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PROTECTING THE RFS: THE TRUMP ADMINISTRATION'S ABUSE OF SECRET WAIVERS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND CLIMATE CHANGE

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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[1] Labor union letters submitted by Mr. McKinley have been retained in committee files and also are available at https://docs.house.gov/meetings/IF/IF18/20191029/110175/HHRG-116-IF18-20191029-SD003.pdf.

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PROTECTING THE RFS: THE TRUMP ADMINISTRATION'S ABUSE OF SECRET WAIVERS

TUESDAY, OCTOBER 29, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND CLIMATE CHANGE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:33 a.m., in the John D. Dingell Room 2123, Rayburn House Office Building, Hon. Paul Tonko (chairman of the subcommittee) presiding.

Members present: Representatives Tonko, Barragán, Blunt Rochester, Soto, DeGette, Schakowsky, Matsui, McNerney, Ruiz, Pallone (ex officio), Shimkus (subcommittee ranking member), Rodgers, McKinley, Johnson, Flores, Mullin, Carter, Duncan, and Walden (ex officio).

Also present: Representatives Welch and Loebsack.

Staff present: Adam Fischer, Policy Analyst; Jean Fruci, Energy and Environment Policy Advisor; Waverly Gordon, Deputy Chief Counsel; Rick Kessler, Senior Advisor and Staff Director, Energy and Environment; Brendan Larkin, Policy Coordinator; Nikki Roy, Policy Coordinator; Mike Bloomquist, Minority Staff Director; Jerry Couri, Minority Deputy Chief Counsel, Environment and Climate Change; Mary Martin, Minority Chief CStaff Assistantounsel, Energy, and Environment and Climate Change; Brannon Rains, Minority Legislative Clerk; and Peter Spencer, Minority Senior Professional Staff Member, Environment and Climate Change.

Mr. TONKO. The Subcommittee on Environment and Climate Change will now come to order. I recognize myself for 5 minutes for the purposes of an opening statement.

OPENING STATEMENT OF HON. PAUL TONKO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

This morning the subcommittee will examine H.R. 3006, the Renewable Fuel Standard Integrity Act of 2019, a bipartisan bill sponsored by Congressman Collin Peterson of Minnesota.

Last Congress, Mr. Shimkus led a series of hearings and roundtables taking a deep dive into EPA's Renewable Fuel Standard program. While the subcommittee covered many aspects of the RFS, the growing use of small refinery exemptions was an area we did not fully explore.

Today is an opportunity to provide oversight regarding the recent rise of these waivers and the administration's overall implementation of the program.

Based on our previous hearings, nearly everyone seems to agree that there have been challenges in the past with implementation, including setting an appropriate and timely annual Renewable Volume Obligation, or an RVO.

I also believe most would agree that small refinery exemptions are a legitimate part of the program. Refineries processing less than 75,000 barrels per day that believe they are experiencing disproportionate hardship due to the program can petition for these waivers.

During the Obama administration, EPA followed the Department of Energy's advice on which waivers to grant. This resulted in numerous years with fewer than 10 exemptions granted annually. Often, half of the petitions or more were rejected.

It is also indisputable that we have seen a change in how petitions are being evaluated and granted. That change coincides with the beginning of the Trump administration.

For 2016, some 19 waivers were granted. Just 1 was denied. For 2017, 35 waivers were granted and one denied, and for 2018, there were 31 granted and 6 denied.

As more information has come out about these exemptions, it has become clear that EPA's actions are no longer aligned with DOE's recommendations.

H.R. 3006 seeks to bring needed transparency into the process. The bill would set an annual deadline of June 1st for small refineries to petition for exemptions for that following year.

Setting this deadline will mean granting waivers before the RVO is set, which would end the current retroactive process that has generated uncertainty in the RIN market.

In order for the RIN market to function and properly incentivize investment, particularly in advanced biofuel production, it is critical that all market participants are receiving the same information and signals.

The bill would also require public disclosure of any information included in exemption petitions.

While I understand there are legitimate issues around confidential business information in these applications, surely there is some information that we can all agree would be appropriate to release.

This includes details as innocuous as petitioners' names and locations of facilities receiving those exemptions. There is no good reason this very basic info should be treated as a trade secret.

Currently, we do not know which, or even how many, facilities are receiving exemptions until long after they do. For a program that relies on trading to enable compliance, it is unbelievable that the program's regulator would give some participants market-driving information that can be traded on while everyone else is left in the dark.

I do not think that it is a good or fair way for the RIN market to operate, and it certainly leads to greater volatility in RIN prices.

The original goals of the RFS are still needed today, from supporting economic development in rural communities to developing domestic biofuel production, especially for advanced and cellulosic biofuels.

The recent use of small refinery exemptions is failing to advance these goals. The administration is undermining market signals and certainty, which ultimately hurts rural communities.

Adding greater certainty and transparency to the RIN market, and the RFS more broadly, is a necessary and valuable improvement.

I look forward to hearing the perspectives of our witnesses on whether H.R. 3006 can help achieve those objectives.

And so I do thank our witnesses for joining us today. I do want to also speak to the fact that we may be joined by many other Members of the House on different committees.

I want to recognize the presence of those as they join us, the colleagues from our committee who will be joining us for our hearing this morning. We are happy to have them here and welcome them to the committee.

This is an important hearing, and it's always good to see Members so motivated on an issue of importance to their constituents and to our Nation.

I do want to remind our guests if they do choose to come, and our committee members, that while the rules of the House allow for our colleagues to join us, those rules also prohibit them from speaking or otherwise actively participating in our hearing.

I also want to remind our committee members that it is also not in order to yield time to any of our colleagues who are not also members of this committee, and again, we will welcome them if they join us today. We appreciate the participation.

[The prepared statement of Mr. Tonko follows:]

PREPARED STATEMENT OF HON. PAUL TONKO

The Subcommittee on Environment and Climate Change will now come to order. I recognize myself for five minutes for the purposes of an opening statement.

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I do not think that is a good or fair way for the RIN market to operate, and it certainly leads to greater volatility in RIN prices.

The original goals of the RFS are still needed today, from supporting economic development in rural communities to developing domestic biofuel production, especially for advanced and cellulosic biofuels.

The recent use of small refinery exemptions is failing to advance these goals. The administration is undermining market signals and certainty, which ultimately hurts rural communities.

Adding greater certainty and transparency to the RIN market, and the RFS more broadly, is a necessary and valuable improvement. I look forward to hearing the perspectives of our witnesses on whether H.R. 3006 can help achieve those objectives.

Mr. TONKO. With that, I will now recognize Mr. Shimkus, our ranking member of the Subcommittee on Environment and Climate Change, for 5 minutes for his opening statement, and welcome, Mr. Ranking Member.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman. Good morning.

I want to welcome you back, all of you all back, to the Renewable Fuel Standard debate and extend a hearty welcome to all the new members of the subcommittee that haven't had the pleasure of trying to sort through the complexities of this issue prior to today.

Quite frankly, I am surprised we are having any hearing at all whose title speaks to protecting the Renewable Fuel Standard when last fall it was suggested that the Federal Government should be advancing policies to reduce demand and reliance on liquid fuels—the thrust of the RFS—because the transportation sector is now the greatest source of greenhouse gas emissions in the United States, and climate policy must address it.

So I want to set the stage. Last year, my friends said we ought to get out of the liquid fuel debate, period, because of climate.

Now we are here talking about protecting it. It's dystopia that I am experiencing right now. Moreover, while I think it is fair to have an oversight hearing about the RFS, I would caution folks, like our hearing title suggests, making comments about the uniqueness of the situation.

I want to associate myself with Mr. Tonko's comments from last fall, that for several years we have heard about issues with implementing the Renewable Fuel Standard program under administrations from both parties.

For this reason, simply "saving" the RFS is not only a misnomer, it does a disservice to the many stakeholders impacted by this program.

I would like to take this opportunity to renew my plea for this committee and the affected stakeholders to take a very serious look at the high-octane proposal that Congressman Flores and I have recently reintroduced.

Even though we are both not seeking reelection, we think status quo with this program is not sustainable. Given the Energy Department's Energy Information Administration projections of declining liquid transportation and fuel demand, it's difficult to envision a post-2022 scenario in which biofuel volumes would not actually be lower than they are today.

In addition, while it is true that the Renewable Fuel Standard does not disappear in 2023, the rules for allocation change quite a bit depending upon who is in office and what that administrator considers appropriate for the disparate interest involved in this issue.

If you are looking for certainty, this is not a recipe for it. On top of that, just as Congress guessed wrong in 2007 on the levels and types of fuels that would be in the marketplace a decade or more later, we cannot predict market forces or trade impacts, or other political pressures on allocations, nor should Congress repeat the error of making fuel choices during any major change in auto technology, fuel efficiency regulation, and a push for removing liquid and higher carbon-based fuels from the marketplace.

Rather than looking at individual Federal transportation fuel policies on their own, I urge my colleagues, as we have done in a high-octane proposal, to take a wider view of those policies and consider how they might—using rather than manipulating the marketplace—work together to bring more value to consumers and more certainty to stakeholders.

Our bill would transition from blend-specific mandates to performance-based standards for future fuels and vehicles, remove longstanding barriers to the availability and usability of higher ethanol blends, provide an additional decade of certainty for advanced biofuels, and harmonize EPA and DOT vehicle efficiency programs.

It's time that Congress pursue this type of comprehensive reform. Stakeholders on all sides of this debate have been whipsawed for months by rumored and actual administration actions.

Media reports and legal actions and the uncertainty will only increase after 2022 when EPA receives even broader discretion to set biofuel blending requirements.

I welcome the witnesses today and their organizations back to the committee. I hope you will provide us with a constructive and, hopefully, objective and productive dialogue.

[The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

Good morning, Mr. Chairman, and thank you for this time.

I want to welcome you back to the renewable fuel standard debate and extend a hearty welcome to all the new members of the subcommittee that haven't had the pleasure of trying to sort through the complexities of this issue prior to today.

Quite frankly, I am surprised we are having any hearing whose title speaks to protecting the Renewable Fuel Standard when last fall, Mr. Chairman, you suggested your belief that the Federal Government should be advancing policies that reduce demand and reliance on liquid fuels—the thrust of the RFS—because the transportation sector is now the greatest source of greenhouse gas emissions in the United States and climate policy must address it.

Moreover, while I think it is fair to have an oversight hearing about the RFS, I would caution folks from—like our hearing title suggests—making gratuitously political comments about the uniqueness of this situation. I want to associate myself with Mr. Tonko's comments from last fall that for several years we have heard about issues with implementing the Renewable Fuel Standard program under administrations from both parties. For this reason, simply "saving" the RFS is not only a misnomer, it does a disservice to the many stakeholders impacted by this program.

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On top of that, just as Congress guessed wrong in 2007 on the levels and types of fuels that would be in the marketplace a decade or more later, we cannot predict market forces or trade impacts or other political pressures on allocations; nor should Congress repeat the error of making fuel choices during ANY major change in auto technology, fuel efficiency regulation, and a push for removing liquid and higher carbon-based fuels from the marketplace.

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I welcome the witnesses and their organizations back to the committee. I hope you will provide us a constructive—and hopefully objective and productive—dialogue.

And with that I yield the remainder of my time to Mr. Flores.

Mr. SHIMKUS. And with that, I'd like to yield the remainder of my time to Mr. Flores, my colleague and friend from Texas.

Mr. FLORES. I thank the gentleman for yielding.

At a hearing last December on the 21st Century Transportation Fuels Act, I outlined some basic concerns with respect to the status quo of America's current fuel policies.

Number one, biofuel producers consistently raise concerns about the annual implementation on the RFS.

Number two, refiners face increased cost of complying with the RFS, and those costs are borne by consumers.

Number three, automakers face challenges in complying with the efficiency programs under two different agencies inside the EPA and the DOT.

And four, some environmental communities believe that first-generation ethanol creates environmental problems.

Almost 11 months since that hearing, we are back in the same room fighting over the same RFS. The 21st Century Transportation Fuels Act developed after several bipartisan roundtables and hearings addressed many of these concerns by taking a holistic view over transportation fuel policies.

For consumers, higher octane fuels can bring increased efficiency and performance for the next generation of engines.

For stakeholders, transitioning the RFS to a national octane standard creates new market opportunity for biofuel producers and gives compliance certainty to refiners and automakers.

Mr. Shimkus and I have reintroduced this bill on October the 16th and, as I've said before, we need to go with the status quo, which almost everybody has said is broken.

If we can have compromised solution like the 21st Century Fuels Act, I can guarantee all of you in this room and that are listening that we are not going to find a perfect solution that gives everybody 100 percent of what they want.

With that, I look forward to questioning our witnesses, and I yield back the balance of my time.

Mr. TONKO. And Mr. Shimkus yields back.

The Chair now recognizes Mr. Pallone, chairman of the full committee, for 5 minutes for his opening statement.

Chairman Pallone?

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Chairman Tonko.

Today, this committee is continuing its oversight of the Trump administration by examining the EPA's abuse of secret waivers to undermine the Renewable Fuels Standard program, or RFS.

Right now, President Trump is pitting farmers and refiners against each other to the detriment of all stakeholders and consumers. As a result, the RFS does not appear to be working the way it should for anyone involved.

Last Congress, then-Chairman Shimkus held a series of roundtables and hearings on the RFS in a quest to try to determine a new course for the program going forward.

And while I disagreed with the proposal he developed, his efforts were sincere and the hearings illuminated many important issues that we must deal with as we approach 2022 and the sunsetting of the current phase of the program.

Unfortunately, President Trump does not seem interested in making the program work. In fact, the Trump administration has done its best to undermine the program at a time when American farmers are already struggling to deal with the collapse of markets for many of the products they grow here at home.

The idea that EPA Administrator Andrew Wheeler is somehow acting without the President's knowledge or approval defies logic.

As we have seen throughout the last 3 years, anyone in the administration who acts against President Trump's stated desires is either subject to a public browbeating or they are dismissed from the administration.

So it's clear that Administrator Wheeler is acting on the President's orders—orders that, once again, show President Trump is captive to the oil industry.

Nowhere is this more evident than the President's huge expansion of small refinery waivers. Before President Trump had taken office, EPA normally approved around seven or eight petitions for these waivers each year.

But that changed dramatically when Trump came to office. Former Administrator Pruitt retroactively approved 19 exemptions for 2016, and then 35 were approved for 2017, followed by 31 in 2018.

Now, I think it's fair to say that some exemptions to the law's renewable fuel blending requirements are necessary and that there are refineries that would be harmed without an exemption.

In New Jersey, we have a number of small refineries, and these waivers can be important for a struggling facility. But, unfortunately, today we have no way of knowing whether any of the refineries granted these exemptions are actually experiencing the hardship envisioned by Congress when we created the RFS, and it is a frustration shared by both Democrats and Republicans.

Senator Chuck Grassley has said, and I quote, he is "very skeptical that every company receiving waivers truly needs them."

And this skepticism is completely understandable considering these hardship exemptions are granted in secret, with EPA not even revealing the name of the companies that receive them.

Not even our committee, which created the RFS, receives that information, and there is simply no transparency in the process, and these decisions are far too consequential to be made in a dark back room without any sunlight.

So that's why today we are holding a hearing on these exemptions and, specifically, on Representative Peterson's bipartisan legislation to bring at least part of this process out into the open.

H.R. 3006, the Renewable Fuel Standard Integrity Act of 2019, requires public disclosure of any information included in petitions for exemption from the annual blending requirements.

The bill also sets an annual deadline of June 1st for small refineries to petition for exemption from the upcoming year's blending requirements in order to make the process more predictable and rational.

Now, some of the information contained in the small refinery exemption petitions is likely to be confidential business information that shouldn't be divulged to the general public.

But there is, clearly, a logical middle ground between releasing every bit of information on a petition and the complete blackout we are all subject to today.

So we should be able to find a middle ground and move a version of this bill through the committee with bipartisan support, and that is what we are hoping to achieve today.

And I thank you again, Chairman Tonko. This, I think, is a very important hearing. Thank you.

I yield back.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Today, this committee is continuing its oversight of the Trump administration by examining the EPA's abuse of secret waivers to undermine the Renewable Fuels Standards program or RFS. Right now, President Trump is pitting farmers and refiners against each other to the detriment of all stakeholders and consumers. As a result, the RFS does not appear to be working the way it should for anyone involved.

Last Congress, then-Chairman Shimkus held a series of roundtables and hearings on the RFS in a quest to try to determine a new course for the program going forward. While I disagreed with the proposal he developed, his efforts were sincere, and the hearings illuminated many important issues that we must deal with as we approach 2022 and the sunsetting of the current phase of the program.

Unfortunately, President Trump does not seem interested in making the program work. In fact, the Trump administration has done its best to undermine the program at a time when American farmers are already struggling to deal with the collapse of markets for many of the products they grow here at home.

The idea that EPA Administrator Andrew Wheeler is somehow acting without the President's knowledge or approval defies logic. As we have seen throughout the last three years, anyone in the administration who acts against President Trump's stated desires is either subject to a public browbeating or they are dismissed from the administration. It's clear that Administrator Wheeler is acting on the President's orders—orders that once again show President Trump is captive to the oil industry.

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Now, some of the information contained in the small refinery exemption petitions is likely to be confidential business information that shouldn't be divulged to the general public. But there is clearly a logical middle ground between releasing every bit of information on a petition and the complete blackout we are all subject to today.

We should be able to find a middle ground and move a version of this bill through the committee with bipartisan support. I yield back.

Mr. TONKO. You are welcome. The gentleman yields back.

The Chair now recognizes Mr. Walden, ranking member of the full committee, for 5 minutes for his opening statement.

Congressman Walden?

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you very much, Mr. Chairman, and to our witnesses, thank you for being here.

I understand today's hearing has multiple objectives. It's a legislative hearing on H.R. 3006, the Renewable Fuels Standard Integrity Act. It's an oversight hearing of both small refinery exemptions and the recent supplemental proposed rule on required production of certain renewable fuels.

I am sure H.R. 3006 is a well-meaning attempt to address concerns that biofuel feedstock producers have about the issuance of waivers. But I have questions about the legislation.

From my reading, I am confused about the timing between the deadline for requesting a waiver and the rules establishing required volumes.

I am also troubled by the broadness of the precedent the bill sets for removing protections for any legitimate trade sector intellectual property submitted to EPA as part of a waiver.

I hope our witnesses can help us understand whether this bill needs changes to be workable and whether they would consider this a good policy if it applied to them.

As the EPA's recent supplemental proposal on the required production amounts for certain biofuels in 2020 and 2021 and its administration of the small refinery waiver, I wish we had a witness from the EPA here to explain its logic for proposing the change calculations of renewable fuel percentages, how that will ensure industry blends what is intended, and required volumes are not reduced by future hardship waivers.

Now, I understand the EPA offered alternate dates to appear before our committee. But considering the EPA is holding a public hearing on this subject tomorrow and it will be taking comment for another 30 days, it seems it would have been prudent for the committee to postpone long enough for us to engage in meaningful oversight.

But this is hardly the only issue of the RFS. A broader hearing on the entire program seems like it would have been a more appropriate way to tackle this.

Take renewable fuel source of woody biomass, something I've talked about for years and actually is occurring in my district, or will soon.

Not only can woody biomass produce the most desired yet least produced fuel under the RFS, it also helps thin our forests and reduce the risk of catastrophic fire that pumps carbon emissions into the atmosphere.

Despite these advantages, RFS treats wood from private and Federal land differently, even though there is no scientific difference. This is a missed opportunity.

If we are serious about expanding renewable fuels and further lowering carbon emissions, we cannot establish arbitrary conditions and be so narrowly focused on who owns the wood.

We need innovation, preparation, and conservation-based solutions. Let me be clear, though. The RFS is important to many people, particularly in a time of uncertainty and commodity markets.

If we are going to look at this program seriously, we should do it in a way that's broader and improves the program for consumers and not just incumbent producers.

Finally, let me say something about the most obvious part of this hearing. We are holding a hearing on the need for more biobased liquid transportation fuels when every other indication from the majority, whether talking points, its ill-defined 100 by 50 proposal of which we have many questions, Green New Deal, or the LIFT Act, each revolve around doing away with liquid fuels to power light-duty and heavy-duty vehicles' fuel mix.

Based on this policy desire, Department of Energy data showing decline in the use of liquid fuels, it's perplexing that we have this hearing to promote the use of liquid fuels and the Renewable Fuel Standard at the same time—that it's promoting policies against continued use of these fuels.

Now, in the last Congress, I tasked Mr. Shimkus and Mr. Flores with the tough duty of coming together to see if we could figure a way through this for a modern RFS system and if—well, you know what happened.

First, Mr. Shimkus announced he's not running again. Then Mr. Flores announced he's not running again, and then I announced I am not running again.

So it's a hell of a mess, but it's one that I would caution anybody who wants to get close to—and you dropped out too. So——

Mr. LOEBSACK. I am running again.

[Laughter.]

Mr. WALDEN. Yes. I mean, it's—I am just warning anybody on the committee stay away. Stay away from RFS.

But it's a tough one. We all know that. Lots of competing interests, and I think we all want to get it right, Mr. Chairman.

So, as always, we look forward to working with you, sir, and as this moves forward.

And I yield back.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Thank you, Mr. Chairman.

I understand that today's hearing has multiple objectives: it's a legislative hearing on H.R. 3006, the Renewable Fuel Standard Integrity Act, an oversight hearing of both small refinery exemptions and the recent supplemental proposed rule on required production of certain renewable fuels, and, frankly, score political points with a specific group of voters.

I am sure H.R. 3006 is a well-meaning attempt to address concerns biofuel producers and feedstock producers have about the issuance of waivers, but I have questions about this legislation. From my reading, I am confused about the timing between the deadline for a requesting waiver and the rules establishing required volumes. I am also troubled by the broadness of the precedent the bill sets in removing protections for any legitimate trade secret or intellectual property submitted to EPA as part of a waiver. I hope our witnesses can help us understand whether this bill needs changes to be workable and whether they would consider this a good policy if it were applied to them.

As to the EPA's recent supplemental proposal on the required production amounts for certain biofuels in 2020 and 2021 and its administration of the small refinery waiver; I wish we had a witness from the EPA here to explain its logic for proposing the changed calculations of renewable fuel percentages, how that will ensure industry blends what's intended, and required volumes are not reduced by future hardship waivers. I understand the EPA offered alternate dates to appear before our committee; but considering that the EPA is holding a public hearing on this subject

tomorrow and then will be taking comment for another 30 days, it seems it would have been prudent to postpone long enough for our committee to engage in meaningful oversight.

This is hardly the only issue with the RFS; a broader hearing on the entire program seems like it would have been more appropriate.

Take renewable fuels sourced from woody biomass. Not only can wody biomass produce the most desired, yet least produced fuel under the RFS, it also helps thin our forests and reduce the risk of catastrophic fires that pump carbon emissions into the atmosphere. Despite these advantages, RFS treats wood from private and Federal land differently, even though there is no scientific difference. This is a missed opportunity. If we are serious about expanding renewable fuels, and further lowering carbon emissions, we cannot establish arbitrary conditions and be so narrowly focused on who owns the wood. We need innovation, preparation, and conservation-based solutions.

Let me be clear though, the RFS is important to many people, particularly in a time of uncertainty in commodity markets. If we are going to look at this program seriously, we should do it in a way that is broader and improves the program for consumers and not just incumbent producers.

Finally, let me say something about the most obvious part about this hearing:

We are holding a hearing on the need for more bio-based liquid transportation fuels when every other indication from the majority—whether talking points, its ill-defined 100 by 50 proposal, of which we have many questions, the Green New Deal, or the LIFT Act—each revolve around doing away with liquid fuels to power light-duty and heavy-duty vehicles fuel mix. Based on this policy desire and Department of Energy data showing a decline in the use of liquid fuels, it is perplexing that the majority called this hearing to promote the use of liquid fuels and the Renewable Fuels Standard at the same time that it's promoting policies against continued use of these fuels.

I know the House Majority Leader has signaled to the press that Democrats are for farmers because they oppose the administration's latest proposal, but folks in farm country, while frustrated with the situation, can see right through this to what it is.

We should be about solutions, not duplicitous, one-off political pandering. This committee is better than that.

As Mr. Shimkus and Flores showed us last year, we know farmers, biofuels producers, and refiners have concerns about the RFS, but union workers and others have major concerns about the RFS, too. If we're sincere about a future that includes liquid transportation fuels, let's bring all the people affected into this discussion and let's try to work through some of these problems.

Mr. Chairman let's do some real bipartisan work we can be proud of. I yield back.

Mr. TONKO. Well, we appreciate those comments and the warnings.

Mr. WALDEN. Good luck.

Mr. TONKO. And the warnings. The gentleman yields back.

The Chair would like to remind Members that, pursuant to committee rules, all Members' written opening statements shall be made part of the record.

Now we will introduce our witnesses, and we welcome them all for joining us on what is a very important discussion.

We will begin with Mr. Geoff Cooper, president and CEO of Renewable Fuels Association. Seated next to him is Mr. Gene Gebolys, president and CEO of World Energy.

Next to him, Mr. Chet Thompson, president and CEO of American Fuel & Petrochemical Manufacturers, and then finally, Mr. Kelly Nieuwenhuis, president of Siouxland Energy Cooperative.

Before we begin, gentlemen, I would like to explain the lighting system. In front of you are a series of lights. The light will initially be green at the start of your opening statement. The light will turn yellow when you have 1 minute remaining. Please begin to wrap up your testimony at that point. The light will turn red when your time has expired.

At this time, the Chair will now recognize Mr. Cooper for 5 minutes to provide his opening statement, and again, welcome, Mr. Cooper.

STATEMENTS OF GEOFF COOPER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, RENEWABLE FUELS ASSOCIATION; GENE GEBOLYS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, WORLD ENERGY, ON BEHALF OF THE NATIONAL BIODIESEL BOARD; CHET THOMPSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS; AND KELLY NIEUWENHUIS, PRESIDENT, SIOUXLAND ENERGY COOPERATIVE

STATEMENT OF GEOFF COOPER

Mr. COOPER. Well, thank you, Mr. Chairman, and good morning, Chairman Tonko, Ranking Member Shimkus, Ranking Member Walden, and members of the subcommittee.

My name is Geoff Cooper, and I am the president and CEO of the Renewable Fuels Association, a trade association representing the U.S. ethanol industry.

I appreciate the opportunity to share our industry's concerns regarding EPA's rampant abuse of RFS Small Refinery Exemptions, or SREs.

When properly implemented, the Renewable Fuel Standard is an extraordinary program. It decreases reliance on imported petroleum, reduces greenhouse gas emissions, lowers gas prices, and boosts the economy.

The RFS achieves these goals by ensuring that biofuels are afforded access to a fuel market that is otherwise closed to competition.

Unfortunately, the current administration's approach to implementation has destabilized the RFS and created significant uncertainty in the marketplace.

Specifically, EPA's flagrant abuse of SREs has resulted in lower production and use of ethanol, increased emissions, higher gas prices, and lost jobs.

In recent years, EPA has granted an unprecedented number of SREs and disregarded the established requirements for eligibility. SREs were intended to be temporary, meaning there should be fewer exemptions granted each year as more small refineries come into compliance.

Further, exemptions were meant to be available only to refineries that demonstrate compliance with the RFS itself would cause them disproportionate economic hardship, something that would be incredibly difficult for any refinery to show today, given historically low RIN prices and the fact that compliance costs are fully passed through to the refiner's customers.

Under the current administration, EPA has granted an average of 28 SREs per year, eroding renewable fuel blending requirements by an average of 1.35 billion gallons annually.

That compares to just seven SREs per year on average and a reduction in the RFS requirements of just 230 million gallons under the previous administration.

So we have seen a fourfold increase in the number of exemptions granted and a sixfold increase in the volume of exemptions granted. The dramatic increase in SREs has resulted in demand destruction and some of the worst market conditions in the industry's history.

The RFS was intended to continually grow the volume of domestic ethanol consumption. But, unfortunately, the demand increase promised by the RFS has not materialized due to the SREs.

After 22 straight years of successive increases, U.S. ethanol demand in 2018 fell from 2017 levels, and before the massive increase in SREs, U.S. ethanol consumption for this year—2019—was expected by EIA to top out at above 14.8 billion gallons.

EIA now expects 2019 consumption will be closer to 14.3 billion gallons. So a loss of 500 million gallons of demand.

Ethanol consumption would have fallen even further if not for the dramatic downward adjustment in ethanol prices. Ethanol had to maintain competitiveness, and so prices fell, and as prices fell net returns at ethanol plants deteriorated to the lowest levels since at least 2007.

Facing weaker negative margins, ethanol plants have been forced to idle or permanently shutter. We have seen 19 ethanol plants—at least 19 plants—idle or close since spring of 2018 when this issue really began.

When an ethanol plant goes down, the local community suffers. We are talking about lost jobs. We are talking about a reduction of 20 to 25 cents per bushel in corn prices.

We estimate that, you know, with these 19 plants that have recently idled or closed, we are talking about 700 direct jobs that have been lost and about 2,800 jobs indirectly that have been affected in related sectors.

Unfortunately, EPA's recent supplemental proposal, which was intended to implement a relief package promised by President Trump, fails to correct these problems.

The bait-and-switch employed by EPA in this latest proposal does not ensure that the statutory volume for conventional biofuels will be enforced in 2020 or beyond, and we think it is likely the 2020 requirement for conventional biofuels could, again, be eroded to less than 15 billion gallons.

In short, EPA's proposal will not bring idle plants back online, and it won't put furloughed workers back to work.

I want to close by expressing RFA's strong support for H.R. 3006—where I come from, we'd call that 30 aught 6—which begins to resolve some of the problems we are discussing today.

The bill would ensure EPA's final RVOs are actually enforced and not eroded by SREs. The bill also contains important provisions that would greatly enhance transparency.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Cooper follows:]

TESTIMONY OF
GEOFF COOPER
PRESIDENT & CEO, RENEWABLE FUELS ASSOCIATION
BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENVIRONMENT & CLIMATE CHANGE
HEARING ON
"PROTECTING THE RFS: THE TRUMP ADMINISTRATION'S ABUSE OF SECRET WAIVERS"
OCTOBER 29, 2019

Good morning, Chairman Tonko, Ranking Member Shimkus, and Members of the Subcommittee. My name is Geoff Cooper and I am president and CEO of the Renewable Fuels Association (RFA), the national trade association representing the U.S. ethanol industry.

The RFA has been the leading trade association for America's renewable fuels industry for over 38 years. Our mission is to advance the development, production and use of renewable fuels by strengthening America's ethanol industry and raising awareness about the benefits of biofuels. Founded in 1981, RFA serves as the premier organization for industry leaders and supporters. With over 300 members, we are working to help America become cleaner, safer, more energy secure, and economically vibrant.

The ethanol industry makes a vital contribution to our nation's economy. The production of 16.1 billion gallons of ethanol in 2018 directly employed more than 71,000 American workers in the manufacturing and agriculture sectors. In addition, the ethanol industry supported 295,000 indirect and induced jobs across all sectors of the economy. The industry created $24 billion in household income and contributed $46 billion to the national Gross Domestic Product (GDP). Moreover, ethanol producers paid nearly $10 billion in federal, state and local taxes, and spent $26 billion on raw materials, inputs, and other goods and services.[1]

I. The Renewable Fuel Standard Works

[1] J.M. Urbanchuk. "Contribution of the Ethanol Industry to the Economy of the United States in 2018." January 30, 2019. https://ethanolrfa.org/wp-content/uploads/2019/02/RFA-2018-Ethanol-Economic-Impact-Final-1.pdf

Congress established the Renewable Fuel Standard (RFS) as part of the Energy Policy Act of 2005 and greatly expanded and extended the RFS as part of the Energy Independence and Security Act of 2007. While the primary goal of the RFS is to "replace or reduce the quantity of petroleum-based transportation fuel"[2] used in the United States, the program also addresses a number of additional policy objectives. In addition to decreasing reliance on imported petroleum, the RFS has reduced emissions of harmful tailpipe pollutants and greenhouse gases (GHG), lowered consumer fuel prices, supported hundreds of thousands of jobs in rural America, and boosted the agricultural economy by adding value to the crops produced by our nation's farmers. Far from "distorting the free market" as RFS opponents often claim, the policy has been remarkably successful in stimulating market competition and giving consumers more choices. Simply put, the RFS ensures renewable fuels are able to gain access to a fuel market that would otherwise be closed to competition.

a. Because it has Worked, the RFS is Under Attack

Because the RFS has succeeded in replacing petroleum with cleaner renewable fuels, the policy has come under fierce attack from the incumbent fossil fuel industry and its supporters. The oil industry and its supporters continue to devise strategies and tactics intended to frustrate the goals of the RFS, undermine and complicate implementation, and mislead the public about the many benefits of renewable fuels.

In its ongoing pursuit to undermine the RFS, the oil industry continues to advance the red herring narrative that the "cost of compliance" presents an unbearable economic hardship that threatens the viability of petroleum refineries. Specifically, refiners claim that when they choose to purchase RFS compliance credits (known as Renewable Identification Numbers, or "RINs") from competitors in lieu of blending renewable fuels, an insufferable financial burden is created that warrants regulatory "relief." Of course, empirical evidence, the practical experience of market participants, the legislative and regulatory history, and an expansive body of scientific literature expose these arguments as absurd and contrived.

Unfortunately, however, the current Administration apparently has been convinced by oil refiners that RIN prices are indeed something that must be managed, despite the original intent that the RIN market would operate freely to help ensure achievement of the statutory RFS requirements. After

[2] U.S. EPA. "Overview for Renewable Fuel Standard." https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard

previous failed attempts to implement regulatory schemes intended to manipulate RIN prices[3], EPA in early 2018 finally found a way to covertly and rapidly destroy RIN markets and undermine the RFS—massive expansion and abuse of the statutory Small Refinery Exemption (SRE) program.

As detailed in this testimony, EPA's secretive and underhanded approach to the SRE provision in recent years has destabilized the RFS, reduced the production and use of clean renewable biofuels, increased GHG emissions and tailpipe pollution, and led to lost jobs and economic opportunity in rural America.

II. EPA's Vast Expansion of the Small Refiner Exemption Program Has Created Significant Uncertainty in the Marketplace and Undermined the RFS

As a "bridge to compliance," Congress provided *all* small petroleum refineries—those with average crude oil throughput of no more than 75,000 barrels per day—with a *temporary* blanket exemption from RFS compliance obligations through 2010.[4] Accordingly, the volume of gasoline and diesel fuel produced by these exempt small refineries was not included in EPA's annual calculation of renewable volume obligations (RVOs) through the 2010 compliance year. Excluding the exempted gasoline and diesel volume from the calculation ensured that the full volume of renewable fuel, as specified in the annual RVO rules, would be blended by non-exempt refiners.

Based upon the results of a Congressionally directed study by the Department of Energy, EPA extended the exemptions for 21 small refineries in the 2011 and 2012 compliance years.[5] Again, the volume of gasoline and diesel fuel produced by these exempt refineries was not included in EPA's annual RVO calculations for those compliance years, ensuring that the required renewable fuel blending volumes specified in the 2011 and 2012 RVO rules would be met.

However, beginning in the 2013 compliance year, small refineries had to petition EPA for an extension of the compliance exemption. In order to receive an extension of the temporary exemption, a small refinery had to prove that "*compliance with the RVOs* would cause the refinery to suffer *disproportionate economic hardship*."[6] Starting with the 2013 compliance year, EPA began to receive some petitions for SREs *after* the annual RVO rule had been finalized, meaning approved exemptions would apply retroactively.

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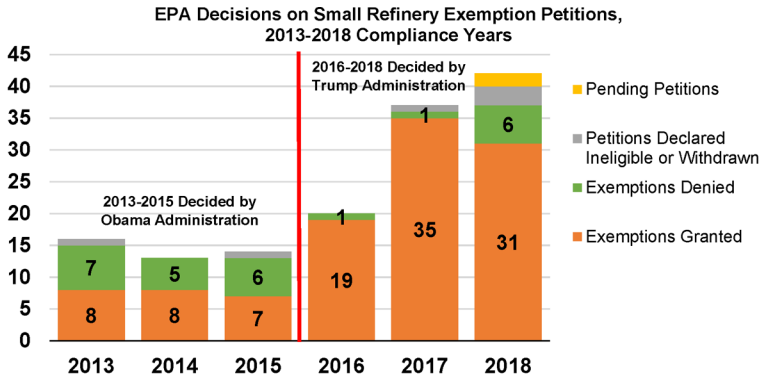
[3] See, for example, U.S. EPA. "Availability of Supplemental Information and Request for Further Comment on Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019." 82 Fed. Reg. 46174 (proposing various schemes for reducing the RVOs and artificially increasing RIN stocks).
[4] *Hermes Consol., LLC v. E.P.A.*, 787 F.3d 568, 575-580 (D.C.Cir.2015).
[5] 77 Fed. Reg. 1340 (Jan. 9, 2012)
[6] U.S. EPA. "Renewable Fuel Standard Exemptions for Small Refineries." (emphasis added)
https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-exemptions-small-refineries

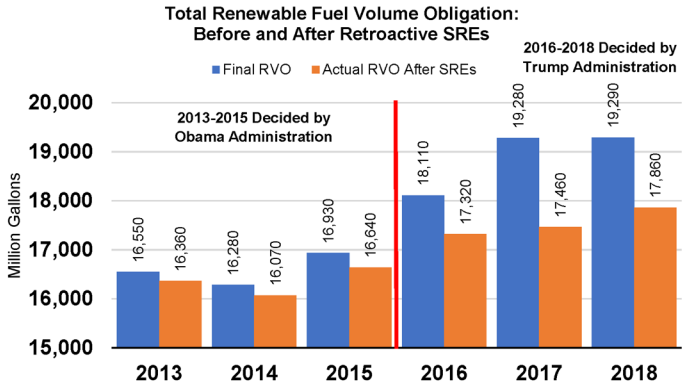
To date, EPA's use of retroactive exemptions has resulted in the *actual* blending requirements for the given compliance year being lower than the volumes specified in the final RVO rule (i.e., because some volume of gasoline and diesel fuel that was initially expected to have a renewable fuel blending obligation ultimately is exempted from the obligation). The practice of issuing retroactive exemptions has continued since 2013, but only emerged as a significant concern in early 2018 when the public became aware that the Trump Administration had massively expanded both the number and size of exemptions granted to small refineries.

For the 2013 compliance year, EPA received 16 petitions for SREs. The Agency granted eight exemptions, while denying seven and declaring one ineligible. As a result, the actual enforced 2013 RFS blending requirement was effectively reduced by 190 million gallons, or 1.1%, from the level specified in the 2013 final RVO rule. Similarly, EPA received 13 and 14 petitions for the 2014 and 2015 compliance years, respectively, and again approved roughly half of the petitions while denying (or declaring ineligible) the other half. The exemptions effectively reduced the 2014 and 2015 total RFS requirements by 1.3% and 1.7%, respectively, from the levels specified in the final RVO rules for those years. Consistent with the Congressional intent that SREs were meant as a temporary measure and a "bridge to compliance," EPA was judicious in its approach and correctly held petitioners to a relatively high standard for demonstrating "disproportionate economic hardship" in the 2013-2015 compliance years. While EPA's process for granting retroactive exemptions was as opaque then as it is now, the reductions to the 2013-2015 RFS requirements caused by the exemptions were largely inconsequential and thus did not provoke significant scrutiny or public outcry.

However, under the current Administration, the EPA has granted an unprecedented number of SREs, disregarding the established requirements for eligibility. In early 2018, EPA began to massively expand the size and scope of the SRE program. The Agency retroactively approved 19 exemptions for the 2016 compliance year and 35 exemptions for the 2017 compliance year, while initially refusing to deny a single request (EPA eventually denied two pending petitions, one each for 2016 and 2017). Most recently, in August 2019, EPA approved another 31 petitions for SREs from 2018 compliance, while denying just six.



The effect of the 2016-2018 retroactive exemptions on required renewable fuel blending volumes is substantial. Cumulatively, the 85 exemptions reduced 2016-2018 RFS blending requirements by a total of 4.04 billion gallons, or 1.35 billion gallons annually (a six-fold increase from the annual average of 0.23 billion gallons from 2013-2015). In 2017 alone, the exemptions effectively reduced the total RFS volume by 9.4% from the level specified in the 2017 final RVO rule.



As described more fully later in these comments, the current Administration's vast expansion of retroactive SREs has rendered EPA's annual RVO rule meaningless, introduced tremendous

uncertainty into the marketplace, and significantly undermined demand for renewable fuels. As a consequence of EPA's repeated abuse of the SRE provision, ethanol producers, farmers, and others in the supply chain have no faith that the volume requirements appearing in the annual RVO rule will actually be enforced by the Agency.

