National Farmers Union
UNITED TO GROW FAMILY AGRICULTURE

DRAFT – August 28, 2017

Scott Pruitt, Administrator
United States Environmental Protection Agency
EPA Docket Center
Office of Air and Radiation
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Washington, DC 20460
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Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Proposed Rule, 82 Fed. Reg. 34,206 (July 21, 2017)

Dear Administrator Pruitt:

National Farmers Union (NFU) appreciates the opportunity to present the U.S. Environmental Protection Agency (EPA) with comments on its proposal, entitled the "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019," published at 82 Fed. Reg. 34,206 (July 21, 2017). 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: "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. "Biofuels have created a path for farmers who help address environmental problems."[2]

NFU is 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 (EPAct) and enhanced by the Energy Independence and Security Act of 2007 (EISA). Our policy calls for expanding the RFS to mandate that biofuels production make up a third of the U.S. fuel supply.[3] We are longstanding proponents of the RFS and its proper implementation, because the RFS provides numerous benefits, including the following:

- Reduces emissions of greenhouse gases (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.

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[1] Policy of the National Farmers Union, Art. 1, March 2017, https://nfu.org/2017-policy/.
[2] Policy of the National Farmers Union, Family Farming and the Renewable Fuel Standard (RFS), March 2016, https://nfu.org/2016-nfu-policy/.
[3] Policy of the National Farmers Union, Art. VIII-C-3, *supra* n.1.

In particular, Congress recognized the contributions biofuels can make to the rural economy.[4] Biofuels create a price-stabilizing mechanism, encourage much-needed reinvestment in our rural communities, and contribute significantly to net farm income. As such, NFU and its members have a significant interest in EPA's proposal.

President Trump and his administration have assured family farmers and rural residents that this administration plans to support biofuels and uphold the intent of Congress as it relates to the RFS. We appreciate that EPA's proposal maintains the implied conventional biofuel RFS volume at 15 billion gallons. EPA admits that there are no constraints on ethanol supply and that "use of higher ethanol blends is growing and *can continue to grow*."[5] EPA, however, continues to consider "constraints" on ethanol use, when it should continue to support ongoing efforts to increase use of higher ethanol blends in this country. This is particularly true given that ethanol's lifecycle GHG emission profile compared to gasoline continues to improve, not just through updated analysis but also due to improvements in production and farming practices.

In addition, EPA's proposal significantly reduces the statutory volume for advanced biofuels and, thereby, the total renewable fuel volume. As such, the overall proposal falls short of preserving the integrity of the RFS – which is to drive the biofuels market and grow the industry. Also concerning, EPA requests comments on whether it has authority to further reduce its proposed volumes.[6] As family farmers navigate a severely depressed farm economy, this is a time the administration should be raising expectations for a policy that drives many economies in rural America. We urge the administration to increase these proposed volumes and reject any calls to further reduce the required volumes.

I. Farmers have Significantly Contributed to Enhancing This Country's Economy, Energy Independence and Environment.

Farmers have been the backbone of the growing renewable fuels industry in the United States. In addition to supporting the corn ethanol industry, farmers contribute to ensuring the advanced biofuel volumes can be met.

In 2015, the output of America's farms contributed $136.7 billion to this country's Gross Domestic Product (GDP).[7] "The overall contribution of the agriculture sector to GDP is larger than this because sectors related to agriculture … rely on agricultural inputs in order to contribute added value to the economy."[8] While contributing to the overall economy, the economy of numerous communities rely primarily on agriculture and these related industries. By essentially providing no increases in the program, EPA is undermining these contributions, putting family farms at risk.

