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VIA ELECTRONIC FILING (www.regulations.gov)

Scott Pruitt, Administrator
United States Environmental Protection Agency
EPA Docket Center
Office of Air and Radiation
Mail Code 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460
ATTN: Docket ID No. EPA-HQ-OAR-2017-0091

Renewable Fuel Standard Program: Standards for 2018 and Biomass -Based Diesel Volume for 2019; Availability of Supplemental Information and Request for Further Comment, 82 Fed. Reg. 46,174 (Oct. 4, 2017)

Dear Administrator Pruitt:

National Farmers Union (NFU) represents family farmers, fishers and ranchers across the country, with formally organized divisions in 33 states. NFU believes that good opportunities in production agriculture are the foundation of strong farm and ranch families, and strong farm and ranch families are the basis for thriving rural communities. Vibrant rural communities, in turn, are vital to the health, security and economic well-being of our entire national economy. The Renewable Fuel Standard (RFS) is one of those important opportunities. As such, NFU's policy calls for strong support of the RFS and *expanding* renewable fuels, as explained in our comments on EPA's proposal for the 2018 RFS program and 2019 biomass-based diesel volume, 82 Fed. Reg. 34,206 (July 21, 2017) (referred to herein as the "2018 RFS Proposal").¹

In a letter to the Renewable Fuels Association, President Trump assured the industry that "this Administration value[s] the importance of renewable fuels to America's economy and to our energy independence."² He acknowledged, again, that "renewable fuels are essential to America's energy strategy."³ As such, NFU is disappointed with the

¹ EPA-HQ-OAR-2017-0091-3184; *see also* EPA-HQ-OAR-2017-0091-3431 (Comments of North Dakota Farmers Union); EPA-HQ-OAR-2017-0091-1692 (Comments of Missouri Farmers Union). These comments are incorporated by reference.

² Letter from President Trump to National Ethanol Conference, *available at* <http://www.ethanolrfa.org/wp-content/uploads/2017/02/White-House-NEC-Letter.pdf>.

³ *Id.*

recent “Request for Further Comment” published by EPA on October 4, 2017, at 82 Fed. Reg. 46,174. While the notice appears to be targeted at biomass-based diesel and advanced biofuels, it is a deeply troubling signal that this Administration is not looking out for the biofuels industry, but rather the petroleum industry. This is counter to the assurances President Trump and this Administration provided.

As with the 2018 RFS proposal, the Request for Further Comment does not present any information or concerns regarding the ability to meet the implied conventional biofuel RFS volume of 15 billion gallons for 2018. The Request for Further Comment does not meet the procedural obligations imposed by the statute on EPA to utilize its general waiver authority. EPA has not, to date, met those procedural obligations nor presented any support for deviating from this 15 billion gallons and, thus, the final volumes must include this 15-billion implied conventional biofuel requirement.

U.S. farmers, however, do not just support corn ethanol, which makes up the bulk of the implied conventional biofuel requirement. They also support other biofuels, such as advanced ethanol, cellulosic ethanol, and biomass-based diesel. As explained in NFU’s comments on the proposal, EPA’s proposal on advanced biofuels falls seriously short of preserving the integrity of the RFS – which is to drive the biofuels market and grow the industry. It fails to advance the intent of Congress and loses many additional benefits that come with increased volumes of biofuels. As such, NFU urged EPA to *increase* the proposed volumes and reject any calls to further reduce the required volumes.

EPA, however, now has issued this Request for Further Comment, which appears to ignore NFU’s comments, outlining, instead, the views of the American Fuel and Petrochemical Manufacturers (AFPM) and the American Petroleum Institute (API) on possible ways EPA can *reduce* not just its proposed volumes but also the 2018 biomass-based diesel volume that was made final in December of 2016. But, AFPM and API are ardent opponents of the RFS and have time and time again tried to ignore the policy directives of Congress. Their attempts to undermine the statute have been previously rejected by EPA and/or the D.C. Circuit. As such, the Request for Further Comment is only a distraction to EPA’s real job as Congress directed, and it should be withdrawn.