III. The Dramatic Increase in Small Refinery Exemptions Has Resulted in Ethanol Demand Destruction and the Worst Market Conditions in the Industry's History

Responding to the signals sent by the RFS and a presumption of market certainty, U.S. ethanol producers invested billions of dollars to expand production capacity in the 2007-2018 timeframe. These investments were driven, in large part, by an expectation that the RFS would drive domestic ethanol consumption over and above the so-called E10 "blend wall" to at least 15 billion gallons. Unfortunately, that promised increase in domestic demand has not materialized because of the dramatic increase in secretive SREs.

The retroactive SREs for 2016-2018 resulted in a flood of RIN compliance credits back onto the market. The sudden glut of RINs caused prices to collapse, as the supply of the credits overwhelmed demand. With historically low RIN prices and actual conventional renewable fuel blending requirements falling to levels below the E10 "blend wall," the market pressure to expand domestic ethanol consumption to at least 15 billion gallons annually has been completely eliminated. The unprecedented availability of cheap RIN credits means non-exempt refiners can now choose to comply with their marginal RFS obligations by obtaining low-cost RINs instead of blending physical gallons of renewable fuel. The erosion of RFS requirements (and the associated collapse in RIN prices) has not only destroyed the incentive to expand consumption of higher-level ethanol blends like E15 and E85, it has also reduced marginal demand even for E10.

This demand loss has been evident in recent market data. According to the U.S. Energy Information Administration (EIA), U.S. ethanol consumption was 14.38 billion gallons in 2018—down from 14.49 billion gallons in 2017.[7] According to the *Wall Street Journal* and other sources, this marked the first year-over-year decrease in ethanol consumption in more than 20 years.[8] Moreover, the reduction in ethanol blending in 2018 was *not* a function of lower gasoline consumption (as EPA

[7] U.S. Energy Information Administration. Monthly Energy Review: Table 10.3 "Fuel ethanol overview." Available at: https://www.eia.gov/totalenergy/data/monthly/

[8] J. Bunge and K. Maltais. Wall Street Journal. "Ethanol Industry Reels as Trade Dispute and Policy Changes Cut Demand." Sept. 4, 2019. Available at: https://www.wsj.com/articles/ethanol-industry-reels-as-trade-dispute-and-policy-changes-cut-demand-11567604261

has reportedly argued in the past[9]), as U.S. gasoline demand in 2018 was unchanged from 2017 at 143 billion gallons.[10] This is also reflected by the fact that the "blend rate" (i.e., ethanol's average inclusion rate in gasoline) fell in 2018 from the 2017 level—the first annual decline in at least a decade.

In any event, a static comparison of current levels of ethanol consumption to past levels of consumption misses the point. The RFS was intended to continually grow the volume of domestic ethanol consumption; thus, the proper comparison is *actual* consumption levels to the consumption levels that *would have occurred* in the absence of the SREs.[11] EPA regularly utilizes this type of "counterfactual analysis" when assessing RFS impacts and should do so to better ascertain the demand loss attributable to SREs.[12]

For example, in January 2018—before the public became aware of the dozens of 2016 and 2017 SREs that were being issued—EIA forecasted 2019 U.S. ethanol consumption at 14.82 billion gallons. But in its latest forecast, EIA now expects 2019 consumption to total just 14.38 billion gallons, 440 million gallons lower than the initial forecast. In a recent outlook, EIA stated it "…assumes that growth in higher-level ethanol blends is limited in the near-term by recent Small Refinery Exemptions that reduced volumes of renewable fuels required under the RFS."[13]

U.S. ethanol consumption would have fallen even further in 2018 and 2019 if not for a dramatic downward adjustment in ethanol prices. Against a backdrop of eroded RFS requirements, historically low RIN prices, and record surpluses, ethanol prices had to fall steeply relative to gasoline prices to "buy back" demand. A regression analysis performed by RFA's chief economist shows that 2018 ethanol prices would have been as much as 34 cents per gallon higher in the absence of SREs. More recently, ethanol futures prices plunged 18 cents per gallon (12%) in just the one week following the Aug. 9, 2019 announcement by EPA that 31 more exemptions had been

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[9] H. Pamuk and J. Renshaw. Reuters. "EPA chief defends biofuel waivers in meeting with farm senators: sources." July 30, 2019. https://www.reuters.com/article/us-usa-ethanol-waivers/epa-chief-defends-biofuel-waivers-in-meeting-with-farm-senators-sources-idUSKCN1UP1HC

[10] U.S. Energy Information Administration. "U.S. Product Supplied of Finished Motor Gasoline." Available at: https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MGFUPUS1&f=A

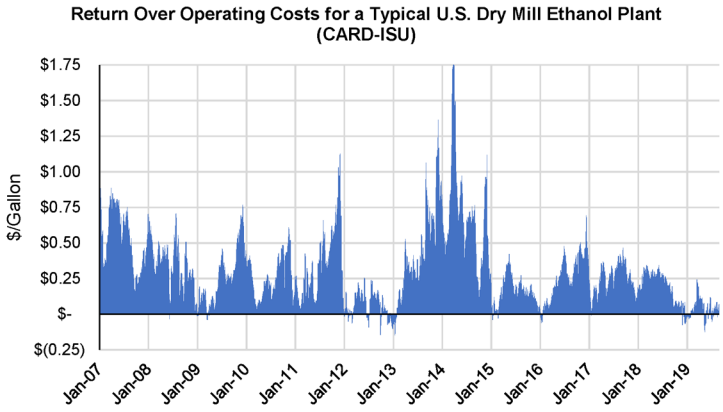
[11] The University of Missouri's Food & Agriculture Policy Research Institute (FAPRI) conducted this sort of analysis on the impact of SREs, concluding that the waivers have significant negative economic impacts on ethanol and corn producers. See https://ethanolrfa.org/2018/09/university-analysis-epas-refiner-waivers-could-cost-ethanol-industry-20-billion-in-losses/

[12] For example, EPA's RFS2 final rule included analysis comparing the expected economic and environmental impacts of the RFS2 to a counterfactual scenario where the RFS2 does not exist.

[13] U.S. Energy Information Administration. Short-Term Energy Outlook. July 9, 2019. Available at: https://www.eia.gov/outlooks/steo/archives/Jul19.pdf

approved for the 2018 compliance year. Thus, the SREs have already resulted in billions of dollars in losses to U.S. ethanol producers via reduced ethanol demand and sharply lower prices.

Lower ethanol prices have put tremendous pressure on operating margins for U.S. ethanol producers, with the Center for Agricultural and Rural Development (CARD) showing that net returns over operating costs for a typical ethanol plant have deteriorated to the lowest sustained levels since CARD began tracking ethanol profitability in 2007.[14]



The destruction of ethanol demand is now eliciting an unmistakable supply response. Although EPA has claimed otherwise, ethanol production has fallen dramatically in recent months and is well below year-ago levels.[15] Monthly EIA data show that total U.S. ethanol production in January-July 2019 (latest available) is down 1.9% from the same period in 2018.[16] The EIA weekly data (through October 18, 2019) show even greater erosion in ethanol output, with 2019 year-to-date production down 2.1% versus the same period a year ago.[17] According to EIA, the most recent four-week

[14] CARD. Iowa State University. "Historical Ethanol Operating Margins."
https://www.card.iastate.edu/research/biorenewables/tools/hist_eth_gm.aspx
[15] In testimony before the House Committee on Science, Space, and Technology on September 19, 2019, EPA Administrator Andrew Wheeler stated, "So far this year the industry has produced more ethanol than they did at this point last year." However, all available data from EIA and EPA at the time showed year-to-date production was down about 2% from the same period in 2018.
[16] U.S. Energy Information Administration. "U.S. Renewable Fuels Plant and Oxygenate Plant Net Production of Fuel Ethanol." Available at:
https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=M_EPOOXE_YNP_NUS_MBBL&f=M
[17] U.S. Energy Information Administration. "Weekly Ethanol Plant Production." Available at:
https://www.eia.gov/dnav/pet/pet_pnp_wprode_s1_w.htm

average of ethanol output was the lowest in 177 weeks.[18] EIA expects 2019 ethanol production to fall from 2018 levels—the first annual decrease in nine years.[19] Similarly, EPA data show U.S. ethanol output in January-August 2019 was down 2.1% compared to the same period in 2018.[20]

Meanwhile, data from the U.S. Department of Agriculture (USDA) show corn use for ethanol is falling as well. In November 2018, USDA forecast corn use for ethanol in the 2018/19 marketing year (Sept. 1, 2018 - Aug. 31, 2019) at 5.65 billion bushels. However, in its latest report, USDA now estimates actual corn use for ethanol fell to 5.38 billion bushels. The 270-million-bushel reduction in estimated corn use for ethanol is equivalent to eliminating demand for the entire Michigan or Kentucky corn crop.

IV. The Real Impacts of SREs: Shuttered Ethanol Plants, Collapsing Corn Markets, and Lost Jobs

In response to sustained weak or negative margins, ethanol plants have been forced to idle or shut down permanently. Since the spring of 2018—when the public began to recognize EPA's massive expansion of the SRE program—at least 19 ethanol plants with combined production capacity of about 1.1 billion gallons have temporarily idled production or permanently closed.

When an ethanol plant goes down, the local community suffers. The idling of an ethanol plant—even if temporary—sends damaging shockwaves throughout the entire community in which the facility operates, including lost jobs, the immediate loss of a local market for corn, and a sudden drop in local corn prices. According to a recent economic analysis conducted by the RFA, the idling of an ethanol plant can cause local corn prices to immediately fall by as much as 15-25 cents per bushel, resulting in significant financial losses for area farmers.[21] While corn demand destruction and price erosion are among the most significant negative economic impacts of a plant closure, there are many others including:

- **Lost direct jobs:** Most ethanol plants directly employ 40-50 full-time employees. When plants shut down, these workers are typically laid off or furloughed, often without pay.

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[18] *Id.*

[19] U.S. Energy Information Administration. "Increase in U.S. fuel ethanol production capacity slows." Sept. 20, 2019. ("U.S. production of fuel ethanol reached 16.1 billion gallons (1.0 million b/d) in 2018. In the September *Short-Term Energy Outlook* (STEO), EIA expects U.S. production of fuel ethanol to decline slightly to 15.8 billion gallons for 2019…"). Available at: https://www.eia.gov/todayinenergy/detail.php?id=41393

[20] U.S. EPA. "Public Data for the Renewable Fuel Standard." (comparing volume of "non-cellulosic ethanol" produced by "domestic producers"). Available at: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard

[21] RFA. "The Impact of the Idling and Closure of Ethanol Production Facilities on Local Corn Prices." (September 25, 2019). https://ethanolrfa.org/wp-content/uploads/2019/10/Corn-Price-Impact-of-Idling-and-Closure-of-Ethanol-Plants.pdf

- **Lost indirect jobs:** An ethanol plant's impact on jobs goes far beyond the facility itself. For every direct job at the plant, it is estimated that operation of the facility supports an additional 4-6 full-time jobs indirectly, meaning a typical plant supports roughly 300 indirect jobs in the local area. This includes workers involved in farming, trucking, rail transportation, manufacturing and supplying process inputs, legal and administrative services, engineering, maintenance and repair, construction, and many other fields. When a plant shutters, these workers often lose their jobs too.
- **Lost local supply of low-cost, high-protein livestock and poultry feed:** The ethanol industry is a major supplier of low-cost, high-protein animal feed (called distillers grains), with a typical 120-million-gallon plant producing approximately 350,000 tons of feed annually. Livestock and poultry producers rely on their local ethanol plants for a ready supply of low-cost distillers grains. When the plant shuts down, these producers are forced to find alternative sources of feed, typically at a higher price.
- **Loss of low-cost feedstock supply for biodiesel and renewable diesel production:** A typical 120-million-gallon ethanol plant also produces 38 million pounds of corn distillers oil, a high-quality vegetable oil that is often made into biodiesel or renewable diesel. When an ethanol plant goes idle, biodiesel and renewable diesel producers lose access to this high-quality feedstock.
- **Lost supply of low-cost, clean, biogenic carbon dioxide:** Many ethanol plants capture CO_2 that is released during fermentation and sell it to companies who use it for making dry ice, carbonating beverages, flash-freezing food products, or other manufacturing and industrial purposes. CO_2 from ethanol plants is known for its purity and low cost. When an ethanol plant shuts down, users of CO_2 must find alternative sources, typically at a higher cost.

Ethanol plants serve as vital economic engines for rural communities across the country, providing good jobs, creating value-added investment opportunities for farmers and other rural Americans, and developing new markets for crops produced by local growers. We estimate that the ethanol demand loss associated with SREs has led to the layoff or furlough of more than 700 workers in the ethanol industry since the spring of 2018. In addition, more than 2,800 full-time jobs in related industries and sectors have also been affected.

V. EPA's Administration of the Small Refinery Exemption Program Suffers from a Lack of Transparency, Inconsistent Implementation, and a Divergence from Congressional Intent

EPA's current approach to administering the SRE program is plagued by opacity, inconsistency, and an obvious deviation from Congressional intent surrounding the RFS generally and regulatory relief for small businesses specifically.

a. Lack of Transparency

There is an inherent lack of accountability surrounding the SRE program because the entire petition process is opaque and completely shielded from public scrutiny. While it is understandable that some financial and operational information contained in petitions for SREs may be sensitive in nature and entitled to protection under confidential business information (CBI) provisions, basic information regarding the petition should be made public. Unbelievably, EPA continues to treat even the most basic non-financial information as CBI, including even the identity and location of refineries seeking exemptions.

Despite the mounting public outcry[22] for greater transparency, EPA still refuses to disclose the identity of the oil refiners seeking and receiving SREs. It is unfathomable that an Agency tasked with protecting the environment is instead excusing wealthy fossil energy companies from their Clean Air Act requirements, then shielding them from public scrutiny. But that's exactly what's happening. Indeed, the only information available to the public regarding the identity of refiners receiving SREs has come through dogged investigative reporting and a few voluntary disclosures in quarterly financial filings.[23]

EPA seemed to realize it was on shaky ground when it proposed to publicly reveal certain information related to SREs in November 2016.[24] EPA proposed that it "…would release to the public the petitioner's name, the name and location of the facility for which relief was requested, the general nature of the relief requested, the time period for which relief was requested, and the extent to which the EPA granted or denied the requested relief. All of this information is inherent to

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[22] See, for example, letter from Sen. Tammy Duckworth (D-IL) to EPA Acting Inspector General Charles J. Sheehan (May 23, 2019). Available at: https://www.duckworth.senate.gov/imo/media/doc/Letter%20to%20EPA%20OIG%20re%20EPA%20SRE%20policy.pdf

[23] See, for example, J. Renshaw and C. Prentice. "Exclusive: Chevron, Exxon seek 'small refinery' waivers from U.S. biofuels law." (April 12, 2018). https://www.reuters.com/article/us-usa-biofuels-epa-refineries-exclusive/exclusive-chevron-exxon-seek-small-refinery-waivers-from-u-s-biofuels-law-idUSKBN1HJ32R

[24] 81 Fed. Reg. 80828

the EPA's decision and, we believe, *is not entitled to treatment as CBI*."[25] However, EPA's 2016 proposal to disclose basic SRE information was shelved as the new Administration settled into the White House.

It appeared the SRE public disclosure proposal was being revived in April 2019 when a pre-publication request for comment was posted on the EPA web site, but it was never officially published in the Federal Register (in fact the EPA page where a draft was posted now says "Not Found"). According to *Reuters*, the plan to enhance transparency was abandoned again after "blowback from the White House and parts of the oil industry."[26]

EPA's management of the SRE program also suffers from a woeful lack of transparency surrounding the timing of important decisions and communication of those decisions to the public. In early 2018, for example, EPA privately notified refiners that they had received SREs from their 2016 and 2017 RFS obligations. Thus, the refiners possessed—and likely acted on—market-moving information that no other market participants possessed at the time. For instance, a refiner receiving an exemption could have quickly sold its inventory of RIN credits (i.e., because they were no longer needed for compliance) before other participants in the market became aware that EPA had effectively reduced the RVO for that year, and thus reduced demand for RINs.

In response to calls for greater transparency, EPA in September 2018 announced it was launching a new web site aimed at providing the public with more information about the SRE program. EPA said it "…intends to coordinate small refinery hardship decisions with website updates such that the recipients of waivers and the broader market receive the same information at the same time." Whether EPA is truly notifying the public of its SRE decisions at the same time it notifies the petitioner remains unknown. Further, the information provided by EPA on the web site is aggregated and still falls far short of providing the public with important information regarding the SRE program.

b. Relief Was Intended for Truly Small Businesses

It also seems highly unlikely that Congress intended for RFS compliance exemptions to be awarded to small refineries that happen to be owned by multinational integrated oil companies with billions of dollars in profits. Petrochemical giants like Chevron, ExxonMobil, Phillips 66, and Valero all happen to own one or more refineries that meet the definition of "small refinery" because they

[25] 81 Fed. Reg. 80909 (emphasis added)
[26] J. Renshaw, C. Prentice, and H. Pamuk. "EPA stalls biofuel waiver transparency plan after White House blowback: sources." (April 30, 2019). https://www.reuters.com/article/us-usa-epa-biofuels/epa-stalls-biofuel-waiver-transparency-plan-after-white-house-blowback-sources-idUSKCN1S62KL

process no more than 75,000 barrels of crude oil per day. Exemptions were given to some of these highly profitable companies for the 2016 and 2017 compliance years, according to numerous media accounts. However, these are hardly the small business operations that Congress likely had in mind when it created a *temporary* RFS compliance exemption provision. Yet, EPA has absurdly interpreted the terms "small refinery" to apply only to the singular facility requesting an exemption without regard to the parent company or any affiliates and subsidiaries.

c. EPA's Misinterpretation of "Disproportionate Economic Harm"

EPA's interpretation of "disproportionate economic harm" also is at odds with Congressional intent and any reasonable definition of the terms. If EPA were evaluating only the impact of RFS compliance on a refinery's economic viability (as intended by Congress), it would be unable to find that any refinery is disproportionately impacted by the RFS. This is because compliance obligations apply evenly and proportionately to all petroleum refineries, and evidence from the marketplace proves that all refineries—whether large or small, merchant or integrated—fully pass through their RFS compliance costs to purchasers of their refined products. If all refineries pass through RIN costs in the form of slightly higher prices for refined products, there can be no "disproportionate economic harm" due to the RFS.

Even the EPA itself has concluded that RINs are not negatively affecting profit margins for oil refineries. According to EPA, "…obligated parties, including small entities, are generally recovering the cost of acquiring the credits necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell. This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs."[27]

Economists from Harvard University, the Massachusetts Institute of Technology, and the University of Michigan also determined that refiners recover the cost of RINs, and thus there is no net impact on margins: "RIN prices were passed through one-for-one in the prices of bulk petroleum fuels."[28] Similarly, economists from Iowa State University found that "…added refiner costs from complying

[27] U.S. EPA. "Renewable Fuel Standard Program—Standards for 2018 and Biomass-Based Diesel Volume for 2019: Response to Comments." December 2017. https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100TDDH.pdf
[28] Christopher R. Knittel, MIT; Ben S. Meiselman, University of Michigan; James H. Stock, Harvard University. "The Pass-Through of RIN Prices to Wholesale and Retail Fuels under the Renewable Fuel Standard: Analysis of Post-March 2015 Data." November 23, 2016. https://scholar.harvard.edu/files/stock/files/kms_rin_passthru_update_2016_002.pdf

with the RFS are passed on to blenders through higher gasoline prices. We show that high RIN prices…have no impact on profits of refiners, blenders, or integrated oil companies."[29]

Oil refiner Andeavor (formerly Tesoro and now part of Marathon) has also acknowledged that "RIN costs are passed through at the bulk finished product sales points and provide refiners with coverage of their exposure to them."[30] Even the American Petroleum Institute agrees, stating "…RIN costs are largely recovered by refineries, both large and small, through the increased value of gasoline and diesel fuel they supply to the market."

Moreover, a new study published in *Energy Policy* by a Colorado State University economist shows that refiners receiving SREs are experiencing disproportionate economic *windfalls*—not disproportionate economic hardship as they are claiming.[31] Small refiners exempted from the RFS are able to reap inflated margins by charging prices for gasoline and diesel that still incorporate the costs of RFS compliance. The analysis finds that since RIN costs are fully passed through to wholesale gasoline prices, exempt refiners benefit from slightly higher wholesale prices for their refined products but escape the offsetting RIN cost that non-exempt refiners face. According to the study, "…small, exempt refineries that do not comply with RFS blending requirements, and therefore do not pay the RIN costs but receive higher output prices, may receive substantial benefits from the policy."

VI. EPA's Recent Supplemental Proposal for 2020 RVOs Fails to Ensure Statutory Requirements for Conventional Renewable Fuels will be Enforced in 2020 and Beyond

Despite significant public outcry about EPA's abuse of the SRE program, the Agency's 2020 RVO proposed rule failed to address the SRE problem. Instead, EPA proposed to use the same misguided approach to setting the RVO that had resulted in the evisceration of the 2016-2018 RVOs by retroactive SREs. During the public comment period on the proposed rule, stakeholders underscored that the proposed 2020 RVO requirements were unreliable and meaningless because the marketplace now fully expects the volumes will be eroded by retroactive SREs.

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[29] Bruce A. Babcock, Gabriel E. Lade, and Sébastien Pouliot. "Impact on Merchant Refiners and Blenders from Changing the RFS Point of Obligation." December 2016. CARD Policy Brief 16-PB 20. https://www.card.iastate.edu/products/publications/pdf/16pb20.pdf

[30] Comments of the Tesoro Companies, Inc. EPA Docket Center EPA-HQ-OAR-2016-0544. http://www.ascension-publishing.com/RFS-Tesoro.pdf

[31] Jesse Burkhardt. "The impact of the Renewable Fuel Standard on US oil refineries." Energy Policy, Volume 130, 2019, Pages 429-437, ISSN 0301-4215, https://doi.org/10.1016/j.enpol.2019.03.058.

In both written comments and at a public hearing, RFA strongly urged EPA to offset retroactive SREs by including a projection of exempted gasoline and diesel volume in its RVO calculation in the final rule. Doing so—just as EPA did every year prior to 2013—would ensure that the volumes specified in the final RVO rule would in fact be fully enforced. We argued that the historical average of exempted gasoline and diesel should serve as the starting point for projecting exemptions in 2020 and beyond.

Despite numerous written and oral comments opposing EPA's current approach to the SRE program, EPA on August 9, 2019 (roughly one week after its public hearing on the 2020 RVO proposal) issued 31 more SREs for the 2018 compliance year. Following the August 9 announcement, public outcry over the continued abuse of the SRE provision greatly intensified. In response, President Trump promised at the end of August that the Administration would soon deliver a relief package for renewable fuel producers and farmers that would offset the damages caused by rampant SREs.

On October 4, 2019, the Administration announced that an agreement had been reached that would "ensure that more than 15 billion gallons of conventional ethanol be blended into the nation's fuel supply beginning in 2020."[32] EPA confirmed that it would ensure the 2020 RVO resulted in an actual requirement of at least 15 billion gallons by including a projection of exempted gasoline and diesel volume based on the average of actual exemptions for the past three years (2016-2018) in the RVO calculation.

Yet, less than two weeks later, the EPA released a supplemental proposal to the 2020 RVO rulemaking that has properly been described by many as a "bait and switch." The EPA incomprehensibly proposed to base its estimates of the gasoline and diesel that would be exempted in 2020 on the historical recommendations for exempted volumes it received from the Department of Energy (DOE), rather than the *actual* exemptions it granted.

The irony of this proposal is that EPA has *never* followed DOE's recommendations in deciding SRE petitions. In August, EPA noted that, "[w]e granted full exemptions to petitioners where DOE either recommended full or 50% relief."[33] And, in a July 2019 letter to Sen. Chuck Grassley (R-IA),

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[32] EPA Press Office. "President Trump Delivers on a Key Promise to American Farmers as EPA, USDA Announce Agreement on Promoting Biofuels." (October 4, 2019) https://www.epa.gov/newsreleases/president-trump-delivers-key-promise-american-farmers-epa-usda-announce-agreement

[33] Memorandum from Anne Idsal, Acting Assistant Administrator, EPA Office of Air and Radiation to Sarah Dunham, Director, EPA Office of Transportation and Air Quality. August 9, 2019. Available at: https://ethanolrfa.org/wp-content/uploads/2019/10/Motion-to-Take-Judicial-Notice-and-Attachments.pdf

Secretary of Energy Rick Perry confirmed that the EPA had ignored DOE recommendations regarding whether small refiners should receive exemptions. According to the letter, "DOE is aware of one instance in which DOE's analysis indicates that EPA consider no exemption, but the result was an EPA decision to grant an exemption to the petitioner." DOE further acknowledges that "EPA has never granted a 50 percent exemption. EPA has…granted…(full) exemptions in the past for which the results of DOE's analysis indicate that a 50 percent exemption may be appropriate."[34] For the 2016-2018 compliance years, DOE on average recommended that 7.3 billion gallons of gasoline and diesel be exempted from RFS obligations, but EPA actually exempted an average of 12.8 billion gallons – 75% more.

If the EPA had included in the supplemental proposal any mechanism to ensure that it follows DOE recommendations, the proposal might be viewed as a serious attempt to address the SRE issue. However, EPA says only, "… we propose to adopt this interpretation of the statute, under which EPA has the authority to grant a partial exemption to a small refinery under *appropriate circumstances*." It does not state what "appropriate circumstances" would be, and the flexibility the Agency leaves itself means the fox will continue guarding the henhouse, as has been the case for the last two years.

In short, the supplemental proposal fails to provide the necessary assurances that the statutorily required volume of 15 billion gallons of conventional renewable fuel will actually be enforced in full in 2020 and beyond.

VII. RFA Supports H.R. 3006, Which Brings More Certainty and Transparency to the SRE Program

As a response to EPA's ongoing exploitation of the SRE program, Rep. Collin Peterson (D-MN) and a bipartisan group of original co-sponsors introduced on May 23, 2019, the "Renewable Fuel Standard Integrity Act of 2019." The bill would bring badly needed transparency to the SRE process and provide renewable fuel producers and other stakeholders with greater certainty surrounding implementation of the RFS.

Most notably, the bill imposes an annual deadline of June 1 for small refineries to submit petitions for exemptions from the following year's RFS compliance obligations. This deadline would ensure

[34] Letter to Sen. Charles Grassley from Secretary of Energy Rick Perry. July 19, 2019. Available at: https://www.grassley.senate.gov/sites/default/files/2019-07-19%20DoE%20to%20CEG%20%28Small%20Refinery%20Economic%20Hardship%20Analysis%29.pdf. Also see J. Renshaw & S. Kelly (Reuters). Sept. 24, 2019. "Exclusive: EPA granted full biofuel waivers to refineries despite Energy Department advice – memo." Available at: https://www.reuters.com/article/us-usa-biofuels-epa-exclusive/exclusive-epa-granted-full-biofuel-waivers-to-refineries-despite-energy-department-advice-memo-idUSKBN1W91S6

EPA receives—and decides—SRE petitions before finalizing the RVO for the following year on or before November 30. Accordingly, EPA would know the precise number of SREs issued and the volume of gasoline and diesel fuel exempt from a renewable fuel blending obligation *before* setting the final RVO. This would allow the Agency to effectively redistribute the exempted volume to non-exempt refineries and ensure the statutory requirement for renewable fuel is truly enforced and met.

The bill also clarifies that basic information submitted to EPA by small refineries seeking an exemption shall not be deemed to be a trade secret or confidential information and shall be subject to public disclosure. These provisions would greatly enhance transparency and accountability in the SRE program.

RFA strongly supports H.R. 3006.

Mr. TONKO. You're most welcome, and thank you for your presentation.

Now we'll recognize Mr. Gebolys for 5 minutes for your opening statement, please.

STATEMENT OF GENE GEBOLYS

Mr. GEBOLYS. Good morning, Chairman Tonko, Ranking Member Shimkus, and members of the committee.

I am Gene Gebolys, president and CEO of World Energy, one of the largest and longest-standing advanced biofuels suppliers on North America.

Thank you for the opportunity to be here today on behalf of the National Biodiesel Board and the 65,000 workers associated with America's biomass-based diesel industry who, collectively, generate $17 billion in economic activity, dramatically reduce our Nation's reliance on fossil fuels, and substantially lighten the national carbon footprint.

On August 9th, the Environmental Protection Agency announced that it had waived Renewable Fuel Standard requirements for another 31 refineries, bringing the total issued in just the last 2 years alone to 85.

The move ensured that over 4 billion gallons of biofuels would be replaced by fossil fuels in the national fuel tank, adding more than 20 million tons of carbon back into the atmosphere.

For an agency whose namesake mission is environmental protection, these moves are not only alarming but fully perplexing. For years, the EPA had routinely issued seven or eight waivers a year, totalling a couple hundred million gallons in total impact.

But now, the most recent waiver deluge set off a wave of plant closures, impacting thousands of workers in biofuels, agriculture, and related industries.

On August 16th, one week after the EPA announcement, I had to tell our employees, suppliers, and the communities where we work that we were shutting down production at our plants in Rome, Georgia, Natchez, Mississippi, and Harrisburg, Pennsylvania, as a direct result of the EPA's misuse of its Small Refinery Exemption authority.

Our closures alone impacted more than a hundred workers directly and many hundreds more indirectly. An analysis conducted at the University of Illinois found that Small Refinery Exemptions issued over just the last 2 years have slashed demand for biomass-based diesel by over 2 billion gallons, with the economic damage expected to reach $7.7 billion.

The blowback to the latest round of waivers has been swift and widespread, and by the end of August President Trump promised a giant package to address the problems stemming from the EPA's excessive use of waivers.

On October 4th, the White House announced that a deal had been reached to use an average of the gallons exempted over the previous 3 years to estimate expected 2020 waivers in establishing the renewable fuel volume obligations for the coming year.

While the deal would not make up for the billions of gallons of advanced biofuels demand already lost, if implemented correctly it promised to soften the blow of exemptions in the future.

Now the EPA has offered its proposed solution in the form of a supplemental rulemaking and, regrettably, it falls woefully short of the President's advanced billing.

Again, the EPA had gone astray. Now, instead of taking the average of the waivers the EPA actually granted over the last 3 years, the agency is proposing to offset in 2020 the average volume that the Department of Energy originally recommended that the EPA grant.

Why? Because what DOE advised is dramatically lower than what EPA has actually done. Now we know what we suspected all along, that EPA ignored DOE recommendations and handed out nearly twice as much waiver volume as DOE had recommended.

As hard as that is to fathom, it's harder still to understand why it would make sense for EPA to now go back to the very same DOE recommendations it blatantly ignored to account for next year's proposed waivers.

The Agency is doing nothing to assure that they will discontinue the practice of promoting compliance avoidance over compliance and is doing little to establish RFS stakeholder confidence that the Agency intends to chart a new course based on the plain intent of Congress to grow the Nation's use of advanced biofuels.

EPA's job is to administer the law Congress enacted, not to rewrite it. EPA must be held to account to do the public's bidding in public.

There should be nothing secretive about who gets waivers, why they get them, and for how many gallons the relief is provided. There is absolutely nothing confidential about the damage our industry is experiencing.

How can it be reasonable that those seeking noncompliance can be allowed to continue to lurk in EPA's shadows when those of us impacted by their actions have nowhere to hide?

When EPA finalizes its 2020 renewable fuel obligations rule by the end of this year, it must fully account for Small Refinery Exemptions—those actually given, not those recommended but ignored.

The agency must recognize and support the biodiesel industry's ability to grow under the RFS in 2020 and beyond, as Congress intended. The war on biofuels in agriculture must end.

It's time for the secret waiver program to be brought into the light and for EPA to reestablish public trust.

[The prepared statement of Mr. Gebolys follows:]

Testimony of Gene Gebolys, Founder, President & CEO
World Energy
On Behalf of the National Biodiesel Board

Submitted to the Energy and Commerce Committee, Subcommittee on Energy
Hearing on "Protecting the RFS: The Trump Administration's Abuse of Secret Waivers"
October 29, 2019

Summary:

- On behalf of the National Biodiesel Board and the biodiesel industry, I appreciate this subcommittee's interest in the Renewable Fuel Standard (RFS) and the Environmental Protection Agency's recent proposal to estimate future small refinery exemptions (SREs).
- Too often, the dialogue ignores how small refinery exemptions undercut the RFS program's 5 billion gallons of advanced biofuel – 90% of which is filled by biomass-based diesel.
- EPA's massive expansion of waivers is destroying demand for billions of gallons of biomass-based diesel. The impact on the industry is devastating. World Energy, alone, has been forced to close three facilities, impacting more than 100 workers.
- EPA's recent proposal to estimate small refinery exemptions in 2020 will never make up for its past demand destruction. Worse, the agency intentionally underestimates future SREs by employing an average of Department of Energy recommendations – the very same recommendations the EPA ignored when issuing the actual waivers.
- When EPA finalizes its 2020 renewable fuel obligations rule by the end of this year, it must fully account for small refinery exemptions, or industry contraction and job losses will continue throughout the biofuels and broader agricultural economy. Moreover, the

agency must recognize and support the biodiesel industry's ability to grow under the RFS in 2020 and beyond, as Congress intended.

Good morning, Chairman Tonko, Ranking Member Shimkus, and Members of the Committee. Thank you for inviting me to testify on behalf of the National Biodiesel Board (NBB).

NBB is the leading U.S. trade association for the biodiesel and renewable diesel industries, including producers, feedstock suppliers, and fuel distributors. In existence since 1992, NBB represents more than 100 U.S. state associations and companies, such as mine.

I am the founder and CEO of World Energy, one of the largest and longest-standing low-carbon fuel suppliers in North America. Founded in 1998, we now own and operate five biodiesel plants and a renewable diesel refinery with total production capacity of over 200 million gallons, and we operate distribution hubs throughout the United States and Canada.

Biodiesel, renewable diesel, and sustainable aviation fuel, collectively known as biomass-based diesel, are the nation's foremost advanced biofuels. They are used from coast to coast in passenger vehicles, airplanes, farm equipment, trucking fleets, and wherever diesel fuel is used.

The U.S. biodiesel industry has grown from around 400 million gallons of production in 2007 – the first year of the Renewable Fuel Standard program – to more than 2.6 billion gallons in 2018.

On behalf of the 65,000 workers in our industry, who generate $17 billion in economic activity while dramatically reducing our nation's reliance on fossil fuels and improving the nation's carbon footprint, I am here to talk about the crisis caused by the EPA's ongoing mismanagement of the RFS program. After more than 20 years of impressive year-over-year growth, the advanced biofuels industry is facing contraction caused by the very agency Congress entrusted with the responsibility to foster our growth.

EPA's proposal to estimate future small refinery exemptions in the 2020 RVO formula does not send a strong enough signal to the biofuel industry to help reopen closed plants and get industry

employees back to work. There is no guarantee in the proposed rule that EPA won't continue to grant a flood of exemptions every year.

The Renewable Fuel Standard is about much more than the 15 billion gallons of ethanol that Congress required to displace gasoline in the nation's fuel tank. As of 2016, Congress established that all growth in the program would come from advanced biofuels like biodiesel and renewable diesel.

In fact, biodiesel and renewable diesel fill more than 90 percent of the advanced biofuel requirements under the RFS and they reduce greenhouse gas emissions by as much as 86 percent. Biomass-based diesel is made from a variety of feedstocks, including recycled animal fats, used cooking oil, and surplus vegetable oils.

The Environmental Protection Agency has proposed to set the 2020 overall advanced biofuel volumes at just over 5 billion gallons, which maintains the same level for non-cellulosic biofuels that the agency set for 2019. For 2020, the agency set the biomass-based diesel volume at 2.43 billion gallons – despite projecting that the industry will produce more than 2.8 billion gallons. EPA has also proposed flatlining the biomass-based diesel volumes for 2021 at 2.43 billion, a level well below the biodiesel industry's proven capacity.

But EPA hasn't been satisfied to just halt growth and directly defy Congressional intent. The agency has been taking extraordinary action to shrink the market for advanced biofuels. Under previous Administrator Scott Pruitt and again under Administrator Andrew Wheeler, the agency has flooded the RIN market by handing out waivers – as one refining executive said – "like Halloween candy."

Far from protecting small refiners, these waivers are wreaking havoc with small biorefiners throughout the biofuels industry and the affiliated industries and communities that support them.

The EPA's actions are replacing clean, domestically produced, low-carbon renewable fuels with the very fossil-based, high-carbon fuels the RFS was designed to displace. EPA is also jeopardizing state and regional climate goals, such as California's. In 2018, biodiesel and renewable diesel generated 46 percent of all credits in California's Low Carbon Fuel Standard program.

An analysis conducted at the University of Illinois found that small refinery exemptions issued over the past several years slashed demand for biomass-based diesel by 2 billion gallons, with the economic damage expected to reach $7.7 billion overall. [1]

On August 9, with the biofuels industry still struggling with the impacts of last year's SRE deluge, the EPA dumped 31 more waivers on the market under the ironic guise of protecting jobs. With that, the biomass-based diesel industry was forced to start shutting down capacity. At my company, we took immediate action. On August 16, one week after the EPA's action, World Energy shuttered our biorefineries in Harrisburg, Pennsylvania, Rome, Georgia, and Natchez, Mississippi, cutting more than 100 jobs and indirectly impacting many hundreds more.

By no means were we alone. Other plant closings followed in a cascade that still continues. Many thousands more workers, farmers, suppliers, distributors and others in the communities where we operate have been hit hard by this latest blow from the Environmental Protection Agency – whose name defines its mission. The blowback was immediate and intense. President Trump soon stepped in and promised to personally intercede to address the issue. On October 4, the White House announced that a "deal' had been reached to use an average of the gallons exempted over the previous three years estimate 2020 waivers in establishing the renewable volume obligations for the year.

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[1] Irwin, S. "Small Refinery Exemptions and Biomass-Based Diesel Demand Destruction." *farmdoc daily* (9):45, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, March 14, 2019.

While the proposal as outlined is far from adequate to correct the damage done or to ensure that it does not continue, it was an encouraging sign that finally the Administration may be moving to correct its wayward course. But just two weeks later, true to form, the EPA released a convoluted and watered-down proposal to only partially account for anticipated SREs. The proposal does nothing to encourage biofuels executives like me to consider re-opening plants or even to stop closing them.

Both last year and the previous two years, the EPA blatantly disregarded Department of Energy advice and retroactively issued full waivers to companies that the DOE said did not deserve them. Now, the EPA proposes to factor future small refinery exemptions into the 2020 RVO formula. That makes sense, and while they should have been doing this in the past, we welcome the change to do it in the future. But, the idea that they would use the very same DOE guidance that they blatantly disregarded in the past represents a shameless and blatant attempt to continue doing damage with their abuse of the hardship waiver process.

EPA Administrator Wheeler has publicly and repeatedly claimed that EPA followed the law, recommendations from the Department of Energy, guidance from the Courts, and directives from Congress as it granted small refinery exemptions over the past several years. Plain and simple, those claims are contradicted by the public record.

EPA's proposal shows very clearly that the volumes of gasoline and diesel it exempted for 2016, 2017 and 2018 were nearly double what DOE recommended. It is also public knowledge that EPA granted exemptions to oil refineries that didn't qualify for them. In a June 19 letter to Senator Chuck Grassley, Secretary of Energy Rick Perry identified at least one instance where EPA granted an exemption that DOE recommended denying. Further, he identified multiple instances where EPA granted full exemptions where DOE recommended partial exemptions.

EPA began freely handing out these small refinery exemptions months before the court cases that Administrator Wheeler cites as justification. In a Reuters story the day of the *Sinclair* decision, EPA stated it had already issued 29 waivers for 2016 and earlier years. EPA did not wait for Court orders or Congressional directives before launching its present course on small refinery exemptions; its claims to the contrary are demonstrably false.

And even now, the meshuggaas continues. An October 23 Bloomberg article details how EPA fought back against the White House "deal," unilaterally changing the terms to undercount the amount of previous exemptions in projecting the 2020 RVO.

EPA has now thoroughly broken trust with RFS stakeholders and has established itself completely aligned with those who promote non-compliance with the law of the land. The President of the United States has made promises the EPA seems committed not to keep.

The advanced biofuels industry's only objective is to have the EPA administer the RFS in a manner that is transparent, consistent, balanced, and compliant with the law. Doing so is in the interest of all stakeholders and eminently within reach.

EPA has multiple options to account for small refinery exemptions in its annual RFS rules that the industry can support.

First and foremost, EPA can and must grant fewer small refinery exemptions. EPA must deny all exemption applications for refiners who have not been exempt continuously since 2010 and should ensure that all refineries granted exemptions actually experience "disproportionate economic hardship" as a direct result of the RFS program. This approach was recommended by Special Assistant to the President Francis Brooke in a June 21, 2018 memorandum.[2] Further,

[2] "Decision Memorandum for the President" prepared by Francis Brooke, Special Assistant to the President for Energy and Environmental Policy, dated June 1, 2018. *Renewable Fuels Ass'n v. EPA*, No. 18-9533, USCA DCC, Doc. 010110245380, Oct. 15, 2019..

