

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ENVIRONMENTAL PROTECTION AGENCY
AND
THE COMMODITY FUTURES TRADING COMMISSION
ON THE SHARING OF INFORMATION AVAILABLE TO EPA RELATED TO THE
FUNCTIONING OF RENEWABLE FUEL AND RELATED MARKETS**

I. PURPOSE AND AUTHORITIES

The Environmental Protection Agency (“EPA”) and the Commodity Futures Trading Commission (“CFTC”) enter into this Memorandum of Understanding (“MOU”) to address the sharing of information, including proprietary business information “PBI,” in the possession of EPA with the CFTC in compliance with EPA’s obligations under 40 CFR Part 2, Subpart B. CFTC review and analysis of the information will assist the EPA in protecting the public by providing advice to EPA on conducting possible investigation into potential fraud, market abuse, or other violations relating to the generation of, and trading in, Renewable Identification Numbers (“RINs”) and the trade in renewable fuels subject to the EPA’s regulation or oversight.

This MOU is entered into pursuant to authorities applicable to the Parties, including:

- The Commodity Exchange Act Sections 8(e) and 12, 7 U.S.C. §§ 12(e) and 16.
- Clean Air Act Sections 211(o) and 208(c); and 40 CFR § 2.209(c).

II. DEFINITIONS

For purposes of this MOU the following definitions apply:

- “Proprietary business information” or “PBI” shall refer to all information, data, and records shared under this agreement entitled to protection as PBI in accordance with 40 CFR Part 2, Subpart B or Section 8 of the Commodity Exchange Act (7 U.S.C. 12).
- “CFTC” shall refer to the Commodity Futures Trading Commission;
- “EPA” shall refer to the Environmental Protection Agency;
- “MOU” shall refer to this Memorandum of Understanding;

- “Participating Agency” and “Party” shall refer to either the CFTC or EPA;
- “Parties” shall refer to the CFTC and EPA jointly;
- “RIN” shall refer to Renewable Identification Number;
- “Non-public information” shall refer to any information that has not been made available to the public.
- “Section 8 material” shall refer to data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.

III. GENERAL PROVISIONS

1. This MOU serves as a written request for disclosure of information, including PBI, between the CFTC and EPA, pursuant to 40 C.F.R. § 2.209(c)(1). The Parties intend to coordinate, cooperate and share information, including PBI, in the possession of the EPA with regard to the RIN and renewable fuels markets in connection with the respective regulatory and enforcement responsibilities of the Parties in a manner consistent with, and permitted by, the laws and requirements that govern the Parties. The CFTC and EPA each acknowledge the other Participating Agency’s need for and interest in the information to be shared. The CFTC, subject to the availability of appropriated funds and the agency’s budget priorities, will use the information to advise EPA on techniques that could be employed to minimize fraud, market abuses or other violations, and to conduct appropriate oversight in RIN and renewable fuel markets to aid EPA in successfully fulfilling the EPA’s statutory functions under Clean Air Act §211(o)(2)(A)(i). Reviewing information on the RIN and renewable fuels markets provided by EPA will increase the CFTC’s understanding of the operation of and participants in those markets.
2. Without limiting the foregoing, the Parties agree:
 - a. To take steps to avoid duplicative information requests to the extent possible, and to coordinate to the extent practicable oversight, investigative, and enforcement activities of mutual interest;
 - b. That, other than as provided in Section IV paragraph 6, CFTC will not further share any PBI provided by EPA except in accordance with 40 C.F.R. § 2.209(c)(5)(iii); and,