Given the assurances provided by President Trump, it is deeply disappointing that this Administration has chosen to support yet another attempt by obligated parties to create instability and undermine the biofuels industry, when Congress ordered EPA to create certainty and ensure growth in biofuels. Indeed, Congress saw the benefits of promoting renewable fuels because of their many benefits, not the least of which are the benefits to rural communities. Yet, there is not one reference to the concerns or impact on family farmers in the Request for Further Comment if the RFS volumes were reduced even further than what EPA has proposed (or already made final). Family farmers are currently facing significant economic distress, and the Administration should be supporting them and our rural communities. Such support would be through higher volumes than what EPA proposed, not lower ones.

I. Any Consideration of EPA's Waiver Authority and the Biomass-Based Diesel Volume Must Consider the Impact to the Rural Economy.

Farmers have been the backbone of the growing renewable fuels industry in the United States. With the growth of the biofuel industry, farmers have increased yields, expanded feedstocks, and helped move this country toward energy independence. And, unlike fossil fuel production, farmers have done this in a sustainable way.

Farmers contribute to the overall economy, but many communities also rely primarily on agriculture and related industries, such as biofuel production plants. Reductions in the RFS volumes have negative repercussions on these communities. Undoubtedly EPA will try to assert that it is trying to support the domestic industry by looking to reduce imports.⁴ NFU, however, has significant questions as to the validity of the arguments raised by AFPM/API, and now repeated by EPA, as to the authority to reduce volumes on these grounds and believes this request only serves to create uncertainty in the market, undermining the program. Indeed, we believe more supply is available and higher volumes are reasonably attainable without detrimental harm to any part of the economy. More important, there is simply no explanation as to how reducing these volumes would address the impact of increased imports and support domestic producers, and thereby U.S. farmers, when the Request for Further Comment makes clear that imports would still be eligible to participate in the program.⁵

Even if it could be said that there will be reduced imports, which EPA has not shown, the myopic focus on reducing the volumes ignores the fact that the domestic industry can step up to the plate and meet substantially higher volumes, making up for these purported lost imports, thereby ignoring the benefits that can be achieved. Indeed, EPA has recognized that, in assessing its general waiver authority, it must consider the benefits of the program, and the adverse impacts of the proposed reduction.⁶

In addition, Congress expressly required EPA to consider the impact on the rural economy, the impact on the environment, and the costs to consumers when assessing the biomass-based diesel volume.⁷ If EPA were to reduce the volumes further, there would be significant adverse impacts to the rural economy, the environment, and consumers. Further reductions in the RFS volumes effectively eviscerate the investments that have already been made, punishing those that have responded to Congress's directives and to EPA's prior approach to implementing the RFS program, and rewarding the petroleum industry.

⁴ The Request for Further Comment, however, only references the potential for increased costs of biodiesel to blenders (e.g., those that have been purchasing imported biofuels).

⁵ 82 Fed. Reg. at 46,178 (noting possible reductions "would not in any way limit the use of qualifying imported biofuel by obligated parties to ultimately comply with the annual percentage standards").

⁶ See, e.g., 73 Fed. Reg. 47,168, 47,172 (Aug. 13, 2008).

⁷ 42 U.S.C. §7545(o)(2)(B)(ii).

In short, this Request for Further Comment completely ignores Congress's "marketing forcing policy" and goals, which EPA must consider when even contemplating the extraordinary actions it is now suggesting.

II. EPA Properly Did Not Propose to Use its General Waiver Authority.

Nothing in the Request for Further Comment supports use of EPA's general waiver authority for any category. While EPA is requesting comments on how it might interpret (or reinterpret) its waiver authority, EPA cannot play games with the notice and comment requirements, and the public should not be required to guess as to what might be said. Rather, EPA must provide a proposal, explain its rationale, and provide the methodology and data supporting that rationale. EPA's Request for Further Comment does none of these things and, thus, does not alleviate EPA of its procedural obligations. As such, the only proposal on the table is to *not* use the general waiver authority.⁸ This is, in fact, the only proper finding for the 2018 RFS.

