February 22, 2017

The Honorable Scott Pruitt
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 Fuel Standard 40 C.F.R 80.1406 (EPA—HQ—OAR—2016—0544)

Dear Administrator Pruitt:

NATSO, the leading trade association representing America's Truckstops and Travel Plazas, submits these comments to reiterate our strong opposition to the petitions for rulemaking to change the point of obligation under the Renewable Fuel Standard ("RFS" or the "Program") program.[1]

The RFS is not perfect. However, the petitions to change the point of obligation do not represent a good-faith effort to alleviate these imperfections or to improve upon the RFS. Instead, they represent the culmination of an effort spearheaded by a narrow segment of the refining community to receive a government bailout for their own – in retrospect unwise – business decisions undertaken in the years since the RFS was first enacted more than a decade ago.

NATSO stands ready to work with the Environmental Protection Agency ("EPA" or the "Agency") and Congress to identify and implement necessary changes to the RFS that would help it achieve its original objectives of displacing traditional fuel and replacing it with renewable substitutes to promote stable supply and prices. Changing the point of obligation would hinder these objectives. It would inject such massive disruption and uncertainty into fuels markets that retail fuel prices will inevitably skyrocket and the incentive for fuel marketers to integrate renewable fuels into their product lines will dissipate. This will crush the very constituencies

[1] Valero, Petition for Rulemaking: Renewable Fuel Standard Definition of Obligation Party—40 C.F.R. 80.1406 (June 13, 2016); American Fuel and Petrochemical Manufacturers, Petition for Rulemaking: Renewable Fuel Standard Definition of Obligation Party—40 C.F.R. 80.1406 (Aug. 4, 2016).

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whose interests President Trump promised to protect in order to benefit a narrow segment of the refining industry.

What's more, changing the point of obligation will impose exceedingly onerous and expensive burdens on EPA staff. As you consider the petitions to change the point of obligation under the RFS, we urge you to seek counsel from the EPA officials who have worked over the past decade to implement the program.

Below is a brief discussion outlining why NATSO believes that the current definition of "obligated party" is best suited to achieving the RFS's objectives, followed by a rebuttal of the key arguments that proponents of shifting the point of obligation have made.[2] NATSO notes at the outset, however, that we agree with virtually every point made in EPA's thoughtful proposal to reject the petitions.[3]

I. *The current definition of "obligated party" is best suited to achieving the RFS's objectives*

The RFS is designed to displace traditional fuel and replace it with renewable substitutes to promote clean air, stable prices, and stable supply. These objectives can only be satisfied if renewable fuels are integrated into the nation's fuel supply. Renewable fuels will only be integrated into the nation's fuel supply if renewable fuels are price-competitive with traditional petroleum-based fuel.

Currently, the entities that are "obligated parties" are fuel refiners and importers. This approach has worked effectively: It creates a strong financial incentive for downstream fuel marketers to blend renewable fuels into the fuel supply all while lowering prices at the pump for consumers. Given motor fuel consumers' price-sensitivity, it is imperative that renewable fuels be sold on a cost-competitive basis with traditional petroleum-based fuels if they are to achieve the type of market penetration that the RFS envisions.

Making downstream marketers (or "position holders," in tax parlance) obligated parties would increase the retail price of motor fuel and renewable fuel blends. Downstream marketers do not control the characteristics of the nation's petroleum supply, *i.e.*, whether it can be blended with renewable fuels to produce a product that can be sold lawfully. Refiners and importers, on the other hand, do control such characteristics. It is logical therefore to make them obligated parties.

If position holders became obligated parties, their ability to satisfy their obligations would be dictated by their upstream counterparts, who would have the leverage and incentive to raise prices. (Current obligated parties, whose main product is petroleum, have no incentive to displace petroleum from the supply chain unless

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[2] This letter supplements the comments on this topic that NATSO filed in its Comments on the Proposed RFS Annual Rule for 2017 (July 11, 2016), which is currently filed in this docket (Docket ID: EPA-HQ-OAR-2016-0544-0062), *available at* https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0544-0062.

