August 30, 2019

U.S. Environmental Protection Agency EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T 1200 Pennsylvania Avenue NW Washington, DC 20460

Re: Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes, 84 Fed. Reg. 36,762 (July 29, 2019)

Docket No. EPA-HQ-OAR-2019-0136

To Whom It May Concern:

The Brazilian Sugarcane Industry Association ("UNICA") appreciates the opportunity to comment on the proposed rule entitled *Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes*, 84 Fed. Reg. 36,762 (July 29, 2019) (hereinafter "Proposal").

Brazil is the world's largest sugarcane producer and the second largest producer of ethanol, responsible for about 25% of the world's ethanol production in 2018.¹ Brazil currently produces nearly 9 billion gallons of sugarcane ethanol each year and typically exports between 400 million and 800 million gallons of its annual production.² Despite these volumes, only 1.2 percent of Brazil's territory is currently devoted to the production of sugarcane ethanol.³ Brazil's innovative use of ethanol in transportation and biomass for power co-generation has made sugarcane a leading source of renewable energy in Brazil, representing 17.4 percent of the country's total energy supply.⁴ In 2018, ethanol consumption accounted for 46% of Brazilian Otto cycle consumption.

¹ <u>https://ethanolrfa.org/statistics/annual-ethanol-production/</u>

² UNICA, <u>2018 RFS Fact Sheet and Frequently Asked Questions</u> at 2 (July 17, 2018) (hereinafter UNICA FAQ).

³ *Id.* at 4. Nor is the small amount of arable land used for sugarcane production located in ecologically sensitive areas. The Brazilian government has established an Agro-Ecological Zoning program that, among other things, prohibits sugarcane production in the country's most ecologically sensitive areas, including the Amazon and Pantanal wetlands and the upper Paraguay River basin. The vast majority of sugarcane produced for ethanol production is harvested in South-Central Brazil, over 1,500 miles from the edge of the Amazon. *Id.*

⁴ Fed. Govt. of Brazil, Ministry of Mines & Energy, Energy Research Office, *Brazilian Energy Balance* at 14 (May 2019).

Brazilian sugarcane ethanol is one of the most climate-friendly biofuels available on the market today. In 2010, EPA determined that Brazilian sugarcane ethanol achieved an average reduction in lifecycle GHG emissions of 61 percent compared to a gasoline baseline. 75 FR 14790–91. More recently, the California Air Resource Board ("CARB") recognized a pathway for Brazilian sugarcane ethanol (App. T2R-1050) that had lifecycle emissions savings greater than 66 percent. Even greater reductions in GHG emissions may be possible. Indeed, recently introduced production techniques and developing technologies may make sugarcane ethanol a carbon *negative* fuel in the foreseeable future.⁵ UNICA and its members continue to work to achieve the greatest possible reductions in the lifecycle GHG emissions of sugarcane ethanol.

UNICA is the largest representative of Brazil's sugar and ethanol producers. Its members are currently responsible for more than 50 percent of the country's sugarcane production and processing. UNICA serves as a source for credible scientific and economic data about the competitiveness of sugarcane biofuels. UNICA also works to encourage the continuous advancement of sustainability throughout the sugarcane industry and to promote ethanol as a clean, reliable alternative to fossil fuels.

UNICA has been a supporter of EPA's Renewable Fuel Standards Program ("RFS2") since the program's inception. UNICA is also an active supporter of California's Low Carbon Fuel Standard ("LCFS"). Given sugarcane ethanol's superior environmental performance, regulated parties continue to rely on it to comply with these programs. Over the past seven years, nearly 1.4 billion gallons of Brazilian sugarcane ethanol were consumed by American vehicles.⁶ During this time, sugarcane ethanol accounted for five percent of the U.S. advanced biofuel supply.⁷

UNICA has consistently participated in EPA's rulemakings under the RFS2 program by submitting comments.⁸ In these comments, UNICA will show that EPA's proposed finding that only 60 million gallons of Brazilian sugarcane ethanol will be reasonably available in 2020 is far too low. EPA's own data indicates that Brazilian sugarcane ethanol generated more than 77 million RINs in 2018, and that this number will likely be surpassed in 2019. Moreover, several important trends—including Japan's decision to begin importing corn-based ethanol and Brazil's rapid increase in ethanol production in response to de-

⁷ UNICA FAQ at 1.

