



UNITED TO GROW FAMILY AGRICULTURE

Gina McCarthy, Administrator
United States Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OAR-2016-0004
Mail Code 2821T
1200 Pennsylvania Ave, NW
Washington, DC 20460

July 7, 2016

Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Proposed Rule

Dear Administrator McCarthy:

National Farmers Union (NFU) appreciates the opportunity to present the U.S. Environmental Protection Agency (EPA) with comments on the Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Proposed Rule. NFU has nearly 200,000 family farmer, rancher, and fishermen members nationwide and organized divisions in 33 states. We have supported family agriculture and rural communities since 1902 because “the family farm is the keystone of a free, progressive, democratic national society, as well as a strong America, and is the basis of a safe, secure and stable food system.”¹ Accordingly, NFU promotes the sustainable production of food, fiber, feed and fuel.

We are a grassroots organization and our policy positions are directed by an annually recurring, vigorously democratic parliamentary process. Our policy is in strong support of the Renewable Fuel Standard (RFS) as created by the Energy Policy Act of 2005 (EPA) and enhanced by the Energy Independence and Security Act of 2007 (EISA). Our policy actually calls for expanding the RFS to mandate that biofuels production make up a third of the U.S. fuel supply.² This year, our policy delegates also passed a Special Order of Business on the RFS that states “Biofuels have created a path for farmers who help address environmental problems” and calls for increased deployment of flex fuel vehicles and blender pumps.³ We are longstanding proponents of the RFS and its proper implementation because, when administered properly, the RFS:

- Reduces emissions of greenhouse gasses (GHGs) that drive climate change;
- Creates jobs that cannot be outsourced;
- Reduces U.S. dependence on foreign fuel sources;
- Drives investment in rural communities;
- Opens the transportation fuels market to competition; and
- Lowers transportation fuel prices for consumers.

Until 2014, the RFS was an exemplary program for reducing GHG emissions and enhancing climate resilience, an important policy goal that will only be achieved through the success of

¹ “Policy of the National Farmers Union,” March 2016. <http://nfu.org/2016-nfu-policy>. At I-A.

² *Id.* at VII-C-3.

³ *Id.* at “Family Farming and the Renewable Fuel Standard (RFS).”

many different initiatives. It also made substantial progress to the other goals listed above. Unfortunately, since 2014, EPA has not acted as proper stewards of the program, foregoing environmental benefits in the short term and hindering economic development and even greater environmental benefits in the long term. This proposed rule continues this regrettable trend.

In the Executive Summary of the proposed rule, and several places throughout the publication, EPA indicates that the volume requirements set in the proposed rule, if enacted, will “continue driving the market to overcome constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to a substantial growth over time in the production and use of renewable fuels.”⁴

NFU disagrees. We argue that, in this proposed rule, EPA attempts to use waiver authority that it does not have to reward the obligated parties for resisting the changes they are required to make, an outcome that is even more offensive since these interests have been awarded an undeserved “grace period” since 2014. As noted in the preamble to the proposed rule, “efforts to expand the use of higher ethanol blends such as E15 and E85 have not been sufficient to maintain past growth rates in total ethanol supply.”⁵ It lists the low number of retail stations selling these blends as a major contributor to the saturation problem, but it is a problem which the obligated parties maintain the authority to address. The preamble admits that “while the RFS program is unlikely to have a direct effect on overall gasoline demand or the number of vehicles designed to use higher ethanol blends, it can provide incentives for changes in the number of retail stations that offer higher ethanol blends and the relative pricing of those higher ethanol blends in comparison to E10.”⁶

EPA acknowledges its own ability to influence these critical matters. But it fails to exercise its influence to the extent to which the Agency is allowed, justified and compelled. Rather than hold the obligated parties accountable for their failure to take steps necessary to comply with the EPCA and EISA, EPA chooses to stymie strong renewable fuel investments made by the U.S. Department of Agriculture (USDA) and punish farmers and renewable fuel producers for expecting EPA to rightfully enact the volume standards set by Congress in 2005 and 2007. The proposed standard also works against further investment in renewable fuels, especially advanced biofuels, by creating an unstable policy outlook that deters capital.

