



Alternative Fuels & Chemicals Coalition

*Advocating for Public Policies to Promote the Development & Production of
Alternative Fuels & Renewable Chemicals, with an Emphasis on Sustainable
Aviation Fuels*

November 29, 2019

**The Honorable Andrew Wheeler
Administrator, Environmental Protection Agency
Air and Radiation Docket and Information Center
1200 Pennsylvania Avenue NW
Washington, DC 20460**

Docket ID No. EPA-HQ-OAR-2019-0136; FRL-10001-36-OAR

Dear Administrator Wheeler:

The Alternative Fuels & Chemicals Coalition (AFCC) is pleased to provide comments on the U.S. Environmental Protection Agency's (EPA's) proposed rule on the Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, and Response to the Remand of the 2016 Standards; Supplemental Notice of Proposed Rulemaking (proposed rule)¹.

AFCC is a collaborative government affairs effort organized by the Kilpatrick Townsend & Stockton law firm and American Diversified Energy. AFCC's intent is to improve the bottom line for companies developing projects in sustainable aviation fuels (SAF), cellulosic and advanced biofuels and operating in these sectors; protect and advocate for additional funding for federal programs that support innovation, development, validation and commercialization in these sectors; and advocate for public policies favorable to these sectors. AFCC member companies work on feedstocks, renewable chemicals (includes bioplastics), food, feed, fiber, and biofuels impacting the biobased economy.

Introduction

The Renewable Fuel Standard (RFS) has been vital to the investment and growth of the advanced and cellulosic biofuels industry and key in the growth of the nation's SAF.² 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 producer, help revitalize rural economies, create good paying jobs, and foster energy independence. The RFS has been vital to spurring investment and development of advanced and cellulosic biofuels. Unfortunately, the demand destruction caused by the drastic expansion of small refinery exemption waivers (SREs) has had a major impact on the industry, costing jobs, stifling investment in innovation, and undermining efforts to reduce greenhouse gas emissions in both ground and aviation transportations. Especially, at this time, where there is tough competition in the global biobased economy; other nations, such as India, China, Japan, are investing heavily in biofuels to improve their air quality, and U.S., is derailing its innovation.

Gallons Lost to Small Refinery Waivers (SREs)

Unfortunately, the success of the biofuels industry and the benefits it provides the nation as a whole have been put at risk in recent years due to EPA's actions administering the RFS. The proposed rule continues this uncertainty. While AFCC supports EPA's decision to raise the SAF, advanced and cellulosic biofuel volumes in the proposed rule, these increases will be undercut by the continued issuance of small refinery exemptions (SREs) without reallocating gallons to other obligated parties.

Earlier this year reports started coming out that EPA had greatly expanded its issuance of SREs from its past precedent of issuing between six and eight waivers from the RFS per year to small refining operations of less than 75,000 barrels per day that can demonstrate they are struggling financially to comply, to roughly 20 in 2016 and at least 25 in 2017, and over 36 in 2019. Unfortunately, despite a number of requests from industry stakeholders and lawmakers with oversight over EPA, the exact names of these SREs have not been disclosed and nor their locations. However, utilizing EPA's data for the RFS shows SREs cut RFS obligations by at least 1.6 billion gallons in 2016 and 2017. A strong policy and regulatory environment is critical to supporting the type of innovation that will help strengthen the biobased economy, create good paying jobs and help revitalize rural economies across the country. It is critical the final rule for the 2020 Renewable Fuel Standard Renewable Volume Obligations (RFS RVO) follow the letter and intent of the law to achieve these goals. AFCC urges EPA to resolve these issues and overcome barriers keeping SAF, advanced and cellulosic biofuels from accessing the market.

Compliance Exemption

RIN prices are not in need of management;³ the RIN market is meant to operate freely to help ensure achievement of the statutory RFS requirements. EPA in early 2018 increased the number of statutory Small Refinery Exemption (SRE) dramatically, which has destabilized the RFS, reduced the production and use of clean renewable biofuels, increased GHG emissions, and led to lost jobs and economic opportunity in rural America.