[3] *See* 81 Fed. Reg. 83776 (Nov. 22, 2016).

they are "obligated" to do so.) Undoubtedly blendstocks that are amenable to blending with renewable fuels will be *available* in the market, but they will become a specialty product for which refiners will charge a premium. Indeed, they know that if their customers were obligated parties, their customers would be required to purchase these specialty blendstocks, and therefore willing (required) to pay a premium for them. The resulting price increase will be passed down to consumers via higher prices at the pump.

If position holders were to become obligated parties, there would inevitably be a decrease in the number of "position holders" in markets throughout the country. Indeed, marketers would be incentivized to acquire fuel "below the rack" in order to avoid RFS obligations. The cost of fuel acquired "above the rack" would increase because doing so would entail RFS obligations. This cost increase would be passed down to all fuel purchased below the rack, including ultimately consumers in the form of higher prices at the pump. (As discussed below, this trend has already taken place in California under the Low Carbon Fuel Standard ("LCFS") in place there.)

Another reason that the number of position holders in any given market would decrease if position holders were to become obligated parties is that many current position holders primarily sell gasoline, not diesel fuel. (Indeed, many position holders, such as trucking and railroad companies, do not sell fuel at all.) However, upon becoming an obligated party, one assumes an obligation in all four renewable fuel categories. Position holders that primarily sell gasoline, therefore, will inevitably find themselves short D4 (biodiesel) RINs. Their only options would be to (a) purchase such RINs in the open market, and pass along the costs to consumers via higher prices at the pump; (b) begin selling substantially greater volumes of diesel fuel; or (c) only acquire fuel below the rack. None of these are attractive options for these businesses, nor would they be positive developments for consumers or EPA's ability to ensure that the RFS's objectives are achieved.

If position holders were to become obligated parties, consumption of renewable fuels in the United States would decrease. The increased costs for specialty fuel blendstocks that are amenable to renewable fuel blending will increase the costs of goods sold for marketers of these fuels – these costs will inevitably be passed down to consumers via higher prices at the pump. Consumers, in turn, would gravitate toward the less expensive, unblended petroleum-based fuel product that the RFS was designed to displace. It is important to keep in mind that the RFS does not require consumers to buy renewable fuels. By and large the only reason consumers buy renewable fuels today is that fuel marketers are able to sell such fuels at a price that is competitive with traditional fuel.

If position holders were to become obligated parties, it would result in an expensive, administrative nightmare for EPA officials. There are substantially fewer refiners and importers today than there are position holders. Thus, EPA's ability to ensure that all "obligated parties" are compliant with their RFS obligations is relatively simple and straightforward.

If downstream fuel marketers became obligated parties, it would inject massive disruption into EPA's RFS enforcement regime, and require a far greater number of resources and staff hours to ensure that the now-larger number of obligated parties satisfy their requirements under the RFS. The Agency would have to re-register and track hundreds if not thousands of additional companies as obligated parties, and these companies will have to hire a number of additional employees solely to ensure that they are in compliance with their newfound obligations. It would also inevitably involve a massive rewrite of the RFS regulations.

II. *Rebuttal of the key arguments that proponents of shifting the point of obligation have made*

The Valero Energy Corporation ("Valero") submitted a Petition for Rulemaking to EPA on June 13, 2016, requesting that the Agency redefine the term "obligated party" under the RFS as a position holder at the rack, rather than refiners and importers[4] (the "Petition"). The Petition represents the most comprehensive argument for changing the point of obligation.

As a general matter, the Petition relies upon various flawed premises (*e.g.*, that the legal and market dynamics prompting EPA to exercise its waiver authority in recent years would disappear if the point of obligation shifts downstream) and mischaracterizes some very predictable consequences that its proposed policy shift would trigger. For these reasons, NATSO wholeheartedly supports EPA's proposed denial of this Petition and urges EPA to finalize this denial as soon as possible.

Below is a brief discussion of some of the incorrect assertions in Valero's Petition.

Incorrect Assertion #1: Blenders are better able to than refiners to satisfy obligated parties' requirements.

Valero purports to be trying to "align the obligation to blend increasing volumes of renewable fuels into transportation fuels with the ability to do so . . . ."[5]

In fact, as noted above, if downstream fuel marketers were obligated parties they would be subject to obligations with which they may be unable to comply. Their ability to do so would be dictated by upstream counterparts that have little incentive to displace petroleum fuel with renewable substitutes (which incidentally is one of the RFS's primary objectives). These upstream counterparts would have leverage to raise prices, turning blendstocks amenable to renewable fuel blending into specialty boutique fuels. This would raise prices at the pump for renewable fuel blends, which is counter to the RFS's objectives.

