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The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building Mail Code: 1101 A
1200 Pennsylvania NW
Washington, DC 20460

Re: Modifications to Fuel Regulations To Provide Flexibility for E15; Modifications to RFS RIN Market Regulations (Docket ID No. EPA–HQ–OAR–2018–0775; FRL–9991–04–OAR)

PBF Energy Inc. ("PBF"), on behalf of its subsidiary PBF Holding Company LLC, respectfully submits these comments in response to the Environmental Protection Agency's (EPA's) "Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations," (EPA–HQ–OAR–2018–0775; FRL–9991–04–OAR) (the "proposed E15 RVP and RIN market reform rule" or "the proposed rule"). PBF is a member of and acknowledges the comments submitted by the American Fuel & Petrochemical Manufacturers (AFPM) (the "AFPM Comment Letter"). PBF's comments are intended to complement and emphasize those raised in the AFPM Comment Letter. PBF specifically aligns itself in full with AFPM's comments relating to the E15 Reid vapor pressure (RVP) portion of the proposed rule and, in doing so, will focus its comments on the proposed RIN market reforms. In addition, this submission addresses relevant issues from the unique perspective of PBF's role as a merchant refiner.

PBF is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. The company currently owns and operates five domestic oil refineries in five states – Delaware, New Jersey, Ohio, Louisiana and California - and related assets with a combined processing capacity of approximately 900,000 barrels per day. PBF employs more than 3,000 people nationally. As one of the largest U.S. merchant refiners - with the most East Coast refining capacity - the Renewable Fuel Standard (RFS) has a significant, negative impact on PBF.

I. EPA appropriately recognizes the need to advance RIN market reforms. Doing so is necessary to reduce opportunities for rampant manipulation in the RIN market.

PBF's 2019[1] and 2018[2] RFS RVO comments highlighted the need for RIN market reform. As PBF previously stated, the RIN market is broken. There are many examples, starting with the fact that only up to three companies control all of the cellulosic (D3) RINs for sale in a given year - usually at "take it or leave it" prices. Extensive volatility across most RIN categories – often resulting in hundreds of percent swings over very short intervals - that occurs in periods of time when there is no significant impending

[1] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2018-0167)
[2] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091)

regulatory action or market event provides even more proof of uneconomic, manipulative trading. Even biofuel interests have noted the need to address potential market manipulation.[3]

Since EPA received comments on the topic in previous RVO proposals, additional evidence has surfaced on the need for effective RIN market reforms. A former U.S. Commodity Futures Trading Commission (CFTC) commissioner authored a report for NERA Economic Consulting ("the NERA report") late last year that concluded the RIN market exhibited evidence of "market frictions, inefficiencies, (and) potential hoarding."[4] More specifically, the report found that RINs:

> (1) are generally five to ten times more volatile than similar energy commodities like oil, ethanol, and natural gas futures, (2) are generally only about one tenth as liquid as comparable commodity futures, (3) have estimated economic transaction costs that peak five times higher than oil, ethanol, and natural gas futures, and (4) frequently transact at prices that defy rational pricing expectations.[5]

Despite EPA's claims that it has, "yet to see data-based evidence,"[6] of market manipulation, some of the Agency's findings in the proposed rule mirror the type of behavior highlighted in the NERA report. For example, the proposed rule states:

> We found that the maximum market share over that entire time period (2013-2018), by any individual RIN holder, was 18 percent. In other words, in one day, one party held 18 percent of the 9.9 billion D6 separated RINs available on that day. In that particular case, an obligated party hit the 18-percent level in the first quarter of 2017, at a time when other obligated parties were retiring hundreds of millions of RINs in single EMTS transactions for the upcoming compliance deadline. This activity dropped the total available RINs in the market suddenly and drastically.[7]