We are confused as to why EPA would choose not to take advantage of this program’s full potential to promote renewable fuels. The enacting statute and the EISA enjoyed broad bipartisan support and were signed into law by a Republican president from oil country. Climate change is happening; it is disrupting agricultural production, challenging food security, and interfering with other aspects of the economy. EPA should fully utilize this popular program to advance climate resilience while bolstering the domestic energy economy. The obligated parties have been on notice of the requirements since 2005.

⁴ Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Proposed Rule, 81 Fed. Reg. 34778, 34779 (May 31, 2016)(amending 40 C.F.R. pt. 80).

⁵ *Id.* at 34789.

⁶ *Id.* at 34790.

These comments will make the legal arguments establishing that EPA may not, for the stated reasons or any other reasons under the present circumstances, invoke a waiver for any of the statutory volume requirements other than for cellulosic biofuel for 2017 and the corresponding waiver in the total renewable fuel volume requirement. The comments will then examine the urgent policy considerations that should compel EPA to enact a final rule setting renewable fuel volume requirements at the levels established by Congress in the EISA, despite the waiver for cellulosic volume. EPA does not have the authority to waive much of the required renewable fuel volume that it proposes. Even if it did have the authority, the Agency should refrain from exercising it.

I. Unwarranted Use of the Waiver

In the executive summary accompanying the proposed rule, EPA asserts that the Agency is “proposing to use both the cellulosic biofuel and general waiver authorities only to the extent necessary to derive the applicable volume of total renewable fuel that reflects the maximum supply that can reasonably be expected to be produced and consumed by a market that is responsive to the RFS standards.” EPA should not lower the total renewable fuel volume requirement by the amount corresponding with the cellulosic, much less any additional amount. The statute does not grant the Agency the authority to consider what can reasonably be expected to be consumed.

A. No Grounds for General Waiver

The statutory language enacting the RFS does allow EPA to waive the 2017 volume requirement for cellulosic biofuel to the extent that production is anticipated to fall short of the requirement. However, in addition to the amount of renewable fuel that corresponds to the waiver for cellulosic biofuel, EPA proposes lowering the total renewable fuel volume requirement by an additional 0.2 billion gallons in 2017. The EISA allows EPA to waive annual total renewable fuel volume requirements without direct attribution to a contributing renewable fuel category, such as cellulosic, but only in very limited circumstances.

General waivers for total renewable fuel may only occur if serious economic or environmental harm would result otherwise, or if there is insufficient supply of a renewable fuel category to allow the obligated parties to meet the annual requirements.⁷ EPA asserts that there is an insufficient supply of total renewable fuel to allow the obligated parties to meet their volume requirements. As EPA states in the Executive Summary of the proposed rule, its determination rests on its finding of “the volume of ethanol in the form of E10 or higher ethanol blends such as E15 or E85 that could be supplied to vehicles...together with the volume of non-ethanol renewable fuels that could be supplied to vehicles...” This is an inappropriate consideration.

There is no statutory authority granted to EPA to consider distribution infrastructure when evaluating the renewable fuel supply, and this interpretation reverses prior rules set by EPA. Establishing the sufficiency of the renewable fuel supply is narrow in scope and a more simple process. EPA must merely determine whether renewable fuel producers have made enough renewable fuel to allow the obligated parties to satisfy their volume requirements. Throughout the preamble to the proposed rule, EPA repeatedly misconstrues constraints in the

⁷ 42 U.S.C. §7454(o)(7)(A)(i)-(ii)

development of renewable fuels distribution infrastructure as “insufficient supply,” just as it did in the volume requirements for 2014, 2015, 2016, and the BBD requirement for 2017.

The ability to supply the required renewable fuels to vehicles does not factor into the assessment of domestic supply; rather, the RFS requires that the obligated parties establish the ability to supply the required renewable fuel to vehicles. EPA acknowledges this in the executive summary of the proposed rule, noting “we believe it is highly unlikely that Congress expected those volume requirements to be reached only through the consumption of E10 and biomass-based diesel.”⁸ It goes on to list other ways in which the market for renewable fuel should be expanded, notably expanded use of E15 and E85. Why EPA fails to assert that holding to statutory volume requirements for total and advanced renewable fuel in 2017 would force the obligated parties to offer more E15 and E85 is unclear. Given the deferment offered obligated parties in recent annual volume requirements, this solution has never been so palatable to the obligated parties or necessary for renewable fuel stakeholders and the environment.

