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Submitted Via Electronic Public Docket

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Comments on Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Proposed Rule

Docket ID No. EPA-HQ-OAR-2016-0004

CVR Energy, Inc. ("CVR Energy," "we," or "us") is submitting these comments on the Environmental Protection Agency ("EPA") proposed rule, published May 31, 2016 at 81 Federal Register 34778, proposing renewable fuel standards for 2017 and biomass-based diesel volumes for 2018 under the Renewable Fuel Standard ("RFS") program (the "Proposed Rule").

CVR Energy is engaged in both refining and fertilizer manufacturing, through its ownership in CVR Refining, LP ("CVR Refining"), a merchant refiner with refineries in Kansas and Oklahoma, and CVR Partners, LP ("CVR Partners"), a fertilizer manufacturer with plants in Kansas and Illinois. CVR Refining is an obligated party under the RFS, and CVR Partners produces products for which demand is driven in part by biofuel consumption. Thus, CVR Energy is uniquely situated in that it sees both ends of the spectrum when viewing the RFS, and it is clear to us that the RFS is not working as intended.

As in prior rulemakings, the current Proposed Rule correctly acknowledges that there are market constraints that necessitate EPA's use of its general and cellulosic waiver authorities under sections 211(o)(7)(A) and 211(o)(7)(D) of the Clean Air Act (the "CAA") to lower the renewable fuel volume requirements for 2017 below the statutory levels set by Congress. While CVR Energy supports and agrees with EPA's decision to use it waiver authorities, we do not think EPA has gone far enough in light of projected declines in overall gasoline demand, projections for renewable fuel consumption, the Proposed Rule's drastic underestimation of demand for gasoline without ethanol ("E0"), and EPA's failure to remove the market constraints that are preventing more renewable fuel from being blended. While it is imperative that EPA further waive the 2017 volume requirements to a sufficient level, EPA must first correct the fundamental flaw in its regulations that is necessitating these reductions.

Despite recognizing the market constraints on additional renewable fuel blending, the Proposed Rule impermissibly fails to address the root cause of these shortcomings – the continued use of an outdated definition of "obligated party" which fails to place the obligation to comply with the rule on the persons with the ability to do so – the persons that control the blending. The CAA charges EPA with the responsibility each year to determine the "appropriate

party," for compliance, which is the party or parties that will "ensure" that the statutory volume targets are met. The statutory volume targets are not being met, yet the Proposed Rule does not propose to address this critical issue. EPA must consider this issue and make any changes in the Proposed Rule that are necessary to correct market failures and reduce the systemic cost of compliance with the RFS.

Given the program's goal of increasing the use of renewable fuels in the transportation fuel supply, the appropriate parties for compliance are the persons who have the ability to blend renewable fuels into transportation fuels. In other words, EPA should place the point of obligation and the point of compliance at the same place. Congress clearly recognized this as it specifically listed blenders as one of the potentially appropriate parties for EPA to consider. Continuing to separate these two points, as the Proposed Rule allows, is a major regulatory flaw.

The reasons for initially selecting refiners and importers as the appropriate parties for compliance were based mainly on perceived administrative convenience and have become outdated and no longer justifiable. As Valero Energy Corporation ("Valero") demonstrated in its Supplemental Comments on Proposed Renewable Fuel Standards for 2014, 2015 and 2016 and Biomass-Based Diesel Volume, EPA-HQ-OAR-2015-0111-3583 (Oct. 16, 2015) and its Petition for Rulemaking dated June 13, 2016 (the "Valero Petition"), changing the definition of "obligated party" to include blenders would not increase the number of obligated parties, all of whom are already regulated under the RFS program's EPA Moderated Transaction System.

We support the definition of "obligated party" that is proposed in the Valero Petition. Under this definition, EPA would regulate refiners, importers, and blenders who own petroleum fuel at the bulk terminal or truck loading terminal just prior to retail. Making these "rack sellers" obligated parties would align the obligation to blend renewable fuel into the transportation system with the persons who have the ability to do so and would properly align incentives. Currently exempt parties would be incentivized for the first time to increase renewable fuel blending to ensure that they generate sufficient Renewable Identification Numbers ("RINs") for compliance.

