

316 Pennsylvania Avenue, SE  
Washington, DC 20003  
202.675.4220 Tel



August 29, 2016

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460

**Re: Opposition to Petition for Rulemaking to Change Definition of Obligated Party  
Under the Renewable Fuels Standards 40 C.F.R. § 80.1406**

Dear Administrator McCarthy,

**Summary:** UPS opposes the Valero petition for rulemaking, but not because we are satisfied with the Renewable Fuels Standard (RFS) as it exists today. To the contrary, that there are several glaring policy problems that we believe prevent the program from reaching its full potential. That said, we disagree with Valero's assessment that renewable fuels penetration would increase if the obligation mandate were shifted to downstream parties, as Valero's petition requests. And in the case of UPS, we believe that such a shift would diminish our ability to continue our leadership in the adoption of renewable fuels into our ground fleet.

**There Are Real Flaws In the RFS**

There are real flaws in the renewable fuels standard program, as well intentioned as it is. First, the program mandates the purchase of specific alternative fuels, rather than imposing a performance standard that is based on the relative greenhouse gas emissions of various fuels.

Second, the specific fuels that are mandated are not compatible with the nation's gasoline or diesel fuel infrastructure. Bio-diesel and ethanol:

- Cannot be shipped in the same pipelines, which efficiently and safely transport over 85% of refined products to downstream terminals;
- Require dedicated Over-the-Road (OTR) transport tankers and vessels, which adds additional transportation costs downstream;
- Require dedicated downstream terminal storage, causing inefficient infrastructure utilization, displacement of gasoline and diesel terminals and excess costs; and
- Cannot be produced in existing refineries that have the ability to produce product at economic scale.

As a consequence of the above infrastructure incompatibility, blending bio-diesel and ethanol into gasoline or diesel fuel must occur only at downstream terminals or even nearer to the point of use.

### **The RFS Should Focus on Incenting the Co-Processing of Renewable Feed-stocks With Petroleum at Existing Refineries**

If the RFS-eligible fuels included renewable feed-stocks that existing refineries can co-process with gasoline and diesel fuel, then this would allow large petroleum refiners to incorporate renewable content during the refining process, near the top of the fuel supply chain. Advanced drop-in fuels like Renewable Hydro-treated Diesel and Renewable Gasoline can be comingled with petroleum-based diesel and gasoline at the refinery gate and can share transportation and common storage downstream. Unfortunately, these feed stocks are not widely available and currently are producible only in purpose-built refineries. The use of renewable feed stocks would efficiently displace petroleum crude oil, accomplishing one of the key objectives of RFS. This approach would also eliminate the need to produce today's "boutique fuels" that are incompatible with the petroleum product supply chain and would eliminate complex blending operations. Finally, this would firmly place the obligation of reducing the carbon intensity of fuels, together with the technical ability to accomplish this objective, upstream with the producers who bear the RFS obligation.

### **Although UPS Understands Valero's Frustration With the RFS, We Disagree With their Assertion That Moving the RFS Obligations Downstream to Rack Sellers Would Yield Greater Renewable Fuels Penetration**

The Valero proposal would impose RFS obligations on what they call "rack sellers," and "blenders," who Valero describes as, "the entities that actually control the hydrocarbon at the primary point of blending," and who "control the blending decision. However, their definition of "obligated party" casts a much wider net, reaching anyone who is:

"the entity that holds title to the gasoline or diesel fuel, immediately prior to the sale from the bulk transfer/terminal system (as defined by IRS regulations in 40 CFR §48.4081-1) to a wholesaler, retailer or ultimate consumer and is required to report federal excise tax liability for the gasoline or diesel on its Form 720 - Quarterly Federal Excise Tax Return, within the 48 contiguous states or Hawaii, during a compliance period or the entity that is the enterer (as defined by IRS Regulations in 40 CFR §48.4081-1) of the gasoline or diesel fuel into the 48 contiguous states or Hawaii outside of the bulk transfer/terminal system and is required to report federal excise tax liability for the gasoline or diesel on its Form 720, during a compliance period." (Petition at 1)

This language appears to attempt to capture companies, like UPS who is neither a producer, refiner, nor blender of petroleum product. Instead, UPS is both a reseller and an end-user of petroleum fuels. We buy fuels from a variety of sources and shift them into storage terminals, some of which we lease, and eventually into our trucks. We have an inventory position, and a subsidiary that serves as a licensed reseller, often because we need to turn over product held for more than month in storage. Consequently, we bear little resemblance to the parties who currently have the RFS purchase obligation. They are typically refiners or importers of product at the top of the fuel supply chain. Further, more than half of the petroleum product that UPS purchases is jet fuel, which is exempt from the RFS obligations, and so no additional UPS renewable fuel purchases will result there, even if UPS has the RPS obligation to purchase. The

Valero net would also capture many parties like UPS who are not blenders. The unintended consequences on the RFS program of capturing such parties as UPS should worry the EPA.