EPA must appropriately consider the analysis and recommendations of DOE in the small refinery exemption process.

EPA should also move to prospectively grant or deny all small-refinery exemptions for a calendar year before issuing the final RVO rule for that year. This practice would allow all actual exemptions to be accounted for in EPA's existing formula for calculating percentage standards and would enhance transparency for all market participants. EPA could easily require refiners to apply for an exemption with sufficient time to allow EPA to reach a decision by the November 30 statutory deadline each year. NBB and its members support H.R. 3006, which would direct EPA to set such a deadline for hardship petitions.

If EPA continues to grant retroactive exemptions, it should include a good faith estimate of such exemptions in the percentage standards for the coming year based on the actual exemptions issued in previous years. As the Supplemental Rule proposes, EPA could set estimated values for GE (the amount of gasoline projected to be produced by exempt small refineries) and DE (the amount of diesel fuel projected to be produced by exempt small refineries) in EPA's formula for the calculation of the annual percentage standards. EPA has plenty of information with which to make an accurate prediction, including small refiners' statements of whether they will need an exemption in upcoming years. EPA should use an average of the actual gallons waived by EPA for the three most recent compliance years in the final 2020 RFS rule.

These approaches would be significantly more accurate than EPA's current approach that assumes zero exemptions will be granted despite all evidence to the contrary or EPA's proposed approach to use an average of DOE's recommendations that the agency has never adhered to.

Finally, EPA can account for any unexpected retroactive exemptions by making them up in a future year's RVO rule. The D.C. Circuit has repeatedly recognized that EPA must follow the requirements of the RFS statute even if it is late in doing so.

EPA could address small-refinery exemptions through any of these methods, or it could use a combination of them. What it cannot do is continue to undermine the annual rules.

EPA can also ensure that the impact of small refinery exemptions is limited by raising future volumes. Congress should provide strong direction to EPA to continue growth of the biofuel industry under the RFS. The biomass-based diesel industry has proven its ability to produce over and above the volumes set each year by EPA. We continue to grow and to invest under the current RFS, even in the face of policy uncertainty, because that policy promises opportunity for further growth.

In sum, Congress should ensure that the United States continues to enjoy the benefits that biodiesel, renewable diesel, sustainable aviation fuel and other advanced biofuels bring under the Renewable Fuel Standard.

Create Jobs, Grow Rural Economies. With biodiesel plants nationwide—from Washington and California to Texas and Virginia —the biodiesel industry supports more than 65,000 jobs, $17 billion in economic impact, and $2.5 billion in wages paid. In many rural communities, biodiesel plants are a driving force of the local economy, supporting the employment of technicians, plant operators, engineers, construction workers, truck drivers, and farmers. Producers nationwide plan to invest, expand production, and hire and train new workers; they need steady growth under the RFS to do so.

Add Value to Other U.S. Economic Sectors, Such as Agriculture. Biodiesel provides very strong soybean price support, adding an average $0.63 to every bushel. Biodiesel allows U.S. soybean

farmers to be more competitive in the global protein market, as demand for biodiesel supports U.S. soybean processing and export opportunities. Policy certainty is one of the most important factors in making significant investment decisions in value-added businesses like biodiesel.

Give Consumers Choice at the Pump. Biodiesel is a cost-effective, renewable alternative to petroleum diesel that saves diesel consumers money. Each gallon of RFS-qualified biodiesel is accompanied by a RIN credit. The value of that credit, which is traded on the open market, is factored into the value of each gallon of biodiesel. This added value allows producers to sell biodiesel at a lower price to fuel distributors or fleet managers, who can then pass along savings to consumers.

Enhance Energy Security. Biodiesel is diversifying our fuel supplies so that we are less dependent on global oil markets that are influenced by unstable regions of the world and global events beyond our control. Despite increased domestic oil production, consumers will remain vulnerable to volatile international oil prices without diversity and competition in the fuels market.

Secure Environmental Benefits. According to EPA, biodiesel reduces lifecycle greenhouse gas emissions by between 57 percent and 86 percent compared to petroleum diesel. EPA consistently cites tailpipe emissions from traditional diesel—primarily from older trucking fleets and other heavy-duty vehicles—as a major national health hazard. Substituting higher amounts of biodiesel for traditional diesel fuel is the simplest, most effective way to immediately reduce air pollution and greenhouse gas emissions.

On behalf of the biodiesel industry and the 65,000 men and women who work in it, I appreciate the opportunity to continue to engage in this discussion.

Mr. TONKO. Thank you, Mr. Gebolys.

And next, we will move to Mr. Thompson. You are recognized for 5 minutes with your opening statement, please.

STATEMENT OF CHET THOMPSON

Mr. THOMPSON. Good morning.

Good morning, Chairman Tonko, Ranking Member Shimkus, and the rest of the subcommittee. I appreciate the opportunity to testify today and to share the views of AFPM on the topics of today's latest RFS hearing.

My members produce the gasoline, the diesel, the jet fuel, and other products that make modern life possible, as well as 20 percent of U.S. ethanol and a substantial amount of renewable diesel.

My members are obligated parties under the RFS and, hence, are directly impacted by this program, SREs, H.R. 3006, and EPA's recent supplemental proposal.

This morning I would like to highlight just a few of the points made in my written testimony.

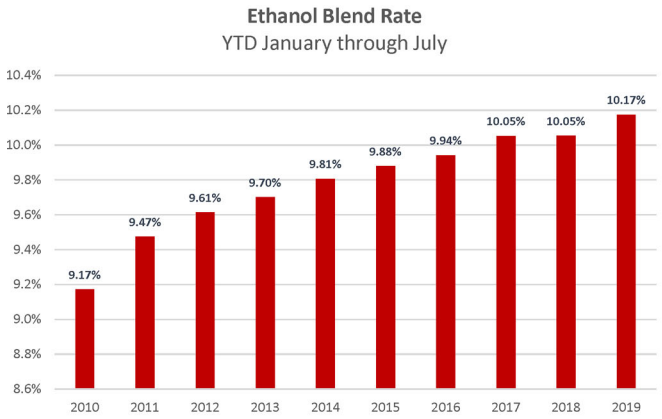
First, our Nation's more than 50 small refiners are national security assets. They are critical sources of our fuel supply. They employ tens of thousands of women and men across the country, and they are the lifebloods of communities, again, all across the country. This very body—Congress—recognized the importance of these refineries and the threat posed to them by the RFS.

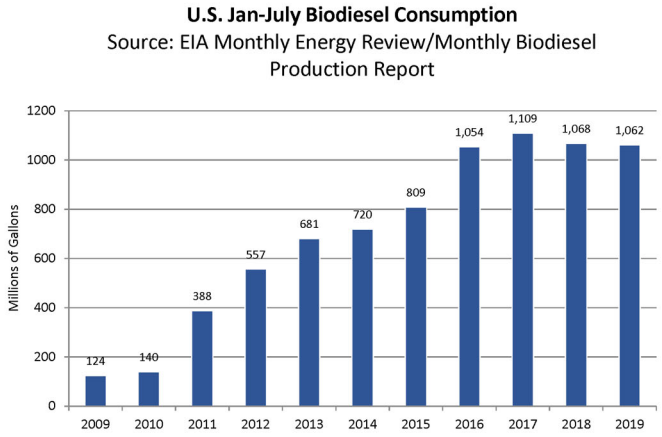
Thus, Congress first exempted small refineries from the program outright and then allowed small refineries to seek waivers, quote, "at any time" and instructed EPA to grant them upon a showing of a disproportionate economic hardship.

As predicted by DOE as far back as 2011, the RFS's rising mandates and the emergence of the blend wall has created hardships for the entire refining industry but, particularly, small refineries. Rising RIN and compliance costs of the RFS is what explains the rise in SREs in recent years.

[Slide follows:]

U.S. Consumption of Ethanol and Biodiesel is at/near Record Levels





Source: Energy Information Administration

AFPM
American Fuel & Petrochemical Manufacturers

Mr. THOMPSON. Second, as the graphs on the chart and the screen show, the notion that SREs are hurting biofuel market share is false. EIA data, the Government's own data, demonstrate that biofuel consumption and blending are at or near all-time highs.

Third, H.R. 3006 would be bad for small refineries, bad for their workforce, and bad for consumers all across the country.

Requiring facilities to apply for waivers months before EPA has even finalized and, in some cases, probably even proposed the RVO and requiring that all supporting financial data be publicly disclosed would effectively eliminate this very critical important safety net, again, one established by Congress.

It would be challenging to make the requisite showing of disproportionate hardship without knowing some pretty key information such as the volume of the mandate in the particular year and the price of RINs.

Having one fixed application date as well, as proposed on June 1st, would deprive facilities of the ability to seek waivers in response to the many unforeseen circumstances that can arise in a given year.

And, as you know, waiver applications require very sensitive financial data such as profitability, cash flow and balances, refining margins, debt, loan covenants, and business plans.

Mandating that the public—that all this information be publicly released, which is exactly what H.R. 3006 would do, would create a Hobson's choice for small refiners: forego the waiver and experience the disproportionate hardship calls by the RFS, or apply for the waiver and grant your competition into an ability to exploit your financial weaknesses.

It is clear that the real purpose of H.R. 3006 is certainly not to reform the waiver process but to eliminate it. For this reason, we cannot and do not support it.

AFPM similarly opposes EPA's supplemental proposal. This supplemental proposal is unfair to nonexempt refineries and unnecessary to maintain the robust demand for domestic biofuels, as the chart on the screen shows.

Its only beneficiary would be foreign biofuel producers.

Finally, we continue to support smarter fuel policies that can really help all stakeholders. That is why we testified twice before this very committee last year about the great potential of transitioning away from the RFS to a 95 RON octane standard.

By better optimizing fuels and engines, we can increase vehicle efficiency at a lower cost, increase market-driven potential for biofuels, and reduce compliance costs for refineries.

As refiners and as producers—as I said, 20 percent of the U.S. ethanol—we believe 95 RON would be a win for all stakeholders and for the environment.

So, to that end, we appreciate the efforts of Congressmen Shimkus and Flores to advance that discussion, and they will be missed.

We also support near-term bipartisan legislation by Congressmen Flores and Welch that recognizes the blend wall and sets volumes based on the market we have today rather than the one that was incorrectly projected more than a decade ago.

With that, I thank you again for being here, and I look forward to answering any of your questions.

[The prepared statement of Mr. Thompson follows:]

Summary Testimony of Chet Thompson, President and CEO, American Fuel & Petrochemical Manufacturers

U.S. House Energy and Commerce Subcommittee on the Environment and Climate Change, *Protecting the RFS: The Trump Administration's Abuse of Secret Waivers*

October 29, 2019

Summary

- AFPM's members operate approximately 110 refineries, accounting for more than 95 percent of U.S. refining capacity, that produce the gasoline, diesel, jet fuel, and petrochemical building blocks for the thousands of products that make innovation and progress possible. Our members are the obligated parties under the RFS.

- Importantly, AFPM's members also produce nearly 20 percent of U.S. ethanol and a substantial volume of the renewable diesel produced the in U.S. We are uniquely positioned to evaluate the true market impacts of these policies.

- Congress established small refinery exemptions as a critical safety net in recognition that small refineries are national security assets, solid foundations of their local economies and a critical source of supply that increases competition in the fuels market.

- Contrary to the premise of today's hearing and much of the narrative around this issue, however, small refinery waivers have not had any demonstrable impact on domestic biofuels demand, which is at or near record highs.

- In fact, until recently, the Administration's RFS policy reduced compliance costs while enabling record biofuel use. EPA recently departed from this balance with a proposed reallocation that amounts to nothing more than an unjustified increase in the regulatory burden for non-exempt parties. This increase will, in all likelihood, be met with a combination of drawing down the Renewable Identification Number ("RIN") bank and more imported biodiesel.

- AFPM opposes the legislation under consideration today, H.R. 3006, as it is both practically unworkable and would eliminate critical protections for refineries' confidential business information. The Committee should instead consider substantial, long-term reforms to the RFS that can benefit all stakeholders, such as a transition from the RFS to fuel-neutral 95-RON octane standard discussed in hearings last year, as well as bipartisan bills such as H.R. 2540, authored by Representatives Flores and Welch.

Testimony of Chet Thompson, President and CEO, American Fuel & Petrochemical Manufacturers

U.S. House Energy and Commerce Subcommittee on the Environment and Climate Change

Protecting the RFS: The Trump Administration's Abuse of Secret Waivers

October 29, 2019

The American Fuel & Petrochemical Manufacturers ("AFPM") appreciates the opportunity to provide testimony on the Environmental Protection Agency's ("EPA") implementation of the Renewable Fuel Standard ("RFS"). AFPM's members operate approximately 110 refineries, accounting for more than 95 percent of U.S. refining capacity, that produce the gasoline, diesel, jet fuel, and petrochemical building blocks for the thousands of products that make innovation and progress possible. Importantly, AFPM's members also produce nearly 20 percent of U.S. ethanol and a substantial volume of the renewable diesel produced the in U.S. We are uniquely positioned to evaluate the true market impacts of these policies.

Congress established small refinery exemptions as a critical safety net in recognition that small refineries are national security assets, solid foundations of their local economies and a critical source of supply that increases competition in the fuels market. Nationwide, the refining sector supports more than 2 million well-paying jobs. There are 36 small refineries in 17 states, accounting for approximately 8 percent of total refining capacity in the U.S. They contribute to the economic health of their local communities through economic development, taxes, and philanthropy. They are investors in infrastructure, safety, and education. Refineries are worth standing up for, and the simple fact is that the Administration's granting of waivers to small refineries has been a lifeline to those refineries disproportionately impacted by the RFS program.

Contrary to the premise of today's hearing and much of the narrative around this issue, however, small refinery waivers have not had any demonstrable impact on domestic biofuels demand, which is at or near record highs. In fact, until recently, the Administration's RFS policy reduced compliance costs while enabling record biofuel use. EPA recently departed from this balance with a proposed reallocation that amounts to nothing more than an unjustified increase in the regulatory burden for non-exempt parties. This increase is expected to be met with a combination of drawing down the Renewable Identification Number ("RIN") bank and more imported biodiesel.

AFPM opposes the legislation under consideration today, H.R. 3006, as it is both practically unworkable and would eliminate critical protections for refineries' confidential business information. The Committee should instead consider substantial, long-term reforms to the RFS that can benefit all stakeholders, such as a transition from the RFS to fuel-neutral 95-RON octane standard discussed in hearings last year, as well as bipartisan bills such as H.R. 2540, authored by Representatives Flores and Welch.

I. Although AFPM does not take a position on individual exemptions, EPA has the legal obligation to grant small refinery exemptions to all facilities that demonstrate disproportionate economic hardship.

In developing the 2007 RFS2 legislation, Congress automatically exempted small refineries, regardless of parent company, from the requirements of the program through the 2010 compliance year, with the ability for EPA to extend the exemption for an additional two years. This was a purposeful exemption that recognized small refineries are critical suppliers in many regions of the country and Congress did not want to lose those facilities or create disincentives for companies to own those assets. EPA extended that exemption for all small refineries in 2011 and 2012. Beginning in 2013, eligible small refineries were permitted to apply for an exemption "at any time" provided they demonstrate disproportionate economic harm. Refineries are evaluated on an individual basis irrespective of parent company size or profitability. The Department of Energy (DOE) and EPA look at the specific facility, local, and regional competitive factors. These factors include items such as access to capital, percentage of diesel production, cash flow, and refinery margins, all of which are confidential business information. If the requisite showing of harm is made, EPA has a non-discretionary duty to grant waivers to the covered facility.

As the mandated volumes have increased (approximately 20 percent since 2013), so has the burden on refineries. This 20-percent increase in the mandate has led to more refineries needing relief and petitioning for exemptions. The increase over the past few years coincides with EPA's efforts to push renewable fuel mandates past the blendwall. This has been an unsurprising development. In fact, in its 2011 study, DOE predicted that as volumetric mandates increased and approached the ethanol blendwall, RIN prices and the resulting burden on small refineries would also increase.

The evolving DOE and EPA administration of the small refinery exemption program and resulting litigation is also a critical factor in the number of granted petitions. For example, in May 2014, DOE released a memorandum updating its metrics for the "viability" component of its scoring, effectively making it more difficult for refineries to demonstrate the requisite harm. In the aftermath of DOE's change to scoring metrics, several federal appellate court cases have limited EPA's authority to deny small refinery exemptions. For example, the Tenth Circuit told EPA that disproportionate economic impact did not require a showing that the refinery would close without the exemption (Sinclair 10th Cir 2017). And the Fourth Circuit held that EPA must look at specific circumstances faced by each applicant including the gasoline/diesel production mix, which affects a refinery's ability to blend renewable fuels (Ergon 4th Cir. 2018).

The combination of increasing mandates and a return to more balanced review of the scoring based on federal judicial determinations have been crucial reasons for the recent increase in small refinery exemptions.

II. All available data show that there has been no decline in domestic biofuels consumption as a result of small refinery waivers.

The recent discussion about the Administration's actions on small refinery waivers is predicated on the faulty premise that biofuel demand has suffered as a result of the waivers. The charts in Appendix A unequivocally show that there has been no decline in domestic biofuel consumption, and that production is near record highs despite trade issues and the lapse in the biodiesel tax credit.

To summarize, the latest Energy Information Administration ("EIA") data show that year-to-date ethanol consumption is at an all-time high both volumetrically (8.39 billion gallons) and as a blend rate (10.17 percent). The reason for this is simple. Refiners, including exempt refiners, produce gasoline BOBs, which must be blended with 10 percent ethanol to reach the required octane specification in finished gasoline. Virtually all gasoline sold in the U.S. is blended with ethanol whether or not it is produced by an exempt refinery and regardless of when such exemption is granted. Ethanol production this year is running at the second highest rate on record, with a small decline (1.9 percent) explained by a large decline (15 percent) in exports. Administrator Wheeler confirmed this analysis in his testimony before the House Science Committee on September 19, 2019, stating that "[w]e do not see any demand destruction from the small refinery program on ethanol production."

Likewise, U.S. biodiesel consumption is near the record high set in 2017 and higher than 2016, despite the lapse of the biodiesel tax credit at the end of 2017. Biodiesel production is at a record level this year, with 1.022 billion gallons produced through July. Biodiesel's biggest challenge is its cost, which routinely averages $0.75-$1.00 more per gallon than the petroleum diesel it displaces.

III. Legislation requiring that hardship applications be submitted before the compliance year is impractical and removing critical confidential business information protections undermines U.S. energy security.

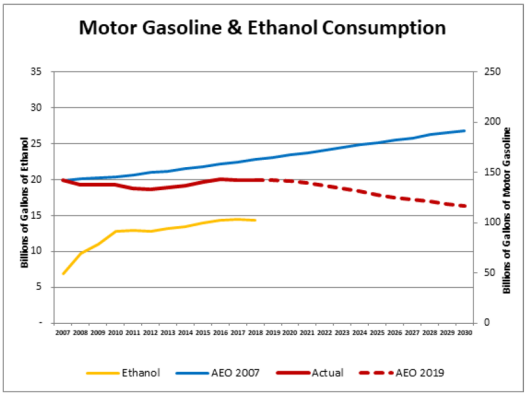
The RFS explicitly allows small refineries to petition for hardship waivers "at any time." This provision, included by Congress in the statute, correctly recognizes that it is impractical to place artificial deadlines on small refineries that may have need to petition for relief for any number of reasons at a later time. For instance, a petition in advance of a June deadline will not reflect an unexpected increase in the annual RFS percentage standards, unexpected increases in RIN prices, lower than expected margins, a greater demand for diesel compared to gasoline, or any other number of factors that DOE and EPA take into account.

Likewise, it is unreasonable to expect companies to lay bare their strongest case for economic hardship for competitors to review and utilize for commercial purposes. The refining industry is among the most competitive industries in the world, competing for advantages of fractions of a penny at a blending rack. It is in the public interest to maintain the confidentially of all information included in applications. As a result, AFPM strongly opposes H.R. 3006.

IV. EPA's proposed reallocation will increase compliance costs and incentivize imports without helping domestic biofuel producers.

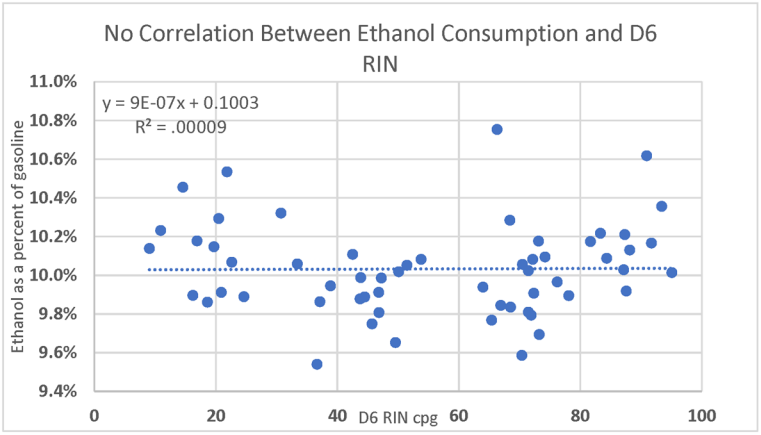
EPA issued a supplemental proposal for the 2020 renewable volume obligations, estimating that EPA will grant waivers for the equivalent of 580-770 million RINs and proposing to increase the requirements for non-exempt refiners. Unfortunately, this proposal ignores the fact that there is no "lost" volume to reallocate and amounts to increasing the mandates for non-exempt refiners. Under the proposed changes, obligated parties will be left with few realistic options to acquire the requisite RINs for the RFS compliance: draw from the RIN bank or import more biodiesel.

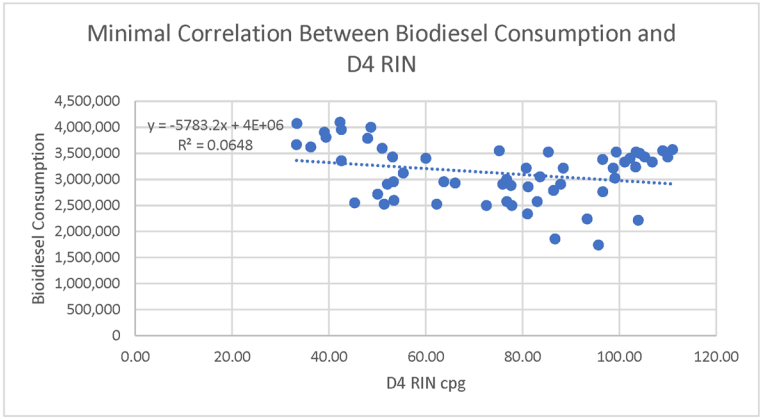
First, significant additional ethanol consumption is unlikely. As AFPM has testified to on multiple occasions, the U.S. energy landscape has changed significantly since the Energy Independence and Security Act of 2007. The most pertinent change for today's hearing is the gasoline demand forecast. In particular, in 2007 EIA projected that the U.S. would consume 165 billion gallons of gasoline in 2019 and 168 billion gallons in 2020. Now, the U.S. is projected to use 15 percent less than originally estimated – only 143 billion gallons. The difference in these projections is the key to understanding the E10 blend wall. Had EIA's projections materialized, at a nationwide E10 blend the U.S. would have consumed nearly 17 billion gallons of ethanol this year. Instead, with current demand, an E10 blend can only reach approximately 14.3 billion gallons of ethanol. Higher-level blends such as E15 face infrastructure and market challenges, most notably incompatible retail components and a legacy vehicle fleet that can not handle midlevel ethanol blends. Despite the Administration's decision to extend the one-pound Reid Vapor Pressure waiver to E15, thereby allowing it to be sold year-round in conventional gasoline areas, it is still not expected to be consumed in quantities sufficient to meet the 15 billion gallon conventional biofuel RFS mandate. In fact, to fill the gap between the 14.3 billion gallons of ethanol used in E10 and the 15 billion gallon conventional mandate, E15 sales would need to grow to 14 billion gallons next year, compared to a few hundred million gallons estimated this year. There is simply no way the infrastructure and vehicle fleet will turn over quickly enough to make this a reality in the near term.



As a result of the challenges with increasing ethanol consumption, companies utilize additional biomass-based diesel to meet the remaining 0.7 billion gallons of required conventional biofuel. Additionally, companies use biomass-based diesel to meet the nested biomass-based diesel mandate and the bulk of the advanced biofuel mandate. Therefore, taking into account the RIN multipliers, obligated parties need an estimated 3 billion gallons of biomass-based diesel to meet the 2019 mandates. However, the domestic biomass-based diesel industry has never produced more than 2.4 billion gallons in a given year, even with tax credits that are now expired. As a result, other compliance mechanisms must be used, including increasing imports of biofuels and drawing down the existing RIN bank to meet existing mandates that are already too aggressive. The result of the Administration's significant reallocation will only exacerbate this situation, increasing prices and incentivizing imports.

Relatedly, some interest groups will claim that a high RIN price is needed to subsidize biofuel infrastructure. Again, a review of the data shows no correlation between D6 RIN prices (conventional RINs) and ethanol blending, and a very weak correlation between D4 RIN prices biomass-based diesel RINs) and biodiesel blending.





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This lack of correlation underscores the problem with expecting a high RIN price to drive additional biofuel blending. Even with D6 RIN prices hitting $1.48 in the summer of 2013, blending did not appreciably increase. The RFS is increasingly unworkable, which is why AFPM has consistently advocated for a transition to a smarter fuels policy.

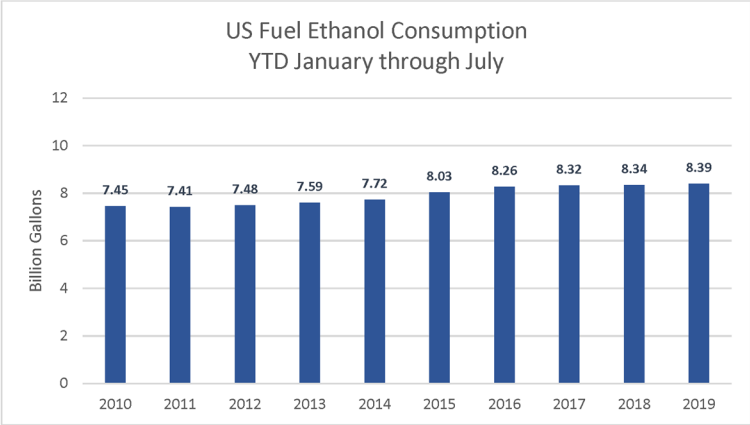
To be clear, the Trump Administration has also taken substantial policy actions to benefit biofuel producers. The most apparent is the decision to grant a one-pound Reid Vapor Pressure waiver to E15, allowing it to be sold year-round. AFPM opposes this action, but it is yet more evidence that the Administration's RFS policy is not "devastating the renewable fuel industry" through its biofuels policies. The Administration has also expanded the mandated volumes despite declining gasoline consumption, including year-over-year increases beyond statutory minimums in the biomass-based diesel category.

V. Recommendations and Conclusion

AFPM appreciates the opportunity to provide its perspective on this critical issue. Unfortunately, the debate in recent months has been untethered from basic facts about the economics of the fuels market. AFPM recommends that the Committee take a critical look at the data referenced in this testimony and take a skeptical view towards claims that EPA's management of the RFS and ancillary programs have harmed the biofuels industry. Indeed, until the recent proposal to reallocate small refinery waivers, the Administration's approach has supported both lower compliance costs and record domestic biofuel consumption.

Rather than focusing legislative efforts on fixing a non-existent problem with small refinery waivers, AFPM recommends the Committee give serious consideration to near-term relief such as H.R. 2450, and long-term solutions that can benefit all stakeholders, such as a transition away from the RFS to a 95-RON octane standard. AFPM stands ready to work with the Committee and all stakeholders on reasonable legislation to address the many challenges with this program.

Appendix A


US Fuel Ethanol Consumption
YTD January through July
Billion Gallons
12
10
8
6
4
2
0
7.45
7.41
7.48
7.59
7.72
8.03
8.26
8.32
8.34
8.39
2010
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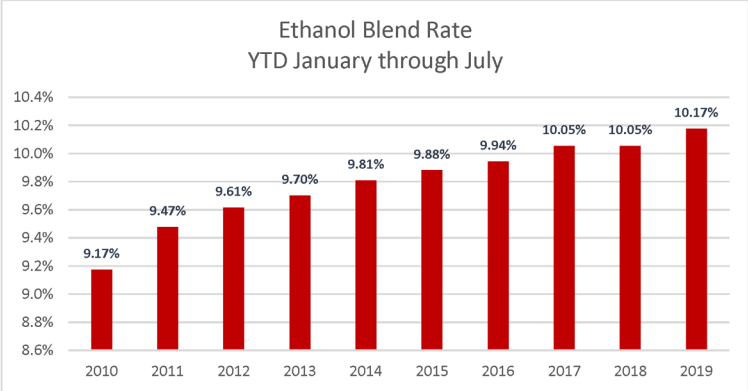
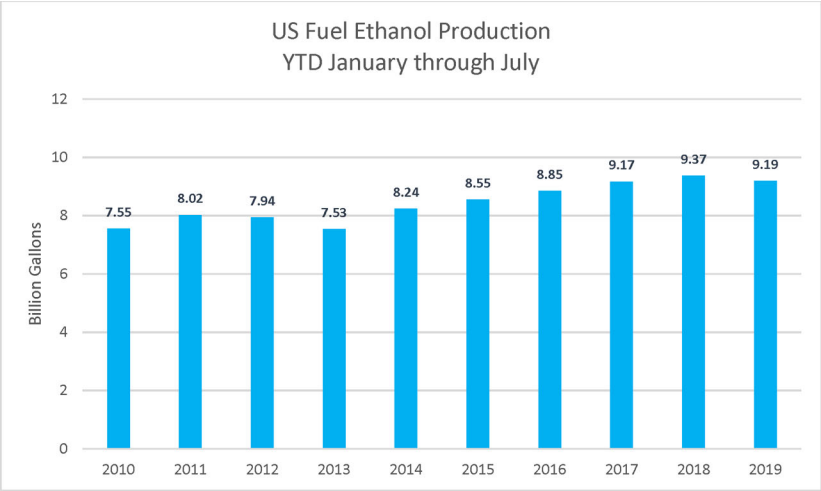
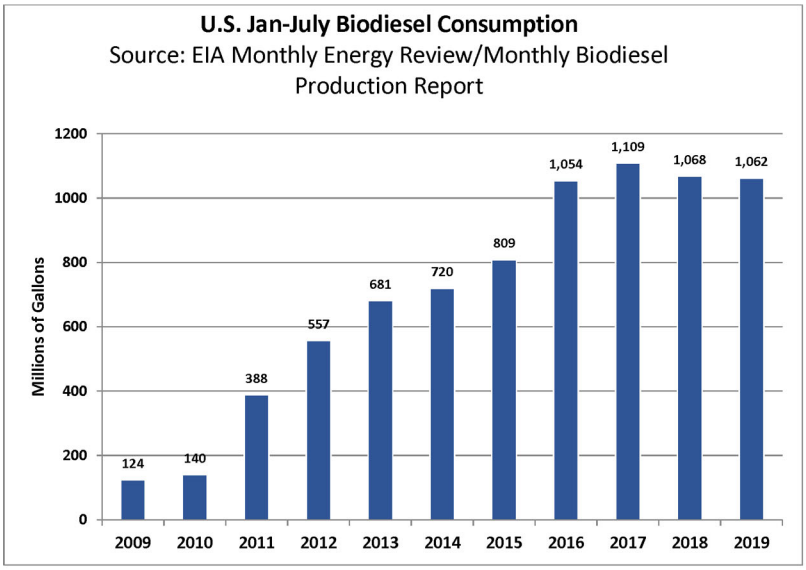
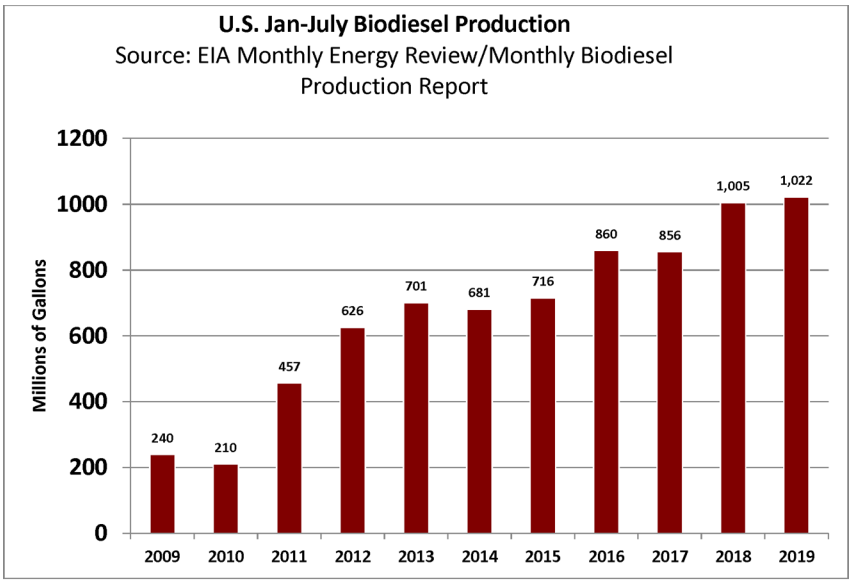

Ethanol Blend Rate
YTD January through July
10.4%
10.2%
10.0%
9.8%
9.6%
9.4%
9.2%
9.0%
8.8%
8.6%
9.17%
9.47%
9.61%
9.70%
9.81%
9.88%
9.94%
10.05%
10.05%
10.17%
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019


US Fuel Ethanol Production
YTD January through July
Billion Gallons
12
10
8
6
4
2
0
7.55
8.02
7.94
7.53
8.24
8.55
8.85
9.17
9.37
9.19
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019


U.S. Jan-July Biodiesel Consumption
Source: EIA Monthly Energy Review/Monthly Biodiesel Production Report
Millions of Gallons
1200
1000
800
600
400
200
0
124
140
388
557
681
720
809
1,054
1,109
1,068
1,062
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019


U.S. Jan-July Biodiesel Production
Source: EIA Monthly Energy Review/Monthly Biodiesel Production Report
Millions of Gallons
1200
1000
800
600
400
200
0
240
210
457
626
701
681
716
860
856
1,005
1,022
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019

Mr. TONKO. Thank you, Mr. Thompson, and welcome again.

And finally, Mr. Nieuwenhuis, you are recognized for 5 minutes, and appreciate your testimony.

STATEMENT OF KELLY NIEUWENHUIS

Mr. NIEUWENHUIS. Chairman Tonko, Ranking Member Shimkus, and members of the subcommittee, my name is Kelly Nieuwenhuis. I've been farming for 37 years with my brothers and father near Primghar, Iowa.

We grow corn and soybeans on our family farming operation, and roughly 95 percent of the corn we produce goes to ethanol.

I also serve as president of Siouxland Energy Cooperative. I am taking time away from harvest because today's topic is critically important.

Plain and simple, the EPA's abuse of Small Refinery Exemptions under the RFS is crippling rural America. I've seen this firsthand as president of Siouxland Energy, a farmer-owned ethanol plant in Sioux Center, Iowa.

Each year our plant produces up to 80 million gallons of clean, renewable biofuel, including up to 2 million gallons a year of cellulosic ethanol.

Because of the EPA's actions to help the oil industry's bottom line at the expense of farmers and the biofuels producers, we had to make a hard decision to idle our plant and shut off a key market for hundreds of local farmers, including myself.

The morning we announced that we were idling our plant, I was tasked with delivering the bad news to our 42 employees. The team sat quietly, wondering about their future in the event we would have to permanently close our facility. This is one of the toughest things I have ever had to do.

Even 8 years ago during a 50-year drought, our plant had significantly more debt than we do today and yet we had no problem accessing capital. This time around, our local bank increased the scrutiny for borrowing, given the lack of certainty with the RFS.

The reality is that they read the same news that we read, and they understand the EPA is taking actions that have dramatically undermined the market.

The economic crisis created by the EPA's abuse of SREs started 3 years ago. At first we couldn't put a finger on what it was. But the fundamentals and our markets seemed off.

It was only after the press started reporting the rapid escalation of SREs being granted behind closed doors by the EPA that we began to understand what was happening to our business.

I am a simple numbers guy. In 2018, if the integrity of the RFS was upheld and we blended 15 billion gallons of ethanol, coupled with the 1.7 billion gallons of exports, that's 16.7 billion gallons of ethanol demand.

That year, the U.S. ethanol industry set a record production of 16.1 billion gallons. If the RFS had been upheld, then today we'd be growing this industry.

A few weeks ago, we did get a small piece of good news for our plant at Siouxland Energy. The State of California is using a significant amount of ethanol to meet its requirements under the low-

carbon fuel standard, and CARB lowered our plant's carbon score by roughly 10 percent, giving us a new market opportunity.

As a result, now we are back online and operating at 50 percent capacity. So we are only losing slightly less money than we would be if our whole plant was idle

This small boost came directly from California, not the EPA. The regulatory attempts by the EPA give us little confidence that we will see the relief we need.

That's why the agricultural and biofuels industry strongly support H.R. 3006, the RFS Integrity Act, sponsored by Representatives Collin Peterson and Dusty Johnson.

This bill would address the EPA's dismal record on SRE transparencies. We have no idea of the specifics used by DOE or EPA in making SRE decisions, and this bill takes care of these basic transparency concerns by setting a reasonable deadline for SRE applications and giving the public greater insight on this murky process.

On behalf of our employees and the ethanol producers, thank you for the opportunity to appear today, and I look forward to your questions.

[The prepared statement of Mr. Nieuwenhuis follows:]

Written Statement of Kelly Nieuwenhuis, President – Siouxland Energy Cooperative

Hearing on "Protecting the RFS: The Trump Administration's Abuse of Secret Waivers"

Subcommittee on Environment and Climate Change of the Committee on Energy and Commerce

Tuesday, October 29, 2019

Chairman Tonko, Ranking Member Shimkus, and Members of the Subcommittee on the Environment and Climate Change:

Thank you for the opportunity to testify today on this important topic. The Environmental Protection Agency's (EPA) abuse of Renewable Fuel Standard (RFS) small refinery exemptions (SREs) is one that greatly impacts my livelihood, my community, a local biofuels plant, and the economic well-being of rural America and the country.

My name is Kelly Nieuwenhuis, and I'm a farmer near Primghar, Iowa. I've been a farmer for 37 years in a partnership with my two brothers and my father. We grow corn and soybeans and also raise hogs utilizing modern farming practices to preserve our land resources. I also serve as a member of the Iowa Corn Promotion Board, the National Corn Growers Association Ethanol Committee, the U.S. Grains Council ethanol action team, and am president of a local ethanol plant, Siouxland Energy Cooperative. I'm taking time away from my farming operation – during our late fall harvest– because the topic you are covering today is so critically important. Plain and simple, EPA's abuse of small refinery exemptions under the Renewable Fuel Standard is crippling rural America.

I have seen this impact firsthand as president of Siouxland Energy. Siouxland Energy Cooperative is a farmer-owned ethanol plant in Sioux Center, Iowa. Each year our plant produces up to 90 million gallons of clean, renewable biofuel. And nearly all the corn I produce on my 2,100 acres is normally sold to this ethanol plant. Because of EPA's actions to help pad the oil industry's bottom line at the expense of farmers and biofuel producers, about six weeks ago, we had to make the hard decision to shut our local plant down and shut off a key local market for hundreds of farmers, including myself.

I can point directly to an event on August 9, when EPA decided to award exemptions to 31 refineries as the moment it became clear we would have to idle our plant. Our plant has been operating for two decades – including throughout the Great Recession – without ever having to shut down operations. But it wasn't an economic downturn that made our plant close its doors– it was the illogical and unlawful decisions from EPA that brought us to our knees.

Small Refinery Exemptions (SREs) Hurt Farmers and Rural Communities:

The EPA's refinery exemptions destroy demand for homegrown energy at a time when family farms are facing the worst economic conditions in a generation. According to the Energy Information Administration (EIA), ethanol consumption fell last year for the first time in 20 years, and the agency has noted that "growth in higher-level ethanol blends is limited in the near-term by recent small refinery exemptions that reduced volumes of renewable fuel required under the RFS."

It was the most recent round of exemptions – where EPA granted 31 small refinery waivers that forced us to make the decision to shut our doors. Following the most recent round of EPA exemptions, the value of corn fell by 10 percent, the sharpest drop for any August on record, further depressing farm income. This was coupled with a decrease in ethanol prices of 18-20 cents in the immediate aftermath of EPA's August 9 decision to exempt 31 refineries. Economic growth in rural communities has stalled, threatening to freeze capital investments, undercut small businesses, and slash state and local revenues associated with agricultural and investment income. Further, the U.S. Department of Agriculture (USDA) has reduced their estimate for corn used in making ethanol by 225 million bushels between November 2018 and August 2019. USDA Secretary Perdue has said that small refinery exemptions are "demand destruction," yet EPA still makes unsubstantiated claims that there is "no evidence" that refinery exemptions have hurt the ethanol industry.

