainty it needs to make investment decisions that will create jobs and increase production of the fuels of the future.

Suggestions for RFS Reform

I'll turn now to improvements that can be made to the RFS program. The biogas industry has helped deliver the majority of the existing volume in the cellulosic biofuel space, which reached over 250 million gallons last year. However, we still have a long way to go to achieve the targets originally envisioned for the cellulosic sector in the RFS2. As ABFA suggested in last year's stakeholder meetings, the changes needed to make the program function as intended for the advanced and cellulosic sectors fall into three categories. One, simple statutory adjustments to timeframes, definitions, and other items found in our attached list; two, addressing major, debilitating ambiguities in the statute; and three, adjusting EPA's regulatory framework using a common-sense approach. As much as possible, we urge Congress to take politics out of the equation by adjusting the RFS toward being a rules-based system.

A. Statutory adjustments

In this and future bills, the Committee should consider adjusting how the annual RVO is set. ABFA supports proposals that would shift the compliance period for the RFS, releasing the annual RVO on March 1 with the mandates for each pool set at previous year's levels according to data from EPA's EMTS system. Mid-year and end-of-year adjustments would then account for increases or decreases in production. This rules-based system would remove the uncertainty and speculation surrounding the RVO and therefore reduce volatility in the program and RIN market.

The second key statutory issue is the cellulosic waiver credit. EPA currently grants as many cellulosic waiver credits as gallons projected for the forthcoming year under the RVO process. This allows obligated parties to purchase waivers in lieu of purchasing cellulosic fuel actually produced. This undermines the potential of the very fuels the RFS2 sought to encourage. EPA should only grant waiver credits to cover any shortfall in actual production relative to the RVO mandates. The RVO process fix I previously outlined would eliminate this issue.

Third, to finance the production of the advanced liquid transportation fuels of the future, investors must have certainty in the value of the RIN well beyond 2022. The Committee must designate a minimum number of years for which these fuels will be able to generate a RIN under the program. While we appreciate this draft bill's attention to this issue by extending requirements for advanced and cellulosic biofuels through 2032, to best facilitate investment, we suggest a minimum 20-year timeframe for the life of the advanced biofuel program as that is the general term of debt for most capital loans.

B. Addressing statutory ambiguity

EPA's treatment of one-cell organisms is a prime example of the ambiguity in the statute and its negative impact on advanced biofuels development. Currently, we allow one-cell organism pathways for algae, but not bacteria. Another example: the statute includes "waste" as a permissible feedstock, but it is unclear what is meant by this term. Is tall oil a "waste," given that it is only 2% of the residue from a tree?

I know of a company that hoped to build a plant in Maine, but because of EPA's interpretation of the language in the law, the Agency could not definitively determine that tall oil could count under the definition for use in the capacity it was requested. Ultimately, the company sited this plant in Sweden to use tall oil and make renewable diesel. I also know of a one-cell organism technology which was forced to site its plant in China instead of the U.S. because the law specifically cites fuels produced from algae as acceptable and not fuels produced from bacteria under the definitions for RFS-compliant fuel. Again and again, because of this statutory ambiguity, EPA has been forced to make subjective judgments that have rendered the U.S. market less attractive for advanced renewable fuel producers.

C. Regulatory changes

The RFS's regulatory framework has created barriers to the advanced and cellulosic sector unintended by Congress.

A prime example of this issue is the RFS's treatment of biointermediates which are approved feedstocks that are only partially processed at one facility and then finished into a compliant renewable fuel at another. EPA has taken the stance that plants generating biointermediates and the final fuel must be co-located in order to generate a RFS-compliant fuel. Additionally, a refiner engaging in co-processing and upgrading to processing fuels from a renewable oil must currently use carbon-14 dating to prove its conversion rate for compliance with the RFS. This is unrealistic for most refineries, as carbon-14 dating is prohibitively expensive, especially when renewable oils usually comprise less than 10% of the slipstreams being co-processed at these facilities.

Such regulatory requirements have missed the forest for the trees, driving up the cost of compliance and making renewably-produced fuels uncompetitive compared to incumbent hydrocarbon fuels.