Facing significant hurdles with expanding urban areas and loss of agricultural lands, farmers nonetheless have increased yields, protected the environment, and helped move this country

[4] S. Rep. No. 110-65 at 2-3 (2007).
[5] 82 Fed. Reg. at 34,230 (emphasis added).
[6] EPA does not have any such authority.
[7] USDA Economic Research Service, Ag and Food Sectors and the Economy, https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy.aspx (last updated May 5, 2017).
[8] *Id.*

toward energy independence. And, unlike fossil fuel production, farmers have done this in a sustainable way. The expansion of the RFS has only supported these efforts, allowing farmers to continue to innovate and find new ways to bring added value to their farmland and production. Moreover, contrary to claims by opponents to the RFS, biofuels actually reinforce efficient local food production and adaptive decision-making.[9]

EPA has long recognized the contributions *increasing* biofuel production make to this country's energy independence.[10] It has been estimated that, over ten years, the RFS has displaced nearly 1.9 billion barrels of foreign oil.[11] The Renewable Fuels Association (RFA) estimated that, in 2016, 15.3 billion gallons of domestic ethanol used in the United States displaced an amount of gasoline refined from 540 million barrels of crude oil.[12] EPA also has found that "on balance, each gallon of fuel saved as a consequence of the renewable fuel standards is anticipated to reduce total U.S. imports of petroleum by 0.95 gallons."[13] EPA's proposal would eschew these benefits, and even implies that it questions whether biofuels used today provide *enough* energy security benefits. This ignores the clear benefits that have been and can be achieved through higher volumes. Such higher volumes would continue to support the growing *domestic* production, which can occur with the right signals by EPA.

Indeed, EPA fails to assess any of the numerous benefits that increasing the volume requirements provides. Until 2014, the RFS was an exemplary program for reducing GHG emissions and enhancing climate resilience. In essentially stagnating the growth of the program, EPA is foregoing numerous environmental benefits in the short term and hindering investment and economic development and even greater environmental benefits in the long term. Indeed, EPA's proposal undermines the investments that have already been made, punishing farmers and renewable fuel producers that have responded to Congress's directives. In short, EPA is replacing Congress's "marketing forcing policy" and sought after goals with its own policy and goal – reducing obligated party compliance costs.[14] This it cannot do.

II. The RFS Program is a "Market-Forcing Policy."

While acknowledging that there is sufficient supply to meet the implied 15 billion gallon "conventional" biofuel requirement, EPA nonetheless continues to review "constraints" on use of higher blends of ethanol to assess the "reasonably attainable" volume of total renewable fuel In so doing, EPA underestimates the ability of ethanol to contribute to meeting the RFS volumes, and ignores the "market-forcing policy" Congress intended to implement in passing the RFS.

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[9] *See* Keith L. Kline, *et al.*, *Reconciling food security and bioenergy: priorities for action*, Global Change Biology Bioenergy (2016), *available at* http://onlinelibrary.wiley.com/doi/10.1111/gcbb.12366/epdf.
[10] *See, e.g.,* 75 Fed. Reg. 14,670, 14,839 (Mar. 29, 2010); 77 Fed. Reg. 59,458, 59,470-59,471 (Sept. 27, 2012); 81 Fed. Reg. 89,746, 89,763 (Dec. 12, 2016).
[11] Biotechnology Industry Organization (BIO), *The Renewable Fuel Standard: A Decade's Worth of Carbon Reductions*, at 1 (2015), *available at* https://www.bio.org/sites/default/files/RFS%2010%20Year%20GHG%20Reductions.pdf.
[12] RFA, *Energy Security*, http://www.ethanolrfa.org/issues/energy-security/ (last updated Mar. 2017).
[13] 77 Fed. Reg. at 59,470.
[14] *Americans for Clean Energy v. EPA*, No. 16-1005 ("*ACEI*"), slip op. at 31 (D.C. Cir. July 28, 2017).

EPA identifies the limited number of retail stations as the "primary constraint" on use of E15 and E85.[15] While the number of retail stations providing higher blends of ethanol continues to grow, as EPA acknowledges, the RFS provides incentives to change these types of market factors.[16] These incentives, however, come from enforcement of strong and growing RFS volumes. Instead, EPA notes that USDA programs supporting ethanol infrastructure is likely to be phased out by 2017 and asserts that retail stations will not grow beyond "those that may be upgraded through independent efforts."[17] This should be irrelevant given that the RFS is supposed to be market-forcing, not market-following.

