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U.S. Court of Appeals Case on RFS Requirements

The Renewable Fuel Standard (RFS) is a bipartisan law that requires increasing volumes of renewable fuels to be blended into the U.S. fuel stream. Congress sought to increase production of renewable fuels and stimulate investment, with the volume requirements intended to be minimums. For the first time, the U.S. Environmental Protection Agency (EPA) reduced statutory advanced-biofuels volumes despite, among other things, greater availability of biomass-based diesel. This case—Americans for Clean Energy, et al., v. Environmental Protection Agency—is a consolidation of several renewable-fuels cases that allege different charges against the agency regarding the reduced volumes and other issues.

• **General Waiver Authority:** Congress provided EPA with limited authority to adjust the volume requirements each year. To use this authority, there must be a case of either inadequate domestic supply or severe economic or environmental harm. This case involves a challenge to EPA's interpretation of "inadequate domestic supply," which both ethanol groups and the NBB dispute. The NBB joined the petition in support of this argument. Petitioners also challenge how EPA handled carryover Renewable Identification Numbers (RINs)—excess RINs that go unused in one year and can be used in the next year. In 2014-15, EPA did not consider the number of carryover RINs available before reducing the volumes required for the next year. The NBB joins other petitioners in arguing that EPA *should have* considered the availability of carryover RINs; by doing so, EPA would not have needed to reduce the volume requirements.

• **Advanced-Biofuel Volumes:** The RFS divides renewable fuels into two broad categories: conventional biofuels, which must reduce greenhouse gas emissions by at least 20 percent, and advanced biofuels, which must have a 50 percent reduction. Historically, EPA has not deviated from the advanced-biofuel volumes required by the RFS statute, even if the agency lowered other kinds of fuels' volumes (such as cellulosic). For the first time, EPA reduced the volumes required for advanced-biofuel for 2014-16. This set the advanced biofuels industry back, because U.S. biodiesel responds to increased demand with increased production. The NBB argues that EPA exceeded its authority and failed to move the advanced-biofuel program forward as Congress envisioned.

• **Cellulosic and Biomass-Based Diesel Volumes:** Certain petitioners representing obligated parties also challenge the 2016 cellulosic biofuel volume as too high and argue EPA lacked authority to set biomass-based diesel volumes for 2014-17 above 1.28 billion because EPA's action was late. The NBB supported EPA on these issues, including by pointing to D.C. Circuit precedent that affirms EPA's authority and lack of harm to obligated parties.

Biodiesel is the first advanced biofuel to reach commercial-scale production nationwide. It has made up the vast majority of the advanced-biofuel production under the RFS to date. Made from a diverse mix of resources such as recycled cooking oil, soybean oil and animal fats, biodiesel is a renewable, clean-burning diesel replacement used in existing diesel engines. The National Biodiesel Board is the U.S. trade association representing the biodiesel and renewable diesel industries, including producers, feedstock suppliers and fuel distributors.