Another example of a devastating regulatory issue with the RFS program is the treatment of wood. EPA's regulations currently require producers to segregate wood so as to track whether the wood residues come from approved sources for RFS-compliant fuel. However, the wood products industry has long-established operational processes that make it nearly impossible to know where each and every stick of wood used in biofuel production comes from. This has blocked industry from moving forward with many new technologies that would transform wood into renewable fuels, including jet and diesel fuel. EPA's regulations need revision to allow for an aggregated, mass-balance approach to compliance in lieu of segregation, lowering the cost of production to competitive levels.

Furthermore, as it stands, landowners in many states may cut down a naturally regenerating tree to create pellets that are shipped to Germany, but they cannot use even the thinnings and cuttings from such wood to make an RFS-compliant fuel. This is not just a regulatory issue but a direct result of the legal interpretation of the statutory language. This is simply foolish.

Small Refinery Exemptions

In addition to these longstanding issues, the EPA under this administration has chosen to unilaterally lower the threshold that EPA utilizes to grant RFS compliance exemptions to small refineries. According to EPA's own May 14 presentation to OMB, this alteration and these exemptions will create over 1.2 billion additional carry-over RINs for use in the 2018 compliance year. EPA documentation also predicts 2.8 carry-over RINs for 2019 – which leads one to believe that the Agency may be intending to follow a similar approach next year for granting exemptions.

The significantly higher number of these small refinery exemptions stand to reduce the demand for renewable fuel by flooding the market with RINs that do not reflect current production and available physical supply of product, despite a growing annual RVO. This process must be halted, as it is undermining the very RVO process in and of itself.

EPA is misusing this provision, stretching the definition of “disproportionate economic hardship” in order to lower RIN prices for the benefit of a small number of merchant refiners that have refused to invest in RFS compliance over the last ten years. As RFS compliance costs were already passed along to consumers through the crack spread, EPA's actions allow a small number of companies to profit off of American consumers – not to mention endangering renewable fuel blending in 2018 and 2019 because of the new carry-over RINs. (See Appendices C, D, and E).

Congress must make explicit its intent to protect only those small, independent refineries experiencing verifiable, disproportionate, and significant economic hardship, and not to further augment the results of highly profitable refiners.

Conclusion

Again, thank you for the opportunity to testify today and for your work in putting together a thoughtful proposal to reform the RFS. Many of our suggestions today are obvious now as we have had an additional ten years of development in the advanced industry since the RFS2 was passed. When the program was drafted, Congress and the nation understood biodiesel and ethanol. But, newer technologies using new feedstocks have developed, and, in many instances, they utilize two-step processes. The original statute was simply not drafted to allow for this, and the oversight

that this Committee has done should point you in new directions compared to what we could understand and achieve in 2007. ABFA looks forward to working with Members of the Subcommittee to continue to build upon the successes of the RFS to further develop the advanced and cellulosic sectors.

Appendix A. RFS Reform Proposals

1. Amend cellulosic RVO fulfillment to require RINs generated in the current year to be purchased ratably, and allow Obligated Parties to purchase waiver credits *only in the event of RVO shortfall* after the close of the compliance year.

The current manner in which EPA issues cellulosic waiver credits is to issue waiver credits in an amount equal to the cellulosic RVO. This eliminates any need for Obligated Parties to buy actual cellulosic RINs generated by fuels production. Additionally, it lowers the RIN value for the pool we want to grow the most, as there are plenty of RINs for purchase. At a minimum, the volume of waiver credits issued should only be that which makes up for the shortfall between actual gallons produced and those mandated.

2. Permit renewable fuels to be used to fuel ocean-going vessels and obtain RINs under the RFS.

If fuel is sold for use in a cruise ship, the seller of the fuel must retire the RIN as this fuel is not considered a “Transportation Fuel” under the RFS. This would expand a target market for the use of environmentally sustainable fuels.

3. Remove the strict limitations on wood-related feedstocks to allow for regenerative species grown on private lands to be utilized.

Loblolly pine is abundant and harvested on private lands, but the tree is not usable to make a renewable fuel. This species alone would provide a tremendous feedstock base of wood for the industry to utilize in making drop-in cellulosic fuels. These and other privately owned/harvested trees should be allowed as renewable fuel feedstock, as the wood is currently used to produce pellets anyway—and a large portion of these pellets are exported out of the U.S. This could also be fixed via EPA’s approval of a planted tree pathway.

This fix would enable a number of additional states such as Oregon, Maine and the Southeast to be able to build and manufacture advanced drop-in biofuels.