⁵Andre Faaij, *Biofuel Conversion Technologies*, 159, 169, *in* SUGARCANE ETHANOL: CONTRI-BUTIONS TO CLIMATE CHANGE MITIGATION AND THE ENVIRONMENT (Peter Zuubier & Jos Van de Vooren eds. 2008).

⁶ EPA EMTS Database.

⁸ See <u>UNICA's Comments on Proposed Renewable Fuel Standards for 2019</u>; <u>UNICA's Comments on Proposed Renewable Fuel Standards for 2018</u>; <u>UNICA's Comments on Proposed Renewable Fuel Standards for 2017</u>; <u>UNICA's Comments on Proposed Renewable Fuel Standards</u> for 2014–2016.

pressed global sugar prices—are likely to drive increased imports in 2020 and beyond. Uncertainty about whether the biodiesel tax credit will ever be extended is also making sugarcane ethanol a more attractive option for complying with the advanced renewable obligation. In the final rule, EPA should revise its estimated volume of sugarcane ethanol imports upwards to reflect current market trends and expectations for imports from Brazil for 2019.

Given UNICA's extensive experience with and knowledge of sugarcane ethanol production, its continuing partnership with EPA, and its interest in supporting successful implementation of the RFS2 program, UNICA respectfully requests that EPA carefully consider these comments as it evaluates the Proposed Rule and moves to make final determinations.

COMMENTS

A. EPA Has Greatly Underestimated the Amount of Brazilian Sugarcane Ethanol that Will Be Reasonably Available in 2020

EPA proposes to find that only 60 million gallons of imported sugarcane ethanol will be reasonably available on the U.S. market in 2020. In support of this proposed finding, EPA states that (1) imports of sugarcane ethanol to the United States have stabilized in the 2014–2018 timeframe, with an average of 62 million gallons imported during these years; (2) only 44 million gallons were imported in 2018; and (3) the E10 blendwall, the biodiesel tax credit (which hasn't been renewed in close to 3 years), and the low price of corn ethanol relative to sugarcane ethanol create disincentives for importing more sugarcane ethanol. 84 FR 36779–80. EPA's proposed finding is seriously flawed, for several reasons.

1. The Proposal Improperly Ignores EPA's Own Data, Which Show Imports Higher than those Reflected in the Proposal

RIN Year										
2010 2011 2012	2013	2014 2015 20	916 2017 2018	2019	Last updated date: Au	g, 10, 2019 (Upd	lated monthly)			
Data Sets	Ø	Generation Su	immary 🖩 🖪 🎢							
Generation Summary	•	RIN Year 😣	Fuel (D Code) 😣 🛛 F	roducer Type 😣 🛛 Fuel	Category 😵 🛛 RINs 😣 🛛 Volume (Gal) 😒				
Dimensions Q	0	RIN Year Q	Fuel (D Q Code) Q	Producer Type	Fuel Category	RINs	Volume (Gal.)			
RIN Year		2012	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	575,793,102	575,793,1			
Month		2013	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	435,313,268	435,313,			
Hondi		2014	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	64,474,655	64,474,655			
Producer Type		2015	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	88,954,450	88,954,450			
		2016	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	34,404,034	34,404,034			
Fuel (D Code)		2017	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	73,889,090	73,889,090			
Fuel Category		2018	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	77,668,319	77,668,319			
		2019	D5	Importer	Non-cellulosic Ethanol (EV 1.0)	67,782,831	67,782,831			
Measures Q	0									
RINs	Σ									
Volume (Gal.)	Σ									

Source: U.S. EPA, Moderated Transaction System ("EMTS") Database.

