

**Testimony of Gene Gebolys, Founder, President & CEO
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On Behalf of the National Biodiesel Board**

**Submitted to the Energy and Commerce Committee, Subcommittee on Energy
Hearing on “Protecting the RFS: The Trump Administration's Abuse of Secret Waivers”
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Summary:

- On behalf of the National Biodiesel Board and the biodiesel industry, I appreciate this subcommittee’s interest in the Renewable Fuel Standard (RFS) and the Environmental Protection Agency’s recent proposal to estimate future small refinery exemptions (SREs).
- Too often, the dialogue ignores how small refinery exemptions undercut the RFS program’s 5 billion gallons of advanced biofuel – 90% of which is filled by biomass-based diesel.
- EPA’s massive expansion of waivers is destroying demand for billions of gallons of biomass-based diesel. The impact on the industry is devastating. World Energy, alone, has been forced to close three facilities, impacting more than 100 workers.
- EPA’s recent proposal to estimate small refinery exemptions in 2020 will never make up for its past demand destruction. Worse, the agency intentionally underestimates future SREs by employing an average of Department of Energy recommendations – the very same recommendations the EPA ignored when issuing the actual waivers.
- When EPA finalizes its 2020 renewable fuel obligations rule by the end of this year, it must fully account for small refinery exemptions, or industry contraction and job losses will continue throughout the biofuels and broader agricultural economy. Moreover, the

agency must recognize and support the biodiesel industry's ability to grow under the RFS in 2020 and beyond, as Congress intended.

Good morning, Chairman Tonko, Ranking Member Shimkus, and Members of the Committee.

Thank you for inviting me to testify on behalf of the National Biodiesel Board (NBB).

NBB is the leading U.S. trade association for the biodiesel and renewable diesel industries, including producers, feedstock suppliers, and fuel distributors. In existence since 1992, NBB represents more than 100 U.S. state associations and companies, such as mine.

I am the founder and CEO of World Energy, one of the largest and longest-standing low-carbon fuel suppliers in North America. Founded in 1998, we now own and operate five biodiesel plants and a renewable diesel refinery with total production capacity of over 200 million gallons, and we operate distribution hubs throughout the United States and Canada.

Biodiesel, renewable diesel, and sustainable aviation fuel, collectively known as biomass-based diesel, are the nation's foremost advanced biofuels. They are used from coast to coast in passenger vehicles, airplanes, farm equipment, trucking fleets, and wherever diesel fuel is used.

The U.S. biodiesel industry has grown from around 400 million gallons of production in 2007 – the first year of the Renewable Fuel Standard program – to more than 2.6 billion gallons in 2018.

On behalf of the 65,000 workers in our industry, who generate \$17 billion in economic activity while dramatically reducing our nation's reliance on fossil fuels and improving the nation's carbon footprint, I am here to talk about the crisis caused by the EPA's ongoing mismanagement of the RFS program. After more than 20 years of impressive year-over-year growth, the advanced biofuels industry is facing contraction caused by the very agency Congress entrusted with the responsibility to foster our growth.

EPA's proposal to estimate future small refinery exemptions in the 2020 RVO formula does not send a strong enough signal to the biofuel industry to help reopen closed plants and get industry

employees back to work. There is no guarantee in the proposed rule that EPA won't continue to grant a flood of exemptions every year.

The Renewable Fuel Standard is about much more than the 15 billion gallons of ethanol that Congress required to displace gasoline in the nation's fuel tank. As of 2016, Congress established that all growth in the program would come from advanced biofuels like biodiesel and renewable diesel.

In fact, biodiesel and renewable diesel fill more than 90 percent of the advanced biofuel requirements under the RFS and they reduce greenhouse gas emissions by as much as 86 percent. Biomass-based diesel is made from a variety of feedstocks, including recycled animal fats, used cooking oil, and surplus vegetable oils.

The Environmental Protection Agency has proposed to set the 2020 overall advanced biofuel volumes at just over 5 billion gallons, which maintains the same level for non-cellulosic biofuels that the agency set for 2019. For 2020, the agency set the biomass-based diesel volume at 2.43 billion gallons – despite projecting that the industry will produce more than 2.8 billion gallons. EPA has also proposed flatlining the biomass-based diesel volumes for 2021 at 2.43 billion, a level well below the biodiesel industry's proven capacity.

But EPA hasn't been satisfied to just halt growth and directly defy Congressional intent. The agency has been taking extraordinary action to shrink the market for advanced biofuels. Under previous Administrator Scott Pruitt and again under Administrator Andrew Wheeler, the agency has flooded the RIN market by handing out waivers – as one refining executive said – “like Halloween candy.”

Far from protecting small refiners, these waivers are wreaking havoc with small biorefiners throughout the biofuels industry and the affiliated industries and communities that support them.