An adequate supply of renewable fuel exists to allow the obligated parties to fulfill the 2017 volume requirements set in the EISA, which means EPA does not have the authority to waive any total renewable fuel volume requirements beyond the amount of cellulosic biofuel waived.

Congress intended the RFS to drive innovation and investment by intentionally establishing volume requirements, the waiver of which was clearly intended only for dire circumstances, that far exceed what would be possible without advances in production and distribution capacity. EPA’s continued insistence on considering the distribution capacity and use of renewable fuel as a component of domestic supply is simply not based in statutory language and invites the inference that EPA is reaching to undermine the intent of the RFS.

EPA repeatedly asserts that the total renewable fuel volume requirement it sets in the proposed rule considers “the ability of the standards we set to cause a market response and result in increases in the supply of renewable fuels.” Yet it does not consider that holding the obligated parties to the statutory volumes would force the obligated parties to establish the infrastructure needed to market renewable fuel to fulfill the entire statutory volume requirement.

While EPA argues that E85 price discounts have not caused direct, proportionate increases in E85 sales, this could be addressed somewhat by consumer education, in which the obligated parties could participate. Also, this phenomenon is likely to change when gas prices rise again. As these comments restate frequently, there is no consideration of the obligated parties’ ability to market the renewable fuel volumes required in the EISA; only that the supply of these renewable fuels exist.

In the event that EPA wrongly insists on considering distribution infrastructure in assessing the adequacy of the renewable fuel supply, they have still miscalculated the volume of renewable fuel that can be distributed and consumed. Other entities, such as Growth Energy, are offering evidence that there is more ethanol and biodiesel that EPA should account for if the Agency properly executed its supply analysis, even under its own incorrect terms. NFU directs EPA’s attention to this critical information because the Agency will find the domestic supply, even

⁸ 81 Fed. Reg. 34778, 34784.

under EPA's incorrect assertion as to what "supply" entails, does not warrant a waiver of 20 percent or more than the applicable volume requirements for 2017.

It is essential that EPA understand that there is more renewable fuel available for consumption than it has determined, and that the Agency act accordingly, because to do otherwise leaves the volume requirements for all following years vulnerable to modification. The RFS has the potential to address very serious challenges to human health and the economy; forfeiting the benefits of the program by allowing volume requirements to be lowered through 2022 is a great risk. Accordingly, EPA should take great care to ensure the supply assessment accounts for the renewable fuel Growth Energy and others will bring to the Agency's attention.

B. No Obligation to Include Cellulosic Waiver in Total Renewable Fuel Volume Requirement

Even when EPA reduces the cellulosic biofuel requirement to accommodate shortfalls in domestic supply, the Agency is not obligated to reduce the total renewable fuel requirement at all, or to match. EPA should maintain the total renewable fuel requirement for 2017 in spite of lowering the cellulosic requirement. At the very least, EPA should lower the total renewable fuel requirement in the final rule by less volume than it has in the proposed rule. This would lower GHG emissions in the immediate term while securing a better market for all renewable fuels, including advanced and cellulosic, when production can increase.

The distribution infrastructure in which the obligated parties must invest to utilize sufficient volumes of total renewable fuel is the same for the cellulosic biofuel, advanced biofuel and renewable fuel categories. EPA would better pursue the important goals for which Congress created the RFS by enacting the total renewable fuel volume requirement in the EISA, even while lowering the cellulosic and advanced categories. This would encourage the establishment of a market for the cellulosic and advanced biofuels for when, in the near future, sufficient cellulosic refineries exist to fulfill the statutory obligations for these additionally beneficial biofuels. The total renewable fuel volume requirement would also mitigate some of the negative signaling prospective capital investors have recently received regarding cellulosic and advanced biofuels. The following discussion will further illuminate why EPA should not lower renewable fuel volume requirements to any degree even if it has the authority to do so.

II. Misdirected Discretion

In the previous section, NFU asserted that EPA does not have the authority to waive any renewable fuel volume requirements set in the EISA beyond the waiver for cellulosic biofuel. NFU also argued that lowering the total renewable fuel volume requirement by the amount corresponding with the cellulosic waiver is not necessary and works against the goals of the RFS. In this section, NFU will explain the importance of the RFS to climate resilience in a broader context than the EISA or renewable fuel development. This discussion should compel the EPA to enact a final rule establishing total renewable fuel volume requirements that match those put forth by Congress in the EISA.