According to EPA's EMTS database, over 77 million D5 RINs were generated for imported, non-cellulosic ethanol in 2018. The only significant fuel fitting this description is Brazilian sugarcane ethanol (98% of fuel ethanol imported to the U.S. in 2018 was from brazil, according to U.S. Census Bureau data). These numbers match those of the U.S. Census database.⁹ EMTS reports that more than 67 million RINs have been generated by these sources already in 2019. Given that Brazilian harvest season started only 3 months ago, these data suggest that Brazil is likely to surpass the 100 million gallons projected in EPA's RVO Rule for 2019. Data from Brazil's Foreign Trade Ministry ("SECEX") also show much higher export volumes than those reflected in the Proposal. SECEX data show that Brazil exported 243.5 million gallons in 2018, and has already exported 115.9 million gallons in the first half of 2019.¹⁰ Given these numbers and the current pace of Brazilian exports to the U.S., coupled with market intelligence and estimates, we believe Brazil will export close to 135 million gallons that will generate D5 RINS in 2019. We ask EPA to use this number (135MG) as a parameter in order to calculate its projections for Brazilian imports in 2020.

Fuel Ethanol Imports for 2018, Year to Date Source: Census													
Million Gallons	January	February	March	April	Мау	June	July	August	September	October	November	December	2018
Brazil			1.6					20.0	2.2	31.6	9.9	10.7	76
Canada	0.3	0.3	0.4	0.5	0.5	0.5	0.6	0.5	0.9	0.4	0.4	0.4	5.7
Guatemala								1.6					1.6
Census total	0.3	0.3	2	0.5	0.5	0.5	0.6	22.1	3.1	32	10.3	11.1	83.3
Imports to California								21.6	2.2	31.6	9.9	10.4	75.7

2. The Proposal Fails to Account for Important Trends Which Are Reshaping the Market for Sugarcane Ethanol

a. <u>Recent Changes in Japan's Biofuels Policy Are Likely to Cause</u> <u>Sustained Increases in Sugarcane Ethanol Imports to the United States</u>

Changes in Japanese biofuel policy are likely to make greater quantities of Brazilian sugarcane ethanol available for import into the United States. Historically, Japan has been the largest importer of Brazilian sugarcane ethanol, consuming 45 percent of the ethanol exported from Brazil (typically after this ethanol was processed into the fuel additive ethyl tert-butyl ether (ETBE) in the

⁹ <u>https://ethanolrfa.org/wp-content/uploads/2019/03/2018-US-Ethanol-Trade-Statistics-Summa-ry.pdf</u> at page 6.

¹⁰Brazilian Foreign Trade Ministry's Secretariat of Foreign Trade (SECEX) <u>http://comexs-tat.mdic.gov.br/pt/geral/24</u>

U.S. or in Brazil).¹¹ Last year, however, Japan revised its biofuel policies to allow the use of ETBE produced from corn-based ethanol.¹² Japan is expected to begin importing approximately 100 million gallons of corn-based ethanol a year.¹³ This will displace sugarcane ethanol from the Japanese market, leaving more available for export to the United States.

In fact, much of the sugarcane-ethanol-based ETBE that has been sent to Japan in the past has come from sugarcane ethanol exported from Brazil to the United States, and then processed and re-exported to Japan. Ethanol traders can be expected to adjust their operations so that corn ethanol is processed and sugarcane ethanol is used as fuel in the United States.

According to *Japan Times*, "Brazil ethanol producers stand to lose a big chunk of their largest market, Japan, to U.S. agribusiness, after Tokyo bent to pressure from U.S. President Donald Trump and tweaked requirements for gasoline additives."¹⁴ One ethanol export trader explained: "In the end, whatever you take away from Brazil, you give to the U.S."¹⁵ With Japan significantly reducing its sugarcane ethanol imports, a greater amount of sugarcane ethanol will be available for shipment to other markets, including the United States.