In detailing how the D6 RIN market is less liquid than comparable futures markets, the NERA report notes that "transaction volume as a percentage of outstanding RINs declines as compliance expiry approaches for the vintage."[8] In other words, as RINs are set to expire, sales of outstanding RINs should accelerate (since they are approaching a date after which they will be worthless), as occurs in normally functioning futures markets. However, the opposite occurs in the RIN market. Additionally, NERA notes that expiring RINs should trade at a discount to RINs with longer shelf lives, but expiring RINs are often more expensive than newer vintage RINs.[9] NERA concludes the reduced number of transactions and higher prices associated with expiring RINs provides evidence of hoarding. EPA's identification of an obligated party holding a RIN volume equivalent to 18 percent of the market as the compliance period was approaching could very well exhibit the manipulative practices NERA observed.

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[3] Barber, Jeff. "RFA Chief Says He's Still Concerned RINs Market Is Being Manipulated." OPIS. August 4, 2017. Available at: https://www.governorsbiofuelscoalition.org/rfa-chief-says-hes-still-concerned-rins-market-is-being-manipulated/

[4] Brown-Hruska, Sharon with Kfoury, Alexander, and Wagener, Trevor. "Ethanol RIN Market Analysis and Potential Reforms." NERA Economic Consulting. October 18, 2018. Available at: http://www.fuelingusjobs.com/library/public/Study/-2018-10-18-NERA-White-Paper-on-the-RIN-Market-Final.pdf

[5] Ibid.

[6] 84 Fed. Reg. at 10,586

[7] 84 Fed. Reg. at 10, 612

[8] Brown-Hruska, et. al. p. 12.

[9] Id. p. 16.

Given continued evidence on the need for RIN market reforms, PBF believes EPA should finalize policies that eliminate the ability of entities to use RIN trading exclusively as a profit center, while ensuring liquidity and that the primary obligated parties, refiners, have more RIN market flexibility than non-obligated parties. PBF previously recommended a suite of reforms in pursuit of this principle.[10] With some modifications, some of the policies in EPA's proposed rule could help rectify the market inefficiencies identified in past PBF comments on the issue.

II. EPA should limit the amount of RINs a company can hold to 120 percent of its RIN obligation, enforced quarterly. Simply disclosing entities in this category is not good enough. An actual position limit will prevent RIN long integrated refiners from hoarding RINs at the expense of merchant refiners. EPA should also require RINs to be traded on an exchange.

PBF's 2019 RVO comments detail how the structure of both the RFS and refining industry at large provides "RIN-long" integrated refiners with large marketing arms an unnatural competitive advantage over "RIN-short" competitors; creating opportunities for manipulation in the process.[11] As stated in those comments, obligated parties with more RINs than they need for compliance often set artificial floors by posting blanket offers to buy RINs below a certain target price. The intent is to signal all other known potential RIN sellers not to sell below that price. Additionally, the market for certain RIN categories is often illiquid and in some cases dominated by RIN long obligated parties. As discussed earlier, EPA has received public comments in the past indicating that there have historically been only two to three parties selling D3 RINs at any time.

The EPA currently allows obligated parties to comply with the RFS in a current year with RINs from a previous year at an amount no greater than 20 percent of their obligation. In light of this existing structure, it would be fairly simple for EPA to eliminate the proposed primary threshold and establish a firm 120 percent position limit for obligated parties. Such a requirement would allow obligated parties to bank RINs in accordance with the existing structure of the regulation, while also preventing hoarding or creating the opportunity to use RIN excesses in an unnatural, anti-competitive manner. Such a limit is specifically needed to ensure liquidity in a structure where only obligated parties are allowed to purchase RINs; a policy EPA looks to advance in this proposed rule. Enforcing this limit quarterly – meaning that no obligated party would be allowed to hold more than 120 percent of one quarter's proportion of their RVO - will provide obligated parties enough flexibility to address any unanticipated operational issues that may arise or other market disruptions, without allowing for too long an enforcement horizon, which could serve to negate the intent of the limit in the first place.