A. Climate change and agriculture

The results of climate change, brought on by emissions of greenhouse gasses (GHGs) to the earth's atmosphere resulting from human activity, will be detrimental to both human health and the economy. In remarks made in September 2014, Environmental Protection Agency (EPA) Administrator Gina McCarthy explained that warming of three degrees Celsius over pre-industrial levels could cost about one percent of the global economic output.⁹ As a family farm organization, NFU is particularly concerned with the challenges climate change poses to family farmers' ability to pursue improvements in global food security.

The USDA's report *Climate Change, Global Food Security and the U.S. Food System* establishes several conclusions with which NFU is extremely concerned. First, the report explains that "the potential of climate change to affect global food security is important for food producers and consumers in the United States," and that "climate risks to food security increase as the magnitude and rate of climate change increases."¹⁰ Anticipated disruptions to agricultural production caused by climate include:

- rising temperatures;
- changes in precipitation;
- increasing frequency of extreme weather events;
- new pest, disease and weed pressures; and
- increases in heat stress on livestock.

These challenges will make it more difficult for American farmers to produce the food, fiber, and fuel upon which the U.S. and world rely. As formidable as these challenges may be, farmers, ranchers and rural communities can contribute to climate resilience and help circumvent serious harms to the economy and human health. The report found that, throughout the food system, "effective adaptation can reduce food-system vulnerability to climate change and reduce detrimental climate change effects on food security..."¹¹ We want to achieve this goal, and enactment of the RFS volume targets put forth by Congress will help.

1. Direct Climate Benefits

The RFS, when implemented properly, offers farmers and consumers a way to reduce GHG emissions by producing and utilizing transportation fuels with lower lifetime emissions than transportation fuels derived from fossil sources.¹² As feedstock production practices and

⁹<https://yosemite.epa.gov/opa/admpress.nsf/8d49f7ad4bbcf4ef852573590040b7f6/5fcd1aaaf9c93885257d5e0047b24a!OpenDocument>

¹⁰ Brown, M.E., J.M. Antle, P. Backlund, E.R. Carr, W.E. Easterling, M.K. Walsh, C. Ammann, W. Attavanich, C.B. Barrett, M.F. Bellemare, V. Dancheck, C. Funk, K. Grace, J.S.I. Ingram, H. Jiang, H. Maletta, T. Mata, A. Murray, M. Ngugi, D. Ojima, B. O'Neill, and C. Tebaldi. 2015. *Climate Change, Global Food Security, and the U.S. Food System*. 146 pages. Available online at http://www.usda.gov/oce/climate_change/FoodSecurity2015Assessment/FullAssessment.pdf. At 111-112.

¹¹*Id.* at 112.

¹² Environmental and Energy Study Institute, "Research Finds Widespread Use of E15 Would Reduce CO2 Emissions." "GREET analyses estimate that corn ethanol greenhouse gas emissions are on average 34

advanced biofuel technology continue to advance, the RFS should ensure that these new fuels, with even greater GHG improvements, find some safe footing in the monopolistic consumer transportation market.

As of last summer, the RFS reduced carbon emissions by 589.33 million metric tons, or the equivalent of removing more than 124 million cars from the road.¹³ This is a starting point; once the policy succeeds in opening the transportation fuels market to competition, significantly greater GHG reductions should be expected. Conventional renewable fuels reduce GHG emissions by 34 percent compared to fossil fuels and advanced biofuels are achieving reductions above 80 percent. These reductions, combined with price advantages that can be expected as production and distribution expands, could knock out a substantial portion of the transportation sector's total emissions. These emissions reductions will mitigate the climate change-driven hazards to agricultural production discussed above.

Lowering the total renewable fuel volume requirement, as EPA proposes, sacrifices the opportunity to mitigate climate disturbances to agriculture to the extent allowed by law and stymies the growth of markets for cellulosic and advanced biofuels by allowing the obligated parties to continue to avoid the investments in distribution the EISA requires of them. Declining such ripe opportunities to enhance climate resiliency, especially when the future of more contentious attempts by EPA to reduce GHG emissions is so unclear, places food security in greater jeopardy.