Although Japan finalized its changes last year, the first shipment of ETBE produced with U.S. corn-based ethanol arrived in Japan in July 2019.¹⁶ Accordingly, the international ethanol market is only beginning to feel the impact of the change in Japanese policy. By 2020, however, the impact will be obvious, and the U.S. will be seeing higher volumes of sugarcane ethanol than have been seen in recent years.

b. <u>Depressed Global Sugar Prices Are Causing Brazilian Produc-</u> ers to Distill More Sugarcane into Ethanol

Because the global price of sugar remains low, Brazilian companies have made investments to support expanded production of ethanol. According to a December 2018 story in *Reuters*: "Brazilian sugar companies are increasing their capacity to produce ethanol in the face of depressed global sugar prices

¹² Id.

¹⁴ <u>https://www.japantimes.co.jp/news/2018/05/03/business/brazilian-ethanol-producers-japanese-auto-emissions-take-hit-tokyo-caves-trumps-america-first-push/#.XT50mpNKg6U</u>

¹⁵ Id.

¹¹ <u>https://www.japantimes.co.jp/news/2018/05/03/business/brazilian-ethanol-producers-japanese-auto-emissions-take-hit-tokyo-caves-trumps-america-first-push/#.XVW7nJNKho4</u>

¹³ <u>https://biofuels-news.com/news/japan-opens-up-to-us-ethanol-imports/</u>

¹⁶ <u>http://ethanolproducer.com/articles/16371/first-shipment-of-etbe-made-with-us-ethanol-ar-rives-in-japan</u>

and government policies expected to boost demand for the biofuel."¹⁷ In 2017, 53.5% of Brazilian sugar cane was distilled into ethanol.¹⁸ This jumped to 64.3% in 2018—an all-time high.¹⁹

When prices of sugar are low, the tendency of mills is to distill more sugarcane into ethanol, EPA's estimate as to the amount of sugarcane ethanol that will be reasonably available in 2020 should reflect this trend. UNICA does not expect any change in price or demand of sugar that would significantly hinder the amount of ethanol available for exports in 2020. Therefore, instead using these two factors to lower projections of Brazilian sugarcane imports in 2020, as EPA did in its proposal, the agency should use them to increase them.

3. EPA Must Acknowledge the Possibility that the Biodiesel Tax Credit Will Not Be Extended

The proposal states that the biodiesel tax credit creates a disincentive for importing more sugarcane ethanol, insofar the credit causes biodiesel to be a cheaper option for complying with the advanced renewable obligation. EPA fails to acknowledge a critical fact: the credit lapsed at the end of 2017 and has not yet been extended. Although the credit has expired before, only to be reauthorized retroactively, it is not in effect at present and there continues to be significant uncertainty as to its chances for reinstatement.

Adding to this baseline level of uncertainty is the growing chorus of interest groups calling for Congress not to extend the credit. In May 2019, "a dozen groups spanning the political spectrum urged congressional leaders not to renew any of the tax extenders [including the Biodesiel tax credit] "²⁰ Influential conservative organizations, such as Heritage Action and Americans for Prosperity, as well as liberal organizations like Economic Policy Institute and U.S. PIRG, joined this letter. ²¹ The same month, Ryan Alexander, the President of Taxpayers for Common Sense, published an op-ed in *The Hill*, arguing that the credit should be scrapped:

At the end of the day, biodiesel subsidies distort energy markets, raise fuel prices and waste taxpayer dollars, and do little to promote long-term sustainable energy policy. Industry can and should do better. And Congress can and should let these subsi-

¹⁹ Id.

¹⁷ <u>https://www.reuters.com/article/us-brazil-ethanol-insight/betting-on-ethanol-brazilian-mills-turn-sour-on-sugar-idUSKBN1020L7</u>

¹⁸ Id.

