Advanced Biofuels Association

June 22, 2016

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy & Power
U.S. House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Bobby Rush
Ranking Member
Subcommittee on Energy & Power
U.S. House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Whitfield and Ranking Member Rush:

The Advanced Biofuels Association (ABFA) would like to thank you for holding this important hearing on the Renewable Fuel Standard (RFS). The ABFA represents over 30 producers and marketers of biofuels from around the world, commanding a total yearly production capacity of 9.6 billion gallons including over two billion gallons of biodiesel and renewable diesel. ABFA members are fueling trucks, boats, and planes with clean, low-carbon footprint, drop-in renewable fuels. The ABFA submits the following comments to contribute to the Committee's discussion regarding the status of the RFS.

The ABFA strongly supports reforming the RFS. We believe the current statutory construct of the program limits its effectiveness by hindering second and third generation biofuel companies' ability to finance the construction of new plants. We have detailed these limitations below for your consideration.

Statutory Issues

The first statutory issue with the RFS lies with the use of the EPA's overly liberal use of the waiver credit for cellulosic fuels. The waiver credit was intended to serve as a relief valve for obligated parties to prevent non-compliance due to cellulosic fuel shortage or overpricing of the fuels. However, the EPA's current statutory interpretation of the program leads to the EPA to issue the same amount of waiver credits as the cellulosic mandates. This creates a loophole for obligated parties, allowing them to buy credits in lieu of purchasing wet gallons of cellulosic fuel to meet their obligation, as was the intention of the authors of the legislation. We strongly urge this be reformed. The agency should only be allowed to issue waiver credits equal to the difference between the mandate and the gallons produced. The RFS must provide cost parity between purchasing the cellulosic fuels and other fuel options. If this parity is not achieved, the financial system will have no confidence that cellulosic plants will be able to compete in the market, creating uncertainty and making it unlikely that financial institutions will take the risk of financing future plants. Indeed, our members have been experiencing this frustration since the inception of this program.

Second, the RFS specifies the volume of fuels to be mandated for all four categories – renewable, advanced, biomass based diesel, and cellulosic – until 2022. Beyond that timeframe, it is clear that the program does not end and that the EPA will set the mandates moving forward. Given the EPA's inconsistent record on administering the program to date, the 2022 timeframe creates fear and uncertainty as to what happens next for both the advanced biofuels industry and obligated parties.

Currently, banks refuse to give any value to RINs beyond 2022. Even the Department of Energy's loan guarantee program will not give credit for the value of the RIN after 2022. This creates a limited repayment window at best of seven years. As advanced and cellulosic biofuels plants are capital intensive to build, this short timeframe makes the cost of financing a plant uncompetitive with first generation fuels that were built years ago. This disproportionately impacts advanced biofuels producers, especially as they compete with the incumbent oil and ethanol industry, which have benefited from tax incentives for decades.

As you know, prior to last year, the EPA failed to announce the program obligations on time for three years. These delays in market-driving Renewable Volume Obligations (RVOs), combined with record low crude and commodity prices, have dealt a crippling blow to the advanced biofuels industry. Many second and third generation companies were beginning to commercialize innovative technologies at the time, and were forced to turn away from the fuels sector, instead seeking revenue from chemicals, food, and other products. This left the first generation producers, most whom have already paid off their plants, as the overwhelming winners under the RFS2 program.

Therefore, ABFA believes that the future of a thriving advanced and cellulosic sector depends on a strong signal of support for the industry from the federal government well beyond the current 2022 timeframe. The advanced sector of the renewable fuels industry provides significant opportunity for the development of low-carbon footprint fuels in material volumes the world will need as the planet's population grows. We urge Congress to reform the program to establish certainty beyond 2022 with sufficient runway for debt financing of new plants for years to come and return investor confidence in the industry.