Recent analysis by the USDA and Argonne (through the GREET model) show that corn ethanol provides greater emissions reductions than estimated by EPA. In addition, U.S. produced ethanol includes ethanol that qualifies as advanced biofuel, including cellulosic biofuel, as well as contributing feedstock for production of biomass-based diesel – an advanced biofuel. EPA's proposal, however, continues to emphasize demand for E0, and in fact increasing its estimate of E0 use. Again, this approach simply follows the market and excuses obligated parties from taking actions to ensure increasing volumes of renewable fuel are incorporated into the country's transportation fuel system.

EPA's approach, thus, underestimates the amount of ethanol that can be used to contribute to the RFS program and works against further investment in renewable fuels. This undermines the purposes of the statute and restricts the ability of the program to continue to grow.

III. EPA Must Increase the Advanced Biofuel Volume for 2018 and the Biomass-based Diesel Volume for 2019.

The "'fundamental objective' of the Renewable Fuel Program 'is clear'": To increase the use of renewable fuels in the U.S. transportation system.[18] EPA's proposal ignores this fundamental objective, proposing a reduction in total advanced biofuels from the volume it set in 2017 and, in fact, a reduction in advanced biofuels that were available in 2016.[19]

Testimony before EPA at the public hearing showed that there is ample room for additional growth of advanced biofuels. Despite Congress's clear goals, EPA has revised its methodology for cellulosic biofuels, which was upheld by the D.C. Circuit, to project *reduced* volumes, and has revised its approach to advanced biofuels generally, by declining to backfill *any* of the shortage in cellulosic biofuels with other advanced biofuels. In so doing, EPA is taking a step backwards, foregoing the economic, environmental and energy security benefits attendant with increasing renewable fuel use. Indeed, EPA admits that more supply can be available, and it should continue to support advanced biofuels.

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[15] 82 Fed. Reg. at 34,231.
[16] *Id.*
[17] *Id.* at 34,232.
[18] *ACEI*, slip op. at 11 (quoting 80 Fed. Reg. 77,420, 77,421 (Dec. 14, 2015)); *see also* 82 Fed. Reg. at 34,220.
[19] EMTS data shows 4.29 billion advanced RINs were generated in 2016 (D3, D4, D5 and D7). EPA, *2016 Renewable Fuel Standard Data*, RIN Generation Summary, https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2016-renewable-fuel-standard-data (data as of Aug. 10, 2017).

IV. EPA Does Not Have Authority to Reduce the Volumes Below those Proposed.

EPA properly is "not proposing to provide volume reductions through use of the general waiver authority."[20] This is because, as the D.C. Circuit has made clear, the general waiver authority under the RFS is limited to considerations of available supply.[21] In addition, although we believe higher volumes can easily be achieved, EPA's finding of "reasonably attainable" volumes precludes any claim of severe economic harm.

Yet, throughout the proposal, EPA requests comments on whether it should use its general waiver authority to finalize even lower volumes for 2018.[22] As an initial matter, the waiver provision includes procedural requirements that cannot be met through a general request for comments.[23] EPA has made clear it is not using the general waiver provision, and, thus, any change in this position would be a new "motion" or request under that provision, requiring public notice and comment and consultation with the U.S. Department of Agriculture (USDA) and the U.S. Department of Energy (DOE).[24] In short, EPA cannot rely on public comments to support a waiver without following the proper procedure. In particular, it must provide interested parties with the opportunity to review and comment on the proposed waiver and the grounds for such waiver.

Regardless, there are no grounds for a general waiver to reduce the volumes beyond what EPA has proposed. General waivers may only occur if severe 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.[25] Neither of these criteria can be met.

A. EPA admits there is adequate domestic supply for higher volumes than it is proposing.

The D.C. Circuit has made clear that "inadequate domestic supply" requires EPA to consider only supply side factors.[26] As the Court found, the "central problem" with EPA's inclusion of other factors was that it "def[ied] Congress's "market forcing policy," which was intended to "'overcome constraints in the market' by creating 'demand pressure to increase consumption of renewable fuels.'"[27] EPA proposed approach obviates that there is sufficient "supply" for higher volumes under the Court's precedent.