EPA must also create some sort of allowance to take into account unforeseen circumstances. For example, a refinery outage near the end of the quarter would reduce a company's run rate and, thus, the quarterly proportion of its RVO. Such a situation could result in an obligated party holding more than 120 percent of its quarterly obligation unintentionally. EPA should ensure companies facing such unexpected events are allowed at least 30 days to assess how unexpected incidents will impact their operations and RVO requirement, particularly as it pertains to the position limit.

In the proposed rule, EPA suggests a 130 percent limit to allow obligated parties a 20 percent banking threshold, with an additional 10 percent for additional flexibility.[12] We believe such a threshold

[10] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2018-0167)
[11] Ibid.
[12] 84 Fed. Reg. at 10,613

is too high. First, as stated in PBF's 2019 RVO comments, the RIN bank is not a communal pot of RINs available to all market participants. The public and market participants do not know exactly which entities hold what quantities of RINs. General market knowledge infers RIN-long obligated parties control the RIN bank and there is no requirement that such entities ever need to offer these RINs for sale in any market situation.[13] Additionally, RIN-long entities could limit liquidity and avoid being "named and shamed," as EPA proposes, if they each hold 129 percent of their requirement. Keep in mind that the Organization of Petroleum Exporting Countries (OPEC) controls about 20 percent of the world's crude oil production and can significantly impact its price. Given these realities, there is no need for an additional 10 percent flexibility threshold. A 120 percent holding limit will ensure the RIN bank remain as robust as possible to ensure it is liquid enough to act as needed in the event of a market disruption.

EPA could naturally create more transparency and enhance its ability to enforce a firm position limit by requiring RINs to be traded on an exchange. There is little transparency in the RIN market, because there is no central clearing house. Requiring RINs to be traded on an exchange would address this issue and advance a more functioning and efficient market. Forcing RINs to be traded on an exchange will provide more insight into market activities, including what happens in the RIN market on a daily basis in its entirety (e.g. volume traded, prices of RINs, timing, etc.), without identifying individual parties' positions. This requirement should be included in the final rule.

PBF believes EPA's proposal to impose a public disclosure threshold of 1 percent of the overall RVO to non-obligated parties is a step in the right direction, but also too high. This issue is significant in the context of a D6 requirement that already creates scarcity by exceeding the E10 blendwall – which is the term used to refer to the 10 percent ethanol concentration that all vehicles and infrastructure can safely handle. The gap between the 15 billion gallons conventional ethanol requirement in the 2018 RVO and the E10 blendwall in the same year was approximately 700 million gallons. With a one percent primary threshold, an entity that currently has no (or voluntarily takes on a small) obligation would theoretically be able to unnaturally exacerbate scarcity by holding an amount just under the threshold, which would be 125 million RINs for 2018, as an example. If multiple parties acted in this manner, such a scenario could result in a market that was potentially over one billion D6 RINs short of the conventional requirement, artificially driving up RIN prices in the process.

Establishing some threshold for non-obligated parties will help mitigate the potential for hoarding among large marketing companies. Guarding against such activity is imperative, because while non-obligated parties represented 15 percent of D6 RIN separation in 2014, they represented 24 percent in 2018.[14] Preventing hoarding among non-obligated parties is best achieved via the proposed requirement for non-obligated parties to sell their RINs quarterly.

Furthermore, PBF believes it will be overly burdensome to require companies to track their holding thresholds daily. Smaller and merchant refiners may lack the resources for such monitoring, which could also be extremely complicated for auditors to assess while putting together an attest document. The same objective can be achieved via a monthly tracking requirement, accompanied with a quarterly compliance report. If EPA does wish to monitor daily RIN activity, it may be better equipped than individual companies to do so on a macro level. In the proposed rule, the Agency notes it already has the capability to assess the RIN marked on a daily basis. The proposal states EPA, "…compared maximum individual end-of-day D6 RIN holdings in every quarter between 2013 and 2018 to total available D6 RINs

[13] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2018-0167)
[14] https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-use

in that quarter."[15] Additionally, EPA notes it, "…already maintain(s) and regularly update(s) a centralized website for RFS data that has become a hub for up-to-date program information and transparency."[16] Given such a capability, there is likely a software or some other mechanism EPA could employ that would notify Agency staff if any of the relevant thresholds are reached on a daily basis. Such a process would be significantly less burdensome than imposing a daily tracking requirement on individual companies that differ significantly in resources needed to engage in such activity.