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[4] *Supra* n.1

[5] Petition at 1.

Incorrect Assertion #2: Shifting the point of obligation to the rack would help renewable fuel producers, and renewable fuel producers support such a policy shift.

Valero misleadingly claims that renewable fuel producers "are in accord with and will not be harmed by the proposed change."[6] In fact, renewable fuel producers are helped by the current definition of obligated party because it creates a guaranteed demand for their product, and further it incentivizes fuel marketers to blend their product into the fuel supply all while *lowering marketers' costs of goods sold.* For the reasons noted above, shifting the point of obligation to position holders would *increase* marketers' costs of goods sold, imposing upward pressure on the retail price for renewable fuel producers' products, thus decreasing demand for such products.

Throughout its Petition, Valero strains to present EPA with a picture of renewable fuel producers supporting Valero's efforts to shift the point of obligation. For example, it cites several statements made by renewable fuel producers in 2009, *before the RFS2 was even in place.*[7] Surely one cannot presume that such viewpoints have not evolved given those entities' experience with the RFS. That Valero does not claim that these entities support Valero's Petition attests to the fact that their views have in fact evolved.

Conversely, NATSO is able to point to express statements from renewable fuel producers *opposing* changing the definition of obligated party. These statements were made *after Valero filed its Petition*, and thus reflect the industry's current thinking. For example, the Renewable Fuels Association, Growth Energy, and the Advanced Biofuels Association have all signed a letter to EPA expressing their "unified position in opposition to efforts by petitioners to move the point of obligation for RFS compliance," adding that "there is no sound public policy rationale for moving the point of obligation and further, such a change would add complexity and uncertainty to the current RFS program."[8]

Incorrect Assertion #3: The current definition of obligated party is why the market is unable to satisfy the statutory RVOs.

The Petition claims that the current definition of obligated party "has created multiple problems that impair the RFS program's proper functioning and prevent it from ensuring that renewables enter the transportation fuel market."[9]

This is demonstrably untrue. First, as EPA knows, the RFS has resulted in a substantial increase in the use of renewable fuels in transportation fuels. Indeed, virtually every fuel terminal in the United States currently has ethanol, and that is in large part due to the RFS.

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[6] Petition at 28.
[7] Petition at 28-29.
[8] *See* Attachment A.
[9] Petition at 1.

Second, and perhaps the most fundamental flaw with the entire Petition, this statement ignores the legal and market realities that fuel retailers confront that are largely responsible for total renewable fuel (*i.e.*, corn ethanol) consumption in the United States having for several years fell below what Congress initially envisioned when it passed the Energy Independence and Security Act in 2007. This necessitated EPA to rightly exercise its waiver authority to bring the annual renewable volume obligations in line with market realities. (EPA has finalized a total renewable volume obligation for 2017 that is back in line with Congress's original goal, further undercutting the Petitioner's argument.)

These realities – which EPA has articulated in justifying its exercise of its waiver authority – would continue to exist if the point of obligation changed. The only difference is that their effect would be exacerbated.

As a general matter, these market realities are:

- *Insufficient Demand* – Consumers have not shown a substantial interest in higher blends of renewable fuel, largely due to diminished gas mileage, and until they do, retailers will have little interest in investing in and offering for sale products that their customers do not want to buy. Very few retailers offering E15 and E85, for example, have generated strong sales of such products.
- *Retailer Liability Concerns* – Federal and state laws, as well as banking covenants, fire codes, and other mandates require retailers to store and dispense renewable fuel blends in equipment that has been listed by a nationally recognized testing laboratory as compatible with the fuel. No fuel dispenser manufactured prior to 2010 has such a listing, and retailers are often unable to verify whether their underground storage tank is listed. Replacing this perfectly functioning equipment is exceedingly expensive, particularly given the small margins on which most fuel retailers operate and the questionable return-on-investment due to consumers' lackluster demand for higher blends.
- *Litigation / Enforcement Exposure* – Retailers who store and dispense higher renewable fuel blends than E10 are exposed to potential lawsuits and EPA enforcement actions for customer misfueling (placing E15 or E85 into a vehicle for which the product is not authorized), a concern that is magnified by the fact that EPA's rule authorizing the sale of E15 bifurcates the motor vehicle market by restricting E15's use to model year 2001 and newer vehicles, prohibiting its use in older models.[10] Additionally, many vehicle manufacturer owner's manuals and warrantees do not authorize the use of fuel blends greater than E10, and retailers may be exposed to litigation for selling a fuel that voids a customer's vehicle warranty.