4. Clarify the definition of “waste.”

The current definition of “wastes” is an abstraction concerning coproducts such as tall oil from trees, biogenic oils, and other compounds which can be used to produce fuels, but also to make other products such as chemicals, candles, etc. Producers who use these feedstocks to make non-fuel products argue that these materials are not “waste” under the RFS and should be reserved for the other uses—not fuels. This has eliminated some of the highest market-value materials and reduced the number of cheap feedstocks available to produce RFS-compliant fuel.

5. The Feedstock Energy equations should also be eliminated in favor of simple mass balancing.

EPA’s latest regulatory proposal for co-processing would require a very expensive carbon-14 dating for refineries to prove that renewable oils were used. Since those oils are less than 10% of what is being processed, this is administrative overkill and not likely to be effective according to the National Renewable Energy Labs. We would once again urge simple mass balancing techniques in lieu of carbon dating, and recommend the elimination of the existing feedstock energy equations.

6. Eliminate pump labeling requirements for drop-in renewable diesel.

We currently produce almost 400 million gallons per year of renewable diesel. It is identical to ultra-low sulfur diesel fuel made from petroleum at a refinery. We should amend the outdated pump labeling requirements for this fuel and fuels like it when dispensed at retail outlets.

7. Address one pound waiver for biobutanol when comingled.

Isobutanol is an energy-dense alcohol that can be blended at B-16 due to its low RVP. It is also not water soluble, and is therefore preferred by boaters and small engine manufactures. Blending E10 and gasoline blended with butanol

does not cause the RVP of the resulting gasoline blend to increase, meaning that such commingling has no negative impact on VOC emissions and thus no negative environmental impact. The commingling prohibition was in fact implemented to prevent the blending of E10 with gasoline blended with MTBE (an oxygenate additive no longer used in gasoline in the United States) due at least in part to the increased RVP that resulted from blending two batches of gasoline with these additives. By definition, a fuel with lower RVP is less volatile. The use of lower RVP fuel blends containing butanol will therefore result in lower evaporative emissions at all stages of fuel use, from service station tank loading and vehicle refueling to vehicle in-use evaporative emissions.

The commingling prohibitions as they currently exist were workable because they were put in place to manage market conditions where both ethanol-blended and clear or MTBE-blended gasolines were generally in abundant supply. Gasoline retailers, who commonly receive their supply from multiple terminals, could count on having more than one source of supply for the gasoline blend they had in their tanks. The commercialization of iso-butanol, however, creates a different challenge. By necessity, the first iso-butanol production will be in limited supply available at a very small number of terminals. Without redundant supply points for iso-butanol, the existing commingling rule is a barrier to adoption of iso-butanol with its attendant benefits. The proposed revision to the commingling rule will serve to greatly reduce this barrier without compromise to environmental quality.

Appendix B. EPA Public Data - RINs and gallons for 2016 and 2017

2016

Fuel	Total RINs Generated	Gallons Generated
Cellulosic Biofuel (D3)	192,361,795	192,361,795
Biomass-Based Diesel (D4)	4,003,479,816	2,617,187,047
Advanced Biofuel (D5)	98,103,017	85,201,935
Renewable Fuel (D6)	15,175,717,036	15,003,278,197
Cellulosic Diesel (D7)	534,429	534,429

2017

Fuel	Total RINs Generated	Gallons Generated
Cellulosic Biofuel (D3)	250,624,373	250,624,373
Biomass-Based Diesel (D4)	3,848,850,322	2,505,302,697
Advanced Biofuel (D5)	143,646,572	128,800,020
Renewable Fuel (D6)	15,107,597,002	15,006,721,963
Cellulosic Diesel (D7)	1,743,894	1,743,705

**Appendix C. “Denial of Petitions for Rulemaking to Change RFS Point of Obligation,”
Environmental Protection Agency, EPA-420-R-17-008, November, 2016, Page 22.**

“Less obviously apparent, however, is *the impact of the RFS program on the market price for the petroleum blendstocks that merchant refiners sell*. In addition... all refiners and importers of gasoline and diesel fuel incur costs to comply with RFS obligations. This is true whether the refiners and importers acquire RINs by blending renewable fuels or purchasing separated RINs – meaning no fundamental inequity exists. Moreover, because all refiners and importers have RFS obligations in proportion to the fuels they produce or import, they all have similar costs of compliance related to the RFS program, and they all seek to recover those costs through the pricing of their product. Stated another way: merchant refiners can indeed expend significant funds to purchase RINs needed to demonstrate compliance with the RFS program, but the cost is offset by a corresponding increase in the price of the fuel they sell. That market price reflects the cost of RINs. The same dynamic applies to both merchant and integrated refiners.”