The EPA's actions are replacing clean, domestically produced, low-carbon renewable fuels with the very fossil-based, high-carbon fuels the RFS was designed to displace. EPA is also jeopardizing state and regional climate goals, such as California's. In 2018, biodiesel and renewable diesel generated 46 percent of all credits in California's Low Carbon Fuel Standard program.

An analysis conducted at the University of Illinois found that small refinery exemptions issued over the past several years slashed demand for biomass-based diesel by 2 billion gallons, with the economic damage expected to reach \$7.7 billion overall.¹

On August 9, with the biofuels industry still struggling with the impacts of last year's SRE deluge, the EPA dumped 31 more waivers on the market under the ironic guise of protecting jobs. With that, the biomass-based diesel industry was forced to start shutting down capacity. At my company, we took immediate action. On August 16, one week after the EPA's action, World Energy shuttered our biorefineries in Harrisburg, Pennsylvania, Rome, Georgia, and Natchez, Mississippi, cutting more than 100 jobs and indirectly impacting many hundreds more.

By no means were we alone. Other plant closings followed in a cascade that still continues. Many thousands more workers, farmers, suppliers, distributors and others in the communities where we operate have been hit hard by this latest blow from the Environmental Protection Agency – whose name defines its mission. The blowback was immediate and intense. President Trump soon stepped in and promised to personally intercede to address the issue. On October 4, the White House announced that a "deal" had been reached to use an average of the gallons exempted over the previous three years estimate 2020 waivers in establishing the renewable volume obligations for the year.

¹ Irwin, S. "[Small Refinery Exemptions and Biomass-Based Diesel Demand Destruction](#)," *farmdoc daily* (9):45, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, March 14, 2019.

While the proposal as outlined is far from adequate to correct the damage done or to ensure that it does not continue, it was an encouraging sign that finally the Administration may be moving to correct its wayward course. But just two weeks later, true to form, the EPA released a convoluted and watered-down proposal to only partially account for anticipated SREs. The proposal does nothing to encourage biofuels executives like me to consider re-opening plants or even to stop closing them.

Both last year and the previous two years, the EPA blatantly disregarded Department of Energy advice and retroactively issued full waivers to companies that the DOE said did not deserve them. Now, the EPA proposes to factor future small refinery exemptions into the 2020 RVO formula. That makes sense, and while they should have been doing this in the past, we welcome the change to do it in the future. But, the idea that they would use the very same DOE guidance that they blatantly disregarded in the past represents a shameless and blatant attempt to continue doing damage with their abuse of the hardship waiver process.

EPA Administrator Wheeler has publicly and repeatedly claimed that EPA followed the law, recommendations from the Department of Energy, guidance from the Courts, and directives from Congress as it granted small refinery exemptions over the past several years. Plain and simple, those claims are contradicted by the public record.

EPA's proposal shows very clearly that the volumes of gasoline and diesel it exempted for 2016, 2017 and 2018 were nearly double what DOE recommended. It is also public knowledge that EPA granted exemptions to oil refineries that didn't qualify for them. In a June 19 letter to Senator Chuck Grassley, Secretary of Energy Rick Perry identified at least one instance where EPA granted an exemption that DOE recommended denying. Further, he identified multiple instances where EPA granted full exemptions where DOE recommended partial exemptions.

EPA began freely handing out these small refinery exemptions months before the court cases that Administrator Wheeler cites as justification. In a Reuters story the day of the *Sinclair* decision, EPA stated it had already issued 29 waivers for 2016 and earlier years. EPA did not wait for Court orders or Congressional directives before launching its present course on small refinery exemptions; its claims to the contrary are demonstrably false.

And even now, the meshuggaas continues. An October 23 Bloomberg article details how EPA fought back against the White House “deal,” unilaterally changing the terms to undercount the amount of previous exemptions in projecting the 2020 RVO.

EPA has now thoroughly broken trust with RFS stakeholders and has established itself completely aligned with those who promote non-compliance with the law of the land. The President of the United States has made promises the EPA seems committed not to keep. The advanced biofuels industry’s only objective is to have the EPA administer the RFS in a manner that is transparent, consistent, balanced, and compliant with the law. Doing so is in the interest of all stakeholders and eminently within reach.

EPA has multiple options to account for small refinery exemptions in its annual RFS rules that the industry can support.

First and foremost, EPA can and must grant fewer small refinery exemptions. EPA must deny all exemption applications for refiners who have not been exempt continuously since 2010 and should ensure that all refineries granted exemptions actually experience “disproportionate economic hardship” as a direct result of the RFS program. This approach was recommended by Special Assistant to the President Francis Brooke in a June 21, 2018 memorandum.² Further,

² “Decision Memorandum for the President” prepared by Francis Brooke, Special Assistant to the President for Energy and Environmental Policy, dated June 1, 2018. *Renewable Fuels Ass’n v. EPA*, No. 18-9533, USCA DCC, Doc. 010110245380, Oct. 15, 2019..