This pain is being absorbed by agriculture while, the EIA said in May, that "2018 was likely the most profitable year for oil producers since 2013." Under the RFS, EPA may grant exemptions to small refineries experiencing disproportionate hardship. The Department of Energy (DOE) is responsible for providing the study, analysis, and recommendations to the EPA to determine if a small refinery is experiencing a disproportionate economic hardship. Some of the largest and most profitable refiners in the world such as Exxon Mobil and Chevron have received small refinery exemptions. How these global oil giants are small refiners experiencing so-called disproportionate economic hardship, I will never understand.

The Obama Administration EPA granted 23 SREs and denied 18 petitions over the three compliance years of 2013-2015, because these decisions were made after the compliance year passed. Further data included in the most recent EPA proposal on SREs shows that Obama officials followed the (DOE's advice on what SREs to grant.

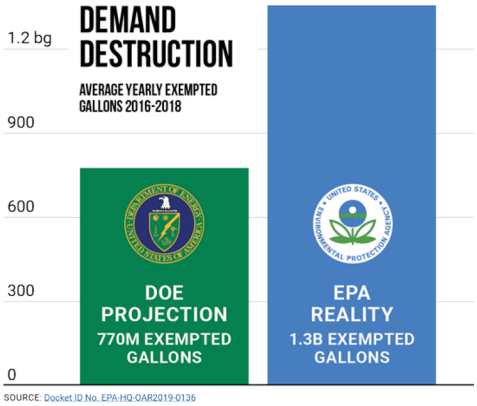
Since 2016, the current EPA has expanded the use of small refinery exemptions to grant 85 SRE petitions, and it did not deny a single application for 2016 or 2017. Press reports indicate that EPA ignored DOE's recommendations to deny a petition in 24 out of 48 applications in 2016-17. These improperly granted exemptions have wreaked havoc on rural economies as more than 35 biofuel plants have closed, idled production, or cut back production in the past year.

A study by the Food and Agriculture Policy Research Institute (FAPRI) from September 2018, before 31 additional exemptions were granted for the 2018 compliance year, found the U.S. ethanol industry could lose 4.6 billion gallons of domestic demand and nearly $20 billion in sales revenue over the next six years if EPA continues to grant so many exemptions. These figures are startling.

There is also a substantial impact to our nation's climate. Biofuels like ethanol deliver a nearly 40 percent reduction in greenhouse gas emissions compared to gasoline, with some cellulosic biofuels delivering as much as 126 percent greenhouse gas reductions. Sadly, as a result of the exemptions, 4.04 billion gallons of demand for these lower carbon fuels has been lost.

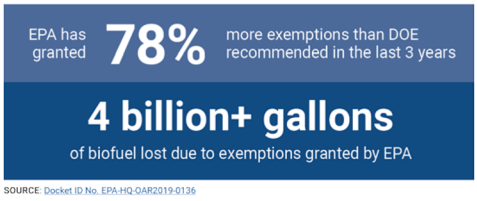
EPA's Small Refinery Exemption Proposal:

On October 4, President Trump, Midwest Senators, USDA Secretary Perdue, and EPA Administrator Wheeler agreed on a plan to address the economic crisis created by the abuse of small refinery exemptions, which have destroyed demand for more than four billion gallons of biofuel. However, on October 15, EPA released a supplemental proposal that undermines the deal agriculture and biofuel stakeholders believed had been agreed to just 11 days earlier.



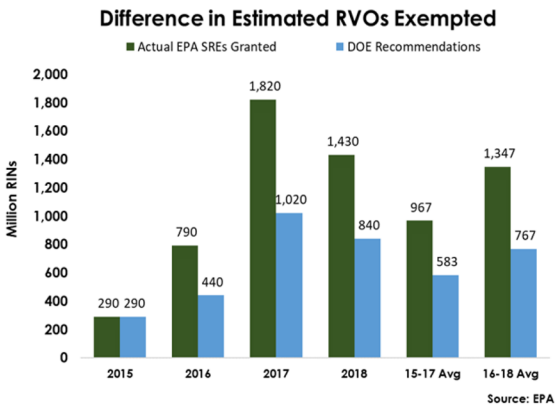
In the original deal, the White House agreed to account for all exemptions based on a three-year rolling average of actual gallons exempted, starting with the 2020 renewable volume obligations (RVOs). We were told that the 15 billion gallons required under the Renewable Fuel Standard (RFS) would actually be blended. In an October 3 briefing with biofuel stakeholders, EPA officials confirmed the actual three-year average would be used. On October 4, Administrator Wheeler stated, "we are putting forth 15 billion gallons plus an additional amount based upon what we've given out in the last three years in waivers."

But the EPA didn't deliver on that proposal. Instead of relying on actual gallons exempted as a way to address this issue, EPA decided to use numbers that were never mentioned in the negotiations to address SREs, the SRE recommendations from the DOE. Many farmers like me believe EPA uses these numbers because it gives them a pathway to minimize the volume of biofuels restored to the market. Moreover, the current EPA has yet to consistently follow the DOE recommendations. In the three years the current EPA has provided SREs, they have consistently gone above and beyond what DOE recommended by an average of 78 percent. The proposal also provides significant room for EPA



to annually exempt more gallons than they restore – negating the deal cut to restore integrity to the RFS. In fact, on six occasions in the proposal EPA clearly states their authority, discretion, or flexibility to go beyond what is recommended by DOE:

- "EPA independently evaluates SRE petitions while taking DOE's recommendation into account and has discretion to provide relief that is different than the DOE recommendation"
- "The statute directs EPA to make an independent decision as to SRE petitions based on DOE's recommendation and other economic factors. While final decisions on 2020 SREs must await EPA's receipt and adjudication of those petitions, we generally have the statutory authority to issue a final decision consistent with DOE's recommendation"
- "Furthermore, we note again that even were EPA to deviate from this policy in adjudicating 2020 SRE petitions, this approach to projection nonetheless provides a reasonable estimate of the aggregate exempted volume at this time."
- "While we cannot predict with certainty the approach that we will in fact take once we have received and reviewed petitions, at this time, we anticipate our evaluation will result in an exempted volume that is on the aggregate consistent with DOE's recommendations."
- "We note that if for any reason we anticipate a different approach to evaluating SRE petitions by the time of the final rule, we may also consider adjusting our methodology for projecting the exempt volumes of gasoline and diesel accordingly."
- "For instance, EPA may deviate from DOE's recommendation where we find that other economic factors compel a different outcome than what DOE recommended. Other factors, such as judicial resolution of pending decisions or subsequent Congressional direction, could also potentially affect EPA's SRE policy going forward."



This EPA proposal is a blatant attempt to undercut the President's promise and deviate from any pledge of 15 billion gallons. As an example, If EPA uses the 2015-2017 average of DOE SRE recommendations (one option proposed in the supplemental proposal) but issues exemptions equal to the actual 2016-2018 SRE average, the real RVO would be just 14.4 bg.

EPA must uphold the President's agreement, which accounts for all exempted gallons based on the actual volumes exempted over the past three years. Additionally, this fix should explicitly apply to future years, not just 2020.

H.R. 3006 Shines Sunlight on a Broken Process:

I strongly support the bill sponsored by Representatives Collin Peterson and Dusty Johnson to provide some stability and transparency to the SRE process at EPA. While most of my testimony has focused on how the SRE problem is hollowing out rural communities, EPA's record on transparency and openness in how they handle SREs is pitiful at best. We have no idea on any sort of specifics used by DOE or EPA in making their decisions. We don't know who applies and who receives an exemption. This bill takes care of these basic transparency concerns.

Over the last two years, EPA has granted a record number of SREs, more than quadrupling the number granted in prior years. And due to the secretive, non-public process in which the SREs are being issued, many of the refineries that have reportedly been granted exemptions — such as those owned by Chevron and ExxonMobil — could hardly be viewed as experiencing disproportionate economic hardship, as the law requires. And EPA data now proves that EPA has not followed the DOE's recommendations outlining which refiners qualify for exemptions or partial exemptions despite multiple EPA officials who have testified in public Congressional hearings that they follow the DoE's advice. Refiners also do not have a deadline for submitting an SRE request, and as a result, EPA is making decisions about RVO calculations often as much as a year after the volumes have actually been finalized.

In particular, this bill:

- Sets a deadline for refineries to apply for an SRE by June 1 in the year before the RVO is in effect (i.e., June 1, 2020, for the 2021 RVOs), allowing EPA time to ensure exemptions are accounted for in the annual RVO process.
- Prevents refineries from claiming certain information submitted to obtain an SRE as confidential business information.
- Increases transparency and gives the public greater insight into the refiners that receive a waiver and why.

I thank the committee for the opportunity to present on this very important topic. I look forward to your questions.

Mr. TONKO. Thank you, Mr. Nieuwenhuis, and thank you again to our panel for your contributions here this morning.

We'll now move to Member questions, and I will start by recognizing myself for 5 minutes.

Mr. Cooper, let's begin with you. Can you briefly explain the relationship between SRE approvals and RIN prices?

Mr. COOPER. Thank you for the question, Mr. Chairman, and I certainly can.

I think the clearest example of the impact of Small Refinery Exemptions on RIN prices really occurred in the first quarter and second quarter of 2018.

Prior to that, if you looked at the late 2017, early 2018, we had RIN prices for ethanol—D6 RINs—that were trading in the 80-to-90-cents-per-gallon range. That was really stimulating investment in downstream infrastructure for higher blends. It was stimulating growth in production.

When the public and the marketplace became aware of this first massive round of SREs from former Administrator Pruitt, RIN prices tanked immediately and we went from 80 cents or 90 cents to about 20 cents for RIN prices virtually overnight, and we've been at that low level—around 20 cents or below—for RIN prices really ever since the first or second quarter of 2018.

That's had a dramatic impact on the investment signal for downstream retailers and blenders, and it's had, you know, obviously, a significant impact on the incentive to produce ethanol as well. We are seeing plants close down and seeing reduced output rates as well, and we point to the drop in RIN prices as partly responsible for that.

Mr. TONKO. Thank you.

And what role does the RVO play in providing a signal to market participants from the refineries all the way over to the biofuel producers?

Mr. COOPER. Well, in the past, when the marketplace had faith that the RVO was a real number, it sent a strong signal and it would—you know, if the RVO was interpreted by the marketplace as a number that was going to be hard to meet, RIN prices reacted and you would see strong RIN prices, and they would do their job to kind of force more biofuel into the marketplace.

Today we have a situation where nobody in the marketplace views the RVO—the annual number—as a real number, because they know it's going to be eroded and undermined by these retroactive Small Refinery Exemptions.

So when EPA last fall published a 15-billion-gallon requirement for conventional biofuels in 2019, the market barely blinked. The market barely reacted because nobody believes the number is real.

Mr. TONKO. Thank you.

And, Mr. Gebolys, your company has existed and grown since the RFS began. Is having confidence in certainty in the RVO important for investments and business decisions that you have made?

Mr. GEBOLYS. Yes, it's absolutely critical. The big investment that we are working on right now is our renewable aviation fuel and renewable diesel facility in Los Angeles.

We've announced a project to expand capacity there substantially. We'll be investing hundreds of millions of dollars. We are

making that investment because of California legislation, not because of the Federal legislation.

At our plant in Houston, Texas, where we have been working on a substantial expansion, we've had to put that project on hold because that project only serves the non-California market.

So, just by looking at those two facilities alone, we are spending money in California because California policy works. We are not spending money in Texas because Federal policy doesn't work.

Mr. TONKO. Thank you.

And Mr. Nieuwenhuis, in regards to that RVO impact, what are your thoughts?

Mr. NIEUWENHUIS. It's definitely part of the certainty of the industry. You know, I talked about our financing at our local plant, and 8 years ago when we had a lot more debt we had no problem with capital.

Now, with the fear of the RFS being undermined by these SREs and the RVO numbers not being where they're supposed to be, that's the uncertainty in the industry, and it's fearful.

Mr. TONKO. Mr. Cooper, do you believe that RIN market manipulation is possible due to the current secrecy around the issuance of exemptions?

Mr. COOPER. Well, Mr. Chairman, I think there's a very clear correlation between the issuance of SREs and the reaction of the RIN market, and it's pretty clear that—at least in my opinion—you know, EPA is using the SRE program as a back-door way of managing RIN prices and controlling RIN prices, which was, clearly, not something that anyone intended EPA to be doing.

The RIN market was intended to operate freely to help—you know, help achieve the goals of the Renewable Fuel Standard, which is to grow the consumption and use of biofuels.

Mr. TONKO. Thank you very much.

The Chair now recognizes Mr. Shimkus for 5 minutes to ask questions.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Our hearing title today suggests a desire to keep liquid fuels powering passenger cars and light vehicles for a long time, and I like that.

Yet, last week, Senator Schumer proposed a $454 billion program to get all Americans out of their liquid-fuel-powered vehicles and into electric-powered vehicles.

Mr. Cooper and Mr. Nieuwenhuis, what would be the impact of this proposal on rural farm economies?

Mr. COOPER. Thank you, Mr. Shimkus.

You know, I think the impact of—if we are talking about H.R. 3006——

Mr. SHIMKUS. No, we are talking about Senator Schumer's proposal last week to move all passenger vehicles to electric.

Mr. COOPER. OK. I think there's a broad understanding that, even if that proposal were to be enacted, it would be very long-term transition. I think we all agree that we are going to be using liquid fuels for a very, very long time.

Mr. SHIMKUS. OK. All right. I am disappointed in that answer, because it's a simple answer and a simple question. If we moved to all-electric vehicles, that's less liquid transportation fuels.

Mr. Nieuwenhuis?

Mr. NIEUWENHUIS. I guess I don't know a whole lot about the electric vehicle industry, but I do know the ethanol industry has been working for 40 years and we are still working on infrastructure, and I can't see how the electric industry can change that infrastructure that fast. So I don't have——

Mr. SHIMKUS. What would it do, basically, on your ability to sell a commodity product like ethanol if all our vehicle transportation fleet moves to electric? Do you have a market?

Mr. NIEUWENHUIS. I don't know. I don't know that answer because I've seen a lot of——

Mr. SHIMKUS. Well, let me—let me go to——

Mr. NIEUWENHUIS. I've seen a lot of information from——

Mr. SHIMKUS. Let me go to Mr. Thompson.

What would be the impact of such a proposal on unionized workers at your members' facilities?

Mr. THOMPSON. It would, obviously, be very bad. Right now, we produce approximately 143 billion gallons of gasoline to supply today's transportation fleet. If it all went electric, that would go away. There is no ethanol used in an electric vehicle.

Mr. SHIMKUS. Would this be a good policy for consumers and taxpayers?

Mr. THOMPSON. No, it would be a very bad policy. One only needs to look at the data out there of how much more expensive electric vehicles are, and certainly there's lots of research that show they're not better for the environment. I do not think it's better for consumers——

Mr. SHIMKUS. Let me go to Mr. Gebolys because, you know, as we move in this debate on electric vehicles for passengers—and we've already had this in the heavy-transportation hearing we had last week—there will be a movement to eventually go to electrify heavy-duty vehicles. What would do—what would that do to your market?

Mr. GEBOLYS. It would be a very long transition. The average——

Mr. SHIMKUS. OK. But all right, I got the answer.

Mr. GEBOLYS. The average diesel vehicle is on the road, sir, for up to 15 years.

Mr. SHIMKUS. I know. We had a hearing last week, and the Port of Los Angeles is exploring electric heavy-duty vehicles that would get recharged halfway to the distribution center.

Can you sell biodiesel to an electric vehicle?

Mr. GEBOLYS. We cannot.

Mr. SHIMKUS. OK. Thank you.

Ten months ago, I asked many of your groups about the future of RFS. I stated, absent legislative action, the EPA will retain its waiver authority—now, we are talking about certainty here—including the authority to exempt certain refiners from their obligations under the RFS, especially after 2022, when all agency loses its statutory biofuel targets in 2022.

So if you can, give me a higher, lower, the same. Given the Energy Information Agency projects 31 percent decrease in motor fuel consumption by 2017 to 2025, do you expect RVOs to be higher or lower post-2022 than they are today?

Higher, lower, or the same, if the Energy Information Agency predicts less liquid fuel use?

Mr. Cooper?

Mr. COOPER. Well, thank you. And the RFS is not a percentage-based program. It's a——

Mr. SHIMKUS. Higher, lower, or the same?

Mr. COOPER. The same.

Mr. SHIMKUS. OK. Mr. Gebolys?

Mr. GEBOLYS. The same.

Mr. SHIMKUS. OK. Mr. Thompson?

Mr. THOMPSON. Substantially lower.

Mr. SHIMKUS. OK. And Mr. Nieuwenhuis?

Mr. NIEUWENHUIS. The same.

Mr. SHIMKUS. Given that ethanol is such an overwhelming cheap octane enhancer in addition to environmental benefits, wouldn't some refiners be more competitive if they were to opt for this lower cost of octane?

Mr. Cooper?

Mr. COOPER. Yes, I believe they would.

Mr. SHIMKUS. Mr. Thompson, seeing as your members are in competition against one another for the client business, to what extent do you think refiners would be influenced by market forces to use the cheapest source of octane, which is ethanol, in order to keep their product prices competitive?

Mr. THOMPSON. Very influenced by that, which is why data shows that lend rates are as high as they've ever been today even with the SREs.

All the testimony that we've heard today is contradicted by EIA data that I put on the screen. Every—this is the highest ethanol blend rates as a country we've ever had, and the reason for that is because my members make blends stocks that cannot be sold until the octane is added, and the cheapest source of octane is ethanol. That's why the data is not consistent with the testimony today.

Mr. SHIMKUS. Thank you, Mr. Chairman. My time has expired.

Mr. TONKO. The gentleman yields back.

Before we go to our next Member, I want to recognize the presence of Congressman Dusty Johnson of South Dakota, who is co-sponsor of H.R. 3006, and we welcome him here today. You are welcome.

And next, the Chair will recognize Congressmember Barragán for 5 minutes for questions.

Ms. BARRAGÁN. Thank you.

I want to start off by being the Member who represents the Port of Los Angeles and applauding them for their efforts to go electric.

The district is one where we have high air pollution, and from everything I have seen indicates that electric will help the environment. And so I wanted to take my opportunity to applaud them in their efforts.

There's a lot of conversation about "Oh, well, it doesn't go very far." When you take a look at distribution from the Port and to the Port, it's coming from the Inland Empire. That's not more than 150 miles. And so I just wanted to put that on the record, given this

is a continuing issue I keep hearing about in the reference to the Port.

I want to start off by saying that I share the goal of many on this committee and on this panel to reduce America's dependence on oil. I also think it's reasonable to want predictability on EPA regulatory decisions such as exemptions that alter the intent of our laws.

However, I think we need a much broader conversation on the future of the Renewable Fuel Standards. My district, as I mentioned, is 90 percent African American and Latino. It bears a great part of the burden of our dependence on fossil fuels.

We have had to live with urban oil wells, liquefied petroleum gas facilities, Superfund sites, and underregulated heavy industry.

Consequently, we have had some of the highest asthma rates in the country, and it is one of the most heavily polluted district in this country.

No one wants America to move off of oil more than I do. However, we have to be mindful of the unintended consequences of the policies we are putting in place to bring us to a fossil-fuel-free economy.

The Renewable Fuel Standards was well intentioned. But we have since then learned from the EPA's own 2018 report titled "Biofuels and the Environment" second triennial report to Congress that the increased demand for biofuels has driven land conversion here and abroad to biofuels to produce corn and soybeans and palm oil. This has led to the national and international land use changes that have replaced carbon sequestering and biodiverse natural landscapes with large corn and soybean farms.

Further, efforts to meet the advanced biofuel mandate has led to the importation of biofuels from palm oil in countries such as Indonesia, causing widespread deforestation.

I hope that in the future this committee can take up the work of crafting a comprehensive, evidence-base policy approach to reforming the Renewable Fuel Standards.

Building off that statement, I have a joint Pro Publica investigative report and New York Times article titled "Palm Oil Was Supposed to Save the Planet. Instead It Unleashed a Catastrophe." It's dated November 20th, 2018. I would like to request unanimous consent to enter it into the record.

Mr. TONKO. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Ms. BARRAGÁN. My question for the biofuel representatives on the panel is, what steps are you taking to make sure that you're not sourcing biofuels from land at home or abroad that has been converted from forest land or natural wilderness to farmland?

Mr. COOPER. Thank you for the question.

On the ethanol side, which I can comment on, the RFS law itself, the statute—the 2007 statute—includes a provision that specifically prohibits our member companies from using feedstock that was cultivated on land that wasn't already in cultivation at the date of enactment in 2007.

If they were to do that—and EPA annually conducts an analysis to see if land has expanded—and if they find that it has as a consequence of the RFS, that triggers all sorts of new onerous require-

ments—reporting and record keeping requirements for the industry.

What EPA has found every single year when they do that analysis is that crop land is shrinking and that the amount of crop land under cultivation today is lower than it was in 2007 when the act was passed and far lower than it was 40, 50, 70, 100 years ago.

So this narrative that we hear that the RFS is somehow driving expansion of crop land is not borne out in the data. It is not—there is no evidence of that.

Now, you know, the EPA triennial report, there's modeling studies and economic, you know, modeling exercises, scenario analysis, and when you plug the right numbers in, yes, it'll give you a scenario where crop land expands.

The real-world evidence shows that it is not occurring, however, certainly in terms of U.S. crop land and, frankly, globally crop land expansion has not accelerated in the era of biofuels. You know, the trend of crop land expansion globally is today what it was prior to passage of the RFS.

Mr. GEBOLYS. If I might just quickly add, the RFS specifically excludes the use of palm oil. Soybeans are not grown for their oil. They're grown for their meal, and we use feedstocks that come from used cooking oil, animal fats, and oil that exist because we use protein from soy to feed animals and people.

Ms. BARRAGÁN. And my time has expired. The issue is, I believe, not how much crop land there is. The issue is how much conversion has happened. I am interested in that.

Thank you, and I yield back.

Mr. TONKO. OK. The gentlelady yields back. The Chair now recognizes Representative Rodgers from Washington State for 5 minutes for questions, please.

Mrs. RODGERS. Thank you, Mr. Chairman.

And I, too, want to thank the panel for joining us today as we discuss the RFS and its future. I think it's important to be conscious of consumer demand and advances in vehicle technology and how that affects the fuel market.

So I wanted to ask the panel, as automobiles and truck fleets turn over to more efficient vehicles, what will this do for demand for fuels? Do the statutory blending goals of the RFS program still make sense when looking at the future of the transportation fleet?

Maybe I will just start right here and ask each one of you.

Mr. COOPER. Happy to answer that question, and yes, I think as we look at the evolution of the light-duty vehicle fleet into more efficient internal combustion engines, those engines want and need and the automakers are demanding higher octane, which Congressman Shimkus and Mr. Flores, of course, have been very much focused on.

Ethanol is the highest, cleanest source of octane available, you know, on the market, and so we think when you pair those two things and RFS and a high-octane fuel standard, the RFS requirements do make sense long term.

They guarantee that the octane source for more fuel-efficient vehicles, higher octane, high-compression-ratio engines comes from biofuels and not from, you know, dirty hydrocarbons, which lead to the asthma problems that we just heard about in California.

Mrs. RODGERS. Thank you. Very good.

Mr. GEBOLYS. So my business works primarily in the diesel side of the equation. On the diesel side, the equipment tends to exist for a very long time. So the transition on the diesel side will be slow in coming.

Progress will come, and that's a good thing. Vehicles should get more efficient. We should move to cleaner and better technologies over time.

But we shouldn't make the perfect the enemy of the good. While we are transitioning to cleaner and better technologies, we have cleaner and better technologies today.

Advanced biofuels are called advanced because they reduce carbon footprint by 50 percent or more, and it's important that we continue to do what the RFS was put in place to do, which is to continue to use more of them while we continue to use vehicle diesel equipment.

Thank you.

Mrs. RODGERS. Very good. Thank you.

Mr. THOMPSON. Certainly, the more efficient car on the road today is part of what explains why gasoline demand is much lower today than it was when this program was created.

When the program was created, it was premised on the estimate of today about 160 billion gallons of gasoline use, which is why there was no concern of the blend wall back then.

Today, we are about 142 or 143 billion gallons, which is what is causing the root cause of the problem, is there's no place for the ethanol to go once the blend wall is reached, right around 14.2 or .3 billion gallons of ethanol.

That's the root cause of the problem. That's why, fundamentally, this program needs to be reformed.

Mrs. RODGERS. OK.

Mr. NIEUWENHUIS. I guess I would just like to say that I realize in the future higher octane fuels are going to be used for the engines designed for better efficiencies.

And I think the one advantage to the ethanol industry is to grow the blend rate to a higher blend, and mainly because of the Clean Air Act and benefits of ethanol and the less greenhouse gas emissions created from ethanol.

So I think it would be down the road the higher blends of ethanol will help with the higher octane engines and also the environment.

Mrs. RODGERS. I would be interested in hearing what you believe should be done to address the implementation of the statute while protecting the interests of small refiners from disproportionate harm, as Congress had envisioned.

Anybody want to start that? Yes, Mr. Thompson?

Mr. THOMPSON. We would say that, again, last year and, frankly, for the last couple years we have been working with Congressman Shimkus about such an alternative, which is why we supported the concept of moving away from the RFS—the command and control approach—into a 95 RON approach, which we believe would be better for all stakeholders, for the biofuel industry, for the auto industry—it makes for a more efficient automobile, for consumers and, certainly, refiners.

We believe if we transitioned away to a performance-based standard, that would be better for small refiners because it's the compliance costs of the program that is causing the hardship, not the use of ethanol in and of itself.

Mrs. RODGERS. OK. Anyone else?

Yes?

Mr. GEBOLYS. This really isn't very complicated on the existing RFS side. The law is extremely straightforward. At this point in the program, advanced biofuels are supposed to be making up the vast majority of the program's growth.

The SREs are by—have, clearly, caused that not only to stop but to start to retrench. We don't have to look any farther than the data that AFPM has put up there earlier and keeps pointing to. That data, clearly, makes my point.

The expansion should be happening in the advanced biofuels sector. Now it's not because of the SREs. We need to have a light shined on what's happening in the SRE program.

Mrs. RODGERS. OK. Thank you.

My time has expired.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes the gentlelady from Delaware, Representative Lisa Blunt Rochester, for 5 minutes for questions.

Ms. BLUNT ROCHESTER. Thank you, Chairman Tonko and Ranking Member Shimkus, and I want to thank the panel for your testimony today.

All of the panelists have raised concerns about how the RIN market is functioning, and so I have one two-part question to each member of the panel, and in the interests of time you will each get about a minute to answer this one two-part question.

Do you think the RIN market has functioned properly throughout the lifetime of the RFS program, and if you do think there is a problem with the RIN market, how has it affected your business or industry?

And we'll start with Mr. Cooper.

Mr. COOPER. Well, thank you for the question, and I will try to answer briefly.

I think the answer to whether the RIN market has functioned properly relies upon was EPA enforcing the RVOs, and when they were enforcing the RVOs that were finalized annually, yes, the RIN market was doing its job. It was helping to expand and grow the market and provide the incentive to do that.

When EPA is not enforcing or implementing the program properly, the RIN market does not function properly.

And then, secondly, you know, I think the lack of transparency in the RIN market, which has been brought up a few times today, is absolutely an impediment to the effective operation of that market, and that's something that I know that the legislation we are discussing here today would help address.

Ms. BLUNT ROCHESTER. Thank you.

Sir?

Mr. GEBOLYS. Yes, the fundamental logic of the RIN component of the RFS makes perfect sense and, theoretically, it should work perfectly fine and, largely, does when there's open access to information.

But when some participants in a market have more information than others, markets don't function properly. The fundamental structure of the RIN market makes sense. The fundamental logic of the RFS makes sense.

But it all is dependent on EPA administering the program such that all market participants have the same amount of information at the same time.

Ms. BLUNT ROCHESTER. Mr. Thompson?

Mr. THOMPSON. We certainly don't believe the RIN market has operated as envisioned. At the time the program was enacted, RINs were supposed to be a minor transactional cost.

As we all know, that is not the case today. It's created great hardship for not only small refineries but all refineries.

Now, as far as to some of the testimony that the biofuel industry believes there needs to be higher RINs to drive demand, simply not true.

Analysis after analysis shows zero correlation between RIN prices and—D6 RIN prices—and ethanol consumption. Zero correlation, and only a weak correlation as it relates to biodiesel.

So the assertion that you need high RIN prices, there's only one thing that—high RIN prices do two things: It creates hardship for the refining industry and more expensive fuel for consumers.

Ms. BLUNT ROCHESTER. Thank you.

Mr. Nieuwenhuis?

Mr. NIEUWENHUIS. I believe the RIN market has worked successfully with the RFS. You know, it's a pass-through cost to the refineries. If they meet their obligations, they recoup the price.

But also in our situation at Siouxland Energy, we produce about 2 million gallons a year of cellulosic ethanol through cell-based or fiber-based ethanol, and the D3 RIN values help promote that project to create some cellulosic ethanol with our corn fiber.

So I do think it's been a successful part of the RFS.

Ms. BLUNT ROCHESTER. Thank you so much, and I would also agree with Mr. Walden. This is one of the complex issues that this committee has to deal with. So thank you for your testimony, and thank you for your leadership.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes the gentleman from West Virginia, Representative McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman, and thank Mr. Walden for giving up his slot so that I could ask this question.

The biofuel industry argues that granting hardship exemptions to small refineries—boutique refineries like Ergon in Newell, West Virginia, which produces 23,000 barrels a day—and they say if we grant that exemption it will be, quote, "demand destruction" is what I am hearing from the biofuels.

Now, let's put this in context. That may sound like a lot of production—23,000 barrels. But Marathon produces over 3 million barrels a day, 130 times what Ergon is producing.

So there's a reason for these exemptions for small refineries that were put in the Clean Air Act, and it's been upheld by the courts. It was for facilities just like Ergon.

I would like to ask unanimous consent to enter letters of record from the labor organizations which support these small refinery ex-

ceptions and oppose the RFS from the steelworkers, the plumbers and pipefitters, the boilermakers, the IBEW, Northwest Building Trades, the National Building Trades, and the AFPM—organizations that say we should do this.

Now, EIA data that, Mr. Thompson, you brought up shows that the ethanol production and blending has gone up to record highs, so even when these exemptions have been granted that they say were so sinister in the last 2 years plus.

When do you think biofuels will be able to compete in an open market without a mandate?

Mr. THOMPSON. That's a difficult question. I will say when they become, you know, more—at least from the biodiesel side, when they become more cost competitive, frankly, right.

It's 75 cents to a dollar more expensive on a gallon basis of biodiesel than the diesel that my members produce. Ethanol is cost effective right now and, like I said, you know, ethanol is being used. Back to the data—it's being used.

So this isn't a fight. We are not anti-ethanol. We are anti-mandates, and we are anti-programs that are trying to smother our small refineries.

Mr. MCKINLEY. Let me follow up with a second question with you. The legislation we are talking about today would require the release of proprietary business information. Is the intent of the bill, in effect, to keep small refineries from filing these hardship petitions, and is that workable?

Mr. THOMPSON. Well, it sure seems that way, as I talked about in my opening remarks, because you create this Hobson's choice, as I said, for refiners who are going to be asked to put their most sensitive information into the public.

There is no more competitive market in this country than it is for motor gasoline. Asking a small refinery to put all their financial data and then make it publicly available certainly plays right into that competition.

It's not something that most small refineries would welcome, and I think what it would do it would chill refineries from seeking such relief.

Mr. MCKINLEY. Thank you.

Mr. Chairman, did you—did I get unanimous consent?

Mr. TONKO. You certainly did.

[The letters appear at the conclusion of the hearing.]

Mr. MCKINLEY. Thank you, and I appreciate that.

Back to Mr. Cooper, as we close out on my time for questioning, let me just clarify. You said several times when you didn't answer Congressman Shimkus's question that it was going to take a long time.

The Green New Deal says by 2030. Nine years, 10 years—is that a long time?

Mr. COOPER. I think everyone who has looked at how this transition to electric vehicles could play out from a very analytical standpoint knows it's going to take more than 10 years. We are talking 40, 50——

Mr. MCKINLEY. But that's what they're—that's what they're pushing on it is the 10-year window, and the presidential candidates have all been embracing that. They think that's a great

idea, and I think that Congressman Pallone's offer is another alternative—to change that to 2050.

Again, we've heard from some other folks from the Department of Energy in a previous administration, with Moniz and others have said that's not workable to be able to think about. Even 2050 can't work.

So I just want to make sure that you understand. I am aware of the time frame, and I don't think even by 2050 we are going to be ready. The devastation it's going to do to our country is incredible.

And, Mr. Chairman, I yield back my time.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Mr. Pallone, full committee chair, for 5 minutes to ask questions, please.

Mr. PALLONE. Thank you, Chairman Tonko.

Let me just ask Mr. Gebolys—if I am pronouncing it right—your company has been in business for about 20 years, a little longer than the RFS program has existed, and the original RFS granted a blanket exemption for small refineries for several years in the beginning of the program.

And when the blanket exemption in the law expired, EPA continued to approve some Small Refinery Exemptions virtually every year.

In your testimony, you say that recently you have had to close three facilities. So my question is, has this type of setback happened in past years when there were fewer Small Refinery Exemption?

Mr. GEBOLYS. Thank you for the question.

As you point out, in the early days of the RFS there were waivers given as of right and then subsequently extensions of those.

Starting around 2012, companies had to apply for the waivers, and there were only a few given—seven, right—totaling about 200 million gallons annually.

Those were relatively modest. They didn't substantially change the markets. In the early going, they didn't change markets at all because they were—the waived gallons were picked up by other obligated parties.

Only starting 15, 18 months ago with the very significant expansion of the waiver program did it show up in decreased RIN values, which go directly to our economics and our ability to produce.

Mr. PALLONE. Right. But in your testimony, you said that one of your products is sustainable aviation fuel, and last week we had a hearing on the transportation sector with a representative of Neste who talked about the need to increase demand for this fuel if we are to lower climate pollution from the aviation sector.

So let me just ask a couple questions. Are we going to get new investment in alternative fuels without the RFS?

Mr. GEBOLYS. It makes it very difficult. As I was pointing out earlier, we are investing in California because California is investing in California.

With the signals that we are getting out of the EPA, it makes it very difficult to invest.

Mr. PALLONE. What is the——

Mr. GEBOLYS. Not only does it chill demand in the moment, it makes it very hard to project forward an environment in which we can justify investments today that we'll have to pay out over time.

Mr. PALLONE. And this is because the EPA continues to grant a large number of exemptions, or what is it?

Mr. GEBOLYS. For us, directly so. I think there's been a lot of quoting of studies one way or the other. There's absolutely zero question that the Small Refinery Exemptions are killing demand in biodiesel and advanced biofuels.

Mr. PALLONE. And so the—I mean, what kind of signals does this, you know, implementation of the RFS send to the investment community with respect to advanced biofuels, essentially?

Mr. GEBOLYS. Well, it's not a positive one.

Mr. PALLONE. OK.

Can I ask Mr. Cooper and Mr. Nieuwenhuis, you know, about the same topic, if you want to express your views?

Mr. Cooper?

Mr. COOPER. Thank you for the question, and I guess I would respond by really challenging what you have heard from Mr. Thompson regarding demand destruction in the ethanol industry.

We absolutely have experienced demand loss in the ethanol industry as a consequence of these Small Refinery Exemptions, and the signal that sends to the industry is, hey, stop investing. If there's not going to be a market for larger volumes of renewable fuels, we are not going to invest in expanding capacity.

You know, as I said in my testimony, 2018 consumption was about 150 to 200 million gallons lower than it was in 2017.

That's the first time in more than 20 years that we saw a year-over-year loss in ethanol consumption, and now this year EIA is saying actual consumption is likely to be about 500 million gallons lower than they initially projected.

So there absolutely has been demand destruction in the ethanol side as well, and we expect that to accelerate now that we have another 31 exemptions that came out in August.

Mr. Thompson's slide showed everything going through July. Well, you know, what about the impact of these 31 waivers that were announced after——

Mr. PALLONE. I think I have 20 seconds left for Mr. Nieuwenhuis, if you want to say something.

Mr. NIEUWENHUIS. The August 9th 31 Small Refinery Exemptions really crushed the ethanol market and crushed the prices, and that's when the bottom fell out of our industry.

In our local plant that I am president of the board, like I talked about, our capital projects—we are actually doing a capital call to our initial shareholders right now and to raise some cash to keep the plant running.

So those Small Refinery Exemptions have done a lot of damage not only to the ethanol demand but also to the investment side of things and the fear of not having the certainty of an RFS that's being upheld.

Mr. PALLONE. All right. Thank you. Thank you all.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Mr. Walden, full committee ranking member, for 5 minutes to ask questions, please.

Mr. WALDEN. Thank you, Mr. Chairman. Again, thanks to the panel, and as you have heard, some of us have a hearing upstairs and this one as well. But we appreciate your information.

So I just have one question to start with for everybody on the panel. I think businesses generally would have a problem with a blanket statement that anything submitted to the government that was unique to their operation's competitive position should be given to the general public, right.

So my question, does that seem reasonable to each of you, and kind of a yes or no, if you can.

Mr. Cooper?

Mr. COOPER. Yes. You know, I think—we are not suggesting that refineries should turn over private financial operational data to the public. Nobody's asking for that.

Names of the refineries and their locations—even EPA has said that's not confidential business information and should be publicly available.

Mr. WALDEN. All right. Let me work down the panel here.

Mr. GEBOLYS. So a company chooses to seek an exemption, I cannot fathom why it doesn't make sense for that company to reveal who they are, where they are, and why they are seeking the exemption.

Mr. WALDEN. Mr. Thompson?

Mr. THOMPSON. Again, I've made it clear we certainly don't support that.

Something Mr. Cooper said, that no one's asking for that to be the case. Unfortunately, that's what H.R. 3006 says directly, that any information submitted as a part of the waiver application shall be deemed to be, you know, available for public disclosure.

Mr. WALDEN. Right.

Mr. THOMPSON. Now, even the name of a company can hurt you, given that all fuel markets are regional and very competitive; even people knowing you have got one and that your distress could put you at even further distress.

Mr. WALDEN. All right.

Mr. NIEUWENHUIS. I realize the SREs are part of the RFS, and they're—it's designed for the small refineries, and, you know, and they're supposed to show a hardship.

So, unless you know who they are, how are they going to show that they are actually suffering a hardship from the RFS? So I think the SREs or the H.R. 3006 is very important, going forward, for transparency.

Mr. WALDEN. All right. Thank you all.

Mr. Gebolys and Mr. Cooper, for many years I've been promoting policies to increase the use of woody biomass in our environmental policies, given the great forest stocks we have and the need to thin out our forests and trying to figure out markets to pay for all that.

So I recently visited an innovative project in Lake View, Oregon, where Red Rock Biofuels is constructing a gasification facility. Now, that will turn woody biomass into jet and diesel fuel, and they already have contracts.

This is the first gasification project in the world to use woody biomass from forest-thinning-related activities. It may serve as a blueprint for producing advanced renewable biodiesel and at the

same time help keep forests healthy and more resilient to these awful wildfires we've been having.

So I understand it already has contracts with Southwest Airlines, Fed Ex, and DoD. One problem is, due to RFS and tax credit prohibitions, the project cannot take biomass from Federal lands or wood chips from a local mill. Yet, there's no way to determine whether chips are from Federal or private land, since it sources from both.

So, from your perspective, what are the prospects that innovative projects like this can provide additional fuel sources for biodiesel and transportation fuels, and what would be the impact on greenhouse gas emissions?

Do either of you want to comment?

Mr. GEBOLYS. I can't speak to that particular project. But, in general, the way innovation happens is that there are market signals set and then companies compete to respond to those.

And so, whether it's the project that you referred to or the project that we are doing in Los Angeles or projects that are happening throughout the country, that is what the RFS was meant to do.

It was meant to drive innovation. It was meant to push forward. And so I think we are all—I can't speak to the particular——

Mr. WALDEN. Well, you could come out and visit, and then you could. We'd be happy to——

[Laughter.]

Mr. WALDEN [continuing]. Anybody wants to come out to Lake View, we'll take you.

Mr. Cooper?

Mr. COOPER. I would say that, you know, the issue we are talking about today—Small Refinery Exemptions—have absolutely, you know, dampened the incentive to invest in the type of innovation that you're talking about as well.

We've talked a lot about the impacts on first-generation biofuels—corn ethanol, soybean-based biodiesel. But, when EPA issues an SRE, it affects every category of the RFS. We've seen lower cellulosic RIN prices and, therefore, lower investment in those technologies as well.