Currently, the obligation for compliance is placed on refiners and importers regardless of whether they have the ability to affect the amount of renewable fuels blended and sold to consumers. Independent refiners like CVR Refining, who are referred to as "merchant refiners," do not control the amount of renewable fuels that are blended and sold to consumers. Merchant refiners primarily operate refineries and sell their refined products at the pipeline interface to third parties who operate downstream blending terminals and retail outlets. Merchant refiners cannot blend a significant portion of the fuel they produce because merchant refiners rely in large part on pipelines to transport their products, and pipeline operators do not allow shipment of transportation fuels that have been blended with renewable fuels. As a result, merchant refiners rely almost entirely on purchasing RINs from third parties to satisfy their compliance obligations under the RFS.

By not fixing the misplaced point of obligation, EPA has allowed the RIN to become a high-priced commodity rather than a compliance tool, resulting in distorted RIN prices that enrich blenders and large vertically integrated refiners at the expense of small and independent

refiners without furthering any of the program's purposes. These detriments have become more apparent recently, as evidenced by a June 29, 2016 report by Goldman Sachs ("Goldman") that reported downgrading stocks for several independent refiners because they do not have adequate access to RINs and upgrading stocks for large gasoline retailers who acquire and sell RINs.

These opinions were reinforced in a July 11, 2016 presentation on the outlook for RINs in which Goldman noted that the most important variable for determining whether a refiner is a RINs winner or loser is whether it has a retail business because that is where the ethanol blending is often controlled. According to Goldman, refiners like CVR Refining are disproportionately negatively impacted by the rule because they do not have a retail business. Goldman also expressed its belief that higher RIN prices will not be absorbed in gasoline crack spreads, noting that even as RIN prices have increased over the last two months, gasoline margins have continued to deteriorate.

In response to a question concerning moving the point of obligation to the subset of blenders defined in the Valero Petition, Goldman indicated that such a change would make those parties more incented to use the RIN price to blend more biofuel which could make biofuel blending easier and more abundant, which could ease some of the concerns on RIN market tightness.

Since 2013, CVR Refining has spent nearly $500 million on RINs and, at current prices, CVR Refining estimates that its RINs exposure is likely to approach $200 million for 2016. RINs have now become CVR Refining's single largest operating expense, exceeding labor, maintenance, and energy costs, among others. These exorbitant costs are not being recovered by CVR Refining in the sales price of its transportation fuels. CVR Refining cannot pass along its RIN expense because it is competing at the rack with parties who have no RIN expense – exempt blenders and partially exempt large vertically integrated refiners that blend more fuel than they produce and have more RINs than they need for compliance. These exempt and partially exempt rack competitors have no incentive to invest their windfall RIN revenues in renewable fuel infrastructure (which would create greater liquidity and lower prices for RINs) or encourage more consumption of renewable fuels by consumers. As a result, RIN revenues are being retained as profits, resulting in an unintended compliance penalty for CVR Refining and other merchant refiners and an unintended windfall for non-obligated blenders.

As a result of not placing the point of obligation on the appropriate party, renewable fuel blending is not reaching the levels envisioned by Congress, and the cost for RINs has skyrocketed, enriching exempt blenders and large integrated refiners with large distribution and marketing arms who are choosing to retain their RIN revenues as profits instead of investing them in necessary renewable fuel blending and distribution infrastructure or offering discounts to encourage the consumption of higher renewable fuel blends. CVR Refining sees this first hand, as it offers E85 at 18 locations and sells virtually none of it due to a lack of demand. EPA must fix these problems by making the appropriate party responsible for complying with the law.

By not placing the point of obligation on the appropriate party, EPA has created a paradox where the persons who have the capability of furthering the laws purposes are actually being incentivized to take actions that thwart the laws purposes. These actions are not only

contrary to Congress's intentions, but they have created a system of winners and losers, where fuel blenders, speculators, and integrated refiners with blending and retail operations are the winners, and small and independent refiners who must purchase their RINs from others are the losers. This system, which benefits a select few, is threatening to put small and independent refiners, who make up roughly half of our nation's refining capacity, out of business. This would result in a significant weakening of our nation's energy security framework in direct contravention of one of the law's core purposes of strengthening energy security.

With businesses on both sides of the RFS, CVR Energy is interested in seeing the RFS applied fairly and in the manner envisioned by Congress. Instead, the RFS is enriching exempt blenders and others who are using their windfall profits to invest in their own businesses rather than the blending and distribution infrastructure necessary to remove the market constraints that are preventing the statutory volume targets from being met. Put simply, the RFS is not achieving its goals and it is creating enormous compliance costs because EPA has not made the "appropriate party" responsible for compliance. EPA is authorized, and in fact required by the statute, to make the appropriate party – blenders – responsible for compliance. EPA must make this change.

Sincerely,

John J. Lipinski
Chief Executive Officer and President
CVR Energy, Inc.