

July 25, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Regan.Michael@epa.gov

Dear Administrator Regan:

The Sustainable Advanced Biofuel Refiners (SABR) Coalition is a coalition of biodiesel stakeholders that have invested in building out America's first advanced biofuel. It includes stakeholders from every link in the value chain from feedstock growers to biodiesel producers, distributors, retailers, and consumers, as well as infrastructure and products and services suppliers. These stakeholders, mostly small businesses, have invested heavily in the Renewable Fuel Standard (RFS) program, but, as explained in its comments on and petition for reconsideration of EPA's Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes, EPA's implementation of the program has disadvantaged biodiesel compared to renewable diesel and sustainable aviation fuel.¹ Those comments also expressed concerns that the biomass-based diesel and advanced biofuel volumes did not account for the availability of advanced biofuels and, therefore, were set too low. EPA already acknowledged that biodiesel production is likely to *decrease* under its implementation of the RFS program.

We understand that EPA recently denied a request from the American Petrochemical & Fuel Manufacturers (AFPM) to waive, in part, the cellulosic biofuel volume for 2023. 89 Fed. Reg. 20,961 (Mar. 26, 2024). We note that the AFPM request for a waiver also urged EPA to reconsider the cellulosic biofuel mandates for 2024 and 2025, presumably to reduce those volumes. While AFPM's request refers to reconsideration, EPA's authority to reduce volumes is limited to any applicable waiver authority under 42 U.S.C. §7545(o)(7).

SABR Coalition does not take a position on the appropriateness of a waiver of the cellulosic biofuel volumes. We write to EPA, however, because, if a partial waiver is subsequently granted, there is no basis to reduce the overall advanced biofuel volumes. Where Section 7545(o)(7) provides that EPA "may" reduce the volumes, EPA has discretion *not to reduce* these volumes, even if it finds a shortfall of cellulosic biofuels. When EPA has reduced the cellulosic biofuel volumes, it declined to reduce the advanced biofuel volumes based on its assessment of availability of volumes of advanced biofuel to make up the difference. *See, e.g.,* 77 Fed. Reg. 1320, 1333 (Jan. 9, 2012). This has been upheld by the U.S. Court of Appeals for the D.C. Circuit in *API v. EPA*, 706 F.3d 474 (D.C. Cir. 2013). While EPA more recently did reduce the statutory volumes for advanced biofuels in light of reduced cellulosic biofuel volumes, the 2024 and 2025 volumes for advanced biofuels were set by EPA at levels below available volumes.

¹ EPA indicated in its 2024 Spring Regulatory Agenda that the next RFS rulemaking will include regulatory changes to improve implementation. While EPA has not yet responded to SABR Coalition's petition for reconsideration, we urge EPA to include these issues in any such proposal.

In particular, there are ample volumes of non-cellulosic advanced biofuels to make up any shortfall EPA may find warrants a reduction in the cellulosic biofuel volumes. For 2024, EPA set the advanced biofuel volume at 6.54 billion gallons. While EPA estimated that some advanced biofuels would need to make up potential shortfalls in ethanol to meet the 15 billion “implied” conventional biofuel category, the “candidate volumes” for 2024 considered by EPA totaled 6.495 billion D4 and D5 RINs. 88 Fed. Reg. 44,468, 44,496, 44,516 (July 12, 2023). Through May, there have already been over 3.6 billion D4 and D5 net RINs generated in 2024.² Based on the monthly average through May, this puts the non-cellulosic advanced biofuel volumes on pace to exceed 8.6 billion RINs in 2024, much higher than what would be needed under EPA’s estimates. This does not include the over 646 million 2023 D4 and D5 RINs that remain available for compliance.³

As it has always done in the past, the biodiesel industry stands ready to meet the RFS volume requirements. But EPA must provide a level playing field, must increase the volumes required for biodiesel, and must enforce the volume requirements. Otherwise, as EPA already admitted, the biodiesel industry will continue to see declines due to EPA’s implementation of the RFS, even though Congress expressly sought to support and promote the biodiesel industry.

We appreciate your attention to this matter and are happy to discuss any of the issues that we have raised with EPA to ensure implementation of the RFS program that fulfills the intent of Congress and takes full advantage of the environmental, economic, and energy security benefits of biodiesel.

Best regards,



Joe Jobe, CEO
Sustainable Advanced Biofuel Refiners (SABR) Coalition

² EPA, RINs Generated Transactions – Total Net Generation, <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rins-generated-transactions> (data as of June 10, 2024).

³ EPA, RINs Generated Transactions – Available RINs, <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rins-generated-transactions> (data as of June 10, 2024). While obligated parties do carry a deficit in advanced biofuels from 2023 into 2024, the available 2023 D4/D5 RINs exceed the deficit by over 228 million RINs.