### **Shifting the RFS Obligation Downstream to Blenders Would Inhibit UPS's Fulfillment of Its Commitment to Deploy Low-Carbon Alternative Fuels**

UPS deepened its commitment to alternative fuels in 2012, when it set the goal of reaching 1 billion miles driven with alternative fuels by the end of 2017, using our alternative fuel and advanced technology fleet, which now numbers about 7,200 trucks. In joining the President's Business Act on Climate Pledge just prior to the Paris COP21 agreement, UPS included that goal as one of its pledges. Shattering that goal one year early, about 12 percent of the conventional diesel and gasoline fuel previously used by UPS's ground fleet is now being replaced by alternative fuels including renewable natural gas and renewable diesel. In fact, that fleet is racking up one million miles per day. By the end of 2016, UPS will have invested more than \$750 million in alternative fuel and advanced technology vehicles and fueling stations globally since 2009. A second goal that we pledged to the White House was to reduce our carbon intensity by 20% by the year 2020.

On July 29, 2015, UPS announced agreements for up to 46 million gallons of renewable fuels over the next three years, constituting a 15-fold increase over prior contracts and making UPS one of the largest users of renewable diesel in the world. Achieving both of these goals involves the purchase and use of renewable fuels and that depends on UPS receiving and, for now, monetizing the renewable fuels credits when we purchase the blended fuel. This enables UPS to purchase renewable diesel and renewable natural gas at prices close to parity with conventional petroleum. For UPS, the RFS program is an effective incentive to our increasing our use of renewable fuels through voluntary purchases, and the results are dramatic.

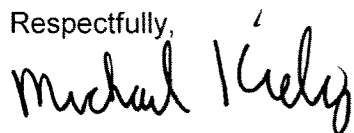
If the RFS obligation were shifted downstream, it would force UPS to re-examine its above-the-rack purchases, which we began long before the RFS began. We engage in above the rack purchases in order to reduce the cost to us of diesel fuel, jet fuel and gasoline and lower our cost of delivering packages. For us, the RFS program would move from an effective incentive to purchase renewable fuels voluntarily to a disincentive to our purchase of fuels above the rack. This would raise our fuel costs, lower price competition above the rack, and disrupt our plans to incorporate renewable fuels into our fleet. Our commitment to renewable fuels would be driven, not by optimizing our use of renewable fuels voluntarily in our fleet, but rather by meeting our mandatory renewable fuels purchase obligations that may not synchronize at all with our needs for alternative fuels.

### **Shifting the RFS Obligation Downstream to More Parties Would Cause Greater Costs of Program Administration and Enforcement**

Any proposal to shift the RFS obligation downstream would necessarily increase the number of parties obliged to purchase renewable fuels, thereby raising the administrative and enforcement costs. That shift alone carries with it no inherent reason to believe it would increase the blending of renewable fuels. The RFS program always envisioned placing the renewable fuel obligation high on the fuel distribution chain, on refiners and petroleum product importers, where control resides. UPS is neither.

In closing, Valero is correct that not all is well with the RFS program, and UPS can empathize with their frustrations. Yet, we believe that the fundamental problem is fuel-specific mandates for blending components that are inherently incompatible with the nation's petroleum infrastructure, necessitating RFS blending far below the position in the fuel supply chain of the refiners and importers who now bear the RFS burden. Rather than moving the RFS obligation downstream to where blending of bio-diesel and ethanol is feasible, the slate of renewable blending components should change to enable their blending and co-processing with petroleum far upstream in conventional refineries. UPS is happy to discuss with you any aspects of these comments or any questions that you may have.

Respectfully,

A handwritten signature in black ink that reads "Michael Kiely". The signature is written in a cursive style with a large, prominent "K".

Michael Kiely  
Managing Director, SVP  
U.S. Government Affairs

UPS  
316 Pennsylvania Avenue, S.E.  
Suite 300  
Washington, DC 20003

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pa. Ave., NW Room 3000  
Washington, DC 20460

Route **EPA Mail**

To: McCarthy, Gina

Mailstop: ARIEL RIOS NORTH

Department: 1101A

SCL