Finally, it will be critical for EPA to further define what constitutes a RIN "holding" in the final rule. Some obligated parties may purchase RINs early in the year for fourth quarter delivery. Those entities may accrue for the RINs throughout the first quarter, since they have already been purchased, even though they physically may not take possession of such RINs until later in the year. In light of such scenarios, EPA should clarify whether "holding" means physically possessing a RIN, or owning and accruing for a RIN, even if it will not be in physical possession of an obligated party until a later date.

III. The proposal to increase RFS compliance frequency is overly complex and unnecessary.

A quarterly compliance requirement could limit flexibility for obligated parties and, as even EPA recognizes in the proposal, adds complexities associated with small refiner exemptions, seasonality of RIN generation and deference allowance, to name just a few issues. Were EPA to advance a framework that includes position limits, while simultaneously limiting the purchase of separated RINs to obligated parties and requiring non-obligated parties to sell RINs quarterly (and in a manner that eliminates loopholes), then quarterly compliance becomes unnecessary. Additionally, the core principle behind RIN reform should be to eliminate the ability of entities to use RIN trading exclusively as a profit center, while ensuring liquidity and that the primary obligated parties, refiners, have more RIN market flexibility than non-obligated parties. A quarterly compliance requirement would limit the ability of RIN-short obligated parties to stay short if they felt the price of RINs was too high given potential near-term events that could result in prices decreasing. Without a firm position limit, it would also create opportunities for RIN-long entities to engage in the type of manipulation that seems to occur near the end of a compliance period, which the NERA report identified.

IV. PBF supports limiting the purchase of separated RINs only to obligated parties if such a limitation is accompanied with a position limit. Implementing the former without the latter would not eliminate the incentive to hoard among RIN-long integrated refiners.

As stated in PBF's 2019 RVO comments,[17] the lack of any RIN market controls or regulation, coupled with the lack of a central clearinghouse that provides transparency, allows multiple actors to participate in the RIN market in a manipulative manner without repercussion. RIN trading occurs mostly on web based messaging platforms and practices regulated or banned in other markets are not prohibited in the RINs market. One such practice is "spoofing," where traders place bids or orders with the intention of canceling before orders are filled. This is meant to generate high frequency trades that can manipulate the price. Congress made this illegal with other commodities in Dodd-Frank, but it is allowed in the RIN market. There have also been reports of "wash sales" in the RIN market, like money pass, where a transaction gives the appearance of a certain volume sold, but where the transaction does not result in actual change of ownership.

[15] 84 Fed. Reg. at 10,612

[16] 84 Fed. Reg. at 10,615

[17] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2018-0167)

Additionally, public comments submitted to EPA indicate that traders often offer to sell RINs at a certain price, only to refuse to sell when the buyer takes the offer, which also serves to manipulate the price. These practices are exacerbated due to the fact that non-obligated parties can participate in such activities knowing that 1) refiners *have* to buy RINs and prefer to do so on a ratable basis and 2) there is no regulation of or prohibition against manipulative activity. Given the lack of other regulation, efficient market structure or a central clearing house, limiting purchase of RINs to obligated parties will eliminate the ability of non-regulated entities to engage in manipulative behavior. It will also ensure RINs are made exclusively available to obligated parties that must purchase them for RFS compliance.