[10] *See* 40 C.F.R. 80.1504.

These various market and legal realities are the primary obstacles to further penetration of renewable fuels into the transportation fuel supply. Shifting the point of obligation would not mitigate their effect on fuel retailers' decision-making when it comes to offering higher renewable fuel blends.

In fact, shifting the point of obligation would exacerbate these obstacles. For example, moving the point of obligation would not prompt investment in infrastructure that is listed by a testing laboratory as being compatible with higher renewable fuel blends – it would do the opposite. Fuel marketers would stop buying fuel above the rack if they are not certain that they have the infrastructure in place to sell the requisite gallons of renewable fuel to satisfy their RVOs. The Petition suggests that fuel retailers would break concrete at their site to install new equipment, and then acquire fuel above the rack to become obligated parties under the RFS, all to sell increase renewable fuel blends for which demand is uncertain. This suggestion is inaccurate.

The only real way to prompt fuel marketers to invest in infrastructure is if they think their customers will demand the products that will be stored in it and dispensed through it.

Incorrect Assertion #4: If EPA maintains the current definition of "obligated party," it is being fooled by fuel marketers' self-interested claims.

Valero ominously warns EPA to "pay careful attention to the motives of any opponents to the change; none are motivated to improve the efficiency and power of the RFS to promote renewable fuel."[11]

This is also untrue, and as discussed below represents what Dr. Sigmund Freud would call *psychological projection.*

Without question all parties in the supply chain – from producers and refiners down to marketers and retailers – are motivated by making a profit. The beauty of the current RFS regime, however, is that it harnesses these various profit-motives to achieve the Program's objectives. In so doing, EPA recognizes that for more renewable fuels to be integrated into the nation's fuel supply, there must be a strong financial incentive for marketers and retailers to sell renewable fuels.

Fuel retailers, for the most part, have benefitted under the RFS. The RFS has resulted in a more diverse source of supply from which fuel marketers can acquire and then sell goods to their customers. Many savvy travel plaza operators have improved their bottom line by buying and blending biofuels into the fuel supply, all while *lowering prices at the pump*. <u>This is what the RFS was designed to achieve, and represents a sound approach to policymaking: Creating financial incentives for private actors to engage in behavior that is beneficial for society at large.</u>

[11] Petition at 6.

Thus, NATSO's membership and the entire fuel marketing community opposes changing the definition of obligated party because maintaining the current definition would "improve the efficiency and power of the RFS to promote renewable fuel"[12] and simultaneously improve fuel marketers' ability to improve their bottom line. The two go hand-in-hand.

Dr. Sigmund Freud considered in *psychological projection* thoughts and motivations that cannot be accepted as one's own are dealt with by being placed in the outside world and attributed to someone else. Valero's warning to EPA that those who oppose its Petition are simply self-interested actors who couldn't care less about the RFS's success is the textbook definition of psychological projection.

Valero and others that support moving the point of obligation downstream – like marketers, renewable fuels producers, and all other entities in the supply chain – are motivated by profit. However, based on how Valero and other merchant refiners are positioned in the market, their ability to maximize profit is incompatible with the RFS's ability to effectively and efficiently promote renewable fuel's integration into the transportation fuel supply.

Valero specifically has made a series of business decisions – *after* the RFS was in place – that have made it more difficult for Valero optimize its operations in a market governed by the RFS program. Their proposed solution is for the federal government to bail them out for decisions they have come to regret.

For example, in 2013, more than three years after the RFS2 rules were finalized, CST Brands, with approximately 1,900 sites in the U.S. and Canada, spun off from Valero.[13] Valero thus lost a substantial retail fuel footprint that would have enabled it to acquire the requisite number of RINs to satisfy its RVOs more economically than it can today. As it stands now, Valero – unlike its integrated competitors – refines more product than it buys at the rack. This leaves Valero in a position where it is short RINs while its competitors are long RINs. It is certainly not an enviable position, but equally certainly it is not one that necessitates EPA turning the RFS program on its head in order to accommodate certain companies' business positions.

