



November 29, 2019

The Honorable Andrew Wheeler  
Administrator  
The Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Renewable Fuel Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, Supplemental Notice of Proposed Rulemaking [EPA-HQ-OAR-2019-0136; FRL-10001-36- OAR]

Dear Administrator Wheeler:

On behalf of the Business Council for Sustainable Energy (BCSE), I write in support of the Renewable Fuel Standard (RFS) and the benefits it provides for the American economy and the environment. Of particular interest to our members are the categories that encourage the production of biogas, renewable natural gas (RNG) and renewable electricity. The Council supports renewable electricity from biogas and biomass including municipal solid waste (MSW). The Council is pleased to offer the following comments on the U.S. Environmental Protection Agency's Proposed 2020 Standards for the Renewable Fuel Standard Program (RFS) (October 28, 2019) Supplemental ("NOPR").

BCSE is a coalition of companies and trade associations from the energy efficiency, natural gas, propane, and renewable energy sectors, and includes independent electric power producers, investor-owned utilities, public power, commercial end-users, and environmental and energy market service providers.

Founded in 1992, the Council advocates for policies at the state, national and international levels that increase the use of commercially-available clean energy technologies, products, and services. The coalition's broad-based business membership is united around the growth of the economy and the creation of a secure and sustainable energy future for America. As a broad coalition, not all members endorse or take positions on the issues discussed in these comments.

The Council supports the RFS, which promotes American security and energy independence by placing value on the development of American fuels that can lower emissions and reliance on foreign fuels. Utilizing a diverse portfolio of clean energy options available for emissions reductions will make the U.S. economy stronger and increase resilience. The technologies represented in the advanced biofuel (D5) and cellulosic biofuel (D3) categories are a key component of that diverse energy portfolio. In order for these industries to continue to grow, it is vital that the 2020 Renewable Volume Obligation (RVO) encompass complete and credible volume predictions for these categories.

### **Ensuring a Successful Renewable Fuel Standard**

As BCSE stated in the comments submitted on the Renewable Fuel Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes (EPA-HQ-OAR-2019-0136), EPA should ensure that it is capturing the full range of benefits of RNG and renewable biomass including the biogenic

portion of municipal solid waste, in the proposed standards for the 2020 RVO. The Council urges EPA to increase the cellulosic biofuel volume requirement for 2020 to reflect expected availability of RNG to meet the RFS requirements. This includes consideration of carryover RINs and the impact of small refinery exemptions to ensure that the requirements EPA sets actually reflect available volume.

#### *Increases to the RVO Volumes*

As stated in its previous comments to EPA on the proposed 2020 RVO, the BCSE recommends that EPA set the cellulosic biofuel requirement at a level that accounts for at least 650 million gallons RNG in 2020.

In addition, the proposed RVO would keep the volume requirement for non-cellulosic advanced biofuels stagnant. To support the development of non-cellulosic advanced biofuels, the Council also supports an increase in the advanced biofuel requirement for 2020. Lastly, EPA should adjust upward the 2020 RVO and future standards if new pathways or registrations that affect the availability of qualifying cellulosic biofuels are approved by EPA.

#### *SREs and the Supplemental Notice*

BCSE agrees with and appreciates EPA's determination in the Supplemental Notice that it must take action to ensure the volume requirements it sets under the RFS are met. Ideally, EPA would cease granting small refinery exemptions (SREs). However, recognizing that EPA's proposal assumes the continued granting of SREs, we are concerned that the approach outlined by EPA in the Supplemental Notice falls short of ensuring that the volumes are met.

EPA should provide greater transparency by codifying the criteria and procedures for seeking and obtaining SREs. This would alleviate the uncertainty created in the market by EPA's existing approach of granting SREs retroactively, including after the close of a compliance year.

In addition, EPA must properly account for SREs to ensure the volume requirements. While BCSE believes that EPA should make up for lost volumes due to retroactive SREs by adding those volumes onto later years, EPA properly may project future exemptions and adjust the total transportation fuel estimates based on the projection when setting the 2020 and future standards as part of its obligation. But, to implement the incentives created by Congress, EPA's projection should be based on the largest amount of actual exempted volumes during the prior three years (e.g., for 2020, the actual volume exempted in 2017).

Under EPA's proposal to use a three-year rolling average, EPA must use the actual volumes of SREs it has granted, not the volumes based on recommendations from the U.S. Department of Energy ("DOE"). For 2020, this should be based on the average of actual exempted volumes for 2016-2018, not on a speculative policy change and not using years where EPA admittedly took a different approach (i.e., 2015).

If EPA seeks to use a reduced volume projection, EPA must provide assurances to support these projections such as codifying the change in methodology for granting "partial" exemptions, codifying the use of a three-year rolling average, and setting a cutoff date for seeking exemptions (e.g., 90 days after the end of the compliance year).

In conclusion, we appreciate EPA's efforts to account for the harms caused by its expansion of SREs and urge EPA to ensure the RFS program's volume requirements. Setting the cellulosic biofuel requirement for 2020 at a level that assumes at least 650 million gallons of RNG will mitigate the harm caused by SREs in a manner that is consistent with the overall policy objectives of the RFS program.

### **Activating the Electricity from the Renewable Fuels Pathway**

Per previous comments to EPA, the Council urges EPA to approve the renewable electricity pathway. The unrealized potential for electricity derived from biogas and solid forms of biomass, including woody biomass and the biogenic portion of municipal solid waste, used as transportation fuel could significantly contribute to the program; EPA ruled in 2010 that electricity from renewable fuels qualifies for RINs but has yet to process any applications for electric pathways.

EPA should include qualifying electricity, and pathway applications submitted by biogas and renewable biomass including the biogenic portion of MSW when establishing RVO estimates. Activating the renewable electricity pathway would have a positive impact on existing infrastructure that provides local governments with tools to manage biogas and solid forms of biomass waste including agriculture, forest and municipal solid waste through the generation of electricity. The electricity pathway could also drive investment, job creation, and spur the construction of more biogas, biomass and waste-to-energy infrastructure.

According to data from the U.S. Energy Information Administration on the amount of electricity currently consumed by electric vehicles, the RVO should include 662 million gasoline gallon equivalents in the cellulosic category beyond the volumes that account for RNG. This represents the power put on the grid by biogas, for which EPA approved a pathway in 2014. There is additional electricity from biomass and waste-to-energy that qualifies according to RFS feedstock definitions, but for which EPA has yet to approve a pathway.

### **Conclusion**

An inaccurate RVO and lack of clarity on the reallocation of the gallons waived by SREs would have significant market impacts, costing jobs, slowing investment, and discouraging confidence in the RFS. The RNG and biogas industries are growing and can grow faster with a well administered RFS that recognizes projects coming online and better anticipates future growth. Additionally, an RFS that takes into account an activated renewable electricity pathway would positively impact the sustainability of existing biomass and waste-to-energy infrastructure, which have faced premature closures in recent years. The Council encourages EPA to ensure a successful RFS program by accurately taking into account the opportunities and growth of the advanced biofuel (D5) and cellulosic biofuel (D3) industries, and supports further action to activate the electricity from renewable fuels pathway.

Thank you for the opportunity to submit comments on the RFS, and the Council looks forward to working with EPA in this process to ensure a successful program.

Sincerely,



Lisa Jacobson  
President, Business Council for Sustainable Energy