Other comments EPA indicated it received regarding the RIN market also hint at the possibility of hoarding. For example, the proposed rule states:

> Based on discussions with some obligated parties, we believe that they routinely contract with third-parties, such as traders, to deliver separated D6 RINs. We have also learned, as described in Section III.E.3.a, that some non-obligated parties routinely commit under contract to deliver D6 RINs to obligated parties based on their anticipated future blending volumes and must purchase separated D6 RINs on the market to satisfy the contract if their blending volumes fall short. We believe all of these contractual transactions are helpful to obligated parties and that obligated parties, the very parties this reform is attempting to protect, would be harmed if these types of contractual transactions were prohibited.[18]

These types of contracts establish prices based on the monthly average index prices for RINs. The third parties agree to sell a very large amount of RINS, 25,000,000 for example, to the obligated party at a future date at a slight discount to whatever the monthly average price may be at that future time. This entices the obligated party to buy the RINS due to the perception that they will be purchasing them at a better price than the average at that future time. After locking in this de facto future contract for selling a large RIN volume, the third party then goes out and starts buying RINs in groups of smaller volumes, say 500,000 at a time, at *higher* prices than existing offers. Buying such groups of RINS at increasingly higher prices creates a false sense of natural demand that only serves to drive the index price up, which enables the third party to make the money back with profit when it executes its contracted future sales. Such a scenario reflects exactly the type of price manipulative hoarding that is allowed in the RIN market given the lack of sufficient regulations.

Buying off an index is not automatically a bad practice. However, the lack of liquidity and transparency in the RIN market, coupled with a point of obligation disassociated from the point of compliance, is what enables bad actors to unnaturally manipulate the market via index deals. The probability of such practices occurring are significantly diminished in trading associated with more natural and transparent commodities where there is greater public insight into market fundamentals. In order to protect against manipulative activity, EPA should actually prohibit obligated parties from contracting with non-obligated parties to deliver separated D6 RINs via future index price deals.

While a limitation on selling RINs to only obligated parties will help address the manipulative behavior of non-obligated parties, it does not guard against RIN-long obligated parties engaging in similar activity. EPA partially acknowledges the possibility of this occurrence in highlighting that gasoline sulfur and benzene credit programs are ones in which, "…the obligated parties are both the generators of the

[18] 84 Fed. Reg. at 10,619

credits and the users of the credits and are the only parties that need to take any action. Conversely, in the RFS program, obligated parties are typically dependent on the action of other parties, such as renewable fuel producers and blenders, to actually introduce the renewable fuel and the RINs into the marketplace."[19] Given the misalignment of the point of obligation and the point of compliance in the RFS program, EPA must couple a requirement to sell RINs only to obligated parties with an actual position limit. Failure to do so will create the incentive for RIN-long obligated parties – with whom merchant refiners compete and on whom they depend to generate purchasable RINs - to hoard and engage in the very activity the limitation is looking to prevent.

The proposed rule indicates some parties have suggested that liquidity could suffer from limiting the purchase of RINs to obligated parties. If coupled with position limits and a requirement that non-obligated parties sell their RINs quarterly, the opposite will occur. Shaping the reforms in this manner is critical for liquidity, since as the NERA report discovered, the RIN market is, "generally only about one tenth as liquid as comparable commodity futures."[20]

Furthermore, Twitter and RIN trading chat rooms have been rife with talk about how the treatment of corporate or contractual affiliates under this element of EPA's proposal could create massive loopholes, making the RIN reforms irrelevant. EPA is proposing:

> ….that a party that is a corporate affiliate or a contractual affiliate, as proposed at 40 CFR 80.1401, to an obligated party would be allowed to execute a separated D6 RIN purchase transaction. This would include a party that is owned more than 20 percent by an obligated party or that owns more than 20 percent of an obligated party. This would also include a party that has an agreement to deliver RINs to an obligated party.[21]

Under this structure, trade shops and RIN-long obligated parties with active trading arms could just set up such an entity that would negate the proposed regulation's goal of limiting unnatural speculation. EPA should eliminate this loophole. It mirrors the very potential loophole scenario EPA highlights, where non-obligated parties become obligated parties in order to avoid the RIN purchase restriction.[22] This specific situation also exhibits why actual position limits are needed; because imposing a definitive ceiling on holdings based on a party's obligation will eliminate the potential to game the system by proactively taking on a small RFS obligation.