Were EPA to grant the Petition and change the point of obligation, Valero's business position would improve tremendously. Not only would it be absolved from most of its RVO obligations, it would acquire substantial leverage to raise prices. The predictable diminution in position holders at terminals throughout the country (many would only buy product below the rack to avoid an RVO) would mean less competition for Valero at the rack, thereby enabling it to raise prices. Valero would also remain able to export product rather than sell it domestically if the export

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[12] *Id.*

[13] *See* BusinessWire, "CST Brands, Inc. Spins Off from Valero Energy Corporation." May 1, 2013 (*available at* http://www.businesswire.com/news/home/20130501005416/en/CST-Brands-Spins-Valero-Energy-Corporation).

arbitrage opened up; this business position would be far more attractive if the company did not assume RVOs for product introduced into U.S. commerce.

Additionally, moving the point of obligation to the rack from the refinery will allow entities that are currently obligated parties to receive a windfall by selling up to B5 (5% biodiesel, 95% diesel) prior to placing the product in the pipeline. These parties could then separate the RIN associated with such blending from the downstream buyer, or transfer the RIN and charge a premium for the product. This will not only raise prices directly (since the costs of acquiring the RIN will be passed down to the end-user), but also indirectly by reducing position holders' ability to blend at the rack (because there would already be a percentage of biodiesel in the base product, and marketers would have to assume that this percentage is 5%).

Thus, NATSO reiterates Valero's warning to EPA: "Pay careful attention to the motives" of any company that wants to change the definition of obligated party. It is a given that they are motivated by earning a profit; the question instead is whether their ability to maximize profits is compatible with the RFS's objectives. If EPA considers the motives and market positions of the entities urging it to change the point of obligation, it will become clear that those entities are motivated by self-interest, and, most importantly, that such self-interest is divorced from "improving the efficiency and power of the RFS to promote renewable fuel."[14] (In fact, as recently as 2013, Valero was encouraging Congress to *repeal* the RFS.[15])

Incorrect Assertion #5: Under the current definition of "obligated party," RIN values are not being passed through to consumers; if the Petition is granted, RIN values would be passed through to consumers.

Throughout its Petition, Valero asserts that under "the current Point of Obligation, RIN value is not passed through to consumers to lower renewable fuel prices and stimulate demand." This is plainly false.

Biodiesel and renewable diesel are the best examples for evaluating this statement's veracity, for as a general matter diesel would not be blended with biomass-based diesel fuels in the absence of the RFS and other government incentives. (Ethanol, by contrast, is an economical source of octane and therefore would be blended with gasoline even if the RFS were repealed.) As it stands today, biodiesel and renewable diesel that are sold primarily by NATSO's members to truck drivers are the driving force behind the RFS. Indeed, biomass-based diesel consumption is growing annually, and is responsible for much of the RFS's advanced biofuel obligations being met.

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[14] *See supra* n.11 and accompanying text.

[15] *See, e.g.*, Testimony of William R. Klesse, Chairman of the Board and CEO, Valero Energy Corporation, Before the Senate Committee on Energy and Natural Resources. U.S. Senate. July 16, 2013, *available at* http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=20148F12-FDE4-41F9-82A2-88C42855BF2A.

This is despite the fact that biodiesel as a commodity is substantially more expensive than ultra low-sulfur diesel ("ULSD"). *Ceteris paribus*, biodiesel blends should therefore be more expensive than ULSD at retail. However, biodiesel blends are virtually always less expensive than unblended diesel fuel. EPA was correct when it noted:

> The economic incentives provided by the . . . RIN have made it possible for some retailers to realize additional profits while selling biodiesel blends, while in many cases offering these blends at a lower price per gallon than diesel fuel that has not been blended with biodiesel. The ability for retailers to offer biodiesel blends at competitive prices relative to diesel that does not contain biodiesel, even at times when oil prices are low, is a key factor in consumer acceptance of biodiesel and renewable diesel.[16]

The primary reasons that RINs are passed through to consumers under the current regime – and would not likely be passed through if the definition of obligated party changes – is the transparency and competitiveness of the retail fuels market compared with the wholesale market. The retail motor fuels market is perhaps the most transparent, competitive market in the United States. Motor fuel consumers are extremely price conscious. Unlike virtually any other retail market, motor fuel consumers are able to ascertain the price of motor fuel at a particular retail outlet without having to leave (or even stop driving) their car. This imposes strong downward pressure on retail fuel prices.