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[20] 82 Fed. Reg. at 34,207; *see also id.* at 34,209, 34,214, 34,229.
[21] *ACEI*, slip op. at 4. The D.C. Circuit found EPA's attempt to expand its waiver authority was improper, vacating the 2016 renewable fuel volume. [Any additional volume required based on the *ACEI* decision should be addressed by EPA in a separate process, and cannot affect EPA's determination of reasonably attainable volumes for 2018.]
[22] Since EPA sets the biomass-based diesel volume, EPA cannot use the general waiver authority to reduce those volumes. Rather, it must base the volume on the statutory factors listed by Congress. Such factors warrant *increases* in those volumes.
[23] 42 U.S.C. §7545(o)(7)(A), (B).
[24] *Id.*; *see also* 73 Fed. Reg. 47,168, 47,183-47,184 (Aug. 13, 2008).
[25] 42 U.S.C. §7454(o)(7)(A).
[26] *ACEI*, slip op. at 31.
[27] *Id.* (citations omitted).

EPA asserts that volumes set under the general waiver provision are to be "maximum reasonably achievable volumes."[28] Finding no domestic supply concerns, EPA now proposes only to use its authority under the cellulosic biofuel waiver provision, purported to assess "reasonably attainable" volumes.[29] EPA states that the volumes it sets under its cellulosic biofuel waiver authority are not the maximum volumes. This means more supply is available.[30] And, in fact, EPA recognizes more supply is available.[31] In short, EPA identifies no supply side constraints that could support a general waiver.[32] Nor can it.

Moreover, 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. While we dispute EPA's finding that the rate of growth in biofuel use has slowed, EPA admits that growth is possible. As such, it should (and must) promote that growth.

B. Additional reductions would cause harm to the economy and environment and, thus, using the general waiver authority is not permissible.

Under EPA's longstanding precedent, the severe harm provision establishes a very high bar and applies when adherence to the statutory volume *would* cause *severe* harm to the *nationwide* economy or environment *as a whole.* Neither of these criteria can be shown here.

1. EPA's own determination that its proposed volumes are more than reasonably attainable belies any notion that a general waiver is appropriate based on *severe* economic harm.

The waiver authority under Section 211(o)(7)(A) requires a finding of severe economic harm caused by implementation of the RFS program.[33] "While the statute does not define the term 'severely harm,' the straightforward meaning of this phrase indicates that Congress set a high

[28] 82 Fed. Reg. at 34,210 n.8. The D.C. Circuit has made clear that such standard can only consider factors affecting *supply* to obligated parties, not demand-side factors.
[29] *Id.*
[30] *See id.* at 34,229 ("It follows that if there are sufficient reasonably attainable volumes of renewable fuel to satisfy a total renewable fuel requirement of 19.24 billion gallons, then there is no basis for a finding that there is an inadequate domestic supply to satisfy a 19.24 billion gallon requirement."). EPA is not setting the advanced biofuel volume at a reasonably attainable volume, proposing an even lower volume. EPA does so purportedly based on a comparison of wholesale costs of diesel fuel compared to B100, but this fails to provide a substantial justification for foregoing the benefits of the additional volume. Such an approach is contrary to the statute and EPA's prior actions and, therefore, is arbitrary.
[31] *See id.* at 34,232 (noting "the market could supply a volume of ethanol greater than 14,479 million gallons"); *id.* at 34,236 (recognizing biodiesel and renewable diesel volumes could be "as high as 2.95 billion gallons and potentially higher"); *id.* at 34,234 ("Based on our assessment of supply of ethanol and biodiesel/renewable diesel, along with smaller amounts of non-ethanol cellulosic biofuel and other non-ethanol renewable fuels, we believe that a total of 19.24 billion gallons of renewable fuel is reasonably attainable in 2018").
[32] At best, EPA continues to note demand side constraints, which the D.C. Circuit has rejected as appropriate considerations under the general waiver provision. 82 Fed. Reg. at 34,230.
[33] 73 Fed. Reg. at 47,171.

threshold for issuance of a waiver."[34] Based on this high threshold, EPA has rejected several requests for a waiver under this provision, despite claims of significant economic harms.