²⁰ <u>https://www.rollcall.com/news/soybean-farmers-seek-tax-credit-renewal-amid-ill-trade-winds</u>

dies end. To do anything else at a time when our national debt has now exceeded \$20 trillion is irresponsible.²²

Lawmakers are responding to this momentum by proposing measures that would phase-out the credit over time. For example, a measure introduced by Kevin Brady of Texas would phase out the tax credit over the span of seven years.²³ Even Senator Charles E. Grassley of Iowa—the original author of the biodiesel credit legislation—has indicated that he is open to a phase out.²⁴ EPA should account for the possibility that the biodiesel tax credit will begin to phase out, or simply remain lapsed, which would increase the competitiveness of sugarcane ethanol for complying with the advanced renewable obligation and lead to increased imports of this fuel.

4. The E-10 Blendwall Will Not Prevent Increased Imports of Sugarcane Ethanol

The Proposal asserts that the E-10 blendwall will create disincentives for increasing imports above the levels in recent years. EPA should acknowledge that the so-called blendwall is showing serious cracks. Vehicles built after 2001 can use gasoline containing up to 15% ethanol without voiding their emissions warranty.²⁵ Accordingly, the number of vehicles that are unable to use higher ethanol blends is diminishing every year. Concerns about insufficient infrastructure are also fading. There are currently 1,840 retail locations in 31 states selling E15 (and this continues to increase), usually at per-gallon prices that are 3-10 cents below that of regular gasoline.²⁶ Further, on May 30, 2019, EPA finalized regulatory changes that allowed for year-round use of E15, further increasing the viability of this fuel blend.

Brazil's experience offers a powerful example of how government policies and the market can interact to promote advanced biofuels and the technologies and infrastructure to use them. Brazil requires that its gasoline contain at least 27 percent ethanol. The Brazilian vehicle sector has responded by developing flexible fuel vehicles that can use blends of up to 100 percent ethanol. As a result, Brazil has replaced its gasoline needs with ethanol. The US also has more than 20 million FFV's on the road as well. In sum, the so-called blend wall is no barrier to increased utilization of sugarcane ethanol in the United States.

5. EPA Should Acknowledge its Role in Determining the Relative Prices of Sugarcane and Corn Ethanol

²² <u>http://ethanolproducer.com/articles/16371/first-shipment-of-etbe-made-with-us-ethanol-ar-rives-in-japan</u>

²³ Id.

²⁴ <u>https://thehill.com/blogs/congress-blog/energy-environment/442006-biodiesel-tax-credit-needs-to-stay-gone-industry</u>

²⁵ UNICA FAQ at 3.

²⁶ <u>https://afdc.energy.gov/fuels/ethanol_e15.html</u>.

EPA states that the low price of corn ethanol relative to sugarcane ethanol is likely to act as a disincentive to increased imports of sugarcane ethanol. But as EPA noted in the Final RVO Rule for 2019, "the difference in RIN values between conventional and advanced ethanol may offset the cost difference" in price between corn and sugarcane ethanol "to some degree." 83 FR 63722.

That is an understatement. As UNICA explained in a prior comment, the value of sugarcane ethanol:

can be measured by the price differential between a RIN generated by sugarcane ethanol (D5) and a RIN generated by conventional ethanol (D6). D5 RINs can be used to meet advanced fuel and total renewable fuel and total renewable fuel compliance requirements; D6 RINs can only be used for the latter. When the price differential between a D5 and D6 is high enough, imports increase as there is a premium paid by compliance entities seeking D5 RINs for compliance purposes . . . When the price differential is low, compliance entities may simply choose to blend more conventional ethanol, and there is no incentive for blenders to import sugarcane ethanol. . . . If the D5/D6 RIN spread is wide enough and if the rules are transparent and long-lasting, one could reasonably expect Brazilian exports to the United States to expand even in the short term.²⁷

If EPA continues to reduce the statutory volume requirements for advanced biofuels, the price differential between D5 and D6 RINs will remain small. By contrast, if EPA were to aggressively pursue Congress' goal of promoting advanced biofuels, the cost of imported sugarcane ethanol would decrease relative to corn ethanol.