Finally, the proposed rule details some exceptions that would allow non-obligated parties to purchase RINs under specific circumstances. Specifically, it would allow non-obligated parties that needed to replace invalid RINs to purchase them for such purpose and also allow exporters to purchase RINs in order to comply with the export Renewable Volume Obligation (RVO). In relation to the first exception, rather than allow non-obligated parties full access to the RIN market, EPA should look to address this issue via some direct EMTS mechanism. For example, if the reason for a RIN becoming invalid is due to a calculation error or unknowingly purchasing a fraudulent RIN, despite due diligence, EPA could simply issue replacement RINs to those parties. The Agency has previously issued RINs to obligated parties receiving Small Refiner Exemptions (SREs) and could easily use the same mechanism for replacing the invalid RINs of non-obligated parties. Similarly, allowing exporters full access to purchase RINs could

[19] 84 Fed. Reg. at 10,618
[20] Brown-Hruska, et. al. p. i.
[21] 84 Fed. Reg. at 10,619
[22] 84 Fed. Reg. at 10,620

create a loophole and is unnecessary since the issue EPA identified can easily be addressed via the commercial terms of the export deal. In order to avoid compliance loopholes, EPA should not allow these proposed exceptions.

V. EPA should finalize its proposal to limit the duration of RIN holdings by non-obligated parties regardless of where the Agency lands on the other proposed reforms.

As several parties have pointed out in previous comments, when the RFS was passed into law, Congress did not envision a 15 billion gallon conventional gasoline requirement as one that would breach the blendwall. The U.S. Energy Information Administration's (EIA's) 2007 Annual Energy Outlook projected that Americans would be consuming more than 168 billion gallons of gasoline in 2020. At such levels, a 15 billion conventional requirement falls below the blendwall. This fact highlights that Congress never intended the RFS to be a cap-and-trade like system meant to force higher level ethanol blends into the fuel supply. RINs were simply meant to be a tracking mechanism to ensure RFS compliance; not the independent commodity trading in a multi-billion dollar market that they have become.

Additionally, EIA data shows that if it was the intent of EPA to administer the RFS in such a market forcing fashion, the program's current structure is not achieving that objective. There is no correlation between the RIN price and biofuel blending. RIN prices decreased from 90 cents in November of 2017 to approximately 9 cents towards the end of last year. Despite these factors, EIA data and extensive academic research shows there has been NO backtracking on biofuel blending.[23] In fact, academic research and available data also indicates that sales of fuels with higher concentrations of ethanol – such as E15 and E85 – increased significantly last year.[24] [25] Academic research also shows that domestic biodiesel production is steadily increasing, with the only decreases attributable to the tariffs the U.S. government placed on the nation's largest foreign suppliers of biodiesel – Argentina and Indonesia.[26]

Together, these facts highlight that there is no valid reason for non-obligated RIN generators to be able to hold RINs without restriction. Ensuring that these entities enhance liquidity, rather than restrict it, is increasingly important given the amount of market power of non-obligated RIN generators. As previously mentioned, these entities represented 15 percent of D6 RIN separation in 2014, but generated 24 percent of purchasable RINs in 2018.[27] Non-obligated RIN separators are primarily large, independent marketers that control blending and distribution to retail in various markets throughout the country. These entities have no RFS obligation, but by nature of their business, control a sizeable portion of the RIN market. Limiting the RIN holding period for non-obligated parties to one quarter will ensure marketers have ample flexibility to attract a market rate, while also limiting their ability to hoard RINs in a manner that unnaturally drives up the price for merchant and small refiners dependent on purchasing RINs, often ratably, for RFS compliance.

