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.

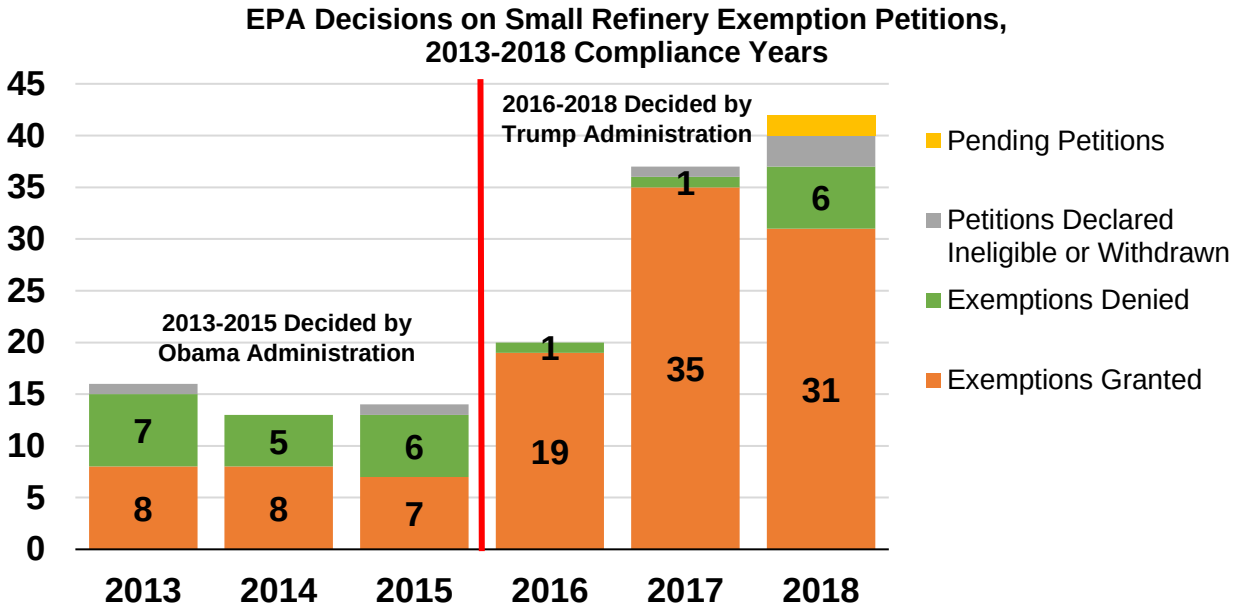
---

[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

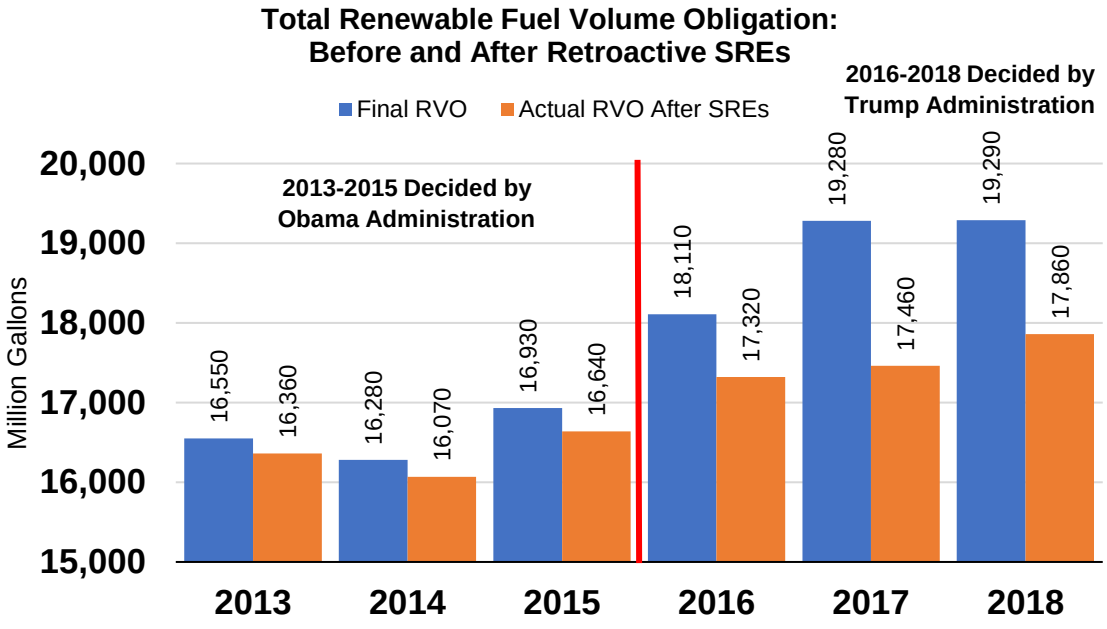
To date, EPA's use of retroactive exemptions has resulted in the *actual* blending requirements for the given compliance year being lower than the volumes specified in the final RVO rule (i.e., because some volume of gasoline and diesel fuel that was initially expected to have a renewable fuel blending 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