Available at: <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P100TBGV.TXT>

**Appendix D. Advanced Biofuels Association v. U.S. Environmental Protection Agency,
Petition for Review.**

Available at https://www.epa.gov/sites/production/files/2018-05/documents/aba_18-1115_pfr_05012018.pdf.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

ADVANCED BIOFUELS ASSOCIATION

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY and SCOTT PRUITT, Administrator,
U.S. Environmental Protection Agency,

Respondent.

Case No. 18-1115

PETITION FOR REVIEW

Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1) the Advanced Biofuels Association (“ABFA”) hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of the Environmental Protection Agency’s (“EPA”) decision to modify the criteria or lower the threshold by which the Agency determines whether to grant small refineries an exemption from the Clean Air Act’s Renewable Fuel Standards (“RFS”) for reasons of “disproportionate economic hardship” pursuant to 42 U.S.C. § 7545(o)(9)(B)(i). This modified criteria or lowered threshold was applied to exempt an unknown—but reportedly historically high—number of refineries from their 2016 and 2017

obligations to participate in the RFS program by either blending their share of renewable fuel or purchasing renewable fuel credits on the market.

Upon information and belief, EPA has granted exemptions to an unprecedentedly large number of refineries. However, EPA has thus far refused to provide—even upon receiving requests from members of Congress—basic information about the refineries that receive exemptions or the Agency’s rationale for granting individual exemptions due to alleged protections for confidential business information.¹

EPA’s change to the threshold for demonstrating “disproportionate economic hardship” and the Agency’s retroactive grant of a historically unparalleled number of exemptions has destabilized the national renewable fuels market, economically harmed ABFA’s members, and has undermined Congress’s goals for the RFS Program.

A change of this magnitude in the number of exemptions granted is implausible and cannot be ascribed to year-to-year changes in the renewable fuels

¹ Letter from Charles E. Grassley, United States Senator, to Scott Pruitt, Environmental Protection Agency Administrator (Apr. 12, 2018), <https://www.grassley.senate.gov/sites/default/files/Pruitt%20Small%20Refinery%20Letter%204.12.18.pdf> (Explaining that recent reports indicate “the EPA has already issued 25 ‘disproportionate economic hardship waivers’” and requesting that EPA “[p]rovide a full list of the refiners that have received a refinery waiver in 2016, 2017 or 2018, including the name, location, refining capacity, date waiver was issued, and number of gallons waived.”) This letter is attached as Appendix A.

market, but can only be attributable to a decision by EPA to modify the criteria or lower the threshold by which it evaluates and grants exemptions in a manner that is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law.

The Corporate Disclosure Statement required by FRAP 26.1 and D.C. Circuit Rule 26.1 is attached as Appendix B. The Certificate of Service and the list of parties served with this petition are attached as Appendix C.

Date: May 1, 2018

Respectfully submitted,

/s/ Rafe Petersen

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*Counsel for the Advanced Biofuels
Association*

April 12, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

We are writing to you regarding the actions the Environmental Protection Agency (EPA) has taken to undermine commitments President Trump made on the Renewable Fuel Standard (RFS) to our constituents. Recent reports indicate dozens of small refiner waivers have been secretly granted to large, multi-billion-dollar companies under the guise of the small refinery hardship exemption provision in section 211(o)(9) of the Clean Air Act. This is extremely concerning to us.

During your confirmation hearing for the post of Administrator of the EPA, you said, *"Any steps that the EPA Administrator takes need to be done in such a way as to further the objectives of Congress in that statute, not undermine the objectives of Congress in that statute."* You also wrote to a number of Senators in October 2017 and said, *"I reiterate my commitment to you and your constituents to act consistent with the text and spirit of the RFS. I take seriously my responsibility to do so in an open and transparent manner that advances the full potential of this program..."*

According to recent reports, the EPA has already issued 25 "disproportionate hardship" waivers to large, multi-billion-dollar refining companies reporting billions of dollars of profits since 2016. Such action would represent a clear violation of your commitments and clearly undermine the President's long-standing support of the RFS.

