E. SCOTT PRUITT
ADMINISTRATOR

January 31, 2018

The Honorable Susana Martinez
Governor of New Mexico
State Capitol, Room 400
Santa Fe, New Mexico 87591

Dear Governor Martinez:

Thank you for your November 22, 2017, letter requesting that the U.S. Environmental Protection Agency exercise the waiver authority under Clean Air Act Section 211(o)(7)(A) to reduce the nationwide renewable fuel volume mandates in order to provide relief to refiners in New Mexico and elsewhere.

We appreciate that New Mexico's refineries, like those elsewhere, are important sources of employment for the state and for the regions immediately around the refineries. We further understand that you, like many other stakeholders, are concerned about the impacts that the renewable fuel standard (RFS) program might have on those refineries. EPA is assigned the responsibility to implement the RFS program, and must continue to do so as directed by the law. At the same time, we firmly believe that maintaining a diverse U.S. energy supply and a strong economy are both core national policy imperatives, and that refining jobs are important and valuable.

As the EPA has indicated in its response to past requests for waivers under this provision, we believe it is critical to have sufficient analysis and information to make informed decisions on such requests. We recognize that identifying severe economic harm caused by the implementation of RFS requirements is a difficult and complex issue and one of intense interest to a number of stakeholders. We discussed in past notices, and in the most recent annual rulemaking for 2018, the type of information we generally think would be relevant to identifying severe economic harm. For example, in 2008, we examined modeling showing expected levels of production and price for both corn and ethanol with and without a waiver. We also provided quantitative estimates of the impact of a waiver on: food expenditures for average and lowest quintile households; feeds costs for cattle, pigs, poultry and dairy; and gasoline prices and gasoline expenditures for average and lowest quintile households.

As your petition relies on broad assertions of the high costs of compliance associated with the RFS and the associated impacts on the viability of the oil refining sector, the EPA believes additional information is required in order to properly evaluate your petition. Examples of such information include, but should not be limited to: explanation of how the EPA should implement the waiver provision consistent with the statutory requirements (e.g., identifying what constitutes "severe harm," and the extent to which harm may be attributable to RFS requirements, particularly when there may be multiple causes contributing to economic difficulties of a refinery); studies or quantitative information demonstrating the

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economic impact of the 2017 or 2018 RFS standards on specific refineries;[1] evidence regarding the minimum reduction in applicable volumes necessary to achieve the desired outcome (e.g., avoid refinery closure and protect associated jobs), and an assessment of the impacts of such a waiver on other participants and affected parties in the RFS program, including other refiners and biofuel producers.

Additionally, your letter suggested potential impacts on diesel, biodiesel, and biodiesel RIN prices due to recent trade deliberations. The EPA would also appreciate additional information on the link between these trade actions and severe economic harm to a state, region, or the United States.

In your letter, you cited a CBO report suggesting that the RFS could increase fuel prices by 15 to 45 cents per gallon. These numbers appear to be from a 2015 report published by CBO that found the potential for fuel price increases as compared to the proposed 2016 volumes if the EPA were to set the 2017 RFS volumes at the statutory targets.[2] However, these projected fuel price impacts are not relevant to the required volume of renewable fuel the EPA established for 2017 and 2018. In both 2017 and 2018, the EPA set the volumes below the statutory volumes.

EPA shares your concern that the RFS should be implemented with the welfare of communities, states, and regions in mind. We are seeking this information in order to be able to fully and fairly evaluate the issue and determine if further relief is warranted, beyond the waivers granted in the 2017 and 2018 annual rules. However, until we receive the necessary supporting information, we are unable to adequately evaluate and provide a final response to your request. We respectfully suggest re-submitting your petition with such information, at which point we will treat the petition as complete for purposes of responding within our statutory timeline.

Again, thank you for your letter. If you have further questions or concerns, please contact me or your staff may contact Troy Lyons, Associate Administrator for Congressional and Intergovernmental Relations, at lyons.troy@epa.gov or at 202-564-5200.

Respectfully yours,

Scott Pruitt

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[1] We note that the question of whether refineries fully recoup the costs of RFS compliance in the price of their petroleum products has been a topic of intense debate, so any further information you could provide on the relation between RIN costs and economic hardship would be relevant as well.

[2] Terry Dinan. "Testimony: The Renewable Fuel Standard: Issues for 2015 and Beyond." November 3, 2015. Available at: https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50944-RenewableFuelStandard.pdf.