First, the D.C. Circuit has made clear that the general waiver authority under the RFS is limited to considerations of available supply, and, while we do not agree with the (obligated parties') suggested revisions to the interpretation of "inadequate domestic supply," we believe there is sufficient available supply for higher volumes, even when just considering domestic production. Current domestic production capacity for biofuels is underutilized and more expansions and new facilities have been announced in anticipation of EPA increasing the volumes. Not even in the Request for Further Comment is there a question as to the availability of feedstock, and family farmers are ready to meet this country's needs.

Also, nowhere in the Request for Comment does EPA indicate it is revising its standard for determining "adequate supply" under the general waiver provision, even if EPA did exclude imports from supply. That methodology was based on finding "maximum reasonably achievable volumes."⁹ EPA has not identified any domestic supply concerns for the volumes it has proposed, even if one only considers U.S. production capacity. Nor can it. Public comments have shown much higher volumes are easily achievable. As such, the general waiver authority is simply inapplicable, even if imports are not considered. Consideration of imports would only require *even higher* volumes.

Second, there is no actual analysis provided to show that the proposed (or higher) volumes will cause severe economic harm to any region, State or the country as a whole. Under EPA's longstanding precedent, the severe harm provision establishes a very high bar, and EPA must consider all sectors of the economy. Instead, the Request for Further Comment is based on the same old complaints by some obligated parties that certain parties are profiting more than others. Reduced profits are not economic

⁸ See, e.g., 82 Fed. Reg. at 34,207; see also *id.* at 34,209, 34,229.

⁹ 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.

harms, nor can they be attributed to the RFS volumes.¹⁰ Indeed, despite the frequent cries that the sky will fall if EPA actually implements the RFS program (as it is required to do), the market continues to adjust. Moreover, farmers have benefitted, consumers have benefitted, and the economy as a whole has benefitted.

EPA attempts to argue that there is new information referring to the still pending reinstatement of a biodiesel tax credit and a still pending trade case against biodiesel from Argentina and Indonesia. This is not new information that was not considered by EPA when it proposed its “reasonably attainable” volumes. In any case, Congress did not intend for EPA to use its limited waiver authority or to limit the increases in biomass-based diesel based on speculative concerns wholly unrelated to the RFS program. The tax credit and the trade case are separate from the RFS program. In particular, the trade case is intended to address disadvantages faced by domestic biodiesel producers with respect to unfair trade practices in these two countries. Moreover, additional reductions would cause harm to the economy and environment and, thus, using the general waiver authority is simply not permissible.

III. NFU Opposes Any Attempts to Reopen the 2018 Biomass-Based Diesel Volume.

The purpose of the RFS is to create certainty. EPA has declined to make adjustments to the standards even when it knows the actual volumes required might not be met. For example, EPA has granted small refinery exemptions after the standards have been set based on estimated gasoline production from those refineries. This effectively reduces the volume requirements, but EPA placed certainty above its obligations to “ensure” the applicable volumes are met.

Now, however, EPA has taken an extraordinary step in suggesting it can reopen the 2018 biomass-based diesel volume that it finalized in December of 2016. While EPA attempts to do so under the waiver provisions, it is not following proper procedure and only presents speculation of what might happen in 2018. None of this speculation undermines any of the findings it made in setting the 2018 biomass-based diesel volume, which many argued was too low in the first instance. If there is, in fact, inadequate domestic supply or severe economic harms from implementation of the RFS volumes, EPA can still utilize its waiver authority through the proper procedures.

Here, however, the obligated parties are merely seeking to reduce their compliance costs and undermine one of the most successful parts of the RFS program. This is beyond EPA’s authority, and any attempts to revisit the 2018 biomass-based diesel volume must be rejected.

¹⁰ Indeed, the woes of some refiners are generally as a result of actions outside the RFS program or as a result of their own inaction.

Conclusion

In sum, the RFS is an important policy with far-reaching direct and indirect consequences, particularly for farmers. NFU believes EPA must withdraw its Request for Further Comment and, in any event, must issue a new proposal if, in fact, it believes there is actual data and analysis showing further reductions than in its 2018 RFS Proposal are warranted.

Instead, NFU strongly encourages EPA to increase the advanced biofuel volume requirements for 2018. Recent wavering on the RFS has caused substantial setbacks in advanced biofuels, including cellulosic biofuel development, and, consequently, has delayed important GHG emission reductions.

Sincerely,

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

Roger Johnson
President