Administrative Changes

In addition to these critical statutory issues, the complexity of the evolving industry has created a number of challenges with the way the EPA seeks to regulate and implement the current statute. Ironically, in a number of areas, it would be in EPA's best interest if Congress would provide more guidance and direction on how to make some of these decisions. For some reason, only in America is what defines a waste debatable and difficult to ascertain, as it currently is defined by the EPA for RFS purposes.

Another significant concern lies in the barriers to entry created by the EPA's reluctance to afford RINs for renewable fuels created using "intermediate feedstocks" to be "co-processed" by obligated parties. For example, fuels created using algae oils from synthetic biology are not given RINs due to the fear of double accounting, even though EPA has instituted a quality assurance program to guard against future fraud potential. Similarly, the EPA's interpretation of the statutory definitions of both feedstocks and pathways limit the opportunities for technologies to participate in the program.

Additionally, the EPA has struggled to perform its day-to-day statutory obligations in a timely manner. Obtaining a simple facility registration, increasing production volume, or getting approval for new feedstocks takes months at a minimum. These delays have put several of our members out of business and continue to make it almost impossible for others to garner the financing they need to move forward. Although the pathway registration has somewhat improved, it remains an arduous process, putting dozens of companies at risk and costing the industry time and money.

Success Story

The biomass-based diesel pool stands out as a success story of the RFS program, as it has significantly outpaced the proposed statutory mandates. While the program originally called for one billion gallons of biomass-based diesel, the EPA is proposing a mandate of 2.1 billion gallons in its 2017 RVO. The actual gallons represent over 3 billion ethanol-equivalent gallons towards the proposed mandate of 4 billion proposed by the EPA for the advanced pool in 2017. Furthermore, we believe that number may actually be several hundred million gallons low considering the increase in the size of current facilities and the increased use of sustainable fuels flowing into our country from abroad. Since the enactment of the RFS2, we have developed drop-in gasoline and diesel, which are identical to fuels produced from a barrel of oil but with more than 50% greenhouse gas reductions. However, deployment has often been impeded by the financing issues discussed earlier. We have built several commercial-scale renewable diesel plants which produce low-carbon fuel that power heavy-duty vehicles, boats, and airplanes. In short, we have enabled more carbon reduction and more competition in the market, while driving more competitive fuel prices.

One of the primary reasons for this year’s success has been the extension of the current biodiesel and renewable diesel blenders tax credit. We urge Congress to continue to support the industry by quickly reauthorizing all biofuels tax credits, including the biomass-based diesel and renewable diesel blenders credits. Our Association, in partnership with the National Association of Truck Stop Operators, the National Association of Convenience Stores, the Society of Independent Gasoline Marketers of America, the American Truckers Association and the Petroleum Marketers Association of America, supports the continued extension of the blenders credit moving forward. These organizations represent every gallon of diesel sold in the United States. For additional information please see the attached letter.

EIA will argue that biodiesel and renewable diesel, like ethanol, have blend wall issues at approximately five percent. We fundamentally disagree. By EIA’s own admission, over 70 percent of the biodiesel blending occurs above or below the rack. Companies are constantly investing in blending technologies to provide various mixture levels with some blending as much as 15 percent. This has provided much higher use of these fuels and more RINs for obligated parties to meet their obligations.

Any mention of success of advanced biofuels without a salute to the leadership of the U.S. military would be remiss. Department of Defense leadership, particularly from the Navy, has been significant for the advanced biofuels industry. Over the last few years, we have seen the Navy and the Air Force fly their most sophisticated fighter jets on blends as high as 50% advanced drop-in biofuels. Additionally, a number of flights utilizing drop-in fuels made from a wide range of feedstocks have been flown in the U.S. and around the world. As we move forward and have increased air traffic, these fuels are a particularly compelling contribution from the advanced biofuels sector to the future of our transportation industry.