These waivers fall well outside the bounds of the letter or spirit of this provision in the law, which sought to provide flexibility for the smallest of U.S. refiners, and only in cases of genuine hardship. Worse, EPA's actions are already hurting biofuel producers and farmers across the United States at a time when farm income is at the lowest levels since 2006 and retaliatory trade measures from China threaten to deepen the crisis.

In 2015, 37 Senators wrote to the EPA requesting that the agency issue a strong Renewable Volume Obligation (RVO), citing the RFS's success in driving economic development, strengthening agriculture markets, and creating hundreds of thousands of clean energy jobs in rural communities. Early reports indicate that the small refinery waivers you have granted could effectively cut biofuel demand by 1.5 billion gallons, thus effectively lowering President Trump's commitment to seeing 15 billion gallons of ethanol blended to 13.5 billion. Additionally, once these select refiners are no longer responsible for complying with these 2016 requirements, they are able to sell excess Renewable Identification Numbers (RINs) back into the market, increasing supply and lowering the price.

This further reduces incentives for blending, slashing demand for biofuels and feedstocks, and hurting farmers and biofuels companies. These waivers could cripple the market for years to come, holding back homegrown biofuels while creating a windfall profits for large oil refiners -- the exact opposite of this administration's promise to voters.

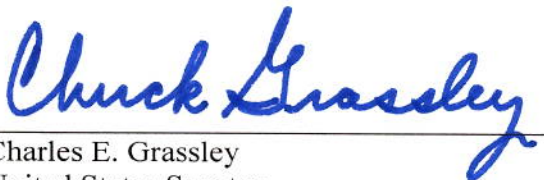
Perhaps most concerning, these lucrative waivers have reportedly been issued behind closed doors, outside of the public process, while the EPA has simultaneously been working with refineries to pressure President Trump to sign off on a RIN cap that would wreak further havoc on the RFS.

We request that you take the following actions immediately:

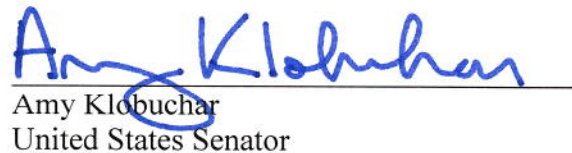
- Cease issuing any refinery waivers under the RFS;
- Provide a full list of the refiners that have received a refinery waiver in 2016, 2017 or 2018, including the name, location, refining capacity, date waiver was issued, and number of gallons waived;
- Provide a detailed report to Congress within two weeks of receipt of this letter that describes your justification for providing each of these waivers. Specifically, please include whether the volumes were redistributed to other obligated parties. If the volumes were not redistributed, please explain why they were not and the reason EPA decided to undercut the RVOs against the President's commitment;
- Respond in writing describing your commitment and plan to consider future small refinery waivers only during the annual RVO rulemaking process and commitment to provide full notice and opportunity for comment on any future small refinery waiver requests.

We appreciate your timely response to these matters.

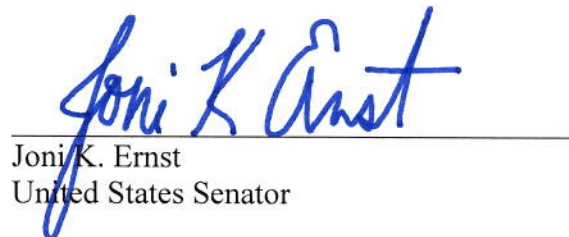
Sincerely,



Charles E. Grassley
United States Senator



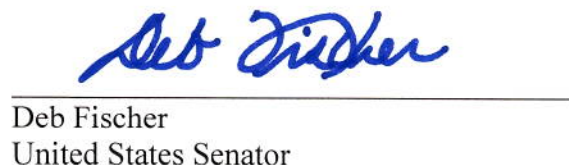
Amy Klobuchar
United States Senator



Joni K. Ernst
United States Senator



Debbie Stabenow
United States Senator



Deb Fischer
United States Senator



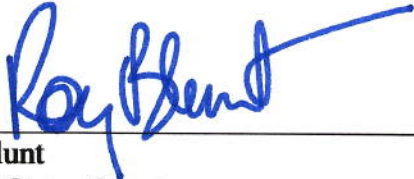
Richard J. Durbin
United States Senator



John Thune
United States Senator



Tina Smith
United States Senator



Roy Blunt
United States Senator



Claire McCaskill
United States Senator



Tammy Duckworth
United States Senator



Heidi Heitkamp
United States Senator



Joe Donnelly
United States Senator

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

ADVANCED BIOFUELS ASSOCIATION

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY and SCOTT PRUITT, Administrator,
U.S. Environmental Protection Agency,

Respondent.