The retail diesel market within which NATSO members operate is even more competitive and transparent because many of their customers – truck drivers and trucking fleets – are more savvy and price conscious than typical American motorists. Truck drivers are often aware of retail fuel prices when they are 100 miles away from potential refueling sites, and fleets often use this information to direct drivers to specific retail sites in order to purchase the lowest-priced fuel available. This imposes extremely strong downward pressure on retail diesel prices.

In this environment, it is virtually impossible for marketers to absorb the entire RIN value without passing it on to consumers. Retailers must pass that value on to consumers in order to remain competitive. Many diesel retailers that are less experienced in the biodiesel space are often surprised to learn that the reason their competitors are able to undercut them on price is the fact that their competitors are integrating biodiesel into their diesel supply. Doing so enables their competitors to economically sell biodiesel blends for less money than their competitors sell ULSD, even though biodiesel as a commodity is more expensive than diesel. <u>This could not</u>

[16] 81 Fed. Feg. 34794.

occur if RIN values were not being passed along to end-users in the form of savings at the pump.

Any suggestion that fuel marketers are reaping a "windfall" from RIN transactions and that RIN values are not being passed through to consumers in the form of lower prices at the pump is incorrect. This is best illustrated by a recent "study"[17] conducted by Ramon Benavides, President of Global Renewable Strategies and Consulting, LLC and formerly a co-founder and vice president of business development for Gen-X Energy Corp.[18]

This "study" is in fact not a study in the traditional sense, but rather a sloppy, haphazard, desperate compilation of incomplete information. It is consistent, therefore, with other efforts that strain to conclude that the current point of obligation enables independent fuel marketers to reap excessive "windfalls." The "study" concludes that two of NATSO's members "realize margins that exceed average convenience store levels by approximately double," concluding therefore that "small retailers do not have the ability to enjoy the same *excess* margins."[19]

The "study" must be dismissed out of hand because it does not have the information necessary to deduce these NATSO members' margins, and even if it did, its conclusions cannot be trusted because its author exhibits no understanding of the retail fuels and renewable fuels markets and the economic forces that govern them.

The "study's" underlying flaw – putting aside the fact that it represents a simple snapshot of only one day which cannot legitimately represent historical differences in margin between competitors in a given industry – is that it fails to account for the various cost components that fuel retailers absorb for every gallon sold at retail.

For example, according to the "study," fuel marketers assume no transportation costs to bring fuel from a refinery to their retail station. The study assumes no tariffs, terminaling charges, storage charges, additive expenses, and no secondary freight costs (*i.e.*, truck freight to bring the product to the retail station). According to this study, fuel marketers wake up every morning and find that fuel magically appears in their underground storage tanks at all of their outlets. And after customers buy that fuel, new fuel magically reappears.

The "study" further assumes that the NATSO members it "analyzes" have access to conventional blendstock for oxygenate blending ("CBOB") in all markets, that they ship CBOB and blend ethanol at all of their retail outlets. This is patently false. Finally the "study" assumes that fuel retailers retain 100% of the RIN value in all of

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[17] Ramon Benavides, "Renewable Fuel Incentives: Estimation of Large Retailers' Margins," *available at:* http://smallretailerscoalition.com/wp-content/uploads/2017/02/Renewable-Fuel-Incentives_Estimation-of-Large-Retailers-Profits.pdf.

[18] The team at EPA charged with identifying and enforcing instances of fraudulent RIN generation is likely familiar with Mr. Benavides and Gen-X. *See, e.g.*, https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program#genx.

[19] Benavides, *supra* n. 17 (emphasis added).

their gallons, and retain 100% of the biodiesel tax credit value in all of their diesel blends. This is nonsensical. In reality, these values are baked in to the overall price that marketers pay for product.