6. The Rationale EPA Provided for Not Reducing the 2019 Volume for Imported Sugarcane Ethanol Below 100 Million Gallons Applies with Full Force Here

In the Final RVO Rule for 2019, EPA explained: "we do not believe it would be appropriate to reduce the volume of imported sugarcane ethanol below 100 million gallons for the purposes of determining the 2019 volume requirement for advanced biofuel because imports . . . have reached considerably more than 100 million gallons in the past." EPA was correct to give some weight to the historical data showing that Brazil can deliver significantly greater volumes to the United States when conditions are right. For example, Brazil exported a record of 1.35 billion gallons in one year (2008) and 164 million gallons *in one month* (September 2008). While these record highs have not been matched in recent years, they prove that it is technically possible to deliver very large amounts of sugarcane ethanol to the United States.

As noted above, imports for 2019 are on track to exceed the 100 million gallons EPA projected. UNICA's communications with ethanol traders indicate that the U.S. is likely to import close to 135 million gallons this year. That is

²⁷ See <u>UNICA's Comments on Proposed Renewable Fuel Standards for 2017</u> at 11–12.

consistent with EMTS data, which shows that 67.6 million gallons have already been imported through July 2019.

Given the most recent estimates for 2019 imports, and the fact that market trends support even greater imports of Brazilian sugarcane ethanol going forward, EPA should use the 135 million gallons as a parameter for its projection calculations of Brazilian sugarcane ethanol imports for 2020.

B. EPA's Advanced Renewable Volume Should Reflect the Availability of Carryover RINs

EPA estimates that there are currently approximately 390 million advanced carryover RINs available on the market. 84 FR 36768. EPA is permitted to consider these RINs in setting the final volume requirement for advanced renewable biofuel. See Monroe Energy, LLC v. EPA, 750 F.3d 909, 916 (D.C. Cir. 2014) ("EPA reasonably concluded that the availability of carryover RINs was certainly relevant to its decision whether to reduce the volume for total renewable fuel.") (internal quotation marks omitted; alterations incorporated). EPA proposes to ignore these carryover RINs in setting the advanced biofuel volume for 2020. 84 FR 36768. UNICA disagrees with this proposed approach, because it does not advance Congress' goal of promoting advanced biofuels, reducing GHG emissions, and promoting energy security. If regulated parties may simply purchase carryover RINs rather than purchasing advanced biofuel, it is likely that the amount of advanced biofuel purchased and blended into the U.S. fuel supply will fall below the amount EPA determined would be reasonably available. That will dampen investment in advanced biofuel and slow the development of this important resource, contrary to Congressional intent.

C. EPA Should Offer Notice and the Opportunity to Comment on How It Intends to Use the Small Refinery Exemption in 2020

On August 9, 2019, EPA granted 31 small refinery waiver exemptions under the 2018 Renewable Fuel Standard—a slight reduction from the 35 exemptions issued in 2017.²⁸ EPA's aggressive use of the small refinery exemption has created considerable uncertainty for advanced biofuel producers. As two academic commentators have explained:

A seemingly obscure provision of the RFS that allows the EPA to exempt small refineries in the U.S. from RFS compliance could have surprisingly large impacts on mandate levels and RINs prices in 2018. Small refineries are defined by the RFS as those with a daily processing capacity of 75,000 barrels or smaller. A blanket exemption of all small refineries would remove about 10 percent of total refining capacity from RFS obligations. The EPA has previously signaled that it would not adjust the percentage standards for any exemptions issued after a final annual rulemaking. Since the 2018 percentage standards have been finalized,

²⁸ <u>https://www.reuters.com/article/us-usa-ethanol-epa/trumps-epa-grants-31-small-refinery-waivers-from-biofuel-laws-angering-corn-lobby-idUSKCN1UZ2AV</u>

this could effectively provide a backdoor procedure for reducing all of the 2018 RFS volume mandates without waiving the requirements. The reduction in the conventional ethanol mandate could be large enough to push the mandate below the E10 blend wall, which could potentially drive D6 ethanol RINs prices back down to the pre-2013 level of just a few cents per gallon.²⁹

Issuance of a large number of exemptions in 2020 would lead to a program completely different from the one EPA has set forth in the Proposal. EPA should be candid with the public about how it intends to use the small refinery exemption, and allow interested parties to submit comments on its proposed approach. If EPA intends to issue a large number of exemptions for 2020, those exemptions should not apply to advanced or cellulosic biofuel obligations.