In particular, the potential for compliance costs is not sufficient to support a finding of severe economic harm. In rejecting waiver requests by several States, EPA recognized that its regulations require refiners and importers "to ensure that the volumes of renewable fuel required under the Act are actually consumed."[35] EPA also has found that obligated parties are earning back their compliance costs through sale of their products. To the extent parties have chosen to rely on purchasing separated RINs to meet their obligations, inaction of the industry to further invest as Congress dictated cannot be considered part of the "implementation" of the program that Congress considered relevant with respect to a waiver. This would turn the program on its head.[36] This is particularly true here where EPA has already determined that the proposed volumes are reasonably attainable.

Moreover, EPA's proposed volumes are lower than what already have been produced or are expected for 2017. The market has easily handled these volumes and, thus, empirical evidence shows no severe economic harm. Rather, as history also shows, there would be significant economic harms if the volumes are further reduced. When EPA proposed reductions in the 2014 statutory volumes in November of 2013, for example, there were significant economic hardships endured by producers and rural communities. In assessing whether to use the general waiver authority, EPA must also consider the lost benefits and the impacts reductions would have on the renewable fuel industry and the local economies that rely on biofuel production.[37] One of the key benefits Congress sought through the RFS was to stimulate economic growth in the rural sector. Thus, any evaluation of a waiver request must consider the negative impacts on farmers, jobs and fuel prices that would be created by a waiver.

2. Reducing the volumes further would result in lost environmental benefits and, thus, it cannot be shown that the volume requirements will cause severe environmental harm.

Congress sought the numerous environmental benefits attendant with increased use of renewable fuels. EPA, nonetheless, notes it has "received numerous comments in previous annual standard rulemakings asserting that there are negative environmental impacts that may be associated with the RFS program."[38] Providing no analysis, EPA merely states that "[a] significant portion of these concerns center on feedstock production, particularly feedstocks

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[34] *Id.* at 47,172.
[35] 77 Fed. Reg. 70,752, 70,772 (Nov. 27, 2012).
[36] Moreover, as the D.C. Circuit has recognized, EPA's regulations and the statute includes other provisions that provide obligated parties means of meeting the requirements, including carryover RINs and carryover deficits. The availability of carryover RINs is an additional reason that the general waiver need not be used. Use of such carryover RINs already further reduce the actual volumes needed in 2018.
[37] *See* 73 Fed. Reg. at 47,172; 77 Fed. Reg. at 70,775; EPA May 22, 2012 Denial of API/AFPM/WSPA Waiver Request at 16 n.52. For example, EPA has estimated that a 30-million gallon biodiesel plant will spend nearly $140 million on goods and services. 77 Fed. Reg. at 59,477. The loss of this income would be devastating to the local community if that plant were to close. Failure to support a growing industry would likely result in such closure.
[38] 82 Fed. Reg. at 34,229.

used to produce conventional biofuels."[39] As an initial matter, so long as the feedstock meets the requirements of the statute, EPA cannot exclude any particular feedstock from the program. In particular, planted crops and crop residues are key feedstocks under the program, and have been the driving force in moving this country's energy policy to be more diversified and sustainable. Moreover, the conventional biofuel portion of the program remains the same as in 2017, and, again, there has been no evidence of adverse environmental impacts associated with the RFS program, much less severe environmental harm.

Indeed, family farming goes hand in hand with environmental protection, and NFU takes seriously concerns regarding land stewardship.[40] NFU's policy embodies the strong sense of responsibility that guides family farmers: "family farmers and ranchers have historically been our best soil and water conservationists when given the economic incentives and flexibility necessary to do so."[41] Stable enactment of the RFS volume requirements bolsters price stability, which allows continued improvements in sustainable agriculture, and is a significant factor in considering whether to bring additional acreage into production. Any assertions that the RFS promotes additional planting does not consider that changes can be attributed to the loss of funding for land retirement programs like the Conservation Reserve Program (CRP) or that farmers have made great strides in 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. 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.