Case No. _____

**RULE 26.1 CERTIFICATE OF CORPORATE DISCLOSURE OF
ADVANCED BIOFUELS ASSOCIATION**

Pursuant to Federal Rule of Appellate Procedure 26.1, the Advanced Biofuels Association (ABFA) certifies that it is an independent 501(c)(6) non-profit trade association registered in the District of Columbia since 2009. ABFA has no parent corporation, and no publicly held company has ten percent or greater ownership in ABFA.

ABFA represents more than 35 companies in the United States and around the world engaged in the production, marketing, and distribution of advanced renewable fuels regulated under the Clean Air Act's Renewable Fuel Standard. Currently, ABFA members produce over 4.4 billion gallons of renewable fuel each

year, including billions of gallons of biodiesel and renewable diesel as well as a variety of drop-in fuels such as isobutanol, dimethyl ether, cellulosic ethanol, and cellulosic heating oil. ABFA's mission is to secure a stable regulatory environment and level playing field for advanced renewable fuels on behalf of its members.

Date: May 1, 2018

Respectfully submitted,

Rafe Petersen /s/
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Review and Rule 26.1

Disclosure Statement were served by placing them in the U.S. mail, first class,

postage prepaid, this 1st day of May, 2018, upon each of the following:

Attn: Scott Pruitt
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Honorable Jeff Sessions
Attorney General
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Respectfully submitted,

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Appendix E. Biomass Research & Development Technical Advisory Committee Advisory to the Biomass R&D Board, November 16, 2018, “Identification of Regulatory Barriers to Advanced Biofuels.”

The Biomass Research and Development Act of 2000, as amended, established a federal Biomass Research and Development Board, and an outside Technical Advisory Committee (TAC), in furtherance of a national initiative to produce sustainable advanced biofuels and industrial products from non-food feedstocks. Today, annual production of ethanol from corn starch exceeds 16 billion gallons and bio-diesel from oilseeds and conventional sources has grown to more than 2.7 billion gallons. While advanced and cellulosic biofuels production is growing, it remains less than 500 million gallons annually, in stark contrast to legislative intent. Several factors have contributed to the slower-than-expected growth of advanced biofuels, including legislative and regulatory barriers.

Confirming the potential economic, social, and environmental gains from expanding production and use of advanced biofuels, the TAC has focused on some of the regulatory barriers that are preventing or slowing expected growth. The TAC has particularly focused on barriers that can potentially be overcome within existing legislation, authorizations, and regulations, fully recognizing that this is a subset of a broader scope (which would include new or alternative policies or regulations). Priority was also given to addressable barriers with potential to result in sizable or scalable growth in sustainable, lower-carbon advanced biofuels that can help increase energy security and create jobs.

1

Near-Term Opportunities to Address Regulatory Barriers

There are opportunities for meaningful growth and acceleration of advanced biofuels that fit within existing statutes, regulations, rules, definitions, and programs. Many of these opportunities are tied to implementation of the Renewable Fuel Standard (RFS) program, including (i) clarifying interpretations, (ii) publishing rules that have completed the regulatory review process, (iii) applying uniformity across rules, and (iv) timeliness in conducting reviews and taking actions. The Committee highlighted several specific issues and opportunities,¹ particularly issues constraining availability and use of woody biomass.