On top of the "study's" ignorance of retail fuel markets in general, it exhibits a glaring misunderstanding of the travel plaza industry's business model – an unfortunate shortcoming given that the study only examines two companies, both of which are leading travel plaza chains.

Specifically, the study assumes that all diesel fuel that travel plazas sell is sold for the posted retail price. In fact, as anyone with a modest understanding of the industry will tell you, travel plazas and truckstops very frequently negotiate fuel volume discounts with trucking fleets. These prices, which are the ones actually paid by truck drivers, are proprietary information to which Mr. Benavides does not have access. Needless to say, they are often substantially lower than the posted retail price, and pass a significant portion of RIN and other values along to end users. This explains why the NATSO members that Mr. Benevides examined are among the most competitively priced fuel retailers in the United States. It also explains why the American Trucking Associations ("ATA") and the Owner Operator Independent Drivers Association ("OOIDA"), as well as the American Highway Users Alliance ("AHUA", representing motorists such as AAA, RV enthusiasts, truckers, bus companies, and motorcyclists, among others) all support NATSO's position to keep the point of obligation with refiners and importers.[20]

In fact, <u>all</u> segments of the motor fuel supply chain with the exception of a handful of merchant refiners oppose shifting the point of obligation. The so-called "**Small Retailers Coalition**," which funded the study and is itself funded by a small group of merchant refiners petitioning to change the point of obligation, is no exception.

Although EPA may receive comments in this docket will be from "small retailers" who claim the current point of obligation places them at a competitive disadvantage relative to "larger" unbranded fuel marketers, this line of argument – which has been fed to these retailers by their suppliers – is clearly and completely off-base.

In fact, the "small retailers'" predicament is due to the fact that they have all locked themselves in to supply agreements where they are only permitted to purchase product from certain suppliers. This affords them less flexibility than their unbranded counterparts to acquire product from multiple sources in order to optimize value.

The "crux" of their grievance is that some of these suppliers with whom certain "small retailers" are locked in to supply agreements have <u>chosen not to pass along any value obtained from renewable fuel blending to their branded "small retailers."</u>

[20] *See* Attachment B.

The "small retailers'" fundamental problem, therefore, is caused not by the point of obligation, but by their suppliers' business stratagem. Changing the point of obligation will not address any of their concerns – unbranded marketers would still be nimble enough to buy fuel more efficiently and price it more competitively than their branded counterparts. What's more, there is absolutely no reason to believe that suppliers, who do not pass meaningful values through to their branded retailers today, will have a charitable change of heart should the point of obligation move downstream.

The branded distributors and retailers that comprise the "Small Retailers Coalition" have made business decisions to lock themselves into supply agreements with certain suppliers. These decisions come with many benefits: they are assured supply in times of disruptions such as hurricanes or pipeline events; they receive assistance setting up and marketing their convenience stores; they have instant brand recognition when they hang their supplier's "flag" outside of its stores; etc.

But the decisions also have certain downsides. One of these downsides is that they are beholden to their suppliers' pricing schemes. These retailers entered such agreements on their own free will, and are equally able to reevaluate these agreements and conduct their businesses in different ways. What they are seeking – on behalf of their suppliers – is simply a government bailout for their own decisions that they have come to regret. They effectively want EPA to change the RFS so that their competitors have to charge the same higher prices for fuel that they charge. Not only is this bad policy, but changing the point of obligation wouldn't even resolve their concerns.

It also clearly exposes the inconsistencies in Valero's position: On the one hand, Valero argues that certain unbranded marketers are reaping a "windfall" by keeping all of the RIN values as "profits" and refusing to pass any of that value down to their consumers. At the same time, using as a mouthpiece their own branded "small retailers" whom Valero has squeezed out of a competitive market position, Valero argues that retailers can't compete on price because independent marketers use RIN values to undercut their competitors on price.

Both cannot be true.

Incorrect Assertion #6: California's LCFS illustrates why changing the point of obligation to position holders would better accomplish the RFS's objectives.

The Petition asserts that California's LCFS illustrates that placing the point of obligation at the rack effectively incentivizes market penetration of renewable fuels. In fact, California's LCFS has demonstrated that placing the point of obligation at the rack decreases the number of position holders in California, allowing those that remain to raise prices without fear of being undercut by competition.