EPA must appropriately consider the analysis and recommendations of DOE in the small refinery exemption process.

EPA should also move to prospectively grant or deny all small-refinery exemptions for a calendar year before issuing the final RVO rule for that year. This practice would allow all actual exemptions to be accounted for in EPA's existing formula for calculating percentage standards and would enhance transparency for all market participants. EPA could easily require refiners to apply for an exemption with sufficient time to allow EPA to reach a decision by the November 30 statutory deadline each year. NBB and its members support H.R. 3006, which would direct EPA to set such a deadline for hardship petitions.

If EPA continues to grant retroactive exemptions, it should include a good faith estimate of such exemptions in the percentage standards for the coming year based on the actual exemptions issued in previous years. As the Supplemental Rule proposes, EPA could set estimated values for GE (the amount of gasoline projected to be produced by exempt small refineries) and DE (the amount of diesel fuel projected to be produced by exempt small refineries) in EPA's formula for the calculation of the annual percentage standards. EPA has plenty of information with which to make an accurate prediction, including small refiners' statements of whether they will need an exemption in upcoming years. EPA should use an average of the actual gallons waived by EPA for the three most recent compliance years in the final 2020 RFS rule.

These approaches would be significantly more accurate than EPA's current approach that assumes zero exemptions will be granted despite all evidence to the contrary or EPA's proposed approach to use an average of DOE's recommendations that the agency has never adhered to.

Finally, EPA can account for any unexpected retroactive exemptions by making them up in a future year's RVO rule. The D.C. Circuit has repeatedly recognized that EPA must follow the requirements of the RFS statute even if it is late in doing so.

EPA could address small-refinery exemptions through any of these methods, or it could use a combination of them. What it cannot do is continue to undermine the annual rules.

EPA can also ensure that the impact of small refinery exemptions is limited by raising future volumes. Congress should provide strong direction to EPA to continue growth of the biofuel industry under the RFS. The biomass-based diesel industry has proven its ability to produce over and above the volumes set each year by EPA. We continue to grow and to invest under the current RFS, even in the face of policy uncertainty, because that policy promises opportunity for further growth.

In sum, Congress should ensure that the United States continues to enjoy the benefits that biodiesel, renewable diesel, sustainable aviation fuel and other advanced biofuels bring under the Renewable Fuel Standard.

Create Jobs, Grow Rural Economies. With biodiesel plants nationwide—from Washington and California to Texas and Virginia —the biodiesel industry supports more than 65,000 jobs, \$17 billion in economic impact, and \$2.5 billion in wages paid. In many rural communities, biodiesel plants are a driving force of the local economy, supporting the employment of technicians, plant operators, engineers, construction workers, truck drivers, and farmers. Producers nationwide plan to invest, expand production, and hire and train new workers; they need steady growth under the RFS to do so.

Add Value to Other U.S. Economic Sectors, Such as Agriculture. Biodiesel provides very strong soybean price support, adding an average \$0.63 to every bushel. Biodiesel allows U.S. soybean

farmers to be more competitive in the global protein market, as demand for biodiesel supports U.S. soybean processing and export opportunities. Policy certainty is one of the most important factors in making significant investment decisions in value-added businesses like biodiesel.

Give Consumers Choice at the Pump. Biodiesel is a cost-effective, renewable alternative to petroleum diesel that saves diesel consumers money. Each gallon of RFS-qualified biodiesel is accompanied by a RIN credit. The value of that credit, which is traded on the open market, is factored into the value of each gallon of biodiesel. This added value allows producers to sell biodiesel at a lower price to fuel distributors or fleet managers, who can then pass along savings to consumers.

Enhance Energy Security. Biodiesel is diversifying our fuel supplies so that we are less dependent on global oil markets that are influenced by unstable regions of the world and global events beyond our control. Despite increased domestic oil production, consumers will remain vulnerable to volatile international oil prices without diversity and competition in the fuels market.

Secure Environmental Benefits. According to EPA, biodiesel reduces lifecycle greenhouse gas emissions by between 57 percent and 86 percent compared to petroleum diesel. EPA consistently cites tailpipe emissions from traditional diesel—primarily from older trucking fleets and other heavy-duty vehicles—as a major national health hazard. Substituting higher amounts of biodiesel for traditional diesel fuel is the simplest, most effective way to immediately reduce air pollution and greenhouse gas emissions.

On behalf of the biodiesel industry and the 65,000 men and women who work in it, I appreciate the opportunity to continue to engage in this discussion.