



Statement of Rob Larew on behalf of the National Farmers Union

Hearing Before the U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Environment and Climate Change

“Protecting the RFS: The Trump Administration’s Abuse of Secret Waivers.”

October 29, 2019

The National Farmers Union (NFU) appreciates the opportunity to submit this statement, as part of the Subcommittee’s hearing on “Protecting the RFS: The Trump Administration’s Abuse of Secret Waivers” to express its strong support for continued promotion of renewable fuels. This nation’s policy under the Renewable Fuel Standard (RFS) program to promote the numerous economic, environmental and national security benefits associated with increasing biofuel production and use has been successful, providing significant benefits to farmers, consumers and communities across the United States. NFU has urged the Trump Administration to build on this success through promotion of higher blends of ethanol, such as mid-level blends of E20-E40, which are readily available and the most cost-effective means to move toward higher octane, low-carbon fuels—a widely supported goal. The success of the RFS program, however, has been severely curtailed, and even taken huge leaps backwards, due to the Trump Administration’s recent handling of small refinery exemptions, which has been done without any consideration of the impacts to the program and behind closed doors without input from those affected by EPA’s actions.

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. Family farms are key to a safe, secure and stable food system. Biofuel production represents a much-needed market for farmers, particularly at a time when rural America is facing a major financial crisis in the farm sector. Domestic utilization of crops for biofuel production helps stabilize and support prices, while promoting sustainable agriculture, reducing carbon emissions, improving air quality, and enhancing the nation’s energy independence and security.

While President Trump has expressed his support for farmers and renewable fuels, EPA has fallen short of the mark. NFU was encouraged by President Trump’s support for year-round use of E15 in directing EPA to revise its Reid Vapor Pressure regulations but was disappointed that EPA declined to remove obstacles to higher ethanol blends. Further, EPA has not, as NFU has urged, grown or properly enforced the RFS program where EPA’s obligation is to ensure the volume mandates established by Congress.

NFU has raised its concerns with EPA's recent handling of small refinery exemptions since reports first started regarding EPA's expansion of the program. This expansion was done in secret and without explanation to the public, such as explaining how EPA defines "disproportionate economic *hardship*" or how EPA was processing these exemptions requests consistent with the statute, particularly its obligation to "ensure" the mandated volumes. Instead, EPA has made vague references here and there, while making policy decisions through closed-door informal adjudications without providing the public with a complete picture of its actions or the rationale supporting those actions. The lack of transparency created market volatility and uncertainty, affecting investment in biofuels, and the expansion of these exemptions has eliminated over 4 billion gallons of demand for biofuels with substantial impacts on farmers.

It was not until September 2018 that EPA officially began providing (limited) information on small refinery exemptions on its website that showed the significant expansion in exemptions granted from prior years. Since then, however, EPA has refused to consider comments on the lawfulness or effects of its actions, including, significantly, how EPA can take action to address the impacts of these exemptions on the volume requirements. As such, NFU was again hopeful when President Trump announced that his administration had reached a solution to address the lost demand stemming from small refinery exemptions. Importantly, the "solution" does not address the lost demand from prior years, which has set the program backwards. Even for future years, however, NFU was again disappointed with EPA's proposed implementation of this claimed solution.

On October 15, 2019, EPA released a supplemental notice to the 2020 proposed standards that was to implement this solution. The solution NFU expected was to include an adjustment for anticipated small refinery exemptions for 2020 based on a three-year average of actual exempted gallons. Instead, EPA proposed to base the adjustment on a three-year average of exempted gallons as recommended by the U.S. Department of Energy (DOE). Because DOE utilizes a two-part assessment to determine whether the small refinery faces (or faced) disproportionate economic hardship, DOE often recommends a "partial" exemption if both parts are not met. For compliance year 2018, however, EPA indicated in an August 9, 2019 memorandum, that, despite DOE's recommendation for "partial" exemptions, it viewed the statute as providing for "full" exemptions. Using actual exempted volumes results in an average of approximately 1.35 billion gallons of exempted volumes per year, while using DOE's recommendations, results in just 770 million gallons. This is a significant difference. Despite the August 9 memorandum, EPA claims it may grant partial exemptions in the future. But EPA makes these decisions in secret, and, due to the annual nature of the RFS program, the public's ability to take action to ensure EPA is enforcing the volumes is extremely limited. Even in the supplemental notice, EPA has sought to restrict those issues on which it will accept comment.

While NFU appreciates efforts to address the significant impacts of the small refinery exemptions by projecting forward when setting the standards, it is important to note that a key issue with EPA's implementation of the exemptions is the retroactive nature of those exemptions. That is, the exemptions are granted after the standards are set, and even after the compliance year is over. Indeed, all 31 exemptions granted for compliance year 2018

to date were granted in August of 2019, which is well after the March 2019 compliance deadline for that year. Moreover, EPA's website shows that, despite these decisions, EPA still shows two petition requests for compliance year 2018 still pending.

The retroactive nature of the exemptions results in uncertainty and possible manipulation of the market where, among other things, Renewable Identification Numbers (RINs) that were long thought retired can re-enter the market. The secret nature of the exemptions and the process gives refiners seeking these exemptions an advantage in determining when and whether to seek an exemption. For these reasons, NFU has urged EPA to set deadlines by when these exemptions must be sought so that they may be granted prior to the standards being set, which we believe is consistent with the language and structure of the statute, and to provide more transparency on the grounds and process for granting these exemptions. Recent years show that EPA's current process, which is not codified, does not "ensure" the volumes. Rather, NFU believes it undermines the carefully crafted incentives created by Congress.

As such, NFU appreciates the Subcommittee's consideration of H.R. 3006, which we support. The bill would set an annual deadline of June 1 for small refineries to petition for an exemption from the upcoming year's volume requirements. Where EPA is to act on these petitions in 90 days by statute, such a deadline would facilitate setting the standards and better estimate exempted volumes. It is also consistent with EPA's implementing regulations and would minimize the uncertainty created by EPA's retroactive grants of exemptions.

H.R. 3006 would also require public disclosure of any information included in petitions for exemptions. While NFU believes EPA already has authority (and an obligation) to take these actions, H.R. 3006 would ensure that it does so, and makes the process less vulnerable to an administration's policy choices that may go against Congress's directives.