Although NATSO agrees with the Petition that California's experience with the LCFS should inform EPA's approach to this issue, NATSO disagrees that this analysis

should prompt EPA to change the point of obligation to position holders. The fact that the LCFS has resulted in less competition at the rack resulted in significantly higher prices for consumers at the pump. In fact, retail prices increased so exorbitantly that California's Attorney General commenced a price gouging investigation.[21]

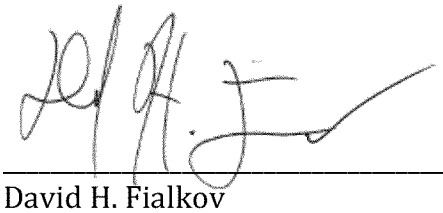
Thus, California's experience should reaffirm for EPA the wisdom of keeping the point of obligation with refiners and importers, as this would encourage fuel marketers to blend and sell renewable fuels all while *lowering* retail prices for consumers. The most effective way to encourage consumers to purchase renewable fuels is to make such fuels the most attractive option from a cost perspective. California's LCFS has not done this.

The net result of California's LCFS program has been to drive out refiners' competitors for refined products. Many entities that are not obligated parties under the RFS have abandoned the above-the-rack market in California in order to avoid assuming the LCFS burden. These entities have reduced or curtailed shipping and storage, which has incidentally reduced Valero's competition and allowed it and its counterparts to raise prices. (It is not a coincidence that Valero wants EPA to follow this model.) The California spot market is not as efficient or transparent due to the fact that the number of buyers and sellers has been reduced. Were this model replicated across the country, the net effect would be to diminish competition and raise prices nationwide.

This is in no one's interests but the Petitioners.

III. Conclusion

NATSO urges EPA to reject the Petition and keep the point of obligation with refiners and importers. NATSO is grateful for the opportunity to provide these comments and stands ready to be of assistance to EPA in its consideration of this matter.



David H. Fialkov
Vice President, Government Relations
Legislative and Regulatory Counsel
NATSO

[21] Ivan Penn, "California attorney general subpoenas oil refiners in gas-price probe." Los Angeles Times. June 30, 2016. *Available at* http://www.latimes.com/business/la-fi-oil-refineries-subpoenas-20160630-snap-story.html ("California drivers paid pump prices that have been as much as $1.50 higher than the rest of the nation since last summer.")

ATTACHMENT A

November 30, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy,

The undersigned associations represent a significant majority of participants across the United States' transportation fuels value chain. While each association has an individual, unique position – often conflicting – regarding the broader Renewable Fuel Standard (RFS) program, we write to express our unified position in opposition to efforts by petitioners to move the point of obligation for RFS compliance. It is unprecedented for all of these undersigned groups to unite in a single letter to express a uniformly held position.

Each of the undersigned associations strongly supports the Environmental Protection Agency's (EPA) proposed denial of petitions for a rulemaking to change the point of obligation under the RFS. There is no sound public policy rationale for moving the point of obligation and further, such a change would add complexity and uncertainty to the current RFS program.

We urge EPA to finalize its conclusion and deny the petitions to move the point of obligation.

Sincerely,

ATTACHMENT B

February 14, 2017

The Honorable Catherine McCabe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Acting Administrator McCabe:

The undersigned associations represent a variety of interests and industries , many of which have differ ing opinions about the wisdom of the Renewable Fuel Standard (RFS) program. Regardless of those differing opinions, we are united in our concern for and protection of the American consumer. With that in mind, we write to express uniform opposition to moving the point of obligation under the RFS.

We believe that the Environmental Protection Agency (EPA) has acted responsibly in denying previous petitions for a rulemaking to change the point of obligation and support EPA's current regulatory action to deny similar petitions . The current petitions are proposing to move the point of obligation to entities that have never been obligated previously and that are not equipped to comply. Granting these petitions would disrupt the fuels markets, raise consumer fuel prices, and do so with no added benefit to the consumer or the program. We represent diverse interests but we are in agreement about this point.

We urge EPA to reject the petitions to move the point of obligation.

Sincerely,

ASSOCIATION OF AMERICAN RAILROADS

American Short Line and Regional Railroad Association

ATA

OWNER-OPERATOR INDEPENDENT DRIVERS ASSN. OOIDA

AMERICAN HIGHWAY USERS ALLIANCE