Points of Concern

As of today, we continue to have a number of lawsuits filed in federal court challenging the RVOs that the EPA released last year. In the event any of these suits prevail against the EPA, they will once again send a loud signal of uncertainty around the entire program. This uncertainty will continue to have a disproportionate impact on the advanced biofuels sector, as advanced producers are still in the midst of financing new plants. Legislation and congressional direction could help to ease these challenges by providing, once and for all, clear intent of the Congress.

In addition, the EPA and Justice Department continue to find fraud in the RIN marketplace. Recently, they have obtained a number of new guilty pleas for RIN and tax fraud under the program. The number of affected gallons is unclear, but it is significant, and the current EPA program will require those replacement RINs to come out of the existing pool. This creates yet another uncertainty for the industry's ability to meet the existing RVO requirements with addition invalid RINs. The current EPA "Buyer Beware" program provides three different remedies for the same crime across three different time horizons. Indeed, this system leaves one scratching his head, as innocent parties wind up having to replace the affected RINs. Essentially, the fraudsters go to jail, and the tab gets sent to someone else. This is clearly not equitable, and Congress should review this aspect of the program in full.

Conclusion

On behalf of the members of the Advanced Biofuels Association, we thank the Committee for holding today's hearing. We appreciate the Committee's continued oversight and interest to ensure the RFS program is working on behalf of all Americans. We welcome the opportunity to answer any questions you may have. Thank you.

Cc: Chairman Fred Upton
Ranking Member Frank Pallone
Members of the House Committee on Energy & Commerce

06/09/2016

The Honorable Orrin Hatch
Chairman
Committee on Finance
219 Dirksen SOB
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
219 Dirksen SOB
Washington, D.C. 20510

Dear Chairman Hatch, Ranking Member Wyden, and Members of the Finance Committee:

The above organizations – representing the entire biodiesel supply chain, including consumers – write to reiterate the importance of the biodiesel blenders' tax credit in helping to displace traditional petroleum-based fuel with a cleaner-burning substitute. As the Finance Committee considers energy tax policy and comprehensive tax reform, we urge you to extend the biodiesel blenders' credit in its current form, and oppose any change to the existing tax credit's structure.

Since 2005, there has been a biodiesel and renewable diesel blenders' tax credit of $1.00 for each gallon of biodiesel used in a qualified mixture. This tax credit, which expires at the end of 2016, has successfully stimulated production and driven consumer acceptance of biofuels by lowering the cost to consumers.

For more than ten years, this tax credit has worked: It creates a strong incentive for downstream fuel marketers to blend renewable fuel into the fuel supply all while <u>lowering</u> prices at the pump for consumers.

Allowing the credit to expire, or converting the biodiesel credit to a so-called *producer* credit, would increase the cost of biodiesel for consumers. Increasing the price of biofuels will reduce consumption of advanced biodiesel fuels resulting in higher amounts of harmful emissions from vehicles and higher heating oil prices. Converting the credit to a producer credit would primarily benefit a small number of large biodiesel producers and potentially violate trade agreements which could result in retaliatory sanctions against domestic industries.

Converting the credit to a producer credit is an extremely contentious issue that was specifically rejected in last year's final tax extenders package. No Committee in the House or the Senate has held a single hearing to examine this change. This proposed policy change potentially would (i) increase fuel prices for the millions of trucks that move two-thirds of the country's freight; (ii) raise the price of heating oil in the Northeast; and (iii) result in a trade violation. The proposal to amend the tax credit to shift the tax credit from consumers to refiners should be closely examined and rejected again.

We urge Congress to extend the current blenders' credit in its current form for an additional two years as Congress continues to consider comprehensive tax reform proposals. We urge you to reject any additional modification to this tax credit.

Respectfully,

Advanced Biofuels Association
NATSO, Representing America's Travel Plazas and Truckstops
American Trucking Associations
Society of Independent Gasoline Marketers of America
National Association of Convenience Stores
Petroleum Marketers Association of America

CC:

Members of the United States Senate Committee on Finance