2. Indirect Climate Benefits

a. Farmers and Rural Communities

While the potential GHG emission reductions resulting directly from the RFS are significant, the policy has much more potential to contribute to climate resiliency than the directly attributable lowered emissions. The RFS is popular among farmers and rural communities. These are important demographics to encourage to engage in climate resilience because of the importance of land use.

The report *Building Carbon in America's Farms, Forests and Grasslands: Foundations for a Policy Roadmap* cites EPA statistics and explains, "Forests, grasslands, croplands, wetlands and even urban landscapes remove about 850 million metric tons of co₂e from the atmosphere each year, offsetting approximately 16 percent of annual emissions."¹⁴ The report analyses the land carbon stock, GHG mitigation potential of forests and agriculture and the prospects of positive policy changes because "land use, land-use change, and forestry-related emissions contribute the most uncertainty to U.S. climate objectives." Depending on land management decisions, this sector of the economy has the potential to become a net GHG emitter rather than a sink. This could prevent the US from meeting its commitments under the UN Framework Convention on Climate

percent lower than those of regular gasoline." <http://www.eesi.org/articles/view/research-finds-widespread-use-of-e15-would-reduce-co2-emissions>

¹³ "The Renewable Fuel Standard: A Decade's Worth of Carbon Reductions." Biotechnology Industry Organization, 11 August 2015. www.bio.org/sites/default/files/RFS%2010%20GHG%20Reductions.pdf

¹⁴ http://www.forest-trends.org/documents/files/doc_5128.pdf at 7

Change (UNFCCC), commitments that must be respected in order to avoid more severe disruptions to global food security resulting from climate change.

Land ownership in the U.S. is highly dispersed. Reaching landowners to encourage climate-smart land management practices, in the numbers needed to meet important emissions reduction goals, will be a challenge. A recent peer-reviewed paper analyzing fossil fuel and cement production records asserted that only 90 companies are responsible for 63% of the total industrial carbon dioxide and methane emissions since the Industrial Revolution, but the top 100 landowners in the U.S. control only two percent of the land.¹⁵

While ownership is dispersed, 40 percent of the total US land mass is farmland, according to the 2012 Census of Agriculture. Offering farmers a way to achieve value for participating in climate change, as a properly implemented RFS would, gives policymakers an opening to have a conversation about other actions that could be taken to build climate resilience on 40 percent of total US acreage.

The U.S. Department of Agriculture (USDA) has undertaken laudable efforts reaching out to farmers and foresters to encourage climate-smart practices. USDA's Building Blocks for Climate-Smart Agriculture and Forestry, which were announced in May 2016, aim to reduce or sequester over 120 million metric tons of carbon dioxide equivalents per year by 2025 through climate-smart agriculture, conservation and forestry practices. As helpful as these reductions may be, reaching the farmers and land managers needed to make them happen presents a significant challenge. Implementing the RFS as Congress intended would be a powerful step in the right direction. The same reasoning holds true for consumers.

b. Consumers

Consumers, like farmers, are likely to be called upon to contribute to climate resilience. Like farmers, consumers receive value while engaging in climate change mitigation through the RFS. The RFS has saved consumers money at the gas pump. Implementing volume requirements that match those in the EISA would save consumers more money, and opening the transportation fuels market to competition would save consumers even more. This argument may appear slightly less compelling at the present with gas prices lower than they have been in recent memory, but this perception is counterproductive. Consumers cannot anticipate that gas prices will remain as low as they are today for the long-term, and building further renewable fuel infrastructure is an investment in deterring future price volatility. Having consumers understand that they have saved money due to the RFS will make future climate-related policies more acceptable to them.

While the establishment of a strong market for renewable fuel will ultimately create significant value for consumers, the obligated parties may attempt to saddle consumers with the cost of additional infrastructure investments in the short-term. This makes the push for distribution infrastructure buildout time-sensitive. If EPA does not implement a final rule including the statutory volume requirements, the Agency will forgo an opportunity to guard consumers from price increases at a time when prices are already high.

