October 29, 2013

The Honorable Barack Obama
President
United States of America
The White House
Washington, DC 20500

RE: Proposed 2014 RFS volumetric blending requirements

Dear Mr. President,

On behalf of the more than 35 advanced biofuel companies listed below, we are writing to express our concern about a recently released draft of the proposed 2014 RFS volumetric blending requirement. While the official proposed rule has not been released, it is clear that a number of key issues are under consideration at the present time.

As you know, there are two overarching compliance pools in the RFS – conventional and advanced. The biofuels industry has stepped up to provide the legislatively required gallons for both RFS categories through 2012. More specifically, the ethanol industry has produced more than enough fuel to meet the conventional standard, and administrative flexibility in the advanced pool has allowed other types of advanced biofuels to make up for the shortfall in the cellulosic biofuel pool through 2012. We also expect to provide sufficient volumes of biofuel in 2013 to meet the originally legislated RFS targets. Simply put, this is a tremendous accomplishment during very difficult economic times.

Going into 2014, it is clear that the Administration is considering making a number of administrative adjustments to the originally legislated blending requirements. This possibility raises some important issues that we would like to comment on:

1. **Broadly speaking, we support the data-driven approach used to date by EPA.** It is clear that the best outcome for the RFS is to base the annual RVOs on immediate term forecasts of actual expected output in the coming year. We expect to meet the 2013 RVO for advanced biofuels of 2.75 billion gallons. We are aware that the oil industry would like to base the RFS on gallons produced to date. Allowing the RFS to reflect, rather than drive the marketplace is a problem because the oil industry controls off-take of our fuel, which in turn gives them unreasonable leverage to determine themselves how quickly our industry grows. This challenge, stemming

largely from the lack of competition and market access in the motor fuel marketplace, is the problem that the RFS is designed to remedy in its forward-looking design.

2. **The RFS must maintain pressure on the marketplace in order to work.** The controversy over the RFS boils down to a market share battle between a growing biofuels industry and the incumbent oil industry. In essence, the oil industry wants EPA/OMB to make administrative adjustments to the RFS that will greatly reduce or eliminate the drivers that facilitate more biofuel blending over time, which will ultimately lead to price competition between the two industries at the fuel pump. The key driver is RIN prices, and the focal point of the oil industry's attempt to paralyze the RFS at the administrative level is the miscasting of RIN prices relative to the so-called blend wall and gas prices. Some major oil companies are arguing that they cannot blend more renewable fuel, and higher D6 RIN prices reflect this reality and will cost consumers at the pump. This is not true. The RFS is actually well-engineered to address the blend wall on its own, without consumer cost. That is, when an oil company refuses to blend more liquid biofuel, they can buy a RIN instead. If intransigent oil companies refuse to blend liquid gallons, RIN trading and values will increase as a result of their affirmative non-compliance, which in turn provides further incentive for other oil companies to actually blend liquid gallons at a savings to consumers. Higher RIN prices are not costing consumers money for two primary reasons: (1) higher D6 RIN values are incenting the increased use of a fuel that is up to $1 cheaper than gasoline, which cut consumer spending by $700 billion to $2.6 trillion in 2013, according to an oil economist; and, (2) many oil companies are now admitting to shareholders on earnings calls that they are the ones *profiting* from higher RIN values, which is why it is untruthful to claim that RIN prices are an unavoidable cost of compliance with the RFS.[1] RINs are thinly traded and showed value above $1 very briefly (perhaps because of speculation, as reported by the *New York Times*). But D6 RINs have settled in at roughly 30 cents more recently, and corn ethanol is not the only type of biofuel eligible for a D6 RIN. There are legal ways to comply with the RFS (e.g. E15, more biodiesel and renewable diesel, E85, etc.). Obligated parties can simply blend more renewable fuel – and make money at it – to avoid buying RINs. As such, the solution to the blend wall is consistent and unwavering administration of the program, which in turn is both a long- and short-term solution to high gas prices. Softening the RFS in any way to address the blend wall will actually perpetuate the blend wall as a construct to dampen innovation and competition, which will cost consumers at the pump and undercut innovation in the sector.

3. **Giving too much credence to factually incorrect claims about constraints on consumption will have a number of serious unintended consequences.** As discussed, the RFS is engineered to address challenges like the oil industry's historic and current refusal to blend more renewable fuels. Investors in next generation biofuels understand how the RFS and RIN values work to introduce market access for advanced biofuels. As such, any perceived unwillingness on the part

[1] For consumer savings estimate, see http://www.pkverlegerllc.com/assets/documents/130923_Commentary1.pdf. For summary of oil companies profiting from higher RIN prices, see: http://www.fuelsamerica.org/blog/entry/something-funny-about-those-oil-company-profits.

of RFS administrators to allow the program to work would send a clear signal to the advanced biofuel marketplace that the RFS may not be allowed to change market behavior as promised. This mere possibility increases investment risk, which in turn drives capital away from the U.S. market and decreases the effective deployment of advanced biofuels. On the legal side, we believe that any reliance on the blend wall to provide effective waiver of the program presents the same problem. The legal standard for a waiver is narrow by design. If allowed to become too broad (via considerations like the oil industry's refusal to comply with the program), the now broader RFS waiver allowance would throw the entire RFS program into a state of perpetual policy/investment uncertainty. The oil industry tried to introduce distribution considerations into the original RFS waiver language when the program was being legislated, and failed because it would have paralyzed the program. This is merely a different venue for the same strategy. In addition, any litigation stemming from what we believe to be an overly broad reading of the RFS waiver provision would in turn cause further uncertainty in the advanced biofuels industry at a critical time, and undermine Congressional intent to promote advanced biofuels.

As a general matter, we are highly aware of the pressure the Administration and Congress are under with regard to the RFS. It is a landmark and innovative program that has been administered admirably by EPA/OMB to date and is changing U.S. liquid fuel markets at the fundamental level. But the RFS is only recently pushing the oil industry out of its comfort zone with regard to the amount of renewable fuel utilized in the marketplace and the types of advanced fuels beginning to come online from new sectors. Depressurizing the program too aggressively at this critical juncture will only make the deployment of advanced biofuels more challenging by embedding willful non-compliance as a construct for discouraging innovation, blocking the availability of cheaper fuels and increasing pump prices, and undercutting billions of dollars in investment in advanced biofuels. We encourage OMB/EPA to recognize that even a proposed rule is a market signal, and that many of the alleged problems with the RFS are actually signs that the RFS is working as designed.

We would look forward to any opportunity to discuss these issues in more detail. The advanced biofuel industry very much appreciates your support.

Sincerely,

R. Brooke Coleman
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Advanced Ethanol Council (AEC)

Jim Greenwood
President and CEO
Biotechnology Industry Organization (BIO)

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