Mr. WALDEN. All right.

Again, thank you all for helping us better understand the issues today and those that lie ahead in this big issue set.

So with that, Mr. Chairman, I will yield back.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the gentleman from Florida, Representative Soto, for 5 minutes, please.

Mr. SOTO. Thank you, Mr. Chairman.

This hearing is part of our historic set of hearings to try to get to net-zero carbon emissions by 2050, to have a Clean Climate Act for the 21st century.

So, when I hear that we can't get to clean energy by 2050, I worry that our Nation's in deep trouble and our world is in deep trouble if we can't do that.

I just got a announcement the other day by the Union of Concerned Scientists about the rise in extreme heat in my district in central Florida from four days a year to 141 by the end of the century if we don't do anything.

Coupled with extreme weather and rising seas, obviously, this is something that we are concerned about. For this particular hearing, how many of you all—and we'll go down the list—agree that the RFS lowers greenhouse gas emissions overall?

We'll start from left to right. Do you agree or disagree?

Mr. COOPER. I agree 100 percent.

Mr. GEBOLYS. There's no question about it.

Mr. THOMPSON. I agree there's reductions in greenhouse gas emissions.

Mr. NIEUWENHUIS. I agree 100 percent.

Mr. SOTO. Thanks. We want to at least establish basic facts as we are going forward on these issues.

Overall, how many of you agree that these applications should remain secret, or be in the sunshine? I come from a State where everything is a public record unless you get an exemption—the State of Florida.

So let's go down the list, and then I had some particular questions for Mr. Thompson to try to get at what may be common ground.

But, from left to right, how many of you agree that these should still be totally secret or not?

Mr. COOPER. I believe that basic information about the petitioner should be revealed to the public. The name, identity, location of the refinery should absolutely be available to the public.

Mr. GEBOLYS. The SEC requires that companies report material financial information, and because of that we know some of who has pursued these, including Chevron, Exxon, and others.

Mr. SOTO. Now, is that comprehensive, or we just know—we get sort of a glimmer of some companies that are doing it, but not all of them?

Mr. GEBOLYS. We get what they deem to be material and what they share under SEC rules. At least the name, the location, and the volume has got to be the bare minimum.

Mr. SOTO. Sure.

Mr. Thompson, I know you had mentioned just merely disclosing the hardship is an adverse consequence. We have, obviously, SEC where you have disclose earnings and other things that companies have to do all the time.

What could be disclosed? Or is your position that nothing should be disclosed because you're admitting a hardship?

Mr. THOMPSON. Well, let me just start by answering your first question, which is I think the application should be—remain confidential. Let's use the correct words.

Mr. SOTO. Sure.

Mr. THOMPSON. Not secret. Confidential, as long as the applicant desires them to remain confidential. By the way, this is the exact same policies under the Trump administration—I mean, the Obama administration. Exact same.

And they were kept confidential pursuant to CBI regulations that EPA must adhere to.

Mr. SOTO. But we have a lot of new——

Mr. THOMPSON. This information can jeopardize the competitive standing of organizations. It's always been treated as confidential.

Mr. SOTO. Well, we are here today because it's the opinion of the committee that it could be abused right now—that we are seeing a bunch of new applications being sent forward, and we have no way to determine whether or not they should have it.

Mr. THOMPSON. Well——

Mr. SOTO. Just this—your identification of it, you are opposed to because you think it'll be a hardship?

Mr. THOMPSON. I would say that what EPA did recently with their website in which they announced the applications—how many are granted, how many volumes, how many RINs—I think that's a step in the right direction.

And by the way, one last thing: there's no shortage of lawsuits filed by folks around me related to SREs. Obviously, this information is getting out in some quarters.

Mr. SOTO. Thank you, Mr. Thompson.

Mr. Nieuwenhuis?

Mr. NIEUWENHUIS. Yes, I would like to say I think these SREs need to be 100 percent transparent. But, speaking from a farmer's perspective who—over the last 37 years, we've had farm subsidies, and everybody knows that.

But everybody sitting in this room can go online and find out how much my family has received from farm subsidies. And so I don't see where the Small Refinery Exemptions should be different than what agriculture has to deal with.

Mr. SOTO. Sure. So you all——

Mr. NIEUWENHUIS. And so I think 100 percent transparency in SREs is necessary.

Mr. SOTO. So you all, in effect, are admitting as farmers to having a hardship and needing that help, and we want you to have that help. Those programs are in place.

So there's other industries that have to admit when they may need a little help from the Government, and that hasn't put you under, has it?

Mr. NIEUWENHUIS. But one thing I will say is the farming industry—we want to move away from subsidies. We want markets. We've been working on this for years. The biofuels industry has been the best thing that ever happened to my farming career, and I want to see it continue to grow and give us markets so we don't need farm subsidies.

Mr. SOTO. Well, that's actually happening in actual trade policy on China and getting USMCA in for a landing. But that's for the Ways and Means Committee.

So thanks for being here.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Flores for 5 minutes.

Mr. FLORES. Thanks, Mr. Chair.

To our witnesses, I want to—I've asked this question before, particularly last December when Chairman Shimkus and I had a hearing on this. Which of these two options would you prefer: Option A, keep the status quo and let the regulatory agencies decide what annual RFS compliance is, or option B, come up with a legislative solution to fix these concerns?

Mr. Cooper, option A or option B?

Mr. COOPER. We would prefer that EPA enforce the law that Congress gave it.

Mr. FLORES. Mr. Gebolys?

Mr. GEBOLYS. The same answer.

Mr. FLORES. OK. Mr. Thompson?

Mr. THOMPSON. B.

Mr. FLORES. OK. Mr. Nieuwenhuis?

Mr. NIEUWENHUIS. I would prefer that the RFS stay intact and we do it the way it's been done.

Mr. FLORES. Is that option A?

Mr. NIEUWENHUIS. No.

[Laughter.]

Mr. FLORES. It's not option A. So that's an option C then, I guess.

Mr. Cooper, you seemed to hedge when I asked you that question last December. You did state, however, that there are things that could be improved with the current program, and the EPA does have the administrative authority to make those fixes.

Since that hearing last December, does your organization still prefer constant litigation of these RFS battles in the administration of courts, or would you prefer a legislative solution?

Mr. COOPER. We still believe that the administration can resolve these issues with EPA's administrative authority. It just requires the will to do so, and that's what we are focused on currently.

Mr. FLORES. To my next question, I imagine that liquid-fuel-powered vehicles will face increased competition from electric and hybrid vehicles in the years ahead.

So the questions are this. Do you agree that liquid-fuel vehicles will have to find ways to improve fuel economy and lower emissions, and B, do you believe that high-powered—excuse me—that a high-octane standard is the most effective way to improve the fuel economy of liquid-fuel-powered vehicles?

Mr. Cooper?

Mr. COOPER. Yes, I do believe there's a tremendous role for high-octane fuel vehicles to improve efficiency and reduce emissions moving forward.

Mr. FLORES. OK. Yes to both questions.

Mr. COOPER. Yes, sir.

Mr. FLORES. And Mr. Gebolys?

Mr. GEBOLYS. Oh. Yes. Obviously, the world's changing and we are going to get to greater and greater efficiency, and the liquid fuels market is going to have to change with it.

Mr. FLORES. Do you feel that high-octane standards are a way to achieve that?

Mr. GEBOLYS. I don't have an opinion on that one way or the other.

Mr. FLORES. OK. Mr. Thompson?

Mr. THOMPSON. Certainly, we believe there's a lot of potential and, as you know, when transitioning away from the RFS to a 95 RON standard, we believe that would be in the best interest of all stakeholders.

Mr. FLORES. OK. Mr. Nieuwenhuis, do you agree that liquid-fuel vehicles are going to have to find ways to improve fuel economy and lower emissions?

Mr. NIEUWENHUIS. Yes, absolutely.

Mr. FLORES. OK.

Mr. NIEUWENHUIS. And I feel the best way is through high-octane fuels with ethanol blends.

Mr. FLORES. OK. Well, I think you all support the approach that Mr. Shimkus and I are trying to take versus the constant litigation and arguing with the EPA.

Thank you. I yield back the balance of my time.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the gentlelady from California, Representative Matsui, for 5 minutes, please.

Ms. MATSUI. Thank you very much, Mr. Chairman, for bringing attention to one out of the many issues that come out of this administration's handling of the Renewable Fuel Standard.

While many of us were excited about the promise of the RFS and the opportunity to reduce greenhouse gas emissions from our Nation's transportation sector, it's been clear for the past two and a half years that it's not an interest of this administration to execute the programs Congress intended and abundantly obvious that the ultimate goal of the RFS to combat climate change is not one shared by the President or his political appointees.

A critical issue that has been gaining attention lately is the liberal use of the small refinery exceptions—SREs—and how they are not only undercutting the program but hurting industries across the country, including Pacific Ethanol, which is headquartered in my district of Sacramento.

I met with Pacific Ethanol's CEO, who has communicated to me firsthand how SREs are hurting his company and threatening good-paying jobs in my district.

Now, I want to now turn to the subject of advanced biofuels. We have not seen the level of deployment of advanced fuels that was originally envisioned under the RFS. We can point to issues that have come up over the years.

It is also clear that difference in emissions between this administration and the last is having an impact here.

For example, the EPA under President Trump has put a freeze on all new cellulosic biofuel registrations and pathways.

Mr. Cooper or Mr. Gebolys, how has this freeze impacted the ability to deploy a higher percentage of advanced biofuels, specifically cellulosic biofuels, into our fuel mix, and if you could be—make it quickly.

Mr. COOPER. Yes, thank you for the question.

Pacific Ethanol is actually one of the leaders in adopting cellulosic ethanol technology, and they are today producing cellulosic ethanol right alongside starch-based ethanol.

We have 200 corn-based ethanol plants across the country. Every one of them was in a position to quickly adopt the same technology to produce cellulosic biofuels that would reduce carbon emissions 70 to 80 percent relative to gasoline.

But, as you mentioned, the EPA put a freeze on those registrations, put a freeze on those pathway petitions. And so today we have maybe half a dozen facilities that are using that technology.

So EPA's, you know, mismanagement of the RFS goes far beyond the Small Refinery Exemptions and also deals with these pathway approvals and registrations.

Ms. MATSUI. Well, has the increase in approval of SREs impacted development of cellulosic biofuels' inability to penetrate the market? Either one of you.

Mr. GEBOLYS. Yes, I can't speak to cellulosic, although it has. But more directly, by far the largest advanced biofuel in the country is biodiesel and biomass-based diesel, and the impact on biomass-based diesel has been severe and immediate.

All of the expansion in the RFS is supposed to be in the advanced biofuels sector as of 2016, and we have flatlined despite the fact that the basic concept of the RFS was that the program would be emphasizing advanced biofuels, all of which have a 50 percent greater reduction in carbon impact.

Ms. MATSUI. OK. So an issue that's come up as this year's rulemaking has unfolded is whether or not and in what volume the waived gallons of renewable fuel might be incorporated back into the market by requiring refineries that did not receive a waiver to blend additional gallons.

Mr. Cooper, would H.R. 3006's June 1st deadline for Small Refinery Exemption petitions address this issue?

Mr. COOPER. Yes, it would, on a prospective basis, moving forward. I think the 4 billion gallons that we've lost already as a consequence of these exemptions would not be addressed by the legislation.

But it would stop the bleeding and ensure that, moving forward, those exemptions—which we are saying, you know, if a small refiner deserves one, go ahead and give it to him. Just make sure that lost blending volume is made up and accounted for by larger nonexempt refineries. The bill would do that.

Ms. MATSUI. All right. Well, should there be additional public transparency milestones such as deadline for EPA to report to the public how many petitions they have received? Is that helpful?

Mr. COOPER. Yes, that would be helpful.

Ms. MATSUI. OK. What other information could be made public that is not currently available?

Mr. COOPER. I think, as we've discussed, we think the identity of the refineries submitting a petition, the volume, you know, that is seeking an exemption, and the location of the refinery.

Those are three basic things that are not confidential business information and don't involve financial or operational factors.

Ms. MATSUI. How about the criteria EPA uses to evaluate these petitions?

Mr. COOPER. It would be very helpful to know exactly what criteria EPA is using and how that's changed, absolutely.

Ms. MATSUI. So you want more transparency all the way around?

Mr. COOPER. Certainly.

Ms. MATSUI. OK. Fine. Well, I've run out of time. So thank you very much. I yield back.

Mr. COOPER. Thank you.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Mr. Chairman.

I've just got a couple questions.

Mr. Thompson, under the RFS, are waivers allowed?

Mr. THOMPSON. Yes.

Mr. MULLIN. They are allowed?

Mr. THOMPSON. Waivers? Yes.

Mr. MULLIN. Yes. OK. Are there court cases to back this up?

Mr. THOMPSON. Yes, there are lots of court cases, including several that deal specifically with Small Refinery Exemptions.

Mr. MULLIN. So the President is within his authority to be able to do this, right?

Mr. THOMPSON. Absolutely.

Mr. MULLIN. OK. That's pretty much all my questions with that. I will yield to the gentleman from Georgia, Buddy Carter.

Mr. CARTER. I thank the gentleman for yielding.

Gentlemen, can you clear something up for me? Mr. Thompson, you said in your testimony that the data—the EIA data—says that both volume and blend rates for ethanol are at a near all-time high.

But I've heard you, Mr. Cooper, and you, Mr. Nieuwenhuis, say that they're—they've decreased. I am confused. Who's right here? Who's wrong?

Mr. Cooper, do you want to take a shot at it?

Mr. COOPER. Absolutely. I am not sure what EIA data Mr. Thompson is looking at. The data we look at shows clear evidence of demand loss. We are consuming less ethanol last year than we have in 2017. That's the first year-over-year loss we've seen——

Mr. CARTER. And are you saying that the SREs are the reason for that?

Mr. COOPER. They are certainly part of the reason for that, yes.

Mr. CARTER. How much of the reason for that, and why?

Mr. COOPER. We would suggest that SREs are primarily responsible for that demand loss because you have reduced——

Mr. CARTER. OK. Because——

Mr. COOPER. You're reduced the requirement—you know, the RFS requirement. You have lowered that below the so-called E10 blend wall and taken the pressure off the marketplace to expand ethanol blending.

Mr. CARTER. OK. Mr. Thompson, what——

Mr. THOMPSON. The only data that I have is from the EIA, and the EIA data which, again, was on display is pulled right from their website. It's the latest data available publicly.

It's only available up through July of this year, and it shows that ethanol blend rates are at 10.17 percent, which is the highest of all time. It shows that bioconsumption is certainly slightly down by it looks like 4,000 or so gallons. And so, you know, as far as they're—I have proof for my data points. It's the EIA data.

Mr. CARTER. OK. Well, and I am not—I am not doubting you. I am just a little bit confused.

Mr. THOMPSON. No, I am not suggesting you're doubting me. I am suggesting I have no way to refute the data that just happens to fall in their testimony.

Mr. CARTER. OK.

Mr. THOMPSON. You know—right, this is the ethanol that speaks for itself.

Mr. CARTER. Fair enough. Fair enough.

Well, let me ask you this. Would the SREs impact the ethanol more so than biofuels, or would it be the same for both, Mr. Thompson?

Mr. THOMPSON. Well, I would say that there's probably more of an impact on biodiesel than ethanol because, as we say, my members make blends—you know, BOBs—that have to be blended with octane before they can be sold, and that octane source is ethanol.

So, regardless of SREs, remember, SREs only give relief from compliance of, you know, handing over RINs to the Government. It does not give them relief from, you know, making sure that they're selling to consumers a compliant product.

Mr. CARTER. OK. Gotcha.

Mr. Cooper?

Mr. COOPER. Well, you know, again, we could—and we have been, are arguing for quite some time about what the EIA data show.

When you look at the facts on the ground, though, we have 19 ethanol plants that have shut down. You can't tell me that that hasn't happened because there hasn't been some loss of demand, and that's absolutely what has occurred. Our production is down. That's a response to the lower demand that we've seen as well.

Mr. CARTER. OK. All right. Fine. Enough.

Let me ask you this. I am going to shift gears and, Mr. Thompson, I am going to ask you this. You said in your testimony that the RFS is explicit in providing small refineries the ability to apply for a petition at any point in the year.

How important is that to be flexible? I know that we've had a number of floods in the Midwest, and certainly that had to have had some impact on it as well.

Mr. THOMPSON. Well, you have hit it on its head. There's lots of circumstances that can arise.

Again, it was Congress—if you go back and look at the legislative history around SREs, it goes back to the early 2000s. It was bipartisan. These small refineries are the lifebloods of communities. You want to protect them and make sure they remain viable.

And so there are things that can crop up at any time in the year that could impact the ability to comply, and refineries should have the ability and the flexibility to seek relief when they need relief.

Mr. CARTER. Very good, and I am going to yield to Ranking Member Shimkus.

Mr. SHIMKUS. I thank my colleague.

And the point I—the point I want to stress is, and whether you want to dispute this or not, is that the volume of the liquid transportation fleet, based upon the Energy Information Agency, is going to decline.

Well, how fast? How slow? If we move to a Green New Deal, it's going to be rapid and it's going to be based upon in intervention by us, regulations, and rules.

So we are trying to protect the liquid transportation market and we have to rewrite the law, and that's what I was trying to do and I need your help.

I will yield back to my colleague.

Mr. CARTER. And I yield the remainder of my time. Thank you, Mr. Chairman.

Mr. TONKO. The gentleman yields back.

And now the Chair recognizes the gentleman from California, Mr. McNerney, for 5 minutes, please.

Mr. MCNERNEY. I thank the Chair and I thank the witnesses. I apologize for missing your testimony.

But this is a complicated issue, and I appreciate there's a lot of different sides to it. My district has Pacific Ethanol, which produces 60 million gallons a year. So it is important to me.

Mr. Cooper, in your testimony you mentioned how the response to sustained or weak, negative margins trends that coincide with the Trump administration's expansion of the SRE program—that ethanol plants have been forced to idle or shut down permanently.

Can you speak to the impact that this has had on the biofuel producers, specifically with regard to both the direct and indirect jobs associated with those losses?

Mr. COOPER. Certainly, and thank you for the question.

Yes, as I mentioned, we've seen 19 ethanol plants either temporarily idle or permanently close. There's four or five of those facilities that have shut their doors and will never come back online.

The jobs—each of those ethanol plants employs 45 to 50 workers directly at the plant. Those are great jobs in rural areas, typically. But the impact goes far beyond that. There's lots of indirect and induced jobs.

We have estimated the impact of these 19 plant closures as 700 lost direct jobs and 2,800 indirect and induced jobs. That's about 3,500 jobs that we believe have been affected because of these Small Refinery Exemptions. It's a serious issue.

We are also experiencing the worst margins, you know, for a sustained period of time that this industry has probably ever seen.

Mr. MCNERNEY. Thank you.

Mr. Gebolys, one of the biggest complaint surrounding how the EPA has managed the SRE program is there's been a lack of transparency—that's come up several times this morning—and with these waivers that's being granted, who's receiving them.

Would you say that all the secretive and capricious nature of the SREs can have a destabilizing effect on the renewable energy sector, specifically with regard to ethanol production and job loss?

Mr. GEBOLYS. Yes. There's no question that the secretive nature destabilizes markets. Some market participants have information. Others don't. You can't have a functioning market like that.

If I might just quickly add to your previous question, Mr. Cooper. Look, we can quote all the studies we want. I had to make a decision to close three plants.

I couldn't personally be in three places at the same time, so I had to do those by video. One after another after another, even through video, I made eye contact with the folks that were going to be furloughed later that same day. There is zero question that these SREs are crushing small refineries. They're just idle refiners.

Mr. MCNERNEY. Thank you.

Mr. Nieuwenhuis, can you speak to the impact of the EPA's decision to not fully reallocate the negotiated amount of 1.3 billion gallons of SREs in 2020——

Mr. NIEUWENHUIS. Yes, absolutely.

The deal that we were approached with on October 4th from the Trump administration was to head back our 3-year rolling average of the waived—gallons that were actually waived of the 4.04 billion gallons. So that would be, like, 1.4 billion gallons per year in a 3-year thing.

Now, there was some certainty in that proposal. But the proposal that the EPA came out with 11 days later cut that in half just in—and that didn't even assure that the waivers that they granted wouldn't offset that to keep us under 15 billion gallons.

So, as president of a board of a plant, when we heard the first proposal we were excited, and then when we heard the actual proposal from the EPA we were disappointed and saw that that wasn't going to be the answer to the situation.

Mr. MCNERNEY. Yes, businesses thrive on certainty and the predictability, and this is, in my opinion and many people's opinion, a real problem.

Mr. Cooper, you noted in your testimony that, while the practice of issuing retroactive exemptions has continued since 2013, they only emerged as a significant concern under the Trump administration's massive expansion.

Can you speak to the importance of closing this loophole?

Mr. COOPER. Absolutely, and again, this program—you know, the Small Refinery Exemption program has been around since the beginning of the RFS.

It hasn't really been an issue for us until the recent—until the last few years when the refining industry did find numerous loopholes available in this program and exploited those loopholes and had a willing partner in EPA.

So we do think there are a number of ways to close those loopholes. We believe H.R. 3006 begins to close some of those, the biggest loopholes, you know, being the deadline for submitting these petitions and ensuring that we know before that RVO is finalized every year what volume of gasoline and diesel is going to be exempted from an obligation.

That allows that volume to be restored or redistributed to non-exempt parties. That's the big issue here.

Mr. MCNERNEY. Well, I mean, the EPA has the flexibility to deal with this. It's just using it in a bad way, in my opinion.

Mr. COOPER. Absolutely.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the gentlelady from Illinois, Representative Schakowsky, for 5 minutes, please.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman and Ranking Member.

So the current issue surrounding the Renewable Fuel Standard perfectly, in my mind, sums up the priorities of the Trump administration.

President Trump and his cronies, they get theirs while ordinary Americans get hurt. We saw this in 2014 when the Trump Taj Mahal Casino filed for bankruptcy only to be bailed out by billionaire Carl Icahn, who bought it, and when casino workers went on strike two years later, Icahn did everything he could to try to strip

them of their pensions and bankrupt the casino to his benefit, and he is definitely an—he is the definition of a vulture capitalist.

Well, President Trump then rewarded Icahn with an advisory role in the White House. Icahn used his position to line his own pocket by pursuing the—pushing the EPA to overhaul the Renewable Fuel Standard in order to benefit his own energy interests.

And this administration is working overtime to promote big oil at the expense of farmers and rural communities and average Americans everywhere.

What's worse is that they're afraid to admit it, resulting in a shameful lack of transparency.

Mr. Cooper, would you say that anything that I said just now—this characterization—is incorrect?

Mr. COOPER. Well, I would say the President on numerous occasions has voiced strong support for the ethanol industry and the RFS specifically. But the actions of his EPA and the actions of this administration are inconsistent with those commitments and promises.

Ms. SCHAKOWSKY. Thank you.

Mr. Nieuwenhuis, has the Trump administration given small refinery waivers to big companies like those Icahn has invested in and put farmers' interests—or has it put farmers' interests first?

Mr. NIEUWENHUIS. Well, from my perspective, it's put the oil industry's perspective first, and the rural communities have taken a lot of abuse through these Small Refinery Exemptions.

And, you know, part of the Small Refinery Exemptions when they started that discussion was because of the cost of RINs was the reason they were asking for the hardships.

Well, August 9th, when they granted the last 31 Small Refinery Exemptions, RIN prices were at an all-time record low. So we were shocked when those were granted because we thought, with record-low RIN prices, why should anybody qualify for a hardship?

Ms. SCHAKOWSKY. Thank you.

So climate change has worsened disasters, such as floods across the Midwest, where I live. This endangers the food security of Americans and the livelihood of our farmers.

Illinois has the third-highest ethanol production capacity in the United States. Again, I want to ask Mr. Nieuwenhuis, as a farmer, is there any evidence that Carl Icahn, when he was at the White House—in the White House—has the best interests of Illinois farmers at heart?

Mr. NIEUWENHUIS. Oh, absolutely not. He has the best interests in his own pocketbook in that situation. You know, he was calling for the change of point of obligation to start with and just—he's been trying to destroy the RFS since the Trump administration got into office.

Ms. SCHAKOWSKY. Thank you.

Mr. Cooper, what would the administration—what the administration has proposed—the changes that it's proposed to the Renewable Fuel Standard mean to Illinois farmers, in your view?

Mr. COOPER. Well, as Kelly pointed out earlier, you know, the deal or the agreement that was promised to the biofuels industry was, we are going to make whole the Renewable Fuel Standard.

We are going to make sure that in 2020 15 billion gallons of required blending actually means 15 billion.

And there's a methodology for doing that that involved the 3-year rolling average of actual exemptions that Mr. Nieuwenhuis referred to.

What we've seen in the proposal is that EPA has gone back on that agreement and is proposing to use a surrogate for projecting those exemptions that would result in a 15 billion gallon number again eroding to something less than 15 billion gallons and being inconsistent with what appears in the statute.

Ms. SCHAKOWSKY. Mr. Cooper, I saw you shake your head when it was suggested that—on the question of transparency, et cetera—that essentially that the Obama administration has just been exactly like the Trump administration. Could you speak to that?

Mr. COOPER. I would be happy to. In 2016, under the previous administration, EPA actually proposed in a proposed rule that went out for public comment to kind of lift the veil on the Small Refinery Exemption program, and they actually said, you know, and I quote, that "small refineries are not entitled to CBI protection for certain information," including the name and location of the refineries, the nature of the relief that was being sought, and the volumes affected.

EPA tried to float that proposal out again recently, and it got withdrawn and pulled back. So it is inconsistent to say that the Obama administration had the exact same approach to transparency on this issue. They understood there was a problem, and they were trying to resolve it.

Ms. SCHAKOWSKY. Thank you.

I yield back.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes the gentleman from Vermont, Mr. Welch, for 5 minutes, please.

Mr. WELCH. Thank you very much. I appreciate the witnesses and the information provided. I am a little disappointed at the narrow scope of this hearing.

The whole issue of the ethanol mandate has raised a lot of policy questions—environmental, cost of food, impact on farmers who use grain.

But I certainly appreciate the advocacy of friends like Mr. Loebsack, who are really concerned about the well-being of the farmers that grow grain that goes in—corn that goes into ethanol.

And I come from a dairy State where grain is feed, and there is a lot of evidence that the higher the ethanol mandate, there used to be a tax benefit and there used to be, as you know, a tariff. All of that added to the cost of the dairy farmers who were paying more for the corn.

So there's a dilemma here, OK. We like farmers, but if you're a corn producer you like the ethanol mandate. If you're a corn consumer for your dairy cows, it's a lot tougher.

And I've been working with Mr. Flores and others to try to deal with some of these problems and get some stability, and I want to just ask—so I just needed to say that, that there's an immense amount of evidence that, as a result of the ethanol policy—in fact,

I disagree with you're all raising your hand—we are using more—we are creating more greenhouse gases net than without it.

There's an enormous amount of evidence about overproduction of row to row—a lot more planting, millions of acres and the loss of habitat life, and then higher costs for consumers if they're buying their food and a higher cost for farmers that are using grain, whether it's dairy, chicken, or hogs.

So, in full disclosure here, I love farmers. But I don't necessarily love ethanol. Let me ask just a couple of questions to get this moving.

With the status of this confusion between EPA and everything you're talking about, what specifically, Mr. Nieuwenhuis, do you think has to be done to address this?

Mr. NIEUWENHUIS. I think the RFS needs to be upheld on this situation and on the Small Refinery Exemptions. You know, it's been excessive during the Trump administration—the 4 billion gallons that have been granted waivers—and now it's a lot of demand that——

Mr. WELCH. So transparency and a limitation on waivers?

Mr. NIEUWENHUIS. Transparency and limitation would be huge.

Mr. WELCH. OK. All right.

And Mr. Gebolys—did I pronounce your name right?

The Greener Fuels Act, which I support, supports advanced biofuels, and that, as I understand it, is what the RFS was originally intended for.

Can the RFS as it is now get us to a broader demand and use of advanced biofuels, and what are the major reforms to the program needed to achieve this goal?

Mr. GEBOLYS. Thanks very much for the question.

The response is absolutely, the RFS, as it is currently constructed, is not an ethanol mandate. It is a broad biofuels-pushing structure that was designed to start with conventional biofuels, get to a maximum of 15 billion gallons of ethanol by 2016, and then all of the growth after that was—is designed to be in the advanced category.

Mr. WELCH. But it's not there.

Mr. GEBOLYS. I am sorry?

Mr. WELCH. We are not getting it.

Mr. GEBOLYS. We are not getting it because we are getting SREs instead. I see Mr. Thompson react to the—to my comment. But that is absolutely what is happening.

There's an economist at the University of Illinois named Scott Irwin. He's written a paper in March of this most recent year that lays it out in three very easily read pages on exactly how that is impacting us.

Mr. WELCH. And without having an argument about the net carbon impact of ethanol, there's no question that advanced biofuels have a much more significant carbon reduction impact.

Would you speak to that, Mr. Gebolys?

Mr. GEBOLYS. Yes. You can't be an advanced biofuel unless you demonstrate without any question that your fuel reduces carbon by no less than 50 percent. In the biodiesel world, many of ours, depending on what you're using for feedstock, reduce the carbon impact by upwards of 85 percent.

The other thing that I wanted to address is the issue about food versus fuel. The reason that soybeans, which are the main source of feedstock for biodiesel—the reason those are grown is for the protein, not the oil, and when you get a higher net back to the oil, the protein actually becomes less expensive.

You get more value in the bean from the oil contribution, and the protein, which is the good stuff, actually becomes less expensive.

So the growth of advanced biofuels actually goes hand in hand with the growth of protein.

Mr. WELCH. OK. I yield back. Thank you.

Thank you, Mr. Chairman.

Mr. TONKO. The gentleman yields back. The Chair now recognizes the gentleman from Iowa, Representative Loebsack, for 5 minutes, please.

Mr. LOEBSACK. Thank you, Chairman Tonko and Ranking Member Shimkus, for allowing me to waive on to this subcommittee, and thank you to the witnesses for being here as well.

The RFS does support, as we know, thousands of jobs across the country. It's an economic driver in many rural and farming communities in Iowa and across the Midwest.

Unfortunately, over the past 3 years, this administration has undermined this program at every turn without providing a shred of transparency along the way, and today, dozens of these plants have shut down or halted production.

Our farmers are feeling real pain watching their local economies disappear right along with their jobs. I am proud to have championed the legislation we are discussing today, the RFS Integrity Act, introduced by my colleague and fellow cochair on the Biofuels Caucus, Collin Peterson, and cosponsored by a number of Republicans as well.

This much-needed legislation would increase transparency around these waivers and allow EPA to account for waived gallons when setting the RVO for the coming year.

And I've got a bunch of questions. I am going to go through them a little bit quickly, if I may.

Mr. Cooper, why is it important that we know who is receiving these waivers and also exactly how many gallons are being exempted before the RVO is set?

Mr. COOPER. Well, thank you for the question, and it really comes down to accountability and fairness. I mean, transparency is necessary if we are going to have an accountable program.

Again, we are not suggesting that private, financial, or operational or sensitive data should be disclosed. But, certainly, the name and location of the facility, you know, that is asking for an exemption should be publicly available.

Mr. LOEBSACK. How many gallons are being exempted before the RVO is set then?

Mr. COOPER. So, I mean, the last few years it's been an average of 1.35 billion gallons.

Mr. LOEBSACK. OK.

Mr. COOPER. We are simply asking EPA to add that into their RVO moving forward, to make sure it's accounted for——

Mr. LOEBSACK. So does the current proposed rule guarantee 15 billion gallons?

Mr. COOPER. It doesn't, because EPA is proposing to only project 770 million gallons of exemptions when the actual total has been 1.35 billion gallons. So about——

Mr. LOEBSACK. Can you address how the market has responded to the supplemental rule and whether the current proposal will circumvent the closure of more ethanol plants?

Mr. COOPER. The market has barely blinked at the supplemental proposal from EPA. RIN prices have remained low. Corn prices, ethanol prices, did not react, you know, and I think that's a pretty strong signal that the market doesn't see this as a proposal that's really going to put the RFS back on the right track.

Mr. LOEBSACK. Thanks, Mr. Cooper.

Mr. Nieuwenhuis, thank you for being here. It's good to see you again. I see you in Iowa from time to time. Too bad we don't have the Corn Indy 300 any longer.

But at any rate, thank you for being here. I think it's just so important that we hear directly from an Iowa farmer about the consequences of these waivers.

How did the most recent batch of SREs play into your decision to close down your ethanol plant? And I am happy that at least some—it's going at least some capacity now.

Mr. NIEUWENHUIS. Thank you for the question, Mr. Loebsack.

You know, that August 9th announcement of the 31 last SREs being granted, ethanol prices dropped 18 to 20 cents a gallon in a couple days. That's a huge move in the ethanol market, and it just took the—knocked the wind out of our sails in our plant at Sioux Center at that point.

The month of August we lost millions of dollars. You know, if we would have had a crystal ball and knew this was going to happen, we probably would have idled our plant sooner. Did not drive it off a cliff——

Mr. LOEBSACK. And so what was—and if I might, what was the local impact of this?

Mr. NIEUWENHUIS. You know, when we idled our plant it's a trickle-down effect. We not only weren't producing ethanol, but we weren't producing—we produce 350,000 tons of wet distiller's grain in our plant alone every year, and we got—it's all fed within a three-county area with two cattle producers. It's a huge market for our coproduct there.

We weren't producing any corn oil, which we either used for livestock feed as a high-energy product or it can go into biodiesel.

Mr. LOEBSACK. Right.

Mr. NIEUWENHUIS. And then also the trucking industry—our plant alone trucks in 24 million bushels of corn a year and it trucks out 75 million gallons of ethanol a year.

Mr. LOEBSACK. And I think that those effects—those sort of forward and backward linkages, the economists call them, right—I think that we often forget about those as well and that effect.

Mr. NIEUWENHUIS. And our plant is unique also. We usually crack and pack 4 to 5 million bushels of corn during harvest, and we are not doing that this year.

Mr. LOEBSACK. So what about the effect on prices that farmers receive for their grain—their ability to deliver during the harvest?

Mr. NIEUWENHUIS. You know what? It is huge. You know, our local location with our farmers—and we have 385 members to our plant, which are pretty much majority farmers—them not being able to deliver corn there and for us to take our bid off the tables is about a 15 to 20 cents a bushel drop in bases because of the——

Mr. LOEBSACK. If Mr. Wheeler were here today, what would you say to him about the proposal?

Mr. NIEUWENHUIS. Well, the latest proposal is woefully inadequate to give the certainty to our industry so we can move forward and grow the use of biofuels.

Mr. LOEBSACK. Thank you.

And thank you, Mr. Chairman. I would like to ask unanimous consent to enter the following item into the record. It's a letter from the Biofuels Caucus, including my Iowa colleagues Representatives Axne and Finkenauer, to EPA Administrator Wheeler. I request unanimous consent that I enter that into the record, if I could—the letter to Mr. Wheeler.

Mr. TONKO. So granted.

[The information appears at the conclusion of the hearing.]

Mr. LOEBSACK. OK. Thank you, and I yield back.

Mr. TONKO. The gentleman yields back.

I believe that concludes all Members that were choosing——

Mr. SHIMKUS. Mr. Chairman? Mr. Chairman?

Can I just ask a point of personal privilege for 1 second?

To all my friends here, I just want to go over a little history. My first legislative success was enacting biodiesel in the fleets in 1998 with Karen McCarthy, and Clinton signed that bill.

MTBE got excluded. Ethanol found a market. I was in this room when we passed the RFS, thanks to the then-Speaker. I voted for the Democratic 2007 RFS revision and expansion.

I just want that on the record, as I've been trying to deal in this very contentious debate. I think we are trying to find a solution, and I really would encourage my friends and my colleagues. I think we are threatened by a changing world, and we better get united.

Thank you, Mr. Chairman. I yield back.

Mr. TONKO. The gentleman yields back.

I request unanimous consent to enter the following into the record: a letter from BIO, the Biotechnology Innovation Organization, a letter from the United States Steelworkers, a letter from New Energy America, a letter from 25 Members of Congress to EPA Administrator Andrew Wheeler, a labor coalition letter to EPA Administrator Andrew Wheeler—Labor Coalition for Biofuels—a set of letters from the labor community to the administration submitted by Representative McKinley, an article published in the New York Times Magazine entitled "Palm Oil Was Supposed to Help Save the Planet. Instead It Unleashed a Catastrophe," testimony from EPA Acting Assistant Administrator for the Office of Air and Radiation, Anne L. Idsal, a post from EIA's website, and finally, a letter, I believe, from the Biofuel Caucus and a letter from a coalition of many organizations that was received on September—dated September 10.

Without objection——

[Side comments.]

Mr. TONKO. Without objection, so ordered.

[The information appears at the conclusion of the hearing.][1]

Mr. TONKO. And finally, that concludes our business here. I would like to thank all of our witnesses for joining us at today's hearing.

I remind Members that, pursuant to committee rules, they have 10 business days by which to submit additional questions for the record to be answered by our witnesses.

I ask each witness to respond promptly to any such questions that they may receive.

And with that, we again thank them for appearing before the subcommittee, and at this time the subcommittee is adjourned.

[Whereupon, at 12:44 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

[1] The EIA post appears during Mr. Thompson's oral testimony. Labor community letters submitted by Mr. McKinley have been retained in committee files and also are available at https://docs.house.gov/meetings/IF/IF18/20191029/110175/HHRG-116-IF18-20191029-SD003.pdf.

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116TH CONGRESS
1ST SESSION

H. R. 3006

To impose an annual deadline of June 1 for small refineries to submit petitions for exemptions from the renewable fuel requirements under section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)) based on disproportionate economic hardship.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2019

Mr. PETERSON (for himself, Mr. JOHNSON of South Dakota, Mr. MARSHALL, Mr. RODNEY DAVIS of Illinois, and Mr. LOEBSACK) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To impose an annual deadline of June 1 for small refineries to submit petitions for exemptions from the renewable fuel requirements under section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)) based on disproportionate economic hardship.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Renewable Fuel Standard Integrity Act of 2019''.

SEC. 2. ANNUAL DEADLINE FOR PETITIONS BY SMALL REFINERIES FOR EXEMPTIONS FROM RENEWABLE FUEL REQUIREMENTS.

(a) DEADLINE.—Notwithstanding any other provision of law, petitions under section 211(o)(9) of the Clean Air Act (42 U.S.C. 7545(o)(9)) for an exemption from the requirements of section 211(o)(2) of such Act (42 U.S.C. 7545(o)(2)) shall be submitted to the Administrator of the Environmental Protection Agency by June 1 of the year preceding the year when such requirements would otherwise be in effect.

(b) EFFECT OF FAILURE TO MEET DEADLINE.—If a petition described in subsection (a) is not submitted by the deadline specified in such subsection, the petition shall be ineligible for consideration or approval.

SEC. 3. INFORMATION IN PETITION SUBJECT TO PUBLIC DISCLOSURE.

(a) IN GENERAL.—Any information submitted to the Administrator of the Environmental Protection Agency by any person, including a small refinery, with respect to a petition under section 211(o)(9)(B) of the Clean Air Act (42 U.S.C. 7545(o)(9)(B))—

(1) shall not be deemed to be a trade secret or confidential information; and

(2) shall be subject to public disclosure, notwithstanding section 552(b) of title 5, United States Code, or any other Federal law or regulation.

(b) APPLICABILITY.—Subsection (a) applies only with respect to information submitted with respect to a petition under section 211(o)(9)(B) of the Clean Air Act (42 U.S.C. 7545(o)(9)(B)) for calendar year 2021 or subsequent calendar years.

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October 29, 2019

The Honorable Paul Tonko
Chairman
Subcommittee on Environment
and Climate Change
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable John Shimkus
Ranking Member
Subcommittee on Environment
and Climate Change
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Tonko, Chairman Pallone, Ranking Member Shimkus, Ranking Member Walden, and Members of the Subcommittee:

The Biotechnology Innovation Organization (BIO) is pleased to submit a statement for the record to the to the United States House of Representatives Committee on Energy and Commerce Subcommittee on Environment and Climate Change hearing, "Protecting the RFS: The Trump Administration's Abuse of Secret Waivers."

Executive Summary

BIO applauds the Subcommittee for holding today's hearing examining the impact the Administration's expanded use of small refinery exemption (SRE) waivers has had on the advanced and cellulosic biofuels industry.

The Renewable Fuel Standard (RFS) has been a vital tool to BIO's member companies who are leading the development of advanced and cellulosic biofuels. As a market driver providing access to the transportation fuel market, the RFS has spurred research and investment in the development of low-carbon biofuels. The RFS has enabled the United States to become a leader in the development and deployment of new technologies which has led to the growth of the biobased economy, benefitting farmers and commodity producers, helping revitalize rural economies, creating good paying jobs, and fostering energy independence.