- c. That information requests between Parties under the MOU shall not be burdensome and shall be initiated by written or email request. Alternatively, direct access by the CFTC to EPA databases regarding RIN transactions may be permitted with the written or email consent of EPA's point of contact (designated in Section VII below), under such terms and conditions as may be required by EPA.
3. This MOU does not create legally binding obligations on the CFTC or EPA and does not create any right enforceable against either Party or any of their officers or employees or any other persons. This MOU also does not confer upon any third party any right, including the ability directly or indirectly to obtain, suppress, or exclude any information shared pursuant to this MOU, or to challenge the execution of an information request under the MOU.
4. The provisions of this MOU apply only to information obtained by the Parties from each other related to RINs, pursuant to the terms of this MOU. This MOU is intended to complement, but does not alter the terms and conditions of, any existing arrangement concerning cooperation in matters between the CFTC and EPA. To the extent any provision in this MOU is construed to be in conflict with a provision in another arrangement between the Parties, the provisions of this MOU shall govern the arrangements between the Parties in connection with sharing information available to EPA that relates to RIN and renewable fuel markets.
5. Nothing in this MOU modifies in any way the ability and responsibility of the CFTC or EPA to enforce their respective statutes and regulations. Non-public information and PBI received under this MOU may be used by the Party receiving the information for or in any enforcement investigation, examination, proceeding, or civil action, except that the Party receiving the information may disclose such information to a third party or the public only with the prior written consent of the Party providing the information. The term "third party" shall not include a person, such as a consultant or expert, retained by the Party receiving the information to assist in the conduct of the investigation, or enforcement action who has signed a non-disclosure agreement that obligated the person to comply with the restrictions in this MOU. Non-public information and PBI may be provided to Congress in accordance with Section IV, paragraph 6.

6. Nothing in this MOU shall be deemed to diminish in any way the independence of the CFTC or EPA in any of their respective agency functions.
7. Nothing in this MOU shall be deemed to obligate the CFTC or EPA to create, share, or maintain any information except as otherwise required under regulation or statute.
8. EPA and CFTC actions pursuant to this MOU are subject to the availability of appropriated funds and each agency's budget priorities.
9. The CFTC and EPA agree that no further authorizations are necessary for their respective agency employees to provide for information sharing as described by this MOU.

IV. PERMISSIBLE USES AND HANDLING OF INFORMATION

1. All information will be protected in a manner consistent with the procedures outlined below.
2. Should a question arise as to whether information provided by a Party is public or non-public, the Party receiving the information will immediately contact the other Party and seek a determination as to the status of the information. If the information is non-public information, it will be treated in accordance with this MOU.
3. PBI will be protected from disclosure in a manner consistent with law, including 40 CFR Part 2, Subpart B and Section 8 of the Commodity Exchange Act (7 U.S.C. 12).
4. When receiving information from EPA, the CFTC will:
 - a. establish and maintain such safeguards as are necessary and appropriate to preserve, protect, and maintain the confidentiality of any non-public information provided pursuant to this MOU, as well as any information derived therefrom;
 - b. notify and consult with EPA in writing, as soon as practicable, of any legally enforceable demand for such information (including but not limited to a subpoena, or court order); provide EPA with a reasonable opportunity to furnish to each affected business notice, to the extent required under 40 CFR Part 2, Subpart B; take action to prevent or limit release of non-public information prior to complying with the demand in a manner consistent with

- the law; and after consulting with EPA, assert all legal exemptions or privileges as EPA may reasonably request be asserted;
- c. not further share any PBI except in accordance with 40 C.F.R. § 2.209(c)(5)(iii); and
 - d. consent to application by EPA to intervene in any action in which demand for information provided pursuant to this MOU is made, solely for the purposes of asserting and preserving privileges and/or claims of confidentiality with respect to the information.
5. When receiving CFTC work product, which may include Section 8 material, derived from the information provided pursuant to this MOU, EPA will:
- a. establish and maintain such safeguards as are necessary and appropriate to preserve, protect, and maintain the confidentiality of the information derived from the PBI provided pursuant to this MOU;
 - b. notify the CFTC in writing, as soon as practicable, of any legally enforceable demand for such information (including but not limited to a subpoena, or court order); consult with and provide the CFTC with a reasonable opportunity to take action to prevent or limit release of non-public information prior to complying with the demand; and if necessary, assert all legal exemptions or privileges on behalf of the CFTC as the CFTC may reasonably request be asserted; and
 - c. consent to application by the CFTC to intervene in any action in which demand for information derived from information provided pursuant to this MOU is made, solely for the purposes of asserting and preserving privileges and/or claims of confidentiality with respect to the information.
6. In complying with an information request, order, or subpoena from Congress or any committee thereof, acting within the scope of its jurisdiction, for the non-public information provided pursuant to this MOU, the Party receiving the information request, order, or subpoena will:
- a. notify the other Party in writing, as soon as practicable, of the request, order or subpoena;