The compliance year for small refineries was 2013, where the small refineries had to petition EPA for an extension of the compliance exemption, and had to undergo prove that "compliance with the RVOs would cause the refinery to suffer disproportionate economic hardship."⁴ EPA did receive some petitions after the annual RVO rule had been finalized, and approved exemptions would apply retroactively. The retroactive exemptions in 2013 to 2018 were much lower than the final RVO and thus did not cause as much alarm as in 2018, when both the number of exemptions and volume size of exemptions granted to small refineries started impacting the volume of biofuels blended and impacting the lowering of the RINs prices. It is known that, in 2013, EPA received 16 petitions for SREs, the agency granted 8 exemptions, and denied 7, and considered 1 to be ineligible, as a result the blending requirement was reduced by 190 million gallons or 1.1%. In the following years, 2014 and 2015 compliance years, similar number of petitions

were received, which reduced the 2014 and 2015 blending obligations, but were significantly low and did not undergo scrutiny. However, since 2016 to 2019, EPA has approved uncontrollable number of SREs, which is making an impact on the compliance, and in 2016, EPA approved 19 exemptions, 35 in 2017, and in August 2019, EPA approved another 31 petitions for SREs from 2018 compliance and denying 6.

EPA's Supplemental Proposal for 2020 RVO's

This federal register depicting the 2020 RVO's fails to ensure statutory requirements for renewable fuels will be enforced in 2020 or beyond as a result of the malfunction of the SRE program, and in the supplemental proposed rule the SRE issue is not addressed. The 2020 RVO's are incorrect and misleading since they are based on misguided approach EPA used in retroactive SREs between 2016 to 2018, which will impact the erosion of the volumes in the market place. Despite industries opposition, EPA, on August 9, 2019, issued 31 more SREs for the 2018 compliance year which brought farmers and biofuel producers public disappointment. President Trump promised at the end of August that the Administration would deliver a relief package for renewable fuel producers and farmers that would offset the high levels of exempted SREs. And, on October 4, 2019, the Administration announced, "more than 15 billion gallons of conventional ethanol will be blended into the nation's fuel supply beginning in 2020," and EPA confirmed that there would be an average of actual exemptions for the past three years, 2016 to 2018 in the RVO calculations. Despite that, in this federal register, the supplemental proposal to the 2020 RVO rulemaking is estimating gasoline and diesel would be exempted in 2020 based on historical recommendations for exempted volumes it received from Department of Energy (DOE), rather than basing it on the actual exemptions it granted. In the supplemental proposal, EPA did not include DOE's recommendations, had EPA done so, a serious attempt would have been made to address the SREs. Therefore, the supplemental proposal is failing to address the necessary assurances that the statutory required volume of 15 billion gallons of renewable fuel will actually be enforced in full in 2020 and beyond.

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.⁵ Furthermore, 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.

The Renewable Fuel Standard Integrity Act of 2019, H.R. 3006

The Renewable Fuel Standard Integrity Act of 2019, H.R. 3006, bipartisan legislation introduced on May 23, 2019 by Representatives Collin Peterson (D, MN), and Dusty Johnson (R, SD), captures accountability of the RFS SREs, and ensures waived volumes are reallocated, and furthermore, requires public disclosure of SREs granted, and deadlines for refineries to submit SRE applications and ensures that EPA reallocates waived volumes to non-exempt obligated parties.

In addition, the bill clarifies that basic information submitted to EPA by small refineries seeking exemption shall not be confidential. AFCC supports H.R. 3006, since it would provide disclosure to all stakeholders for the SRE process being used by EPA. The bill suggests an annual deadline of June 1 for small refineries to submit petitions for exemptions from the following year's RFS compliance obligations. AFCC would recommend EPA have the policies outlined in H.R.3006 in a federal register for public comments and rulemaking for SREs going forward.

Conclusion


The proposed rule makes a good first step in raising the SAF, advanced and cellulosic biofuel volumes from the 2018 RFS. However, these gains are meaningless unless EPA addresses the demand destruction created by the SREs. What it cannot do is continue to undermine the annual rules. When allowed to work, the RFS has enabled billions of dollars of investment in new technologies that have led to the rapid growth of the renewable fuels industry and the biobased economy. This benefits our nation's economic and energy security. We can build on this success with a proposed rule that truly increases volumes for SAF, advanced and cellulosic biofuels.

AFCC 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. 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.

AFCC urges the agency to work with our member companies to make our recommended changes. The result will bolster agriculture and rural communities, spur the development of new investment, innovation, and job growth; and to enhance energy and national security.

We look forward to working with you toward these goals. Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rina Singh". The signature is fluid and cursive, with the first name "Rina" written in a large, stylized font, and "Singh" written in a smaller, more compact font.

Rina Singh, PhD.
Executive Vice President, Policy
Alternative Fuels & Chemicals Coalition

1. <https://www.regulations.gov/document?D=EPA-HQ-OAR-2019-0136-0352>
2. 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).
3. U.S. EPA. "Renewable Fuel Standard Exemptions for Small Refineries."
4. <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-exemptions-small-refineries>
5. "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..