Unfortunately, the U.S. Environmental Protection Agency's (EPA) administration of the program has put the investments made by these companies at risk and threatens to prevent growth in advanced and cellulosic biofuels as the RFS intended. This undermines the future economic, environmental, and national security benefits the RFS provides.

Introduction

BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, and industrial and environmental biotechnology products. BIO's Industrial and Environmental Section (IES) represents more than 70 companies leading the development of new technologies for producing conventional and advanced biofuels.

Importance of Policy Support

BIO member companies are developing new agricultural and low-carbon feedstocks, industrial enzymes, and biological catalysts for the conversion of biomass and waste feedstocks into advanced biofuels, alternative jet fuels, renewable chemicals, and biobased products. Utilizing the power of industrial biotechnology, companies across the country are creating a robust biobased economy. Biobased production encompasses a complex value chain, from agriculture through the manufacture of consumer goods, that provides an alternative to the petroleum-based value chain and that brings environmental, economic and other benefits. The biobased economy can generate new markets for agricultural producers, boost innovation in domestic manufacturing, and stimulate sustainable economic growth.

Regulatory Uncertainty

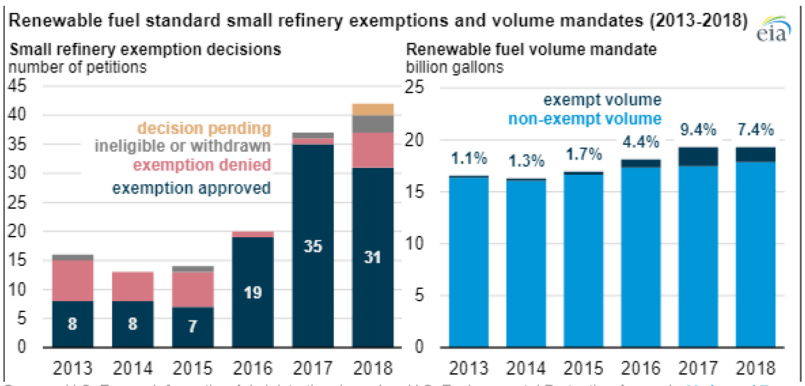
Economic Impact of Small Refinery Exemption Waivers

The demand destruction caused by the expanded issuance of small refinery waivers has had a major impact on the biofuels industry. EPA's expansion of granting SRE retroactively after setting the annual percentage standard ensures that the proposed annual volume obligations will not be met with liquid biofuels, contrary to the statute and congressional intent.

From 2013 to 2015, between 13 and 16 SRE petitions were submitted annually, while EPA accepted seven or eight of those petitions. Under former EPA Administrator Scott Pruitt, EPA retroactively granted 19 SREs for the 2016 compliance year. The number of SREs requested and approved markedly increased for the 2017 and 2018 compliance years with 37 requested and 35 approved for 2017 and 42 requested and 31 approved for 2018.[1] The biofuel volumes exempted from these waivers come to over 4.04 billion gallons exempted – 790 million in 2016, 1,820 million in 2017, and 1,430 million in 2018. As a result of these waivers, biofuel consumption declined in 2018 to 14.38 billion gallons from 14.49 billion gallons in 2017, the first year-over-year decline in U.S. biofuel consumption since 1998.[2] Analysis from the U.S. Energy Information Administration found the

[1] EPA, *Small Refinery Exemptions* (Aug. 5, 2019) Available at https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions
[2] Fatka, J., Feedstuffs. "EPA's RFS waivers cut corn demand by 900m bu." (Mar. 18, 2019). Available at https://www.feedstuffs.com/news/epas-rfs-waivers-cut-corn-demand-900m-bu

SRE waivers effectively reduced the amount of biofuel required to enter the nation's fuel supply by exempting 7.4 percent of the total RFS renewable fuel volume mandate for the 2018 compliance year, or about 1.43 billion gallons.[3]



Source: U.S. Energy Information Administration, based on U.S. Environmental Protection Agency's *Moderated Transaction System* https://www.eia.gov/todayinenergy/detail.php?id=41794

This expansion of waivers was not the result of a sudden proliferation of small refineries experiencing economic hardships. Instead the oil industry recognized how exemptions were being treated under the new EPA leadership, many sought to take advantage of the situation.[4] While EPA will not divulge who has request or received waivers, reports have indicated these waivers have been granted to large companies such as Exxon MobileChevron, Andeavor,[5] and Carl Icahn's CVR Energy.[6]

These exemptions have come at a cost to the biofuels industry, leading to job loss and stifling investment in innovation. As members of the bipartisan Congressional Biofuels Caucus highlighted in their September 20th letter to EPA Administrator Andrew Wheeler, these waivers are negatively impacting the economy across the country. These Representatives noted that the waivers "have caused three ethanol facilities to closed permanently and another fourteen to idle, affecting nearly 3,000 jobs and hundreds of millions of corn bushels on an annual basis." The impact on the biodiesel industry is even more severe with SREs causing, "nearly $7.7. billion in economic losses…To date, at least eight biodiesel facilities have shut down this

[3] Hanson, S and Hill, S. "EPA refinery exemptions reduced renewable fuel blending requirements in 2018" U.S. Energy Information Administration (Oct. 25, 2019) Available at https://www.eia.gov/todayinenergy/detail.php?id=41794

[4] Nepveux, M. "EPA's Small Refinery Waiver Proposal Is an Unbalanced Approach for Agriculture" Farm Bureau Market Intel (Oct. 21, 2019) Available at: https://www.fb.org/market-intel/epas-small-refinery-waiver-proposal-is-an-unbalanced-approach-for-agricultu

[5] Pamuk, H. and Prentice, C. "Exclusive: Exxon Mobil secured U.S. hardship waiver from biofuels laws – sources" Reuters (Dec. 19, 2018) Available at https://www.reuters.com/article/us-usa-biofuels-exxon-mobil-exclusive/exclusive-exxon-mobil-secured-u-s-hardship-waiver-from-biofuels-laws-sources-idUSKCN1OI292

[6] Renshaw, J and Prentice, C. "Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery – sources" Reuters (Apr. 30, 2018) Available at https://www.reuters.com/article/us-usa-biofuels-epa-icahn/exclusive-u-s-epa-grants-biofuels-waiver-to-billionaire-icahns-oil-refinery-sources-idUSKBN1I10YB

year, which represents 6,800 jobs and 214 million gallons of annual production." [7] This is leading to the elimination and consolidation of jobs in rural America which will have a ripple effect throughout the communities they are located.[8]

These waivers also undercut investment and development of advanced and cellulosic biofuels. As the letter noted "these exemptions greatly outweigh the proposed [2020 RFS] rule's slight 0.12 billion gall increase in advanced biofuel."[9] Undercutting demand for advanced and cellulosic biofuels will stifle innovation and drive down the demand for sustainable solutions that reduce greenhouse gas emissions in the transportation sector.

If the RFS were allowed to ensure growth in the advanced and cellulosic biofuels, it would spur the demand for new feedstocks and provide a needed revenue source for agricultural producers. The collection of corn stover for cellulosic biofuels could provide farmers on average an additional $46 per acre.[10] Greater use of advanced biofuels like butanol, will enable facilities to convert sorghum and corn into a "drop-in" fuel, creating more demand for these commodities.[11] Next generation biofuels also have the potential to be a leading driver of sustainable practices in forestry. Residual biomass from forestry operations is one of the most promising potential feedstocks for biofuel production, with the potential to provide over 100 million tons of sustainable feedstock annually.[12] However, investment and development of these technologies will only occur if there is a clear market signal that obligated parties will need to blend biofuels instead of being granted a waiver exempting them from a program.

Environmental Impact of Small Refinery Exemption Waivers

The expanded issuance of SREs is having a negative impact on the environment. Removing biofuels from the transportation fuel market means an increasing dependence on unconventional sources and methods of oil production. Production-related emissions for petroleum from Canadian oil sands is nearly five times that of traditional crude, for example.[13] A recent NASA analysis suggests leaks of methane

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[7] Peterson, C., Marshall, R. Loebsack, D., & Davis, R., "Congressional Biofuels Caucus Members Press EPA to Remedy Damage from SRE Waivers" U.S. House of Representatives (Sep. 20, 2019) Available at https://www.scribd.com/document/427084785/09-20-2019-Final-Letter-to-Epa-2020-Rvos

[8] Eller, D., Des Moines Register. "'A slap in the face': Trump's ethanol waivers are sparking rebellion in farm country." (Aug. 24, 2019). Available at https://www.desmoinesregister.com/story/money/agriculture/2019/08/25/donald-trump-ethanol-waivers-iowa-farm-country-lose-support-president-election-voters-farmers/2085033001/

[9] Ibid.

[10] POET "Make More Money Per Acre Today." Available at http://poet-dsm.com/resources/docs/Make-More-Money.pdf

[11] Environmental Protection Agency, Registration of Isobutanol as a Gasoline Additive, EPA-HQ-OAR-2018-0131, 83 Fed. Reg. 13,460 (proposed March 15, 2018) (to be codified at 40 CFR Part 79), available at https://www.gpo.gov/fdsys/pkg/FR-2018-03-29/pdf/2018-06119.pdf

[12] U.S. Department of Energy, Energy Efficiency & Renewable Energy Bioenergy Technologies Office Available at https://www1.eere.energy.gov/bioenergy/pdfs/btu_forest_biomass.pdf

[13] Union of Concerned Scientists, "Fueling a Clean Transportation Future, Smart Fuel Choices for a Warming World." (Feb. 9, 2016) Available at https://www.ucsusa.org/clean-vehicles/clean-fuels/transportation-fuels-future

from fracking operations may also be contributing more than previously thought to atmospheric greenhouse gas concentrations.[14]

While petroleum production is getting more carbon intensive, the RFS incentivizes increasing reductions in greenhouse gas emissions. The RFS requires that conventional ethanol decrease greenhouse gas emissions by 20 percent. However, a U.S. Department of Agriculture (USDA) study found greenhouse gas emissions from corn-based ethanol are about 39 percent lower than gasoline. The study also states that when ethanol is refined at natural gas-powered refineries, the greenhouse gas emissions are even lower, around 43 percent below gasoline.[15]

The greenhouse gas emission reductions and benefits will only expand with the utilization of advanced and cellulosic biofuels. The RFS requires lifecycle greenhouse gas emissions reductions of at least 50 percent versus the relevant petroleum-based alternative for a fuel to qualify as an advanced biofuel and 60 percent for cellulosic biofuels. Already advanced and cellulosic biofuel technologies are far surpassing these requirements. As the industry improves its efficiencies and practices, the greenhouse gas reductions of advanced and cellulosic biofuels will be substantially greater than petroleum derived fuels.

However, the production and consumption of these biofuels will only be possible if producers and their investors have confidence that the RFS will give them access to the transportation fuel market by requiring obligated parties to use liquid gallons of biofuels.

Continuation of Uncertainty

Because of the impact these waivers have had on the development of advanced and cellulosic biofuels, BIO, and the agricultural and biofuels industry as a whole, has engaged with the Administration to find a solution to ensure waivers went to refineries truly experiencing a hardship without diminishing volumes for biofuels. Unfortunately, these efforts have yet to yield a solution to bring certainty to the biofuels industry.

Following months of negotiations, the President announced the Administration had reached an agreement on reallocation of gallons lost due to SREs.[16] While the deal was short on details the Administration had provided assurances it would put forward a framework to reallocate the gallons lost to the SREs.

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[14] Rasmussen, C. "NASA-led Study Solves a Methane Puzzle" NASA's Earth Science News Team (Jan. 3, 2018) Available at https://www.nasa.gov/feature/jpl/nasa-led-study-solves-a-methane-puzzle

[15] Lewandrowski, J., Rosenfeld, J., Pape, D., Hendrickson, T., Jaglo, K., and Moffroid, K. USDA "The greenhouse gas benefits of corn ethanol – assessing recent evidence." (Mar. 25, 2019) Available at https://www.tandfonline.com/doi/full/10.1080/17597269.2018.1546488

[16] Eller, D. "Trump unveils new ethanol plan, short on details, that promises to replace exempted gallons." Des Moines Register (Oct. 7, 2019) Available at https://www.desmoinesregister.com/story/money/agriculture/2019/10/04/trumps-epa-says-plans-replace-gallons-lost-oil-waivers/3850876002/

Unfortunately, when EPA issued a supplemental notice of proposed rulemaking to the 2020 Renewable Fuel Standard[17] to address the SREs it fell short of this stated promise. Rather than setting the three-year average based off of exempted gallons, the proposal sets the three-year average of exempted volumes based off of the U.S. Department of Energy's (DOE) recommendations. So for example, from 2016 to 2018, EPA waived on average 1.34 billion gallons through SREs. This proposal calls for setting an average of 770 million gallons per year – or about half.

As House lawmakers, led by Representative Rodney Davis (R-IL), noted in a letter to Administrator Wheeler on October 23, 2019 "This announcement does more harm than good for our producers and lends to even greater uncertainty in this challenging farm economy."[18]

By using a three-year rolling average based on the recommendations from DOE and not on the actual exemptions will ensure SREs continue to undermine the promise of the RFS to bring low-carbon biofuels to the market. The disconnect on what was promised by the Administration and what was actually proposed was not lost by those who reviewed the supplemental notice in the interagency review process.

As covered by Bloomberg, "documents, uploaded to a government regulatory docket late Monday, show the U.S. Department of Agriculture initially warned the plan was inconsistent with an earlier White House promise to ensure "more than 15 billion gallons" of conventional biofuel, such as ethanol, are required to be blended into the nation's fuel supply beginning in 2020."[19]

As the documents[20] summarized by DTN showed the White House Office of Management and Budget reviewers called out the supplemental proposal:

> Danielle Y. Jones, senior policy adviser for international regulatory cooperation at the OMB wrote in an Oct. 9 email to EPA officials: "We do not agree with the inclusion of the alternative as drafted. We believe there is no rationale for using older data and the alternative is inconsistent with the WH decision last week to ensure that more than 15 billion gallons of conventional ethanol be blended into the nation's fuel supply beginning in 2020."

BIO will continue to work to urge the Administration to revise its proposal during the upcoming comment period on the supplemental. However, given EPA's rejection of the recommendations put forward by OMB and President Trump stating during a

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[17] Environmental Protection Agency, Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Response to the Remand of the 2015 Standards; Supplemental Notice of Proposed Rulemaking, EPA-HQ-OAR-2019-0136 (Oct. 15, 2019) Available at https://www.epa.gov/renewable-fuel-standard-program/proposed-volumes-2020-and-biomass-based-diesel-volume-2021

[18] Neeley, T. "Group of House Republicans Asks Wheeler to Change Biofuels Proposal" DTN Ethanol Blog (Oct. 25, 2019) Available at https://www.dtnpf.com/agriculture/web/ag/blogs/ethanol-blog/blog-post/2019/10/25/group-house-republicans-asks-wheeler

[19] Dlouhy, J. "White House Sides With EPA Over USDA Objections on Biofuel" Bloomberg, (Oct. 22, 2019) Available at https://www.bloomberg.com/news/articles/2019-10-22/white-house-sides-with-epa-over-usda-farmers-in-biofuel-deal

[20] Documentation of OMB Review Under E.O. 12866 RFS 2020 Annual Rule SNPRM Available at https://www.regulations.gov/document?D=EPA-HQ-OAR-2019-0136-0351

Cabinet meeting on Monday, October 21 that "small refineries are happy,"[21] uncertainty over the RFS due to SREs will continue.

Delays in Pathways and Facility Registrations

Beyond EPA's expanded issuance of SREs, delays and uncertainty surrounding the approval of pathways and registration for advanced and cellulosic biofuels are also hindering the development of the industry. As Representatives John Shimkus (R-IL) and Chellie Pingree (D-ME) state in their June 4, 2019 letter to Administrator Wheeler, "delays in review new RFS pathway petitions have inhibited the growth and development of the next generation of innovative transportation fuels."[22]

While significant headway has been made in the past year and there are now only 22 pending pathway applications; many of the recent approvals have been conventional ethanol facilities receiving efficient producer pathways, versus new advanced and cellulosic pathways. Expedient approval of new technology pathways would show both developers and investors that there is a way forward for new biofuel technologies and provide confidence to producers that their technologies will be reviewed in a timely and fair process.

In addition to delays in approving pathways for new technologies, EPA has delayed approving facility registrations for ethanol producers seeking to install technologies to make cellulosic biofuels from corn kernel fiber, which already has a pathway under the RFS. This delay has kept millions of gallons of low-carbon[23] cellulosic biofuels from reaching the market.[24]

Congressional Oversight

Today's hearing is critical to the overall efforts to ensure the Administration reigns in the excessive issuance of SREs and ensures that the volumes put forward in the annual RFS are filled with liquid gallons of biofuels. Congress must continue to exercise oversight over EPA to ensure the RFS drives investment in innovative, low-carbon biofuels as the law was intended to.

House Agriculture Committee Chairman Collin Peterson (D-MN) and Representative Dusty Johnson's (R-SD) legislation, the *Renewable Fuel Standard Integrity Act*, H.R. 3006 could bolster these oversight efforts. This legislation would require refineries seeking an exemption from the RFS to submit petitions in a timely manner so that any waivers granted would be prospectively reallocated to non-

[21] Hagstrom, J. "Perdue Defends RFS Plan as President Says Small Refiners Are Happy" DTN Ag Policy Blog. (Oct. 23, 2019) Available at https://www.dtnpf.com/agriculture/web/ag/blogs/ag-policy-blog/blog-post/2019/10/23/perdue-defends-rfs-plan-president
[22] Voegele, E. "Letter urges EPA to Process Pending RFS Fuel Pathway Applications." Biomass Magazine (Jun. 11, 2019) Available at http://biomassmagazine.com/articles/16226/letter-urges-epa-to-process-pending-rfs-fuel-pathway-applications
[23] California Air Resources Board, Lifecycle Emissions of POET Biorefining (Sep. 10, 2018) Available at https://ww3.arb.ca.gov/fuels/lcfs/fuelpathways/comments/tier2/t2n-1266_report.pdf
[24] Heller, M. "Industry faults EPA as Cellulosic Ethanol Production Lags." Greenwire (Aug. 22, 2018) Available at https://www.eenews.net/greenwire/2018/08/22/stories/1060094987

exempt obligated parties. It would also provide greater transparency by ensuring that key information surrounding small refinery exemptions is publicly disclosed.

Beyond legislation, it is critical Congress continues to pressure the Administration and seek information on how it determines what refineries qualify for SREs and to insist that any gallons waived are reallocated to other obligated parties.

The administration needs to uphold the intent of the RFS by providing a solution that encourages investment in clean energy innovation. As long as lost gallons from these exemptions are not fully reallocated, the issuance of SREs continues to harm American farmers and biofuel producers who are already experiencing significant hardship.

Conclusion

BIO's member companies are revolutionizing the fuels sector through the entire value chain of biofuel production with new feedstocks, conversion technologies, and low-carbon sustainable biofuels. To develop and commercialize advanced and cellulosic biofuels in order to decarbonize the transportation fuel sector will require policy certainty. Congress must act to reign in the Administration's expansive issuance of SREs and ensuring that gallons waived for small refineries are reallocated to other obligated parties. This will allow the RFS to function as intended and drive investment and consumption of sustainable biofuels that benefit the environment, job creation, and the economy.

UNITED STEELWORKERS

UNITY AND STRENGTH FOR WORKERS

October 28, 2019

The Honorable Paul Tonko
Chairman
Subcommittee on the Environment and Climate Change
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Shimkus
Ranking Member
Subcommittee on the Environment and Climate Change
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Tonko and Ranking Member Shimkus,

Re: Statement for the Record Regarding Subcommittee on the Environment and Climate Change Hearing "Protecting the RFS: The Trump Administration's Abuse of Secret Waivers."

On behalf of the 850,000 members of the United Steelworkers (USW), our union submits the following comments to the Subcommittee on the Environment and Climate Change regarding the October 29th hearing on "Protecting the RFS: The Trump Administration's Abuse of Secret Waivers."

While the subject of transparency in the Renewable Fuel Standard (RFS) is important, our union is concerned about the limited scope of this hearing. The failure to address a federally mandated system that is not working as intended and is rife with abuse means stakeholders are left pushing past the margins and wanting more from legislators. As Congress looks to improve effectiveness and efficiency in government, it is vital that this committee and the legislative branch consider the fiscal impact and quality of the jobs they intend to create through fuel and electric vehicle (EV) policy.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
Legislative and Policy Department, 1155 Connecticut Ave., Suite 500, N.W., Washington, D.C. 20036
202-778-4384 • 202-419-1486 (Fax)
www.usw.org

Introduction

The USW is the largest union in the combustion engine fuel sector. The union represents two thirds of domestic refining capacity and in addition represents ethanol production facilities. Our union also supports innovative bio-fuel production like ArcelorMittal's effort to create biofuels using waste carbon monoxide as a feedstock and microbes, which can be blended for use as a liquid fuel.[1]

Our union is looking to the future and the role the RFS will play going forward must be seriously considered and reassessed. The market in fuel is rapidly changing, as vehicles become more fuel efficient and electric vehicle sales grow. This can be seen even today as fuel consumption in the U.S. has declined.[2]

Changes with fuel demands and in the refining industry, discussed below, requires a longer strategic approach to update the RFS to ensure that whatever product goes into an engine, workers receive just compensation, a safe workplace, and a secure retirement.

Small Refineries Exemptions: A Crude Fix, But a Remedy

The issue of small refinery exemptions (SRE) without context means the committee is left focusing on administration transparency, but not the roller coaster price impacts in fuel policy since the RFS was implemented. Merchant refining experienced significant pressure related to the massive fluctuations in Renewable Identification Number (RIN) prices over the years and is a story that runs significantly deeper than what the committee is considering today. RIN's are a market tradeable compliance mechanism designed to ensure fulfillment of mandated biofuel levels. However, price volatility in RINs creates concern among small to medium sized refineries. These concerns, if left unattended, could lead to job loss in the refining sector, and increased imports of foreign biofuels, which runs counter to the Congressional intent of the RFS.

[1] https://corporate.arcelormittal.com/news-and-media/our-stories/capturing-and-utilising-waste-carbon-from-steelmaking
[2] https://www.reuters.com/article/us-usa-gasoline-kemp/u-s-gasoline-consumption-stalls-adding-to-oil-producers-problems-john-kemp-idUSKCN1PN1XI

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
Legislative and Policy Department, 1155 Connecticut Ave., Suite 500, N.W., Washington, D.C. 20036
202-778-4384 • 202-419-4186 (Fax)
www.usw.org

When the EPA promulgated the rules for the RFS, the agency designated refineries as the obligated party to make sure blending of fuels and biofuels was completed. The obligated party compliance mechanism has several flaws.

Over the past decade, there has been a shift in the refining industry with an increase in merchant refiner production. Unlike the integrated refining companies which can control hydrocarbon processing from extraction to consumer retail sale, merchant refineries are primarily focused on one core function: the refining of crude fuels to bulk sales of final hydrocarbon products like gasoline. Since the enactment of the RFS, integrated oil companies have continued to sell refining assets to merchant refiners meaning much of the blending infrastructure is outside these obligated parties. In 2016, it was reported that over a million barrels per day of U.S. refining capacity had been sold to merchant refiners.

Since merchant refineries of all sizes were unable to control blending and had to buy RINs on the open market, significant compliance costs began to impact facilities across the country and threaten good paying union jobs. In 2018, the now closed Philadelphia Energy Solutions (PES) refinery filed for bankruptcy. They cited compliance costs and RIN prices as a major factor in the bankruptcy proceedings with filings showing the refinery spending $75-$85 million per year on RINs.[3] In 2018, Valero reported $500 million in RFS compliance costs alone even with reduced RIN prices.[4] False RIN generation, hoarding, and political efforts to drive costs down turned a federal compliance mechanism into a broken system that left no party happy. [5][6]

Since the change in administrations, there has been an increase in SRE waivers granted by the EPA.[7] The increase of waivers has been the only effective mechanism to keep RIN prices in check, having no other regulatory or legislative intervention for RIN reform.

[3] https://stateimpact.npr.org/pennsylvania/2018/03/13/epa-deal-gives-pes-in-bankruptcy-some-relief-from-renewable-fuel-credits/
[4] https://www.forbes.com/sites/rrapier/2019/08/22/the-ethanol-industrys-flaw-is-its-entitlement-mentality/?source=bloomberg#a288d471d9ad
[5] https://it.reuters.com/article/newsOne/idUKKBN17X2HX
[6] https://arstechnica.com/tech-policy/2018/08/ohio-man-is-latest-to-be-sentenced-for-millions-in-biofuel-credit-fraud/
[7] https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions

SRE's and Biofuel Blending

The blend rates for ethanol in the gasoline supply have increased over time, even after the SRE's were granted. For example, in February 2019, the ethanol blend rate (i.e. the percentage of the overall fuel supply containing ethanol) was 10.53%, which is the highest it has been in the last 12 months. This is after SRE's were granted. Economist Scott Irwin from the University of Illinois concluded in several different blog posts that there is NO demand destruction from SREs, and that in spite of SREs, the blend rate has been "well within normal statistical variation."[8]

The failure to grant SREs would not only drive up RIN prices and put the viability of some merchant refiners into question but would also increase the nation's dependence on foreign biofuels, particularly on the East Coast. From 2016-2018 the U.S. imported over half a billion gallons of foreign biodiesel each year in order to meet the mandate.[9]

A Complete Overhaul of RFS is Necessary

Without looking at the whole RFS puzzle, the committee will continue down a false narrative of corn versus oil and not look at what is the best policy for workers and consumers.

Additional federal research must go into what impacts federal ethanol requirements have on changing land usage, greenhouse gas, water usage, and climate change. According to the National Wildlife Federation, land use changes driven by the RFS contributed about 27.1 million metric tons of carbon dioxide per year into the atmosphere — the equivalent of more than seven coal-fired power plants.[10]

Federally required blending rates must be tightly controlled to better account for changing fuel consumption requirements as electric vehicle and fuel efficiency standards reduce overall fuel demand.

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[8] http://www.fuelingusjobs.com/library/public/Study/Demand-Destruction-Article.pdf
[9] https://www.eia.gov/biofuels/biodiesel/production/
[10] https://www.nwf.org/Home/Latest-News/Press-Releases/2019/03-07-19-Biofuels-Environmental-Harm?utm_medium=social&utm_campaign=RFS%20research&utm_content=press%20release%2003072019&utm_source=Twitter

Pay and benefits for workers who supply our country's fuel should be considered by establishing federal prevailing wage rates in the biofuel industry, which are comparable to domestic refining wage rates. Additional health and safety monitoring requirements must be included in policy changes to the RFS to ensure process safety management (PSM) rules are followed in the ethanol industry and implemented in a fashion that provides worker involvement and participation. Similar to recent California PSM standards in refining, this will give workers clear authority to participate in process safety decision-making and to call attention to problems that will ensure safer facilities.[11]

With growing inequality across this country, Congress cannot let any federal mandate, tax incentive, or federal expenditure remain free from labor conditions to ensure workers are fairly compensated for the products they produce to move America. We look forward to working with the committee to ensure that RFS policy actually works for all workers and not just large vested corporate interests.

[11] https://www.bluegreenalliance.org/the-latest/after-five-year-effort-california-adopts-the-nations-strongest-refinery-safety-regulations/

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

Legislative and Policy Department, 1155 Connecticut Ave., Suite 500, N.W., Washington, D.C. 20036

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NEW ENERGY AMERICA

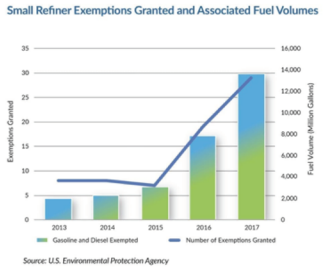
To: The Subcommittee on Environment and Climate Change of the Committee on Energy and Commerce
Fr: Mike Carr, Executive Director, New Energy America (NEA)
Date: October 28, 2019
Subject: NEA's Letter for the Record on Hearing 'Protecting the RFS: The Trump Administration's Abuse of Secret Waivers'

Dear Chairman Tonko, Ranking Member Shimkus, and members of the committee:

Our organization is writing to express our support for the growth of the Renewable Fuel Standard as Congress originally intended, and for the immediate end of the continued issuance of Small Refinery Exemptions (SREs) that the current Administration has allowed.

As a candidate in 2016 Trump promised to "grow" the Renewable Fuel Standard (RFS). Far from growing the RFS, Trump has allowed the program to be gutted, breaking his promise.

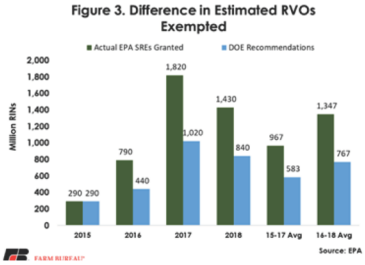
Under Trump's watch, EPA has used "small refinery exemptions" to decimate demand for biofuels. These waivers have erased almost 4 billion gallons of biofuel demand, outraging farmers and farm state leaders and creating a political opening for Democrats. Promising to fix the problem, the President held a series of meetings with the biofuels industry and farm state Senators to come up with a "big package" to finally keep the President's word on biofuels.



The Deal

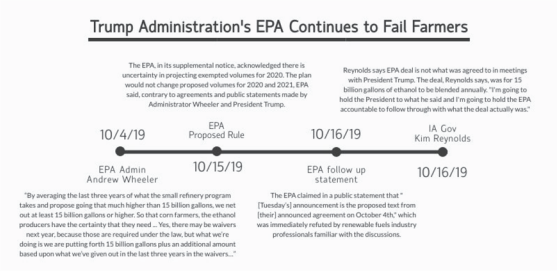
On October 4th EPA Administrator Andrew Wheeler announced a deal with biofuels groups to fulfill Trump's promise. Under the deal, an average of the last three years of small refinery waiver volumes would be applied to future volume obligations. This would replace the volumes lost by the waivers and get the program back on track:

"By averaging the last three years of what the small refinery program takes and propose going that much higher than 15 billion gallons, we net out **at least 15 billion gallons or higher**. So that corn farmers and the ethanol producers have the certainty they need … Yes there may be waivers next year because those are required under the law, but what we're doing is putting forth 15 billion gallons **plus an additional amount** based upon what we've given out in the last three years in the waivers."



This deal was heralded by the farmers, the biofuel industry, and lawmakers from farm states, because it apparently would get the volumes back up to the levels Congress had mandated.

But on October 15th EPA released details of its actual proposal, which was far different than the deal everyone agreed to. Instead of adjusting obligations to account for actual waivers issued, the Administration proposed to use only the waivers *recommended* by the Department of Energy – even though EPA rejected those recommendations and granted nearly double the volumes proposed by DOE. This proposal means far less biofuels blended into the nation's fuel supply going forward. Not only is this not what Trump had promised, it's not even what Administrator Wheeler agreed to eleven days before.



The differences between the volumes proposed and volumes granted are massive, and if implemented, it will mean that Donald Trump's promise to farmers and midwestern voters is broken (again). Worse, EPA is left in charge of implementing the deal in future years – the same EPA that has shown its willingness to throw the biofuels industry under the bus again, and again, making investment certainty impossible. It's a classic "bait and switch," and Trump and his EPA seem to think that farmers aren't sophisticated enough to see what's happening.

We ask that the Members of the Subcommittee on Environment and Climate Change hold Donald Trump and his Administration accountable for the promises made to farmers across rural America who have been decimated by the President's actions, and uphold their responsibility to carry out the mandates of the Renewable Fuels Standard as Congress had originally intended.

Sincerely,

Mike Carr
Mike Carr
Executive Director
New Energy America

Congress of the United States
Washington, DC 20515

September 20, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Dear Administrator Wheeler:

We write you regarding the Environmental Protection Agency's (EPA) proposed rule dated July 5, 2019 which proposed Renewable Volume Obligations (RVOs) for 2020 and 2021 as required by the Renewable Fuel Standard (RFS). We are concerned over EPA's continued abuse of small refinery exemption authority, the uncertainty involved in a possible reset of statutory volumes, and the negative economic implications these realities are having on our rural communities.

EPA's recently announced decision to grant 31 small refinery exemptions (SREs) continues to cast serious doubt on the agency's ability to administer the RFS consistent with Congressional intent. Since early 2018, EPA granted 85 blending exemptions to refineries which equals more than 4 billion ethanol-equivalent gallons of renewable fuel being taken out of the marketplace. These conditions have caused three ethanol facilities to close permanently and another fourteen to idle, affecting nearly 3,000 jobs and hundreds of millions of corn bushels on an annual basis.

For the biodiesel industry, the damage from SREs is also severe. Approved exemptions over the last three years have caused demand destruction and nearly $7.7 billion in economic losses to the biodiesel and renewable diesel industry. To date, at least eight biodiesel facilities have shut down this year, which represents 6,800 jobs and 215 million gallons of annual production.

Furthermore, these exemptions greatly outweigh the proposed rule's slight 0.12-billion-gallon increase in advanced biofuel and steady hold of 15-billion gallons for conventional ethanol, meaning the effective RFS blending obligation will actually decrease. We are also troubled that the proposed rule did not address the D.C. Circuit Court order to restore 500 million gallons of blending obligations which were deemed inappropriately waived in 2016. These facts diverge from Congressional intent of the RFS to build a robust domestic biofuels industry that supports rural America.

There is also unease among our constituents about how the EPA will handle the RFS reset rule, which is currently under review by the Office of Management and Budget. As EPA considers several environmental factors, the agency needs to incorporate U.S. Department of Agriculture's updated 2018 lifecycle analysis which shows corn-based ethanol results in 43% lower greenhouse gas emissions than gasoline when produced at a natural gas-powered ethanol plant.

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Again, we ask that EPA account for small refinery exemptions by reallocating waived gallons when promulgating RVO obligations as required by 42 U.S.C. 7545(o)(3)(C)(ii). We urge the agency to stop the practice of rubber-stamping small refinery exemptions which are hurting farmers during one of the worst rural economic times in recent history. We also request that EPA update its analysis on the benefits of renewable fuels on greenhouse gas emissions, corn and soybean farmers, and consumer demand for biofuels before reaching conclusions on the RFS reset rule.

Our farmers and rural communities are hurting and need the EPA to stop undermining the RFS. Thank you for considering our requests and we look forward to hearing back from you.

Sincerely,

Collin C. Peterson
Member of Congress

Roger Marshall, M.D.
Member of Congress

Dave Loebsack
Member of Congress

Rodney Davis
Member of Congress

Jim Hagedorn
Member of Congress

Cheri Bustos
Member of Congress

Cindy Axne
Member of Congress

Abby Finkenauer
Member of Congress

Angie Craig
Member of Congress

Adrian Smith
Member of Congress



Mike Bost
Member of Congress



Mark Pocan
Member of Congress



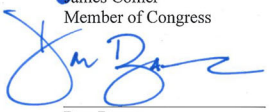
Dusty Johnson
Member of Congress



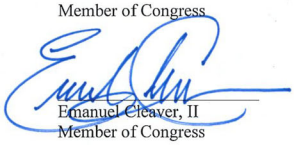
James Comer
Member of Congress



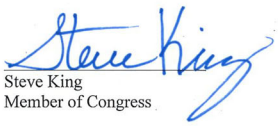
Darin LaHood
Member of Congress



Don Bacon
Member of Congress



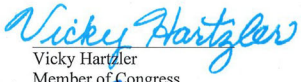
Emanuel Cleaver, II
Member of Congress



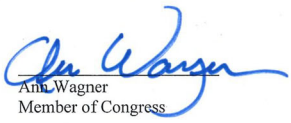
Steve King
Member of Congress



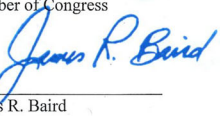
Steve Watkins
Member of Congress



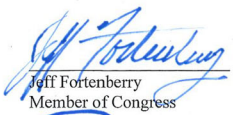
Vicky Hartzler
Member of Congress



Ann Wagner
Member of Congress



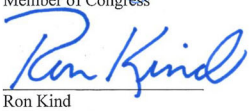
James R. Baird
Member of Congress



Jeff Fortenberry
Member of Congress



Adam Kinzinger
Member of Congress



Ron Kind
Member of Congress

LABOR COALITION FOR BIOFUELS

September 6, 2019

Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20004

Dear Administrator Wheeler,

We write to express our strong opposition to the Environmental Protection Agency's (EPA's) ongoing utilization of Small Refinery Exemptions (SREs) to reduce renewable fuel blending under the Renewable Fuel Standard (RFS). SREs are destabilizing America's renewable fuels industry and putting at risk thousands of jobs across more than two dozen states.

The Labor Coalition for Biofuels is an ad hoc coalition of labor unions that strongly supports the American biofuels industry and the RFS. We represent thousands of workers whose efforts have driven the industry's success and sustainability (see the Addendum). The RFS is a valuable jobs growth and rural economic development policy, as well as an effective energy, environmental, and national security policy. It is a driving force for economic opportunity, especially in rural America, which too often gets left behind as our economy grows. It has created hundreds of thousands of jobs, including tens of thousands of union jobs. It supports a homegrown renewable energy sector that reduces transportation costs for working Americans. It has spurred investment and development of new technologies and it is a pillar of the bio-based economy.

While we applaud the administration's decision to allow the sale of E15 (gasoline blended with 15 percent ethanol) throughout the year, EPA's retroactive approval of an unprecedented number of SREs contradicts the administration's pledge to "increase the amount of ethanol blended into the nation's gasoline supply" and puts workers in the biofuels industry at risk. The administration has now issued more than 80 SREs for 2016-2018; approximately four times the number of SREs issued by the Obama Administration from 2013-2015. Compounding the harm, EPA has refused to include the gallons wiped away by the waivers in the annual Renewable Volume Obligation (RVOs), driving demand for conventional biofuels well below the 15 billion gallons ordered by Congress. The massive uptick in the issuance of SREs has flooded RFS credit markets and also undercut demand for new and innovative types of advanced biofuels that could drive economic growth for decades to come (see the Addendum).

We acknowledge that some small refineries may meet the statutory standard for hardship waivers. The effects of any hardships on the workers in those refineries should be taken seriously. However, EPA has radically increased the number of waivers granted, in some cases to the most profitable oil companies in the world (including Exxon and Chevron). And while the oil industry is enjoying its most profitable year since 2013, according to the U.S. Department of

Energy (DOE), rural America and its workers are struggling. Ethanol plants are closing, ethanol workers are losing their jobs, farmers are facing huge losses and potential bankruptcy, and the businesses that supply the ethanol industry and farmers are facing unprecedented and unnecessary risk. The commercial deployment of advanced and cellulosic biofuels has slowed significantly due to the policy and market uncertainty stemming from SREs, effectively ceding the competitive advantage in developing these innovative fuels to China and Brazil. The Department of Defense has consistently called the reliance on a sole source of liquid fuel a threat multiplier. The aviation and maritime industries recognize the importance of diversifying their fuel sources in support of these important national security concerns.

Simply, there are workers on both sides of the SRE debate, and the over-issuance of SREs to an industry not facing hardship, at the expense of one that is, is hurting workers, farmers, and innovators across America's heartland.

To remedy the situation, we urge the administration to: (1) immediately stop issuing SREs to refineries that do not need them; (2) include the projected volume of gallons waived via SRE in the now-pending 2020 RVO; and, (3) set the 2021-22 "reset" volumes to account for (i.e., restore) demand inappropriately destroyed by the over-issuance of SREs. We are also troubled by the retroactive and secretive nature of the SRE protocol. If the federal government seeks to rebate saleable regulatory credits to regulated parties, the recipients should be known and the process transparent enough for the public and credit markets to react appropriately (see the Addendum).

Thank you for your attention to this letter. If you have any questions or would like us to provide any additional information, please contact Terry Turner at terry.turner@turnerpollard.com.

Sincerely,

Airline Pilots Association (ALPA)

International Organization of Masters, Mates & Pilots (MM&P)

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

Marine Engineers Beneficial Association (MEBA)

Seafarers International Union (SIU)

United Food and Commercial Workers International Union (UFCW)

CC: Lawrence Kudlow, National Economic Council (NEC)
The Honorable Rick Perry, Secretary of Energy
The Honorable Sonny Perdue, Secretary of Agriculture

ADDENDUM

The Biofuels Industry Creates Unionized Middle-Wage Jobs

The American biofuels industry is a source of unionized middle-wage jobs, many of which are in rural areas of the United States that have not experienced the full benefits of our nation's economic recovery. In 2018, according to the U.S. Department of Labor's Bureau of Labor Statistics (BLS), only 10.5% of American wage and salary employees were union members, including only 6.4% of private-sector employees. The Energy Futures Initiative found a union density rate of 8.8% in the corn ethanol industry in 2018. The Energy Department estimated union density in corn ethanol production was 7.7% in 2017. These estimates suggest that the percentage of union members in the ethanol industry is higher than the national average. A recent report by former Acting U.S. Secretary of Labor Seth D. Harris and Charles Carson estimates there are more than 20,000 union members directly employed by the ethanol industry and the industry's suppliers in the United States.