Further reductions in the volumes, on the other hand, would without question result in lost benefits that would harm the environment, having particularly significant impacts on farmers.

a. Climate change and agriculture

The results of climate change, brought on by GHG emissions to the earth's atmosphere resulting from human activity, will be detrimental to both human health and the economy. 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

[39] *Id.*
[40] While there have been claims of grasslands being cleared, no causal connection has been established between these clearing and biofuel production. Moreover, these "grasslands" are largely agricultural land simply being returned to active production. Further, total agricultural land in the United States continues to shrink. U.S. farmers continue to work on increasing yields, reducing crop failures, and making more out of less land.
[41] Policy of the National Farmers Union, Art. VII-A, *supra* n.1.

magnitude and rate of climate change increases."[42] 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…"[43] We want to achieve this goal, and enactment of the RFS volume targets put forth by Congress will help.

i. 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.[44] As feedstock production practices and 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.

Over ten years, the RFS reduced carbon emissions by 589.33 million metric tons, or the equivalent of removing more than 124 million cars from the road.[45] This is a starting point; once the policy succeeds in opening the transportation fuels market to competition, significantly greater GHG reductions should be expected. 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.

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[42] M.E. Brown, *et al.*, *Climate Change, Global Food Security, and the U.S. Food System*, U.S. Global Change Research Program, at 111-112 (2015), *available at* http://www.usda.gov/oce/climate_change/FoodSecurity2015Assessment/FullAssessment.pdf.
[43] *Id*. at 112.
[44] *Assessment: Role of E15 in Reducing GHG Emissions*, Steffen Mueller, Energy Resources Center and Director of the Agriculture and Bioenergy Research Center at the University of Illinois, Mar. 18, 2015, *available at* http://www.eesi.org/articles/view/research-finds-widespread-use-of-e15-would-reduce-co2-emissions. More recent and updated lifecycle analysis continue to show even greater GHG emissions reductions by replacing petroleum fuels with biofuels. *See, e.g.,* Environmental and Energy Study Institute, *Research Finds Widespread Use of E15 Would Reduce CO2 Emissions* (Mar. 27, 2015), http://www.eesi.org/articles/view/research-finds-widespread-use-of-e15-would-reduce-co2-emissions ("GREET analyses estimate that corn ethanol greenhouse gas emissions are on average 34 percent lower than those of regular gasoline.").
[45] BIO, *The Renewable Fuel Standard: A Decade's Worth of Carbon Reductions*, *supra* n.10, at 1.

Lowering the RFS requirements sacrifices the opportunity to mitigate climate disturbances to agriculture 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.

ii. Indirect Climate Benefits

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.

Land use in the United States has long served as a sink for GHG emissions. 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. Offering farmers a way to achieve value for participating in climate change, as a properly implemented RFS would, supports these goals.

Consumers, like farmers, also 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 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. In addition, building further renewable fuel infrastructure would deter the price volatility that oil is particularly subject to.

Setting a strong RFS also would require obligated parties to make additional infrastructure investments, as envisioned by Congress. Lower volume requirements than those set in the EISA allows obligated parties to continue to ignore Congress's directives, thereby impeding future climate resilient actions.

b. Risk to Climate Benefits

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.

Farmers, the first step in biofuel production, require the certainty that is supposed to come with the RFS program to make the necessary decisions to do their part to contribute to expanded use of renewable fuel, as does the rest of the industry. Farmers and rural communities have made business decisions and invested significant assets based on the reasonable expectation that EPA would fulfill its responsibility to grow the renewable fuels industry. In this proposal, however, EPA penalizes farmers for these investments and undermines any certainty by essentially moving the program in the wrong direction and imposing its own policy views, rather than follow a consistent policy of growth. This removes the incentives that would allow farmers and stakeholders to take action 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.

NFU argues that EPA does not have the authority to use its general waiver authority, and that the direct and indirect environmental benefits of the RFS compel EPA to set a higher volume than in the proposal, moving closer to the statutory levels found in the EISA.

Conclusion

As discussed at length above, the RFS is an important policy with far-reaching direct and indirect consequences, particularly for farmers. NFU strongly encourages EPA to increase the advanced biofuel volume requirements for 2018. Recent wavering on the RFS has caused enormous setbacks in advanced biofuels, including cellulosic biofuel development, and, consequently, delayed important GHG emission reductions. But, EPA can still 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,

Roger Johnson

President