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[23] Irwin, Scott. "Why are ethanol prices so low?" farmdocDAILY blog. February 8, 2019. Available at: https://farmdocdaily.illinois.edu/2019/02/why-are-ethanol-prices-so-low.html

[24] Irwin, Scott. "Small Refinery Exemptions and E85 Demand Destruction" farmdocDAILY blog. January 16, 2019. Available at: https://farmdocdaily.illinois.edu/2019/01/small-refinery-exemptions-and-e85-demand-destruction.html

[25] Fueling American Jobs Coalition. "E15 and E85 Sales Keep Going Up…Despite Small Refiner Exemptions and Low RIN Prices." Blog post. January 21, 2019. Available at: http://www.fuelingusjobs.com/january-22

[26] Irwin, Scott. "Biodiesel Production Profitability in 2018: Did Headwinds or Tailwinds Dominate?" farmdocDAILY blog. March 27, 2019. Available at: https://farmdocdaily.illinois.edu/2019/03/biodiesel-production-profitability-in-2018-did-headwinds-or-tailwinds-dominate.html

[27] https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-use

In the proposed rule, EPA states, "Some obligated parties have complained that blenders routinely withhold separated RINs from the market until the price is high enough to secure a large profit. We note that such actions are not necessarily price manipulation or evidence of anti-competitive behavior."[28] EPA has also historically held that RIN costs are passed through to consumers and that the RIN value is used exclusively to offset higher petroleum blendstock ("BOB") prices (an assertion with which PBF disagrees). If RINs are a pass through, how can they provide entities large profits? The fact that EPA cited large RIN related profit taking is another indication of the need to limit the potential for non-obligated parties to unnaturally inflate RIN costs.

Finally, EPA correctly recognizes that in order to evade the holding duration limit, non-obligated parties, "…could easily take the minimal action necessary to become an obligated party."[29] As discussed extensively above, the easiest way to address this potential loophole is to impose an actual position limit on all obligated parties. At the very least, EPA should impose a position limit on obligated parties that are not refiners as a step to somewhat mitigate the potential for gaming.

VI. EPA should finalize additional RIN market reforms.

PBF's 2019 RVO comments detailed other RIN market reforms, which EPA should include in its final rule.[30] Such reforms will greatly enhance the integrity of the RIN market and, thus, the RFS program.

A. All market reforms should apply to all RIN categories, rather than being limited to the D6 RIN pool

As PBF has previously highlighted, there have never been more than four entities offering D3 RINs for sale over the last several years. Additionally, two of the four entities are obligated parties and control substantial portions of the RIN market – well in excess of their actual obligation. Given such illiquidity and concentration of ownership, EPA must protect against excessive market power in all RIN pools. Doing so is particularly important, since the statute places a higher priority on the advanced portion of the mandate,[31] which is also the costlier portion of the RFS. The integrity of the advanced RIN categories will arguably be more important to the program moving forward and, as a result, EPA should apply the market reforms to all RIN categories.

B. RINs should only be transferred among parties twice before they must be used for compliance.

Several other environmental credit programs, such as those governing benzene and sulfur, contain such a restriction. Applying it to the RIN market can help limit the ability of entities to participate in volume driven price manipulation, such as the previously mentioned "wash trades."

C. Enhance transparency of the RIN Bank

The RIN bank lacks transparency. As mentioned above, the public and market participants do not know exactly which entities hold what quantities of RINs. Making the RIN bank perfectly transparent to

[28] 84 Fed. Reg. at 10,621

[29] Ibid.

[30] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2018-0167)

[31] The statute's specific mandates for advanced biofuels (and the fuel "buckets" nested within that category) are evidence of this fact; in contrast to the de facto conventional requirement that results from the difference between the collective advanced biofuel mandate and the total required volumes.

all obligated parties – and requiring those that are hoarding RINS to make those RINS readily available to all obligated parties within a specific time frame – would reduce price volatility and mitigate the potential for RIN price spikes.