[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

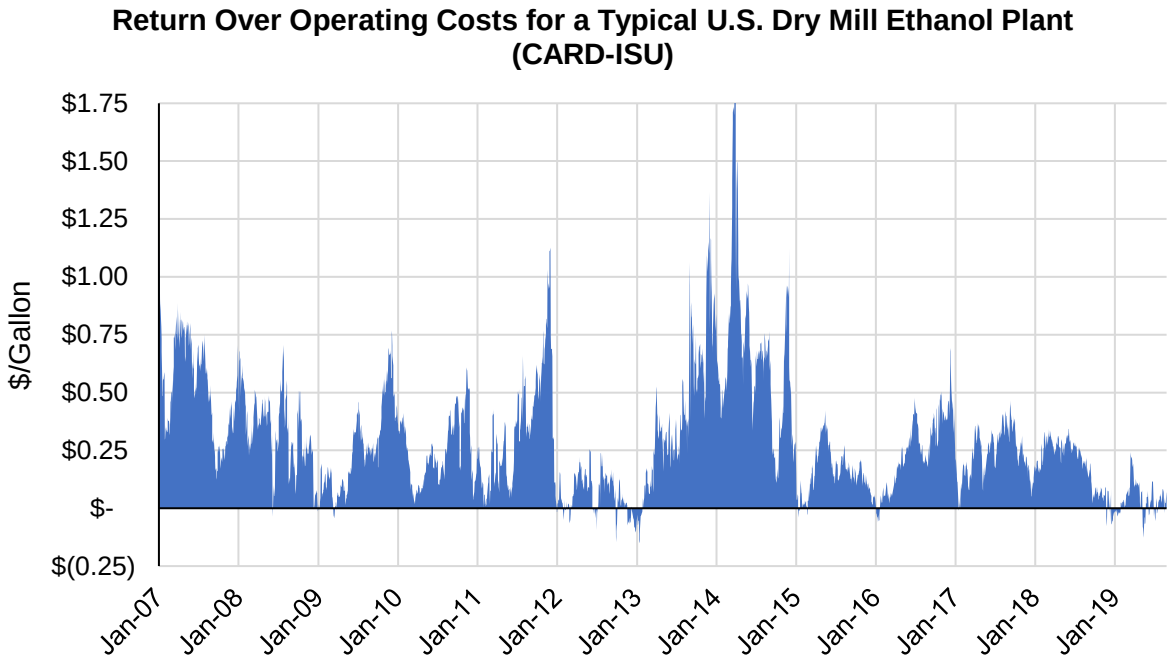
[11] The University of Missouri's Food & Agriculture Policy Research Institute (FAPRI) conducted this sort of analysis on the impact of SREs, concluding that the waivers have significant negative economic impacts on ethanol and corn producers. See https://ethanolrfa.org/2018/09/university-analysis-epas-refiner-waivers-could-cost-ethanol-industry-20-billion-in-lo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

[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.

---

[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

[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.

---

[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),

---

[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.