- **Co-processing & Bio-intermediates** – Local supplies of cost-advantaged biomass could be aggregated and upgraded to an energy-dense intermediate (e.g., biocrude) then transported to existing/future refineries for co-processing, enabling near term large-scale advanced biofuels production. Regulatory constraints disincentivize this approach because current RIN² qualification requires processing at a single location and strict segregation of the final advanced fuel product.
 - ⇒ **EPA has already proposed a Renewables Enhancement and Growth Support (REGS) Rule, awaiting final publication for 2 years now. EPA could include the already-vetted rules related to co-processing of advanced biofuels using bio-intermediates produced at another site in the upcoming RFS “Reset” proposal.**
 - ⇒ **Even in advance of finalizing rules on co-processing and bio-intermediates, EPA should consider individual applications for co-processing (part-80, facility registration), evaluating using the same criteria proposed in the REGS Rule.**

¹ Note that several of the opportunities highlighted have been previously identified and recommended by the TAC; for example, see the Q3-2017 TAC Quarterly Report on “Biomass Integration with Existing Fossil Fuel Infrastructure”.

² RIN refers to a Renewable Identification Number, credits used for compliance and the “currency” of the RFS program.

- Co-mingling of Biomass – There are currently two issues impacting feedstock availability: co-mingling of qualified biomass feedstocks, and co-mingling of qualified and non-qualified feedstocks.
 - ⇒ ***Establish a more equitable method for ascribing RIN values to processes that co-mingle two or more qualifying feedstock sources. A similar approach is already applied for commodity crops.***
 - ⇒ ***Allow co-mingling of qualified and non-qualified biomass, using apportioning and control methodology (e.g. mass balance paired with traceability of biomass) to determine the eligible volume of advanced biofuel or bio-intermediate.***
- Determination on Wastes – There are co-products of certain industrial processes and/or waste streams to be utilized as a feedstock that could be used to produce advanced biofuels, but opportunities are currently limited due to difficulty determining eligibility of wastes under the RFS.
 - ⇒ ***Make a final determination on waste feedstocks to allow substances that are co-products of certain industrial processes to be utilized as feedstocks in the production of advanced biofuels.***
 - ⇒ ***Clarify rules to ensure that the biogenic portion of waste streams qualifies for RINs.***

2

Intermediate-Term Opportunities

There are opportunities to address regulatory barriers that fall under existing authority, but likely require regulatory action to implement, which is more complex or takes longer. The upcoming “reset” of the RFS targets (as required by statute and triggered in 2018) is an opportunity to address.

- Pathway Approvals – Several pathway applications submitted to EPA are awaiting review and approval, where reviews are averaging nearly 3 years. There are projects that are fully developed but cannot move forward until pathways are approved.
 - ⇒ ***Accelerate the pathway approval process under the RFS program. Work through the backlog of pending pathway applications to allow qualified investment-ready projects to proceed. An example is completion of the existing tree pathways proposed in the REGS Rule.***
 - ⇒ ***Consider alternative approaches to pathway approvals: Create certainty in the pathway timeline and determination; consider using qualified, independent third-party resources to expedite the process.***
- De-risking Feedstock Production – There are other barriers outside of the RFS program limiting the expansion of energy crops. One example is the lack of crop insurance or other risk management tools that allow producers to make enterprise management decisions on equal footing (biomass vs. commodity crops).
 - ⇒ ***Enable biomass crops to participate in risk management and conservation programs alongside conventional crops and management activities.***
- Biomass to Electricity – The EPA has issued an Advance Notice of Proposed Rulemaking (ANPR) that allows for the conversion of qualified renewable biomass into electricity that is used in transportation to generate a RIN under the RFS program, but the rulemaking process has not been completed.
 - ⇒ ***Encourage EPA to evaluate and move to complete rulemaking.***

The Committee purposely focused less on opportunities that would require statutory action or change, viewed as long-range opportunities. For perspective, a few examples are highlighted.

- Revisit equal treatment of both sustainable plantation and naturally-regenerated managed forests for qualification as allowable feedstocks under RFS. Focus more on meeting performance standards than prescription standards. This has potential to make available large quantities of sustainable biomass feedstock that are existing, available and accessible today but ineligible to qualify under existing feedstock designations.
- Establish a value for the renewable (non-petroleum) carbon in a final product, regardless of the product type (e.g., fuel vs. material vs. chemical).

In its review of opportunities to address regulatory barriers limiting advanced biofuels growth, the Committee identified research priorities that may be useful in addressing regulatory barriers.

- Identify and quantify the unintended consequences of the rules, definitions and regulations as they have been implemented over the last decade, a sort of third-party independent report card on RFS to date. We need to understand the causes-effects-impacts of the past to make improvements going forward.