D. EPA should institute a D6 government backstop RIN at a low, fixed price.

PBF also supports measures to directly control the cost of a D6 RIN through the use of a price fixed government RIN, much as is done with the cellulosic waiver credit (CWC). As previously discussed, ethanol blending is economic regardless of RIN price. Both history and 2018 market experience shows there is no correlation between ethanol blending and RIN price. Give these realities and to avoid the potential for severe economic harm, the government should generate and sell RINs to obligated parties at a low, fixed price that they could use for D6 compliance if they are unable to obtain RINs cost effectively in the marketplace. Refiners would have the option of obtaining a RIN through blending, buying it off the market, or buying the RIN from the government. The government RIN should be made available at all times with no restriction on the number of credits. Experience with the CWC indicates such mechanisms control costs without inhibiting biofuel growth. Despite the existence of the CWC, physical D3 RIN generation still occurs and has increased each of the prior three years.

VII. EPA should provide clarification on footnote 158 of the proposed rule

In footnote 158, EPA infers that RIN market manipulation may already be illegal under the Commodity Exchange Act. Specifically, the footnote states:

> Such behaviors [RIN market manipulation][32] may also violate the anti-fraud and anti-manipulation provisions of the Commodity Exchange Act. See, e.g., Section 9(a)(2) of the CEA, 7 U.S.C. 13(a)(2) (2012), states that it is a felony for ''Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce . . . or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.'' Section 6(c)(1) of the CEA, 7 U.S.C. 9(1) (2012), titled Prohibition against manipulation, states that ''it shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with . . . a contract of sale of any commodity in interstate commerce . . . any manipulative or deceptive device or contrivance. . . .''

The analysis included in the footnote indicates EPA strongly suggests that RINs are a "commodity in interstate commerce" and, as such, should be regulated under the Commodity Exchange Act (CEA). However, in using the term, "may also violate," EPA equivocates on whether this assessment is a firm conclusion. If it is the Administration's position that RINs certainly are "commodities in interstate commerce," and, thus, are directly regulated under the CEA, then EPA should clearly state this position in the final rule. Additionally, if RINs are regulated under the CEA, then EPA and the CFTC should issue guidance relating to RIN market manipulation enforcement issues. Doing so is necessary for all stakeholders to know that enforcement of manipulative practices can now be handled through the CFTC (which is charged with implementing the CEA), as well as how the agency plans on policing the RIN market.

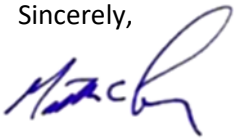
[32] Bracketed phrase added.

VIII Conclusion

PBF welcomes EPA's efforts to advance RIN market reform. The facts show that the RIN market is currently rife with manipulation, wild volatility in RIN prices over the last several years have done nothing to advance or inhibit biofuel blending, and when RIN costs skyrocket, they adversely impact merchant refiners with limited blending capabilities that must purchase RINs off the market, without advancing the RFS program objectives. Given these realities, regulatory reforms are long overdue. RIN market reforms alone will not address the problem associated with mandating overly aggressive biofuel volumes. However, appropriate modifications will help level the playing field among obligated parties, while somewhat helping to contain costs and limiting the potential for harmful manipulation.

As stated above, the core principle behind RIN reform should be to eliminate the ability of entities to use RIN trading exclusively as a profit center, while ensuring market liquidity and more RIN market flexibility for the primary obligated parties, refiners, over non-obligated parties. The most effective way to achieve these objectives is to impose an actual position limit on RIN holdings, married with the other reforms articulated in this document. Getting the details of RIN reform correct is critical to avoid unintended consequences and loopholes. Due to the statute's prioritization of advanced biofuel, it is also critical that the finalized reforms apply to all RIN categories, not just the D6 pool.

Sincerely,



Matthew Lucey
President