¹⁵ Burke, Monte. "America's Largest Landowners." *Forbes*.
<http://www.forbes.com/sites/monteburke/2015/11/03/americas-largest-landowners/#72f83ef67045>

Implementing volume requirements in line with the EISA presents an excellent opportunity to establish trust and dialogue that will facilitate future action on climate. In contrast, establishing lower volume requirements than those set in the EISA impedes future climate resilient actions. Confounding plans and expectations by enacting lower volume requirements when circumstances do not demand them may result in obstacles to future trust and dialogue with consumers, making it harder to take necessary action to address climate change in the future.

3. Risk to Climate Benefits

Through 2013, the RFS achieved the goals Congress sought in passing the EISA by moving “the United States toward greater energy independence and security” and increasing “the production of clean renewable fuels.”¹⁶ By implementing the volume requirements in the statute, EPA reduced GHG emissions, encouraged domestic job growth, directed investment to rural communities, mitigated the monopolistic stranglehold over the transportation fuels sector, and reduced fuel prices while enhancing U.S. energy independence.

Rare is the proactive environmental policy that so clearly benefits so many farmers, rural communities and consumers. NFU is especially concerned with farmers; the RFS is an important opportunity to establish trust regarding climate resilience among a population that is prone to regard federal policy with skepticism and may be vulnerable to a variety of intentionally confusing climate messages. As EPA states in the executive summary to the proposed rule, “Volume requirements over the longer term that are issued in a timely manner and which provide the certainty of a guaranteed and growing future market are necessary for the industry to have the incentive to invest in the development of new technology and expanded infrastructure for production, distribution, and dispensing capacity.”¹⁷ Farmers, the first step in biofuel production, require this certainty to make the necessary decisions to do their part to contribute to expanded use of renewable fuel, as does the rest of the industry. In this proposed rule, EPA pays lip service to the importance of certainty while failing to take the action that would create the most certainty: consistent enactment of the volume requirements Congress set in the EISA. This action would allow farmers, renewable fuel producers, investors and the obligated parties to know what is required of them with sufficient notice to meet requirements and achieve the attendant environmental benefits with as little disruption as possible. Allowing farmers and stakeholders to detrimentally rely on the assurances of the EISA, as EPA proposes to do, will make these parties wary of engagement in increased biofuel production. The same concept will extend to future requests that this and future administrations will be required to make of producers to meet climate resiliency goals. Farmers in particular may prove hard to enroll in these efforts after experiencing unnecessary hardship while trying to participate in the RFS.

Unfortunately, farmers’ detrimental reliance on EPA to properly implement the RFS is likely to make further progress more difficult. The financial uncertainty and lack of confidence in federal programs that EPA is fostering undermines the business acumen of engaging in climate resilience. This negative consequence is likely to be especially acute as farm income has fallen to depths not seen in recent years. As discussed above, farmers and rural communities are critical

¹⁶ Pub. L. No. 110-140, 121 Stat. 1492 (Dec. 19, 2007).

¹⁷ 81 F.R. 34778, 34784.

to achieving important climate resilience goals. But farmers and rural communities are also frequently harmed by federal policy decisions and resulting market reactions.

Farmers and rural communities have made business decisions and invested significant assets based on the reasonable expectation that, in the absence of severe economic harm or inadequate supply, EPA would fulfill its responsibility to enact annual volume requirements matching those Congress set in the EISA. Should the EPA finalize the rule as proposed, farmers and rural communities will almost certainly hold any future attempts to enlist their assistance in future climate resilience endeavors with a degree of skepticism that will prove difficult to overcome and could have been avoided.

Another way in which EPA's failure to enact the 2017 total renewable volume requirement from the EISA may alienate farmers involves competitive markets and anti-competitive practices. Our policy asserts that "inadequate market competition is one of the most pressing issues facing producers across the country."¹⁸ This is true among the companies that both produce the inputs and connect to the markets upon which farmers rely. Transportation fuel is an example of how a lack of competitive provisions prevents consumers from attaining fairness, transparency, and bargaining rights to the detriment of consumers, farmers and the environment. Proper implementation of the RFS grants EPA an opportunity to correct anti-competitive trends in this market. More competition in transportation fuels would provide motivation for obligated parties, farmers and renewable fuel producers to achieve greater efficiencies in producing and distributing renewable fuel, leading to more options for consumers and better environmental results. The market competition aspect of the RFS is one more point upon which EPA may foster or hinder trust among farmers, rural communities and consumers that will be necessary to achieve climate resilience.