The Harris-Carson study finds that union members in the biofuels industry are concentrated in manufacturing, transportation and utilities, construction, and retail trade. Together, these four industries employ two-thirds of all union members working in the biofuels industry, with retail employing the fewest number in these four industries. Many of these jobs help employees and their families sustain middle-class lifestyles. Most of these jobs are available to workers with high-school degrees, some college education, or a two-year college degree, sometimes substituted for or supplemented by significant on-the-job training, and often involving top-of-the-line training provided by joint labor-management technical skills and/or apprenticeship programs.

One of the biggest contributors to rising income inequality in the United States over the last several decades has been a shift in employment away from these kinds of occupations toward low-skill and high-skill occupations. According to a 2018 study for the Kansas City Federal Reserve Bank, the percentage of total employment in so-called "middle-skill" occupations dropped from 54.9 percent in 1994 to 43.1 percent in 2017. Meanwhile, the percentage of employment in high-skill occupations rose from 30.4 percent in 1994 to 39.2 percent in 2017, and the percentage in low-skill occupations rose from 14.7 percent in 1994 to 17.7 percent in 2017. These numbers give evidence of America's shrinking middle class. Supporting the biofuels industry can help reverse this trend and restore the kinds of middle-wage jobs that have long been bulwarks of the American middle class. The ethanol industry and its thousands of unionized workers are important contributors to the effort to rebuild America's middle class.

Increasing Ethanol Use Affords Other Benefits for American Workers

In addition to the important job-creating benefits of the biofuels industry, ethanol reduces the cost of gasoline for working families. Ethanol is blended into 97 percent of America's gasoline supply. In an October 9, 2018 interview with MarketWatch, Teucrium Trading LLC President and Chief Investment Officer Sal Gilbertie noted that "a gallon of ethanol is about 70

cents cheaper than a gallon of gasoline." There is an even greater price discount between ethanol and the petroleum-based octane boosters that ethanol replaces, which are more expensive than gasoline. So, increasing ethanol use would reduce the price American workers pay at the pump. Even a few pennies per gallon can add up to meaningful savings for families who use cars as their principal means of transportation.

Ethanol provides a host of other benefits ranging from reducing America's dependence on despotic foreign petro-regimes like Saudi Arabia to reducing greenhouse gas emissions that contribute to global warming. Accordingly, the administration should promulgate and implement policies that will increase the number of jobs in the biofuels industry and reject the policies that have reduced the production and sale of biofuels.

Additional Policies to Strengthen the American Biofuels Industry

Open All Documents in the SRE Process to Public Review

The small refinery exemption process is secretive and troubling. We believe serious public and stakeholder concerns about this process warrant a comprehensive review of all existing waivers to determine whether they were appropriately granted, both according to widely accepted interpretations of the applicable standards and the process through which the waivers were granted. In addition, we request that all documents relating to the waiver process be made available for public review, with confidential business information redacted. In testimony delivered August 1, 2018 to the Senate Committee on Environment and Public Works, EPA stated that it would publish a "dashboard" designed to "publicize all the information about when we grant a waiver and circumstances around the waiver." Our recent review of the EPA web site suggests that, months after your public promise to the U.S. Senate, a dashboard with this level of detail has not been published. We encourage EPA to publish the dashboard expeditiously.

Support the Development of Advanced Biofuels under the RFS

The vast majority of future growth under the RFS will be in advanced biofuels. The rapid commercial deployment of advanced biofuels could support a new wave of employment and economic growth in rural America and in industries critical to rebuilding the middle class. One sector with great promise is cellulosic ethanol made from corn kernel fiber. This low-carbon fuel could be produced at nearly every one of the existing 200 U.S. ethanol biorefineries using commercial-ready "bolt on" technologies, allowing for production capacity upgrades at the same biorefineries already supporting tens of thousands of union jobs. Last year, more than a dozen major trade associations – including the American Equipment Manufacturers, the National Corn Growers and the National Farmers Union – wrote a letter to EPA expressing concern about regulatory action and inaction inhibiting the commercial deployment of cellulosic ethanol from corn fiber. These groups called on EPA to unlock the commercial potential of this industry by clearing fuel registration logjams and setting appropriate cellulosic blending levels under the RFS. We agree.

It is important to understand that these actions will also help rebuild America's middle class by creating growth in already union-dense job sectors. In addition, innovation and investments in cellulosic biofuels can provide the American airline industry with a sustainable, reliable, and

domestic source of low-cost fuel that will reduce dependence on petroleum-based products and the industry's already very small impact on the environment. In the process, it can help to secure the jobs of American pilots, flight attendants, machinists, and others who serve the traveling public in the face of often unfair competition from state-owned or subsidized carriers.

Support the RFS and Discontinue the EPA's Efforts to Undermine It

We urge you to direct the EPA to lend strong support to the RFS moving forward and to work closely with Agriculture Secretary Sonny Perdue and Energy Secretary Rick Perry to defend this important policy. Creating a collaborative environment with inside and outside stakeholders will result in positive outcomes for all and most importantly, U.S. workers in a variety of sectors.

Since the RFS became law in 2005, it has driven growth while curbing emissions and increasing U.S. energy security. America's ethanol sector grew from 3.8 billion gallons in 2005 to more than 16 billion gallons of ethanol in 2018, becoming the largest ethanol producer in the world. Over the same period, America's net oil imports fell from 12.6 thousand to 3.7 thousand barrels per day. American producers have also increased efficiency, delivering an average carbon savings that is expected to surpass 50 percent by 2022. Every gallon of U.S. ethanol cuts greenhouse gas emissions by 43 percent, according to federal data, and advanced biofuels are doing even more to protect the climate. The RFS is fostering innovation and Americans are reaping the benefits. The RFS deserves your strong support.

The New York Times Magazine | https://www.nytimes.com/2018/11/20/magazine/palm-oil-borneo-climate-catastrophe.html

FEATURE

Palm Oil Was Supposed to Help Save the Planet. Instead It Unleashed a Catastrophe.

A decade ago, the U.S. mandated the use of vegetable oil in biofuels, leading to industrial-scale deforestation — and a huge spike in carbon emissions.

By Abrahm Lustgarten

Nov. 20, 2018

This article is a partnership between ProPublica, where Abrahm Lustgarten is a senior reporter, and The New York Times Magazine.

The fields outside Kotawaringin village in Central Kalimantan, on the island of Borneo, looked as if they had just been cleared by armies. None of the old growth remained — only charred stumps poking up from murky, dark pools of water. In places, smoke still curled from land that days ago had been covered with lush jungle. Villagers had burned it all down, clearing the way for a lucrative crop whose cultivation now dominates the entire island: the oil-palm tree.

The dirt road was ruler straight, but deep holes and errant boulders tossed our tiny Toyota back and forth. Trucks coughed out black smoke, their beds brimming over with seven-ton loads of palm fruit rocking back and forth on tires as tall as people. Clear-cut expanses soon gave way to a uniform crop of oil-palm groves: orderly trees, a sign that we had crossed into an industrial palm plantation. Oil-palm trees look like the coconut-palm trees you see on postcards from Florida — they grow to more than 60 feet tall and flourish on the peaty wetland soil common in lowland tropics. But they are significantly more valuable. Every two weeks or so, each tree produces a 50-pound bunch of walnut-size fruit, bursting with a red, viscous oil that is more versatile than almost any other plant-based oil of its kind. Indonesia is rich in timber and coal, but palm oil is its biggest export. Around the world, the oil from its meat and seeds has long been an indispensable ingredient in everything from soap to ice cream. But it has now become a key ingredient of something else: biodiesel, fuel for diesel engines that has been wholly or partly made from vegetable oil.

Finally we emerged, and as we crested a hill, the plantations fell into an endless repetition of tidy bunches stretching for miles, looking almost like the rag of a Berber carpet. Occasionally, a shard of an old ironwood tree shot into the air, a remnant of the primordial canopy of dense rain forest that dominated the land until very recently.

Our driver, a 44-year-old island native and whistle-blower named Gusti Gelambong, had brought us here to show us the incredible destruction wrought by the growing demand for palm oil. The oldest male among nine siblings, he was modestly built but exuded a wiry strength. His father, he told us, was a king of one of Borneo's dozens of Dayak tribes, the sixth descendant of the sultan of Old Kotawaringin, and his mother came from a line of warriors who served in the Indonesian special forces. In 2001, he said, he took part in a brutal ethnic cleansing of Indonesians who had moved in from the nearby island of Madura. He macheted his way through the nearby town of Pangkalan Bun, slaughtering dozens of people. He felt no remorse about the violence. But the palm-oil companies, Gelambong said, were much stronger than the Madurese. As we approached an intersection, we could see two plantation guards lying back in a shack, rifles propped against their knees. He sped past the guards, averting his eyes.

Most of the plantations around us were new, their rise a direct consequence of policy decisions made half a world away. In the mid-2000s, Western nations, led by the United States, began drafting environmental laws that encouraged the use of vegetable oil in fuels — an ambitious move to reduce carbon dioxide and curb global warming. But these laws were drawn up based on an incomplete accounting of the true environmental costs. Despite warnings that the policies could have the opposite of their intended effect, they were implemented anyway, producing what now appears to be a calamity with global consequences.

The tropical rain forests of Indonesia, and in particular the peatland regions of Borneo, have large amounts of carbon trapped within their trees and soil. Slashing and burning the existing forests to make way for oil-palm cultivation had a perverse effect: It released more carbon. A lot more carbon. NASA researchers say the accelerated destruction of Borneo's forests contributed to the largest single-year global increase in carbon emissions in two millenniums, an explosion that transformed Indonesia into the world's fourth-largest source of such emissions. Instead of creating a clever technocratic fix to reduce American's carbon footprint, lawmakers had lit the fuse on a powerful carbon bomb that, as the forests were cleared and burned, produced more carbon than the entire continent of Europe. The unprecedented palm-oil boom, meanwhile, has enriched and emboldened many of the region's largest corporations, which have begun using their newfound power and wealth to suppress critics, abuse workers and acquire more land to produce oil.



A worker on an oil-palm plantation on Borneo. Ashley Gilbertson/VII, for The New York Times

We arrived at another plantation and stopped near where a stream coursed through the bog. People still lived here: A mother bathed two children beneath a culvert, and a shirtless young boy ran through row after row of identical young palms in the distance, surrounded by dragonflies and sparrows. The uniformity of the world he was growing up in was striking, like the endless plains of drilling rigs in an East Texas oil field. It was, in a way, an astounding achievement, the ruthless culmination of mankind's long effort to extract every last remaining bit of the earth's seemingly boundless natural wealth. But it was also frightening. This was what an American effort to save the planet looked like. It was startlingly efficient, extremely profitable and utterly disastrous.

2. 'Oh, My God, What the Hell Is Happening Here?'

The last thing anyone expected from President George W. Bush's 2007 State of the Union address was a proposal for the largest-ever cut in the nation's use of gasoline. The president was no climate champion — he had backed out of the Kyoto Protocol shortly after taking office in 2001 — but he did favor what he called "energy independence." He had declared the United States "addicted" to foreign oil, yet dependence on Middle Eastern fuel continued. Hurricane Katrina, and the lingering damage it did to oil pipelines and refineries, had pushed up gas prices, renewed fears of global warming and kept a firm thumb on the economy.

Now, Bush proposed, homegrown energy could be drawn from the rural places most in need of an economic boost. Clean-coal initiatives would generate the electricity of the future, but it was biofuels — in particular ethanol, which is largely distilled from corn, and biodiesel, made with vegetable oil — that would power the vehicles of the future. Within 10 years, the country would replace 35 billion gallons of petroleum, or one-fifth of all the gas and diesel burned, with fuel made from plants. The measure, as he put it, would confront "the serious challenge of global climate change." Unsaid, but clear to anyone paying attention, was that it would also please America's agriculture industry, which had been lobbying for ethanol and advanced biofuel research for years. The House chamber erupted in applause.

On the night of the president's address, Timothy Searchinger sat on his couch in Takoma Park, Md., just a few miles from the Capitol, and watched on television, struck by what seemed to him a glaring lapse in logic. "Oh, my God, what the hell is happening here?" he recalls wondering aloud.

Searchinger wasn't a scientist; he was a lawyer, working with the Environmental Defense Fund. But he saw a serious flaw in the claim that the president's proposal would ameliorate climate change. Searchinger knew that cropland had already consumed virtually every arable acre across the Midwest. Quintupling biofuel production would require a huge amount of additional arable land, far more than existed in the United States. Unless Americans planned to eat less, that meant displacing food production to some other country with unused land — and he knew that when forests are cut, or new land is opened for farming, substantial new amounts of carbon can be released into the atmosphere. Forests hold as much as 45 percent of the planet's carbon stored on land, and old-growth trees in particular hold a great deal of that carbon, typically far more than any of the crops that replace them. When the trees are cut down, most of that carbon is released.

Scientists and lawyers who study environmental impact often deploy "carbon-life-cycle analysis" to determine just how much carbon a given product is removing from, or introducing to, the environment over the course of its production and consumption. When a truck burns biodiesel, the carbon emissions that come from its tailpipe aren't much different from those of a truck burning petroleum. But a part of the biodiesel emissions aren't counted, because — in theory — they have been balanced out: Plants absorb carbon from the atmosphere when they grow, and fuel experts subtract that sequestered carbon from the tailpipe emission, completing a transaction that they say balances at zero.

In ideal circumstances — unvegetated land planted for the first time — this balancing out really happens. When corn grows, it soaks up carbon, and when it is consumed (whether as food or fuel), it releases that carbon back into the air. But the analysis breaks down when faced with the reality of land use. Almost everywhere in the world, planting more corn or soy for biofuel would involve creating more farmland, which in turn would involve cutting down whatever was already growing on that land. And that would mean releasing a huge amount of carbon into the air, with nothing to balance the books. As Searchinger watched Bush's call for an unprecedented increase in biofuel production, his hunch was that the biofuel balance sheet would turn out to be tragically shortsighted.

Representative Henry A. Waxman, at the time a powerful 16-term Democrat from California who had presided over several failed efforts to pass climate legislation, was also skeptical about Bush's plan. But he knew that one of the most vexing aspects of global emissions reduction was the question of how to replace transportation fuels. It was hard enough to upgrade several thousand electrical power plants to draw on wind or solar or even nuclear power. That would take years. But transforming the more than 100 million cars and trucks on America's roads would take far longer, decades even, and in the meantime those vehicles were producing 28 percent of carbon emissions in the United States. Waxman thought a biofuel requirement could be a turning point in climate legislation, a moment when Washington stopped pretending.

Trucks carrying eight-ton loads of palm fruit. Ashley Gilbertson/VII, for The New York Times

Within months of Bush's speech, the House and the Senate were reconciling a draft of a sprawling omnibus bill that would eventually be called the Energy Independence and Security Act, or EISA. In addition to requiring carmakers to improve fuel standards, a longtime priority for Democrats, the bill updated and expanded renewable-fuel standards, requiring fuel producers to mix in soy, palm and other kinds of vegetable oil with diesel fuel and to use ethanol from corn and sugar in gasoline. The bill also set tough standards for how much cleaner, in terms of carbon, each of those categories of fuel had to become — 50 percent for diesel, 20 percent for gas — and empowered the Environmental Protection Agency to judge what qualified.

The expected gains were enormous. The switch to biofuels, the E.P.A. would later calculate, promised to stop the release of 4.5 billion tons of carbon over three decades, the equivalent of parking every single American automobile for more than seven years. Before the bill passed in December 2007, Speaker Nancy Pelosi called it "the shot heard round the world for energy independence."

The law had a profound effect. Biodiesel production in the United States would jump from 250 million gallons in 2006 to more than 1.5 billion gallons in 2016. Imports of biodiesel to the United States surged from near zero to more than 100 million gallons a month. As fuel markets snatched up every ounce of domestic soy oil to meet the American fuel mandate, the food industry also replaced the soy it had used with something cheaper and just as good: palm oil, largely from Malaysia and Indonesia, which are the sources of nearly 90 percent of the global supply. Lawmakers never anticipated that their well-intentioned plan — to help the climate by helping American farmers — might instead transform Indonesia and present one of the greatest threats to the planet's tropical rain forests. But as Indonesian palm oil began to flood Western markets, that is exactly what began to happen.

"We saw great promise," Waxman told me recently, sitting in a glass conference room at Waxman Strategies, the Washington lobbying firm of which he is chairman. But he is no longer so hopeful. He is now also the chairman of the environmental organization Mighty Earth, which lobbies food and agriculture companies to deploy more climate-friendly production methods. In 2007, he and other lawmakers were

focused on the benefits of biofuels and the bridge they promised to even greener technologies. Now the soft-spoken Waxman is far more concerned about the other side of the equation. “We didn’t think we were going to pay such a heavy price,” he said.

3. ‘No One Fights for Their Rights’

Palm-oil producers had been lobbying American lawmakers to introduce biofuel incentives for years, and they were well prepared for the moment when the incentives became law. Wilmar — the colossal Singaporean conglomerate that controls nearly half of the global palm-oil trade — announced in 2007 that it would quadruple its biodiesel production. In Indonesia, officials directed state-owned and regional banks to make loans on more than $8 billion worth of palm-oil-related development projects and pledged to produce 5.9 billion gallons of biofuel within five years. They also announced that Indonesia would convert more than 13 million acres of additional forest to industrialized palm production. It was as if in response to a law in China, the United States undertook a plan to convert every single acre of New Jersey to soybean crops, and then threw in all of Connecticut and New Hampshire.

To make Indonesia’s plan a reality, a complicated question of land ownership had to be addressed. Much of the new development was focused on Borneo, where many villages were settled before there were nations, let alone land deeds. To create a legal basis for development, the Indonesian government established a commercial land-share system in the 1980s. In theory, the system let villages sign over development rights in return for some part of the profit. But in practice, many villagers said, companies often secured the permits they needed through some combination of intense lobbying, bribery and strong-arming, and the result was broken promises and missing payments.

Villagers were often simply outmatched by their huge negotiating partners. Wilmar was already a powerhouse in 2007, with operations in 23 countries on four continents, employing more than 60,000 people. When Wilmar said it would buy more than 200,000 acres in the states surrounding Gusti Gelambong’s village, it was a signal for others, too, to rush in. One of Indonesia’s largest conglomerates, the Salim Group — which owns Indofood, the nation’s largest maker of instant noodles — said it would pay $13 million for 200,000 acres in East and Central Kalimantan. Anthoni Salim, the company’s chief executive, was closely tied to Suharto, Indonesia’s longtime dictator who was overthrown in 1998. When the dictatorship fell, an angry mob firebombed Salim’s family mansion in Jakarta, and the new government forced him to abandon dozens of holdings. Within a few years, though, Salim had rebuilt his empire.

Even before the boom, Gelambong told me, he saw promise in the new palm industry, and he decided to stake his own welfare to it. When the large companies began to expand their timber and palm-planting to Kalimantan, they brought roads, construction and an influx of goods. They also offered jobs. By the end of 2007, Gelambong was already two years into working with a wildcat palm-oil operation, overseeing the process of putting millions of palm-tree seedlings into the ground.

Palm fruit harvested by a worker at a plantantion in Sintang; crude oils for cooking and biofuel products are extracted from the fruit and sold abroad.

Ashley Gilbertson/VII, for The New York Times

The oligarchs had once brazenly plundered whole states, but Gelambong thought this time would be different. In the post-Suharto era, it was private business capitalizing on free markets, and the companies promised to share profits with the smallholders — the villagers — who gave up their land. To win access to protected ancestral lands, the corporations promised schools for local children and wages that far exceeded those from harvesting jackfruit and jalut timber.

Gelambong's company was owned by a midsize upstart named Bumitama, run not by an oligarch but by the grandson of a Chinese immigrant who moved to remote eastern Borneo and opened a grocery store in 1915. The family built a fortune out of mining and timber, and Bumitama — which sells its palm to mills run by Wilmar and has direct distribution to the American and European markets — was its palm-oil subsidiary.

As Bumitama's plantations grew, so did Gelambong's responsibility. He became the public liaison for Bumitama's local operations, a company called B.G.A. — in part, he thought, because officials knew that his family held influence over the people who lived there. The deeper he got, however, the more he began to understand that many landowners weren't being paid. As he gained access to more company documents, Gelambong said, he found new contracts where village elders had agreed to smaller and smaller shares of profit. He offered a theory: The elders, often rewarded with gifts by the companies, weren't looking out for the interests of their people, and their people simply had no way of knowing. "No one fights for their rights, because almost no one can write or read," he said.

In his role as liaison, Gelambong was also sometimes responsible for delivering the very gifts that local officials found so persuasive. Indonesia's new democratic government had reached an uneasy détente with its rural islands by giving them a very long leash to run their own affairs, including the authority to issue permits for developing palm and timber. Acquiring such a permit typically required hefty contributions to one or more local political campaigns. Gelambong said he handled the small stuff; payoffs to the police, military patrols and local chiefs. (Bumitama officials say that Gelambong's official position was in "documents and licensing," and that while they cannot "comment on his individual doings," Bumitama complies with antibribery laws.)

As the money flowed, so did the development. From 2007 to 2014, palm concessions in Kalimantan more than tripled. Bumitama alone was planting roughly 37,000 acres of palm each year. Across Indonesia, trees were cut down at a rate of three acres every minute to make room. Soon, palm plantations extended from Kotawaringin in every direction.

The palatial remains of Gelambong's family estate still stand in Kotawaringin, their wood grayed and weathered, ringed by a tall fence capped with elongated spikes that for centuries has turned away tigers and thieves alike. It was there that Gelambong took me to retrieve a box of papers he had acquired. After leaving Bumitama in 2011, he had become the head of his village's microfinance group, which gave him access to records that helped explain how his former employer had been able to so thoroughly take over the village and its land in the early years of the oil-palm boom. Bumitama, it appeared from the documents, had used the microfinance group as a kind of front to justify putting up land owned by residents as collateral for a $26 million bank loan, effectively mortgaging it to the industry's financial backers.

Sifting through the files, he retrieved copies of three contracts the company presented to its banks. Each contained a list of signatures — purportedly those of hundreds of villagers, consenting to let the microfinance corporation control their land and represent their views to the bank. Gelambong pointed to the long rows of names. Dozens of these people, he said, couldn't read or write. When he asked some of them about their names in the document, they told him that they had never seen the paper before and that the signature on it wasn't theirs. At least six of the signatures were from people who had died before the oil-palm companies arrived.

The Roundtable on Sustainable Palm Oil, a voluntary global governance organization for the industry, is formally investigating Gelambong's claims. Bumitama officials said that nothing about their deal in Kotawaringin was improper; the company had the consent of village representatives, and it had undergone due diligence from the banks. A spokesman for Wilmar said that it abides by its sustainability commitments and was watching the Bumitama land inquiry closely but that the company's internal monitoring program had not yet triggered any alerts about Bumitama's subsidiary outside Tanjung Puting National Park.

A worker unloading a haul of palm fruit at a mill. Ashley Gilbertson/VII, for The New York Times

Gelambong's discovery had left him cynical about the industry that had overtaken his home. Promises had given way to despair, and he was humbled by the belief that he and others were suckered into giving up their only true assets. Now they were fighting simply for the right to take back a small sliver of land to farm for themselves.

4. 'It Was Really Sort of Shocking'

Timothy Searchinger spent a year researching cropland demand, and in February 2008, just two months after Bush signed the biofuels mandate into law, he and eight co-authors published their findings in the journal Science. It was a rare coup for a layman — peer-reviewed scientific journals seldom take an interest in the work of activist lawyers — but Searchinger had done something important. He had tried to quantify how increasing the demand for biofuel would change land use. According to his calculations, the ripple effects from land use would be so great that ethanol wasn't going to be better for the climate at all; instead, it would create nearly double the greenhouse-gas emissions of conventional fuels.

How was this possible? A typical life-cycle analysis adds up just the carbon emissions involved in the chain of fuel production and use: the carbon produced by burning the fuel, the carbon spit out by the tractor in the field, the carbon produced by the fertilizer manufacturer and so on. By this accounting, vegetable-oil-based biofuel fares well against petroleum fuels, reducing CO_2 emissions by as much as 80 percent.

What that analysis does not take into account, though, is that there is only so much land. The supposed carbon gains of plant-based fuels have to be offset, Searchinger argued in subsequent papers, by one of three things: reducing food consumption, increasing yields from existing cropland or — most likely — creating entirely new cropland, probably in the countries with the largest "underutilized" forests. And the typical analysis doesn't count the carbon produced by cutting down these forests or — if that deforestation happens to take place in Indonesia — emissions from disturbing the extremely carbon-rich peatland soils that much of the forest grows upon.

Jeremy Martin, a fuel-policy expert with the Union of Concerned Scientists, said that before Searchinger's research was published, the significance of land-use change had been dismissed. "It was really sort of shocking," Martin said. Climate scientists quickly agreed on the general notion that land use was an important factor to take into account, but there the consensus ended. The numbers varied depending on who did the analysis using what model, and as the research evolved, few could agree on the scale of the problem.

Predicting how people will use land can be challenging. Scientists use a suite of complex models to try to capture the nuance of interactions among commodity prices, vegetation coverage, carbon content of that vegetation, fuel use, the weather and the global political situation.

Accounting for the "substitution effect," which describes the way more or less interchangeable commodities like palm and soybean oil tend to be swapped out for one another as buyers seek the lowest price, has proved to be a particularly challenging problem. The American biofuels law, for instance, was designed to support soybean and corn farmers, not palm-oil producers. But the United States began increasing foreign palm-oil imports nonetheless — they more than doubled by 2017 — in large part because so much of the domestic soybean production that once went to food was now being used for fuel. Much of that palm oil went to food production. But the increased use of palm oil in food production was largely a byproduct of the increased fuel-oil production. (In Europe, which also passed a biofuels mandate in 2009 and uses large amounts of palm-based biodiesel directly in its vehicles, the calculation was simpler.)

Wrangling precisely how much palm demand resulted from using a gallon of soy for fuel, and how much rain-forest carbon, in Indonesia for example, might be emitted as a result, became a question that was increasingly influenced by political factors. The E.P.A., in 2009, made one of the most significant efforts to model and predict the carbon from biofuels, using three of the most established models and an overlay of satellite imagery of agricultural lands around the world, including those in Indonesia. The agency determined that the carbon footprint of land-use changes overshadowed any other consideration, and not by a small margin. In fact, when land changes were accounted for, the climate benefit of biofuels was entirely wiped away. Because a huge pulse of emissions comes from land change immediately after forests are cut, the E.P.A. concluded that it would take 32 years before biodiesel from soybean oil was truly net-zero for carbon on an annual basis, and a century for it to reach the level of benefit required under the law.

PT Murini Sam-Sam palm-oil mill.

Ashley Gilbertson/VII, for The New York Times

But that finding did not last long. The agriculture industry went to war to save the mandate they worked so hard to put in place. They lobbied the E.P.A. to abandon its consideration of indirect land-use change, describing it as a "radical" approach that could hold American farmers responsible for business decisions made by villagers halfway around the world. They supported research suggesting that the E.P.A. had overestimated the expansion of crops into tropical rain forests and said farmers were getting better crop yields off the same land than the models had acknowledged.

By the time the E.P.A. released its final rule in early 2010, it had made a complete about-face. Its models now found that the impact from land-use changes were almost negligible. For Indonesia, the E.P.A. estimated that just 110,000 acres of forest would be converted to cropland as a result of the American biofuels law, and almost none of it on sensitive peatland. It also extended the scope of its analysis to 2022, which had the effect of minimizing the short-term emissions. And it worked: Corn ethanol just barely cleared the law's hurdle, and soybean biodiesel suddenly appeared to be vastly cleaner than regular diesel.

It was nearly two years later that the E.P.A. issued its analysis of palm oil; it said in a cursory three-page draft rule that palm oil did in fact fall short of the E.P.A.'s bar, because of its direct impact on Indonesian forests. And that analysis, which remains in draft form today, simply ignores the substitution effect — which, calculated in any form, would suggest an even greater carbon cost.

Searchinger, who now is a research scholar at Princeton's Woodrow Wilson School, argues today that instead of developing evermore complex models, it makes more sense to step back and consider some simple logic: Land has competing uses, and taking more of it for agriculture has to have some consequence for the climate. "We could be off by 100 percent," he says of his biofuels findings, "and it's still incredibly bad."

5. 'It's All a Deception'

After the palm-oil companies gained control of the land, the clearing began. The fastest method was to rip out the forests with excavators and torch what remained. In 2015, the fires spread out of control. Kalimantan — and most of Indonesia, for that matter — was overwhelmed by billowing clouds of smoke and ash, visible from hundreds of miles away. NASA satellites detected more than 120,000 hot spots. As far away as Singapore and the Thai islands, people covered their faces with masks and prayed that their air-conditioners could filter out the soot. The smoke was so thick that Zenzi Suhadi, a leading activist with the Indonesian environmental group Walhi, was unable to land at Pangkalan Bun airport the day he was supposed to arrive late that September. Nor could he land the next day. But Suhadi needed to get closer — right into the heart of the flames.

A biologist who wrote his thesis on Indonesia's wild orchids, Suhadi switched to environmental work because he thought it could have broader impact. He has taken on the pulp and paper, logging and palm industries with a zeal that seems to grind against his quiet, soft-spoken nature. At 37, he has been riotous and unflagging in the face of powerful government ministers, corporate lawyers and even would-be assassins — all of whom he has faced off with at one time or another.

Forest fires are an annual event in Indonesia — sparked in the dry early fall as village farmers clear their fields and then extinguished by the monsoons. But this year was different. NASA officials said they were the worst fires they'd ever observed. Indonesians suffering from the effects of smoke inhalation were streaming into hospitals by the tens of thousands. Researchers at Columbia and Harvard later estimated that the fires led to 100,000 premature deaths. And the fires wouldn't stop. Suhadi, long a critic of how the palm-oil companies managed their plantations, feared that they had now done something cataclysmic.

His team — including an American conservationist from Friends of the Earth and Gusti Gelambong as a guide — had already arrived in Kalimantan. Now he asked them to continue on without him, traveling west toward Kotawaringin and to the jungle of Tanjung Puting National Park. The only way to learn the truth of what was unfolding was to investigate it for themselves.

Sludge settles on low-grade cooking oil extracted from palm fruit at a mill in Sintang.

Ashley Gilbertson/VII, for The New York Times

What the Walhi crew found that week in Kalimantan was not just deforestation and misery but a virtual hole ripped into one of the largest banks of concentrated carbon in existence. At every turn — by motorbike and motorboat — shards of burned stumps, a crop of shimmering silvery charcoal, stuck out from the blackened earth like gravestones. This apocalyptic landscape stretched as far as they could see, punctuated by only the rare tuft of scorched but otherwise healthy juvenile palm. They traced what they describe as telltale signs that the fires had been started by the palm companies — which is illegal and which all the palm-oil companies strongly deny doing, but which is also the fastest, cheapest way to raze the land.

The process is simple and devastating. First, workers bring in excavators to cut deep trenches across the swampland. These quickly fill with water that drains from the adjacent forest, thereby creating canals that serve as near-instant inroads on which to transport heavy machinery by boat or barge. With the machinery, the forests are cut down, their timber efficiently removed, and the swampy peatland they sit on is left to drain and dry. Once it's dried, it's burned.

In most of the places the Walhi crew visited, the fires appeared to have been extinguished, but the earth remained hot, smoldering underground. And this — more than the landscape destruction itself — was what concerned the group most. The dried and decaying peatland soil in this part of Borneo would almost certainly continue to burn for many more months, even years, releasing volumes of carbon dioxide into the atmosphere that far exceeded those from the rain-forest deforestation itself.

Peatland is boggy, waterlogged ground, loaded with layers of decomposing plants that can't get enough oxygen to support the microorganisms that would normally break them down. So they accumulate, layer by layer, season by season, compressing into a dense, black carbon-rich mud of partly decayed matter that sinks below the shallow water table and is preserved there in an anaerobic state. Left alone for a couple hundred million more years, the peat would solidify into coal.

Exposed peatland can spew carbon into the atmosphere for decades, even centuries, after the land is first disturbed. Indonesia's peatland destruction — just the amount that has already occurred — is roughly the equivalent of opening 70 new, large coal-fired power plants. And if even a fraction of these emissions are counted as land-change effects in the process of evaluating biofuels, the scales are forcefully tipped. "It's all a deception," Suhadi said. "There is no sustainability."

Globally, peatlands from Norway to Brazil hold a volume of carbon equivalent to 21 percent of the entire carbon content in the earth's soil. Indonesia's peatlands alone (which are greater in size than others anywhere in the world except for those in Russia and Canada) now emit more than 500 megatons of CO_2 each year, an amount greater than the entire annual emissions of the state of California. Peatland forests hold 12 times as much carbon as other tropical rain forests around the world. This makes destroying them one of the planet's greatest threats — and protecting them one of the most accessible opportunities to curb rising global emissions.

The peatland problem had been known for some time. It's one reason that six of the world's leading carbon-modeling schemes, including the E.P.A.'s, have concluded that biodiesel made from Indonesian palm oil makes the global carbon problem worse, not better. The World Agroforestry Center found that peatland-based biodiesel could produce nearly four times the emissions of petroleum diesel. In 2011, the government began a process to survey and designate millions of acres of Indonesia as protected peatland. In 2013, Wilmar signed a pledge to avoid peatland from inside the industry, and other companies eventually followed. American investors and regulators have taken solace in these pledges, assuming that they have lessened the environmental threat. And yet in 2015, as the peat fires raged aboveground and below, Suhadi could see only that none of that mattered.

6. 'We Call Them Shadow Companies'

In early July, I traveled to Kalimantan to investigate rumors that large-scale illegal peatland logging operations were still underway. Gelambong met me in a shaded garden behind my hotel. He was deeply uncomfortable and believed he was being followed. We switched tables to move farther into the yard, away from the town officials he suspected were listening. Gelambong's life hadn't been the same since he went public with documents accusing Bumitama of seizing his village's land. The company accused him of embezzlement, and he was arrested in 2016. He spent six months in the Pangkalan Bun jail before a judge determined that there was no evidence to hold him and dismissed the charges.

Members of the Wehea Dayak tribe walking past a palm-oil tanker during an initiation ceremony in East Kalimantan. Ashley Gilbertson/VII, for The New York Times

The palm companies keep getting stronger. In 2014, Indonesia's highest judge and three associates were convicted in a huge bribery scandal that journalists have linked to palm land deals in Borneo. A few years later, a Kalimantan governor was caught granting palm concessions to family members, who flipped them back to the companies that paid for his election. Stories of corruption, and threats to keep it quiet, were legion. I was reminded of the threats that Suhadi had described — a series of anonymous phone calls and an intimidating run-in at a market in Jakarta. Suhadi went dark for several weeks as a result — hiding out in a friend's house outside the city. His fear was justified. In 2015, one of Suhadi's colleagues was stabbed to death outside a Jakarta nightclub in a case that news reports speculated was linked to his environmental work, and Global Witness has counted at least eight assassinations of Indonesian environmentalists fighting palm oil.

Gelambong drove us out of downtown that afternoon, to the ramshackle waterfront port of Kumai. There, he turned us over to a boat pilot, and we squeezed into a tiny wedge of wood and fiberglass with a large outboard engine. We motored past derelict anchored ocean tankers, toward the entrance to Tanjung Puting National Park.

Tanjung Puting is one of Indonesia's most protected and beloved landscapes, rimmed by mangrove swamps around a core of heath forests that are home to orangutans, proboscis monkeys, clouded leopards and sun bears, as well as some 230 species of birds. Its 1,100 square miles of peatland bogs are one of the last remnants of an ecosystem that used to dominate the southern coast of Borneo; Gelambong said its peatland bogs once stretched most of the way from here to Kotawaringin, two hours by truck. Ecotourists come from around the world to see what remains of them, cruising the Sekonyer River on private *klotoks*, long wooden ships outfitted with netted open-air bedrooms.

The exception to the devastation of South Kalimantan is supposed to be the national parks. But the parks are not safe, either. As our boat cruised out the mouth of the Kumai River, a teacup skipping over the white caps into the open sea, our guide, Fajar Dewanto, warned us that a large part of the park was threatened by palm development. Dewanto works for Orangutan Foundation International, a group that has resettled many of the more than 5,000 orangutans here in the park. But because it's the widespread conversion of the land to monoculture plantations that threatens the orangutan habitat, Dewanto has also become a de facto park ranger, policing the forest where officials don't have enough staff, or willingness, to do it themselves.

A week before our arrival, Dewanto's team found the rigid body of an orangutan, half buried under a fallen log next to a scar of freshly cut forest in a peat bog being razed for a new palm plantation. They turned the orangutan over. It was riddled with bullet holes to the chest, arm and thigh. As more than a dozen police officers and wildlife experts established a crime scene, an excavator continued ripping down trees on the peat bog behind them, unwilling to lose even a day of progress.

Dewanto couldn't get the scene out of his head. As our boat rounded a small point of mangroves toward a little-visited swatch of parkland, he wasn't sure what he would find. Our captain slowed the motor and turned into a small tributary crowded with nipa, a stalky canelike plant that is a food staple for native people here, and from there we navigated into a recently dredged canal no wider than 10 feet. Dewanto had been here one month earlier and seen forest. Now the forest was gone.

This level of deforestation on protected peatland supposedly wasn't happening anymore. In Jakarta, a string of officials — from the government palm-oil agency, the Ministry of Maritime Affairs, the palm-industry association, the Peatland Restoration Agency — all denied to me that peat deforestation in Kalimantan still took place. Uniformly, they insisted that Indonesia had learned its lesson and solved its palm-oil problem, that peatland bans were in full force. Restoration was even underway, they claimed, painting a picture of a palm industry on a sustainable path — farming only on dry land and focused on increasing yields, not expanding footprints.

But where we stood, a broad expanse had been laid bare, the splinters of wood still so fresh they were pungent, crisscrossed by deep pools of black, boggy water. About a mile back, the tree line marked the new edge of Tanjung Puting National Park, a threshold protecting the largest population of orangutans left in the world. Beside an idle excavator, 24-inch tufts of baby palms had been set in rows, the mound of dirt around their base still fresh from planting. Dewanto wasn't particularly surprised to find the devastation. "This is every day in Borneo," he said.

Timothy Searchinger, a research scholar at Princeton University, teaching a class on global land-use challenges. Ashley Gilbertson/VII, for The New York Times

In government documents from 2011, this field was mapped not only as protected peatland but also as part of the national park. When the Walhi group visited during the fires of 2015, the forest was still protected. Records show, however, that a nearby village petitioned the Indonesian Ministry of Environment and Forestry to carve the plantation out of the park, and this allowed Bumitama, which farms there along with the village, to expand its operation. The government agreed. The park got smaller.

A few days later, we drove north, 20 hours on punishing mountain roads, toward the Malaysian border and the West Kalimantan district of Sintang. There, a meeting was planned with the local county governor, or *bupati*, to discuss a similar situation.

North of Sintang, a grim commercial town of concrete and rebar at a fork in the Kapuas River, two palm plantations were being developed on peatland bogs. These plantations, too, were located on tracts that Indonesian government maps had at one time explicitly labeled protected peatland, which should have placed them under the moratorium on palm development. The maps had since been changed. Yet there was no mistaking that this was peatland: Paths submerged into black goop, teams of dragonflies swarmed over the hot water, reeds and forest grew from their depths. And here came a flatbed truck, carrying an excavator toward the entrance gate, where a guard in a neatly pressed dark blue uniform turned away visitors.

The permits named two obscure companies, but a villager at the gate told us that he thought both plantations were run by the same company and that it had been clearing the forest for months. It's not uncommon for Indonesian companies to use layers of subsidiaries to hide their connections to illegal palm operations. "We call them shadow companies," said Eric Wakker, a founder of Aidenvironment Asia, an environmental consultancy that has investigated the two plantations. Upon further scrutiny, it appeared that the two companies may indeed have been linked to the Salim Group. They shared a business address with a Salim subsidiary in Jakarta and employed the same plantation managers in Kalimantan. Salim was also a buyer of the palm that would come from the Sintang plantations.

The connection matters because the Salim Group has benefited from more than $1.5 billion in loans and capital from foreign investors, including the American firms BlackRock and Vanguard, and Salim companies have pledged that their palm oil is not a product of recent deforestation or peatland destruction. Satellite images from 2017 confirmed that the forests on the Sintang plantations were now virtually gone. (A Salim Group executive, Mark Wakeford, declined to comment about the Sintang companies.)