- b. advise Congress or the Committee thereof that the non-public information produced belongs to the other Party; and
 - c. use its best efforts to obtain an agreement that Congress or the Committee thereof will maintain the confidentiality of the non-public information.
- 7. The CFTC will refer to EPA for disposition thereby, any FOIA requests relating to information shared pursuant to this MOU.
- 8. EPA will refer to the CFTC for disposition thereby, any FOIA requests relating to any non-public information derived by the CFTC from the information provided by EPA pursuant to this MOU.
- 9. The sharing of documents and information pursuant to this agreement does not constitute public disclosure thereof, and is, in no way intended to constitute a waiver of confidentiality or of any applicable privileges, nor does such sharing waive or alter any provisions of any applicable laws relating to non-public information. The Parties expressly reserve all evidentiary privileges and immunities applicable to the information shared under this MOU.
- 10. In the event that the files or information under consideration for sharing by EPA with the CFTC pursuant to this MOU contain “financial records” of “customers” of “financial institutions,” as those terms are defined in the Right to Financial Privacy Act (“RFPA”), 12 U.S.C. § 3401, EPA will analyze whether the RFPA authorizes the transfer of information to the CFTC, and if so, will notify the CFTC of the legal grounds authorizing the transfer.
- 11. CFTC is hereby notified that PBI provided by EPA is entitled to confidential treatment and that further disclosure of information may be in violation of the Trade Secrets Act, 18 U.S.C. § 1905. Material designated as PBI shall not be disclosed by CFTC unless it is in accordance with 40 CFR § 2.209(c)(5)(iii) or this Section (Section IV).
- 12. EPA is hereby notified that PBI provided by CFTC may not be disclosed by EPA unless it is in accordance with Section 8 of the Commodity Exchange Act (7 U.S.C. 12) or this Section (Section IV).

V. MODIFICATIONS AND AMENDMENTS

1. EPA and the CFTC intend periodically to review the functioning and effectiveness of this MOU in light of, among other things, changes in applicable law and the Parties' experience in implementing this MOU, with a view to expanding or altering the scope or operation of this MOU as appropriate.
2. Any and all modifications or amendments to scope of this MOU shall be in writing and shall be signed by the Signatories to this MOU or their successors.
3. Any and all modifications or amendments to the operation of this MOU shall be in writing and shall be signed by the Principal contact of each Party.

VI. PRINCIPAL CONTACTS

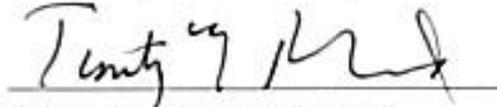
1. EPA designates its Director, Fuels Compliance Center, Compliance Division, Office of Transportation and Air Quality, and his or her designee(s) as its point(s) of contact for requesting or providing any information or notifications as required by this MOU.
2. The CFTC designates its Director of Market Oversight and his or her designee(s) as its point(s) of contact for requesting any information or providing notifications as required by this MOU.

VII. TERM OF THE AGREEMENT

1. This MOU shall become effective as of the date of its signing, and may be revised, modified, or terminated upon the written agreement of the CFTC and EPA. In addition, either the CFTC or EPA may terminate this MOU by providing 30 day written notice to the other party. In the event of such termination, the withdrawing Party agrees that non-public information provided or obtained pursuant to this MOU will remain confidential and continue to be governed by the terms of this MOU.
2. This MOU may be executed in two or more counterparts, each of which together shall constitute one and the same agreement.

VIII. SIGNATORIES

Commodity Futures Trading Commission by:



Date: 3/14/16

Timothy G. Massad, Chairman

Environmental Protection Agency by:



Date: 3/15/16

Gina McCarthy, Administrator