D. EPA Cannot Rely on Any Rationale Not Presented in the Proposal to Justify the Proposed Estimate

In prior rulemakings, EPA has advanced various additional rationales for finding that sugarcane ethanol imports would fall short of historic highs. For example, in the 2019 RFO proposal, EPA cited increasing gasoline consumption in Brazil to support its estimate of 100 million gallons. 83 FR 832040. UNICA explained why this concern was misplaced and EPA did not rely on it in the final rule. 83 FR 63722. Because EPA has not proposed to rely on this rationale in this Proposal, UNICA is not addressing it. Nor is UNICA addressing any other rationale which EPA has not proposed to rely on. UNICA requests that EPA offer an opportunity to comment on any additional questions or concerns it identifies in the course of finalizing its estimate of sugarcane ethanol imports for 2020. UNICA specifically objects to EPA's reliance on any rationale not presented in the proposal to justify adopting the final estimate. *See, e.g., Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005) (EPA cannot finalize a rule that is not a logical outgrowth of the proposal).

E. In the Forthcoming Reset Process, EPA Should Establish an Incentive Multiplier to Promote Continuous Improvement in GHG Performance

The Proposal states that the agency intends to implement a "reset" of statutory volume targets under Section 211(o)(7)(F) of the Clean Air Act in a separate rulemaking. 84 FR 36766. Although UNICA understands that this will be done by a separate rulemaking, the potential reset will be of considerable importance to the Brazilian sugarcane ethanol industry and other advanced biofuel producers both in 2020 and subsequent years. UNICA looks forward to participating in this rulemaking and offering detailed comments. In preparing the proposal, we request that EPA consider UNICA's longstanding position that EPA should provide additional incentives for the production of especially climate friendly biofuels like sugarcane ethanol.

²⁹ Jonathan Coppess & Scott Irwin, <u>Another Wrinkle in the RPS: The Small Refinery Exemption</u>,
7 FARMDOC DAILY 224 (Dec. 7, 2017).

Section 211(0)(5)(A)(i) requires EPA to adopt regulations that provide "for the generation of an *appropriate* amount of credits by any person that refines, blends, or imports gasoline that contains" more than the required volume of total renewable or advanced biofuels. As the Supreme Court has explained, the term "appropriate" is "the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors." *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) (citation omitted). Congress' use of the capacious term "appropriate" constitutes a delegation to EPA to establish a formula for credit generation that will best effectuate the purposes of the RFS2 statute. Now that dramatic increases in domestic oil and gas production have rendered concerns about energy independence less pertinent, the most important purpose of the statute is to reduce greenhouse gas emissions.

EPA has already exercised its discretion under Section 211(0)(5)(A)(i) to establish "equivalence values" for various fuels, which act as a multiplier for fuels that have a higher energy content per gallon. For example, existing regulations provide that every gallon of biodiesel will generate 1.5 RINs. 40 C.F.R. § 80.1415(b)(2). Thus, even though certain biodiesels may cause greater GHG emissions than sugarcane ethanol on a *per BTU* basis, biodiesels currently generate 1.5 times the number of RINs as sugarcane ethanol.