At the *bupati*'s house, an elegant, 19th-century Dutch-built compound bursting with tropical flowers, I pressed him to explain how these peatland forests could be cut down when the government insisted that such land clearing had stopped. The *bupati*, a doctor named Jarot, had moved to Borneo from Java and had developed a local reputation as a conservationist. He greeted us jovially, barefoot and dressed in bluejeans and a crisp, untucked blue button-down shirt. He said the rural districts must balance economic growth with sustainability, and while he has pledged to control corruption and illegal permits, he also described himself as helpless against the currents of a central government that is close to the big corporations and constantly changes both the rules and the playing field. United Nations forest programs pay communities to leave their trees in the ground. Such funding would help him strike a better balance here, he said, casually shrugging off the plantation case I asked about. "We do what we can do," Jarot said. "We cannot do it by ourselves. ... We need a fiscal incentive."

An aide offered a more nuanced explanation. The phrases "peatland" and "forest" have distinct legal meanings in Indonesia, he claimed; not all treed areas are forests, and not all peat-filled bogs are peatland. In the strictest legal sense, he was correct. The Sintang regency alone, according to Indonesian government estimates, contains more than 160,000 acres of old-growth, heavily treed land that it has not designated as "forest" under the law and more than 86,000 acres of nondesignated peatland. After a request from the companies, the government maps for Sintang were revised to change the peatland borders. New maps show the bog boundaries tracing perfect 90-degree angles and straight lines — lines that happen to match the boundaries of the companies' land holdings. How do you account for such details in a life-cycle analysis?

7. 'It Was a Mistake'

This September, with late-season heat pounding Washington, Zenzi Suhadi cleared security at the Russell Senate Office Building, preparing to brief Senate aides about the impact that palm-oil development was having on Indonesia's environment. I asked if he was nervous, and he said no. "These are just people. I don't have to face any tigers." He didn't seem to be joking.

Henry Waxman, a longtime member of the House of Representatives and former chairman of the Energy and Commerce Committee.

Ashley Gilbertson/VII, for The New York Times

Suhadi wanted to tell the lawmakers the same thing he told them in two previous visits to Capitol Hill: that the palm trade, driven by American investment, is slowly killing his country. "It's important for you to understand that all acts of deforestation in Indonesia start with a signature," he said. "And more than a little of it starts right here." He was not confident that he would be heard — the last time he visited Washington, lawmakers chewed up their time asking him about water buffalo in his village. But still he felt compelled to speak.

From Washington, Suhadi traveled to San Francisco to attend a climate march and address a group of hedge-fund investors. Just down the street, Michael Bloomberg implored strong immediate action on emissions reductions at the Global Climate Action Summit, one of the nation's largest gatherings on climate goals. But the conference was light on substance when it came to the subject of forests. There was scarcely any mention of peatland at all.

When Nancy Pelosi took the stage, she looked back on the 2007 fuel-economy bill and biofuels mandate she shepherded into law. The initiative should be credited, she said, with "charting a new path to clean energy, reducing emissions, increasing the use of renewables." She made no mention of Indonesia. When I asked her about the deforestation in an earlier email, her office wrote back defending the bill, citing the Union of Concerned Scientists and arguing that even with the Indonesian forest effect accounted for, biodiesels were cleaner than fossil fuels. "Bottom line," the office responded, "the biofuels in your tank are better for the planet than 100 percent fossil fuels."

Henry Waxman, of course, doesn't agree. He said Congress was so focused on domestic climate policy that it failed to see the repercussions of those policies around the world — repercussions that now seem obvious. "We've created a situation that is so contrary to what we had hoped for," he said. "We're doing more harm to the environment. It was a mistake."

The advanced cellulosic-biofuels program that once seemed so promising has been a failure. It never attracted the investment it needed, and the E.P.A. has allowed biodiesel to serve as a substitute in meeting the mandate. President Trump has wandered into the renewable-fuels-standard debate, too, and found himself caught in a thicket, at one moment poised to reform the fuel standard completely and the very next snagged by the interest of a powerful agriculture industry grown accustomed to its enormous benefit. The result is likely to be at least a near-term doubling down on American biofuels use, no matter the cost.

It may no longer be possible to slow the momentum behind Indonesia's palm markets. Sitting in the lavish dining room of the Mandarin Oriental hotel in Jakarta in July, over an awkward meal of mushroom consommé and blanched scallops, officials from Indonesia's Palm Oil Development Fund made a case for their industry. I asked how important the American biofuels mandate has been, given that other countries buy more Indonesian palm oil than Americans do. The answer was unequivocal: It's what got Indonesian palm off the ground. "The U.S. is not only a market," said Ruddy Gobel, the chief political adviser to the director. "It also sets the global agenda." Now, according to the Indonesian development officials, 80 million Indonesians depend economically on palm oil, and nearly half the industry consists of individual landowners like the people in Kotawaringin. "If you pull out biofuel, the whole system will collapse," said Dono Boestami, the fund's director.

In perhaps the final turn of the life cycle, Indonesia is now working to become its own largest customer. In 2016, it instituted a 20 percent biofuels mandate for its domestic fuels, and this August, it extended that mandate to cover railways and power generation too. Then it upped the pressure further, simply making it compulsory that Indonesians buy and use biodiesel. Officials offer a simple justification for this push: Under the Paris climate accord, they say, converting Indonesia to renewable fuels is the only way the country can meet its own climate goals.

The central problem, of course, is that the goals of Paris — slowing planetary warming just enough to allow humans time to adapt to excruciating and inevitable changes, including flooding coastlines, stronger hurricanes and perpetual famine and drought — are unlikely to ever be achieved without stopping deforestation. The planet's forests have the potential to sequester as much as a third of the carbon in the air. Right now deforestation globally contributes 15 percent of the planet's total emissions, the same as all the cars and trucks and trains across the globe. On paper, biodiesel is a way to make all those modes of transportation produce less carbon. But in the world as it is, that calculation is far more likely to lead to catastrophe.

Testimony for
Acting Assistant Administrator for the Office of Air and Radiation Anne L. Idsal,
U.S. Environmental Protection Agency
Before the Subcommittee on Environment and Climate Change
U.S. House of Representatives Energy and Commerce Committee
on *H.R. 3006 Renewable Fuel Standard Integrity Act of 2019*

October 29, 2019

Chairman Tonko, Ranking Member Shimkus, and Members of the Subcommittee: thank you for the opportunity to offer comments today on the *Renewable Fuel Standard (RFS) Integrity Act of 2019* discussion draft. The Administration does not have an official position on this draft. The new requirements that the legislation would impose include (1) setting a date certain by which petitions for small refinery exemptions must be submitted, and (2) specifying that information submitted in conjunction with a small refinery petition shall not be considered Confidential Business Information.

As you know, in the RFS program, Congress established exemptions from RFS volume obligations for small refineries (statutorily defined as refineries with an average aggregated daily crude oil throughput of 75,000 barrels per day or less). The statute provided an automatic exemption for all small refineries through 2010. After 2010, the statute provided that those small refineries could also receive an extension of the exemption for not less than two years following a small refinery study by the Department of Energy (DOE), should DOE determine that the requirements of the RFS program impose a disproportionate economic hardship on small refineries. In March 2011, DOE issued such a study that determined that such hardship existed for certain of these small refineries that were evaluated.

As such, beginning in 2013 and thereafter, refineries had the option of petitioning EPA for an extension of the exemption for a subsequent compliance year. EPA makes a threshold determination whether the applicant is eligible for consideration under the statute. Should EPA so determine, EPA then refers the petition to DOE. Thereafter, DOE provides EPA with a recommendation for relief, based on application of a scoring matrix. This matrix quantifies specific factors that DOE determines may indicate disproportionate economic hardship. Next, DOE provides EPA the completed matrix scored for each facility, along with DOE's recommendation. In those circumstances where the Administrator of EPA determines that disproportionate economic hardship would be imposed on a given small refinery that has petitioned for relief, the Administrator is directed by Congress to grant such relief.

In fact, Congress directed the agency, in consultation with the DOE, to grant hardship relief to small refineries if compliance with the RFS would impose a disproportionate economic hardship. Congress provided direction to the agency in the Conference Report to accompany the Fiscal Year 2019 Consolidated Appropriations Act, which appeared originally in Senate Report 114-281 (2017).

The following is the relevant language from that Report:

> *Small Refinery Relief.--Congress directed the Agency, in consultation with the Department of Energy [DOE], to grant hardship relief to small refineries if compliance with the Renewable Fuel Standard [RFS] would impose a disproportionate economic hardship. In response to several recent petitions, the Agency determined that compliance with the RFS would have a disproportionate economic impact on a small refinery, but denied hardship relief because the small refinery remained profitable notwithstanding the disproportionate economic impact. This is inconsistent with congressional intent because the statute does not contemplate that a small refinery would only be able to obtain an exemption by showing that the RFS program threatens its viability. Congress explicitly authorized the Agency to grant small refinery hardship relief to ensure that small refineries remain both competitive and profitable. In the intensely competitive transportation fuels market, small entities cannot remain competitive and profitable if they face disproportionate structural or economic metrics such as limitations on access to capital, lack of other business lines, disproportionate production of diesel fuel, or other site specific factors identified in DOE's original 2011 Small Refinery Exemption Study prepared for Congress. When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.*

Previously, the agency had determined that compliance with the RFS would have a disproportionate economic impact on a small refinery but still denied hardship relief because the small refinery remained profitable notwithstanding the disproportionate economic impact. This is inconsistent with congressional intent because the statute does not contemplate that a small refinery would only be able to obtain an exemption by showing that the RFS program threatens its viability. In 2017, the Tenth Circuit held that EPA had inappropriately denied an exemption for a small refinery. *Sinclair Wyoming Refining Co.*, 887 F.3d 986 (10th Cir. 2017). The court held that EPA had "exceeded its statutory authority … by interpreting the hardship exemption to require a threat to a refinery's survival as an ongoing operation." *Id.* at 988.

Most applicants claim their petition, all supporting information, and EPA's decision on that petition as Confidential Business Information (CBI). Until EPA (or a court) makes a final determination on that CBI claim, the agency's regulations require it to treat the information as CBI. Accordingly, under its regulations, EPA does not release information regarding small refinery petitions to third parties. EPA does, however, post and regularly updates aggregated information about small refinery exemption petitions and decisions on its RFS data website (commonly referred to as the "dashboard"). EPA established this dashboard in Fall 2018 in order

to promote transparency and to provide equal access to information regarding the Renewable Identification Number (RIN) market. The dashboard informs the public of the aggregate number of those exemption petitions that EPA has received, approved, and denied for each compliance year, along with the aggregate number of volumes and associated RINs exempted. The dashboard also provides information as to the recent weekly average price and volume of RINs traded.

EPA appreciates the invitation to offer this statement.



September 10, 2019

The Honorable Deb Fischer
454 Russell Senate Office Building
Washington, DC 20510

The Honorable Tammy Duckworth
524 Hart Senate Office Building
Washington, DC 20510

The Honorable Collin Peterson
2204 Rayburn House Office Building
Washington, DC 20515

The Honorable Dusty Johnson
1508 Longworth House Office Building
Washington, DC 20515

Dear Senators Fischer and Duckworth, and Representatives Peterson and Johnson:

Our organizations write in support of the Renewable Fuels Standard (RFS) Integrity Act, introduced in the Senate as S.1840 and the House as H.R.3006. This legislation brings urgently needed reforms to the Environmental Protection Agency's (EPA) process for issuing small refinery exemptions (SREs) under the RFS.

Together, our associations represent mostly small, family-owned and operated businesses across the Northeast that deliver safe, efficient and reliable home heating oil to five million American homes and businesses each winter. That is approximately one-quarter of the region's space heating market. Many of our members now deliver renewable liquid heating fuels including Bioheat Fuel®, a blend of biodiesel and conventional heating oil.[i] These fuels provide our small Main Street businesses and their customers with an environmentally superior product that can be utilized without the frustration and high costs associated with fuel switching and full heating system conversions. Rigorous studies have shown that even modest blends of biodiesel and ultra-low sulfur heating oil can reduce greenhouse gas emissions to levels equal to or lower than competing fuels, including natural gas.[ii]

Existing heating systems can safely utilize biodiesel blends of up-to 20-percent (B20) with little-to-no modification.[iii] Retailers delivering this fuel report improved heating system performance and longevity, and reduced instances of service and maintenance calls. The National Oilheat Research Alliance (NORA) is working with the biodiesel industry to clear the way for widespread use of 50-percent (B50) blends by 2030. This is estimated to reduce greenhouse gas emissions by 40-percent compared to conventional heating oil.[iv]

State policymakers across the Northeast recognize the important role of renewable liquid heating fuels in meeting environmental policy and regional energy security objectives. New York and Rhode Island currently require the sale and use of biodiesel-blended heating oil.[v] The Commonwealth of Massachusetts allows blends of 10 percent or higher to generate credits under its renewable electricity (or portfolio) standard. Connecticut is working to implement a similar program and several other states are considering their own policies to encourage the sale and use of renewable liquid heating fuels.

Growing demand for biodiesel in the heating oil market also supports American farmers. The space heating market provides feedstock growers and biodiesel producers demand for their product during the off-season for on-highway biodiesel, which peaks in the summer. According to the National Biodiesel Board (NBB), the biodiesel industry supports 64,000 jobs, $11.42 billion in economic impact, and $2.54 billion in wages paid. The National Oilheat Research Alliance estimates that almost 18-percent of these benefits can be attributed to the growing demand for biodiesel in the heating oil market.[vi] This translates to 11,500 jobs, $2 billion in economic impact, and $450 million in wages paid.

Widespread use of renewable liquid heating fuels across the Northeast requires hundreds-of-millions of gallons of biodiesel and other advanced biofuels. Around 2 billion gallons will be required annually to supplant 50% of the region's heating oil demand. The advanced biofuels industry is still relatively nascent, however, especially in the Northeast. Continued support from federal lawmakers is needed to ensure future growth in this market. It is therefore essential that Congress and the Administration maintain and strengthen the Renewable Fuels Standard and other policies that help achieve these goals.

We therefore commend you for the introduction of the RFS Integrity Act of 2019. This legislation (S.1840 and H.R.3006) proposes urgent reforms to certain provisions of the RFS program. Specifically, this legislation brings long-overdue transparency to the process by which the EPA grants waivers from RFS requirements. These waivers, known as small refinery exemptions (SREs), wholly waive an obligated party's requirement to blend mandated volumes of biofuels into their fuel supply or purchase renewable fuel credits, known as "RINs," in order to fulfill these obligations.

SREs were intended for limited use and only as a last resort for very small refineries experiencing significant and tangible hardship. Unfortunately, the EPA has decided to dramatically increase the number of SREs from just 7 in 2015 to a total of 85 between 2016 and 2018. Since this dramatic increase, biofuel RIN values have tanked to all-time lows. This is harming parties across the nation and value chain, including American farmers growing feedstocks to support the biofuels industry. It is creating uncertainty for biodiesel and renewable diesel producers, blenders, and marketers, all of whom work diligently to comply with RFS requirements and have invested billions of dollars in renewable fuels and related technology and infrastructure. Above all, it sends the wrong signal to consumers, who are ultimately left holding the bag and paying the price for these fuels.

According to economist Scott Irwin of the University of Illinois, while all biofuels are impacted by the dramatic increase of SREs, most of the demand destruction is falling on biodiesel and renewable diesel. Dr. Irwin estimates economic damages totaling $7.7 billion, or 2.54 billion gallons of biomass-based diesel.[vii] This economic harm threatens to decrease overall use of renewable fuels, increase greenhouse gas emissions, reduce consumer choice, and diminish competitiveness for our small family businesses.

These challenges are further exacerbated by the delayed reinstatement of the biodiesel and renewable diesel tax credit, which has now lapsed for a record 20 months. Our organizations have repeatedly called for the immediate passage of legislation to retroactively extend this important tax credit. We appreciate your continued support on this front as well.

Biodiesel and other advanced biofuels are helping to reduce emissions for millions of homes that rely on heating oil for daily warmth and comfort. These renewable liquid heating fuels provide policymakers in cold weather states an immediate option for reducing greenhouse gas emissions while also supporting small businesses, local economic growth, and America's farmers and environmental entrepreneurs. As mentioned, robust and effective federal policies are essential in achieving these goals.

Thank you again for your ongoing efforts and continued support.

Sincerely,

American Energy Coalition
Berks-Schuylkill Oil Heat Association
Better Home Heat Council of Lehigh Valley
Connecticut Energy Marketers Association
Delaware Valley Fuel Dealers Association
Energy Marketers Association of New Hampshire
Maine Energy Marketers Association
Massachusetts Energy Marketers Association
National Association of Oil & Energy Service Professionals
New England Fuel Institute
New York Oil Heating Association
Northeast Pennsylvania Energy Marketers Association
Oil Heat Institute of Long Island
Oil Heat Institute of Rhode Island
South Central Pennsylvania Energy Association
Vermont Fuel Dealers Association

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[i] Bioheat Fuel is a registered trademark of the National Biodiesel Board (NBB). Information at www.mybioheat.com.

[ii] Entropy Research LLC, *Analysis of Fuel Cycle Energy Use and Greenhouse Gas Emissions from Residential Heating Boilers,* developed for and submitted to the National Oilheat Research Alliance, June 2018, p. xii and xi.

[iii] See studies by the National Oilheat Research Alliance (NORA) and Brookhaven National Laboratory. The American Society for Testing and Materials now recognizes up-to 20 percent biodiesel blends in its Specification for Fuel Oils (D396-18a). Some heating systems may require minor, low cost modifications in order to utilize biodiesel blends above five percent.

[iv] Based on average reductions in greenhouse gas emissions for biodiesel according to the National Biodiesel Board.

[v] The state of Rhode Island requires a five-percent blend in all heating oil sold in the state effective July 1, 2017 (see 23 RIGL §23-23.7); and New York City effective October 1, 2017 (see NYC Admin. Code §24-168.1). New York City plans to phase-in of a 20-percent blend requirement for heating oil by October 2034. Under a 2018 law, the New York requires a five-percent biodiesel-blend for heating oil in Nassau, Suffolk and Westchester counties (see N.Y. ENV §19-0327).

[vi] *NORA Biofuel Report to Congress,* May 31, 2015, p.15.

[vii] Irwin, S., "Small Refinery Exemptions and Biomass-Based Diesel Demand Destruction," *farmdoc daily* (9):45, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, March 14, 2019.

Subcommittee on Environment and Climate Change
Hearing on
"Building a 100 Percent Clean Economy: Solutions for Planes, Trains and Everything Beyond Automobiles"
October 23, 2019

Mr. Chet Thompson
President and CEO
American Fuel & Petrochemical Manufacturers

The Honorable John Shimkus (R-IL)

1. Under the Clean Air Act, a "disproportionate economic hardship" is not a defined term and in order to obtain an exemption for a "disproportionate economic hardship," EPA needs to determine, after consultation with other Federal agencies, whether a "disproportionate economic hardship" will occur to a refinery if it must pay for enough renewable identification numbers to attain compliance.

    a. What do you think should be the definition of a "disproportionate economic hardship"?

AFPM does not take positions on the merits of individual small refinery exemption requests. As a general matter, however, the plain text of the statute indicates that an exemption must be granted in instances where complying with the RFS will disproportionately harm a small refinery. That hardship may arise from a variety of factors as DOE's current test recognizes.

    b. Are you concerned that EPA has too much discretion or the Energy Department will use an inappropriate or inconsistent definition from year to year on what constitutes a "disproportionate economic hardship"?

The Clean Air Act is clear that EPA has a non-discretionary duty to grant small refinery exemptions whenever such a disproportionate hardship showing is made. The courts have also provided guidance to EPA that has further clarified its discretion. It would be difficult for Congress to adopt a definition that addresses the myriad factors impacting small refineries and eliminate the need for EPA to exercise some level of discretion.

2. Do you agree with this statement in the Joint Explanatory Statement for the Consolidated Appropriations Act, 2016?

    "the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program. Small refinery profitability does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority, in consultation with the Secretary, to reduce or eliminate this burden."

a. Why or why not?

AFPM agrees with the above statement. Profitability does not completely address whether a refinery is experiencing disproportionate economic harm.

3. In 2017 and 2018, EPA lost legal cases involving decisions it made to reject small refinery exemptions. In the 10th Circuit (Sinclair Wyoming v. EPA) and the 4th Circuit (Ergon-West Virginia v. EPA) the courts ruled EPA too narrowly construed what constituted a "disproportionate economic hardship", ignored the financial impact of Renewable Identification Numbers on the refinery, and relied too heavily on a deficient Energy Department economic hardship analysis to deny the exemption application.

    a. How much do you think these two decisions have influenced EPA waiver responses in the last two years, including the recent granting of 31 waiver requests and EPA's waiver policy?

AFPM is not privy to EPA's internal deliberations about individual refinery exemptions so it cannot speculate on the weight EPA officials have given recent decisions.

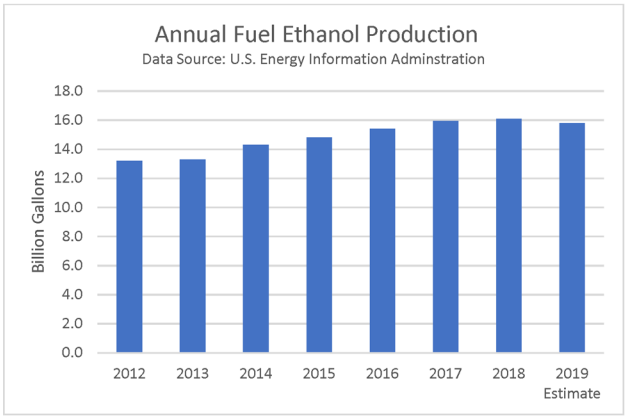
    b. Should Congress create a statutory definition of "disproportionate economic hardship" to avoid continued legal action on this front?

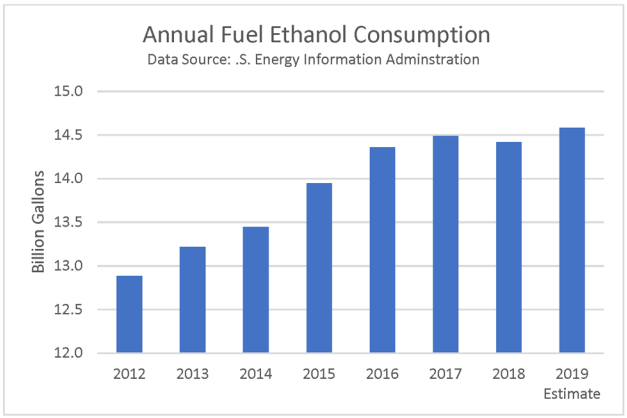
AFPM does not believe further legislative changes to the small refinery program are needed. While creating a more precise definition may increase clarity, it would give rise to further unintended consequences and likely associated litigation. More importantly, it would not address the underlying issues with the RFS that give rise to the need for small refinery exemptions (and broad programmatic waivers) to begin with. Rather, Congress should continue exploring legislative reforms to the program, including transitioning away from RFS volume mandates to a 95-RON octane performance standard.

4. I want to ask you about demand destruction and decreased Renewable Volume Obligations in 2017 and 2018 – decreasing the amount of ethanol being purchased.

    a. Has the actual amount of ethanol being produced decreased at all?

EIA data show that the U.S. ethanol production were record highs in 2017 and 2018, reaching 15.9 and 16.1 billion gallons, respectively. Although the EIA estimates that production may have dipped slightly in 2019, EIA estimates that U.S. consumption reached a record high of 14.6 billion gallons in 2019. We believe that this data demonstrates that the dip in production was largely due to the decline in exports driven by trade policy. The U.S. ethanol industry remains the largest and most efficient biofuels industry in the world.



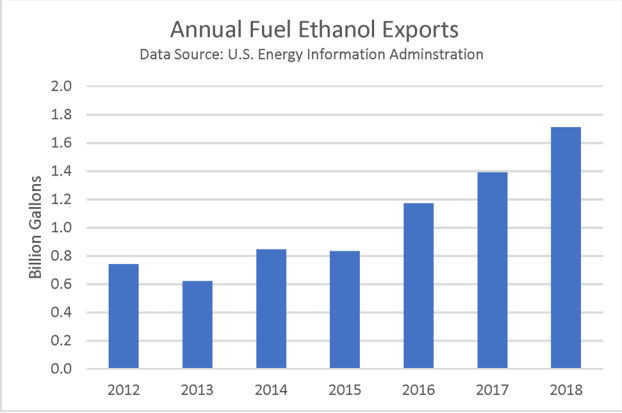


Annual Fuel Ethanol Production	
	Billion gallons
2012	13.2
2013	13.3
2014	14.3
2015	14.8

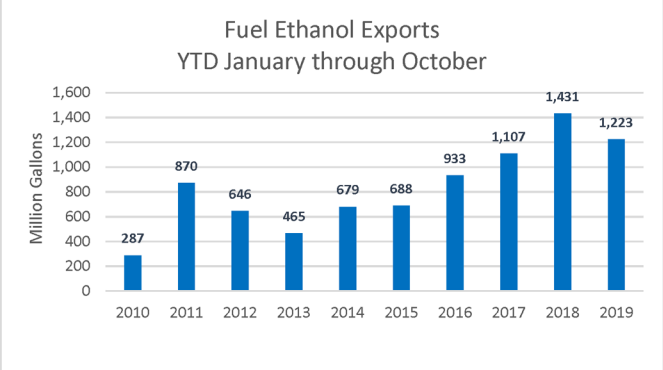
2016	15.4
2017	15.9
2018	16.1
2019	15.8 (estimate)

b. I understand the U.S. has exported record numbers of gallons of ethanol? Is that true? Where is this ethanol going?

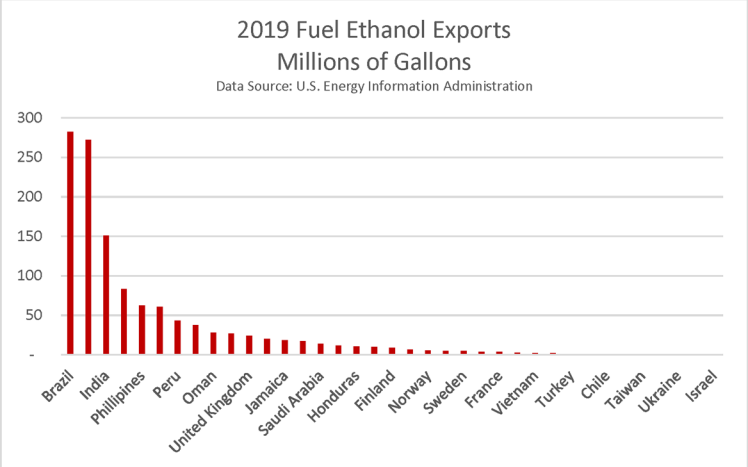
The U.S. has continued to increase ethanol exports for the past decade. The industry exported a record 1.72 billion gallons in 2018, more than double the exports just 3 years earlier and quadruple the volume of exports since 2010.



In 2019, there was a decline in exports, especially to China. In fact, fuel ethanol exports to China stopped after March 2018. Full year fuel ethanol export data for 2019 is not yet available; however, 2019 exports through October were almost 15% lower than 2018.



The following is the list of importing countries and volumes for 2019.



c. Can the blend wall be overcome without additional investments in infrastructure being made?

RESPONSE:

Substantially increasing the volume of ethanol in the gasoline supply would require significant investment and time, including, among other things, refueling infrastructure replacement, and

changes to state fuel regulations. The ethanol blend wall refers to a point at which the domestic gasoline pool contains the maximum amount of ethanol that vehicles and retail infrastructure can accommodate. Generally, the percentage is approximately 10 percent, but the precise number is a function of compatibility between vehicles designed and warrantied to run on blends exceeding 10 percent, the associated retail infrastructure, and consumer choice.

Moreover, E15 is prohibited in California and a handful of other states, representing a significant portion of U.S. gasoline demand. On the vehicle front, only a minority of the vehicles on the road today are compatible with E15, according to the vehicles' owners manuals. These are major obstacles to overcome.

Additional retail investment and auto fleet turnover could increase the proportion of E15 in the market, but it is critical to understand that the EIA also projects declining gasoline consumption in the coming years. In fact, according to the latest Short Term Energy Outlook (January 2020), an E10 baseline will only be 14.1 billion gallons of ethanol in 2021, but EIA projects 14.6 billion gallons of ethanol consumption – a 10.2% blend rate. Therefore, it is increasingly unlikely that the U.S. will meet the 15 billion gallon conventional biofuel target using only ethanol, even with aggressive growth in E15. In spite of EPA's recent authorization of year-round E15 sales in certain vehicles, this fuel blend comprises less than 1 percent of gasoline sales. In fact, to meet the 15 billion gallon conventional target with ethanol, retail stations would need to increase from 1,400 to ~40,000 and E15 market share would need to grow from less than 1 percent to approximately 12 percent of sales. E15 is not the solution to increased domestic ethanol production.

If not, isn't the RFS in need of reform to address this issue at a minimum?

RESPONSE:

The RFS is in critical need of reform for many reasons. AFPM continues to believe that, if done properly, a transition from the RFS to a 95 RON octane standard would be a better policy for consumers, ethanol producers, refiners, automakers, and the environment.

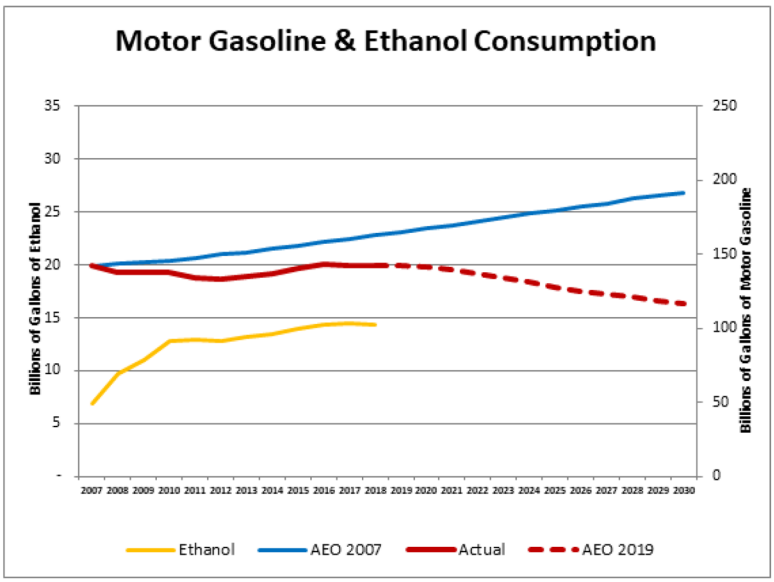
5. What role do the overall markets for your product play regarding the issue of demand destruction?

As stated in AFPM's October 2019 testimony, there has been no demonstrated domestic demand destruction for ethanol resulting from small refinery exemptions. In fact, according to the latest EIA data, which includes data through October 2019, the U.S. consumed a record amount of ethanol in 2019 despite small refinery exemptions. Ethanol remains an economic blending component with a federal mandate, and the U.S. liquid fuels infrastructure has been adapted for E10. AFPM's members primarily produce "blendstocks for oxygenated blending" or "BOBs." These BOBs are formulated for shipment to blending terminals (or "racks") before they are blended with ethanol, many of which are at the end of thousands of miles of common carrier pipelines. The small refinery exemptions reduce compliance obligations, but not physical blending.

Ethanol is a critical product in modern fuels, and demand for the product will largely rise and fall with overall demand for finished gasoline. In this way, markets play a critical role in how much gasoline and ethanol will be consumed. In fact, this is one of the critical factors in making the current RFS volumes unworkable. At the time of enactment of the Energy Independence and Security Act (EISA) gasoline in 2020. In that scenario, the entire 15 billion gallon conventional mandate could be fulfilled with ethanol, at an implied blend rate of 8.9 percent. Instead, the U.S. is now projected to consume only 143 billion gallons of gasoline this year-15 billion gallons of ethanol would imply a blend rate of 10.5 percent- well above the E10 blendwall.

Critically, overall ethanol demand – and thus plant profitability – is also driven by export markets. This is not dissimilar from the refining industry as domestic fuel demand declines. Therefore, market access and trade policy are critical factors in the long-term health of both the refining and biofuel industries.

Gasoline Consumption Forecast Billion Gallons	**2019**	**2020**
AEO 2007	165.2	168.0
AEO 2019	142.9	142.0
STEO January 2020	142.6	142.8
AEO 2019 vs AEO 2007	-22.3	-26.0
% Change	-14%	-15%
STEO vs AEO 2007	-22.6	-25.3
% Change	-14%	-15%



a. If more than the RFS comes into play, why are you only focusing on this issue?

AFPM has long focused on many issues within the RFS and recommended various reforms to improve functioning of the program and to better align the statute with market realities. For example, AFPM testified twice in 2018 recommending that Congress pursue a transition from the RFS to a 95-RON octane performance standard. AFPM has also endorsed legislation that recognizes the E10 blendwall and compels EPA to set advanced biofuel standards based on demonstrated actual production. Small refinery exemptions are only one facet of this complicated program.

6. As I understand it, one way to look at the existing Renewable Volume Obligation proposal is that higher numbers are being proposed, but based on historical exemptions, the expectation is that the number of gallons of renewable fuel produced should work out to guarantee the 15 billion gallons of conventional ethanol normally expected.

    a. RFS required ethanol production has been flat for several years, if the math works out to ensure you are still selling the same amount; what is the concern?

Conventional ethanol has never reached 15 billion gallons consumed in the U.S. In EPA's final rule promulgating the 2020 renewable volume obligations, the Agency finalized its proposal to

prospectively reallocate volumes from small refinery exemptions, using a formula to estimate the average exempted volume using a 3-year average of the DOE recommendations. AFPM strongly opposes EPA's action to reallocate exempted requirements. The fact remains that there has been no demonstrated demand destruction for ethanol as a result of small refinery waivers. Rather because of the aggressive volume targets and blend wall, EPA's final rule will in all likelihood merely force a draw-down the Renewable Identification Number bank and lead to additional volumes of imported biodiesel.

b. In your opinion, is the RFS meant to guarantee a minimum amount of sales of renewable fuel or a minimum level of income from the sales of that fuel?

The RFS sets overall goals for a minimum volume of renewable fuel within the four statutory categories, with various waiver authorities available to EPA to help balance those statutory goals with economic, environmental, and other market realities. In providing several waiver authorities, Congress clearly did not intend for the volumetric targets to be immovable. Rather, they are part of a broader statutory framework that recognized there would be unforeseen challenges and impacts from the program that should be addressed through the waiver provisions. As stated above, policymakers were working from assumptions about gasoline demand that have proven to be wrong. The existence and use of these waiver authorities is more critical now that even anticipated when the EISA was enacted.

7. EPA has claimed that not granting partial waivers is the best way to read the law.

a. Do you agree with this interpretation?

EPA changed its interpretation of this provision in the final 2020 renewable volume obligations rule. AFPM is still evaluating EPA's new interpretation with its membership.

b. What deference should EPA give for waiver consideration to the Explanatory Statement of Managers from the 2016 Consolidated Appropriations Act?

The referenced 2016 appropriations language was not directed towards EPA. Rather, it directed DOE to provide a recommendation for a 50 percent waiver in certain circumstances and reminded DOE that the statutory framework does not allow DOE to only consider profitability. EPA's waiver decision may be informed by DOE's recommendation, but it may not "blindly adopt the conclusions," as the court held in Ergon-W. Va., Inc. v. EPA, 896 F.3d 600 (4th Cir. 2018).

c. What deference should EPA apply from the court cases in 2017 and 2018 on this issue?

EPA should follow the law as interpreted by the courts consistent with their jurisdiction. AFPM is confident that EPA and DOE will apply all relevant court decisions when issuing a decision on small refinery waiver petitions.

d. I understand EPA has conceded this is not the only way to read the law. Is there a better way to read the law and why?

EPA changed its interpretation of this provision in the final 2020 renewable volume obligations rule. AFPM is still evaluating EPA's new interpretation with its membership.

8. A central focus of the hearing this morning concerns the EPA's issuance of the small refinery exemptions (SREs) for the 2018 compliance year. Am I correct that when Congress established the RFS program in 2005 and modified in it 2007, it exempted small refineries through the 2010 compliance year for the standard?

Congress exempted all small refineries through 2010, which was automatically extended through 2012 based on the results of the Department of Energy Small Refinery Study. Beginning in 2013, small refineries were permitted to petition for an extension of those exemptions "at any time."

a. Congress recognized that the RFS program might disproportionately harm small refineries because they lacked the inherent scale advantages of large refineries, is that correct?

Congress recognized there may be many aspects of the RFS that may cause disproportionate economic harm to small refineries. In the DOE Small Refinery Exemption Study (2011), DOE identified the lack of integration with upstream and downstream operations and loss of working capital to purchase RINs, among other factors, as potential factors that may disproportionately harm small refineries. Many of these factors are considered in the DOE matrix when evaluating waiver petitions.

b. And since the automatic exemption in the law expired after 2010, small refineries have had to petition the EPA for exemptions, as required by Congress, correct?

The automatic exemption was extended through 2012 as required under the statute. Small refineries have petitioned for annual relief since the 2013 compliance year.

c. Regarding transparency: When refiners petition for waivers, do they supply confidential business information—the release of which would harm them competitively?

AFPM is not privy to the actual data its members submit to DOE and EPA in their waiver petitions. However, EPA and DOE guidance provide the types of information that need to be included, such as information about facility profitability, margins, and competitive standing within a local market. Such information is and should be treated as confidential business information.

d. Is the current petition process set up to protect this confidential business information? Is that why we don't know the specifics for granting the waivers?

Yes, EPA and DOE have protected individual applications as confidential business information. EPA has taken steps to increase transparency about the number of petitions received, granted and denied, as well as the corresponding aggregated impact on compliance obligations. AFPM supported EPA's decision to increase transparency on an aggregated basis.

e. Is there more information that can be supplied to address transparency concerns?

AFPM believes the steps EPA has taken to increase transparency are sufficient and would oppose efforts to require the disclosure of small refineries' waiver petitions. Disclosure of additional information provides no benefit, would chill companies' desire to seek relief, and if sought would be used to gain commercial leverage.

9. Can you speak to the impacts of price volatility on the RIN prices on refinery operations, especially on smaller refiners and on so-called merchant refiners?

RFS compliance and associated RIN price volatility have a significant impact on refiners of all sizes. Many of our merchant and small refinery members, however, have submitted comments to rulemaking dockets documenting impacts on their businesses. In many instances, the cost of obtaining RINs are among the most significant costs for these refineries, in some instances exceeding all other cost other than crude oil purchases. These costs not only help explain the increase in small refinery waiver petitions, but more fundamentally harm the ability for refineries to invest, create, and sustain quality jobs.

a. How are merchant refiners vulnerable to prices volatility?

RIN price volatility impacts all refiners. The impacts and exposure to RIN market price volatility vary company by company and largely depend on company structure, capitalization, and strategy for procuring RINs.

b. Do the small refinery exemptions help reduce this volatility?

RIN prices are driven by supply and demand, while volatility is driven by uncertainty. If the market expects a higher volume requirement, its stands to reason that RIN prices will increase. Timely issued small refinery exemptions help reduce volatility by increasing the certainty that an increased volume of RINs will be on the market and available for compliance. This liquidity is particularly critical as the volume standards continue to increase year after year and become progressively more expensive and difficult to achieve. Of course, this help is also vitiated if waived volumes are reallocated to non-exempt refineries. Reallocation increases the demand for RINs and further harms obligated parties.

In fact, in 2018 the mandate was set at 19.29 billion RINs while available supply only reached 18.55 billion RINs, which included 700 million gallons of imported biofuel. No small refinery waivers were granted for 2018 until after the compliance year ended. Without the waivers, there would have a been a draw on the RIN bank, reducing liquidity and increasing volatility. For all

the reasons set forth in AFPM's public comments to the 2020 RFS rulemaking, AFPM opposes reallocation of small refinery waivers.

Of course, small refinery waivers are symptomatic of a larger issue and granted on a case-by-case basis. The best course of action would be to transition from the RFS to a 95-RON octane performance standard, assuming it is done correctly.

10. The Subcommittee received a letter from the United Steel Workers, expressing concern about the focus of this hearing and expressing support for the small refinery exemptions as the way to address price volatility. The Steel Workers also noted that Congress must take a longer-term strategic look at the RFS program, in light of changing vehicle efficiencies, the push for expanding electric vehicles, and other market changes. What are your views on that?

AFPM agrees that Congress should take a longer-term strategic look at fuels policies. This is precisely why AFPM continues to support efforts to transition from the RFS to a 95-RON octane performance standard. If done properly, this shift would help increase the efficiency of the internal combustion engine, relieve refineries from the complex and inefficient RFS, and provide a continuing growth opportunity for ethanol, which is a low-cost source of octane.

11. In terms of SRE waiver decisions, what have been the impacts at the price of fuel at the pump, as a result of these waivers?

AFPM is not aware of an analysis estimating the correlation between small refinery waivers and retail gas prices, which are determined by a complex set of factors, most importantly the price of crude oil. However, small refinery waivers are undoubtedly a critical lifeline for small refineries and help maintain a competitive market for fuels.

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