NFU argues that EPA does not have the authority to reduce total renewable fuel volume requirements any more than the amount of cellulosic biofuel waived, and that the direct and indirect environmental benefits of the RFS compel EPA to set total renewable volume requirements at the levels found in the EISA. Some opponents of the RFS have asserted that the program carries environmental hazards. NFU argues that the concerns of actual merit are far outweighed by the benefits and will explain this reasoning below.

4. Addressing Environmental Concerns

While the RFS, when implemented properly, is a clear win with regards to climate change, there are concerns that the RFS may promote environmentally harmful land use decisions by encouraging farmers to bring acreage into corn production that may otherwise not be planted. NFU's policy embodies the strong sense of responsibility and stewardship that guides family farmers, asserting "family farmers and ranchers have historically been our best soil and water conservationists when given the economic incentives and flexibility necessary to do so."¹⁹ NFU does not take these concerns lightly. However, we assert that these concerns do not contemplate all relevant considerations and mitigating factors.

¹⁸ "Policy of the National Farmers Union," at II.

¹⁹ *Id.* at VI-A.

First, commodity producers have endured market volatility that also contributes to planting decisions. When prices are down, or anticipated to be down, many producers will react by planting more acreage in the hopes of overcoming price deficiencies by selling additional product. While different producers employ different decision-making processes in reaction to volatile or low prices, stable enactment of renewable fuel volume requirements in line with those set in the EISA could bolster price stability that would prevent at least some farmers from bringing additional acreage into production.

Second, the assertion that the RFS promotes additional planting does not consider the potential for mitigating this effect by greater funding for land retirement programs. Greater funding for land retirement programs like the Conservation Reserve Program (CRP), in both increased rental rates and funding for additional acres, could counteract any drive to plant additional acreage.

Third, this assertion fails to account for conservation improvements to working lands. Advances in both the popularity and efficacy of practices like nutrient stewardship, soil health, cover cropping, riparian buffer strips, precision conservation and a myriad of other practices, work against many of the expressed concerns over water quality or habitat regarding additional planting. As we continue to plant and cultivate more conscientiously, concern over additional planting must subside proportionately.

Finally, those who oppose the RFS, or implementation of the statutory volume requirements therein, lose sight of the ultimate logical conclusion of the program. This is demonstrated particularly clearly by concern over stover removal for cellulosic production. Stover is collected in a manner that leaves sufficient crop residue in fields to combat erosion, and refiners need to work with stover until the technology is perfected to justify planting dedicated perennial crops. Utilizing stover in the short term is a direct bridge to the habitat, soil health, water quality and climate benefits of establishing a market for dedicated perennial energy crops.

Properly implemented, the RFS will allow producers, refiners and consumers to establish a strong market for perennial and low-input cropping systems that achieve far greater GHG emission reductions than we are yet experiencing through the program. Even if NFU concedes, merely for the sake of argument, there may be some short-term negative environmental results from implementation of statutory volume requirements, we know the end result benefits of building a viable market for advanced biofuels, and the agricultural products that will provide the feedstocks for these fuels, will far outweigh detriments to wildlife habitat or water quality endured in the meantime. NFU implores EPA to keep these environmental benefits in mind as it considers implementing the final rule setting renewable fuel volume requirements for 2017.

III. Conclusion

As discussed at length above, the RFS is an important climate policy with far-reaching direct and indirect consequences. It seems counterintuitive that EPA would proactively reach for authority it does not have to undermine a popular program that has offered all parties concerned ample notice, but NFU strongly encourages the Agency to change the total renewable fuel volume requirements for 2017 in this proposed rule to those in the EISA. Recent wavering on the RFS has caused enormous setbacks in cellulosic biofuel development and, consequently, delayed important GHG emission reductions. But the final rule offers EPA another chance to regain some lost ground, and NFU would be supportive of and most grateful for such efforts.

NFU appreciates EPA's efforts addressing climate change and the climate resilience it brings to the food system. We stand ready to offer any support and assistance EPA may find helpful regarding these matters. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Johnson". The signature is fluid and cursive, with the first name "Roger" and the last name "Johnson" clearly distinguishable.

Roger Johnson
President