UNICA has repeatedly urged EPA to move away from this energy-content based approach, in favor of an approach that hews more closely to Congress' purpose of reducing lifecycle GHG emissions. EPA could do that by adopting a new incentive multiplier program for the most climate-friendly biofuels. For example, EPA could exercise its authority to provide an "appropriate amount of credits" by allowing advanced biofuels to generate an additional half-a-RIN for every 10 percent reduction in their lifecycle GHG emissions below 50 percent. Under such an approach, a fuel that achieved a 60 percent reduction in lifecycle GHG emissions would generate 1.5 RINs per gallon, a fuel that achieved an 80 percent reduction would generate 2.5 RINs per gallon. This approach would help reduce the advanced biofuel shortfall, and provide incentives for *continuous* improvement in GHG performance.

A helpful analogy is the incentive multiplier EPA has adopted for advanced vehicles as part of its motor vehicle GHG emission standards program. Under this rule, manufacturers must achieve a particular fleet-wide average emission rate each year. The fleet-wide average is generally determined by taking the weighted average of the emissions associated with each vehicle produced by the manufacturer. 40 CFR § 86.1865-12. However, EPA regulations create an incentive multiplier of up to 2.0 for electric and other advanced vehicles, which effectively allows manufacturers to double-count these vehicles for purposes of determining their fleet-wide average. § 86.1866-12. Although the Clean Air Act does not specifically contemplate such a multiplier, EPA determined that it served the statutory purpose by "provid[ing] temporary regulatory incentives to promote the penetration of certain 'game changing' advanced vehicle technologies into the light duty vehicle fleet[.]" 77 FR 62628. Similarly, the fact that Section 211(0)(5)(A)(i) does not specifically provide for an incentive multiplier for improved environmental performance does not preclude EPA from determining that such a multiplier would be "appropriate." Certainly, establishing such a multiplier is preferable to additional waivers of statutory volume requirements as a way to deal with projected shortfalls in production of advanced and cellulosic biofuels.

As an alternative, EPA could allow producers of non-cellulosic advanced biofuels that achieve emissions reductions comparable to those achieved by cellulosic biofuels (i.e., at least 60 percent below the baseline lifecycle greenhouse gas emissions) to generate cellulosic RINs when EPA determines that the statutory volume for cellulosic fuels cannot otherwise be met.

CONCLUSION

EPA's proposed finding that only 60 million gallons of Brazilian sugarcane ethanol will be reasonably available in 2020 is far too low. EPA's own data indicates that Brazilian sugarcane ethanol generated more than 77 million RINs in 2018. This number will likely be surpassed in 2019. UNICA's communications with ethanol traders indicate that the U.S. is likely to import close to 135 million gallons this year. That is consistent with EMTS data, which shows that 67.6 million gallons have already been imported through July 2019. Moreover, several important trends—including Japan's decision to begin importing combased ethanol and Brazil's rapid increase in ethanol production in response to low global sugar prices—are likely to drive increased imports in 2020 and beyond. Uncertainty about whether the biodiesel tax credit will be extended is also making sugarcane ethanol a more attractive option for complying with the advanced renewable obligation. In the final rule, EPA should revise its estimated volume of sugarcane ethanol imports upwards to reflect current market trends and expectations for imports from Brazil for 2019.

EPA should take additional action to ensure that this rule continues to drive investment in advanced renewables, consistent with Congress's goals of promoting energy security and reducing greenhouse gas emissions. EPA's estimate of the amount of advanced renewable fuel reasonably available in 2020 should reflect the fact that obligated parties can use up to 390 million advanced carryover RINs currently on the market. EPA should offer notice and the opportunity to comment on how it intends to use the small refinery exemption in 2020, and should reconsider its aggressive use of these exemptions, which have created tremendous uncertainty for advanced biofuel producers and depressed the market for their product.

Finally, as EPA begins considering a possible reset of statutory volumes, it should consider UNICA's proposal to create additional incentives for the production of especially climate friendly biofuels like sugarcane ethanol. UNICA appreciates the opportunity to comment on the Proposal, and stands ready to provide EPA with any additional information it needs.

Sincerely,

letturphillips

Evandro Gussi

CEO

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