



MEMORANDUM

October 25, 2019

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Legislative Hearing on “Protecting the RFS: The Trump Administration’s Abuse of Secret Waivers”

On **Tuesday, October 29, 2019, at 10:30 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the Subcommittee on Environment and Climate Change will hold a hearing entitled, “Protecting the RFS: The Trump Administration’s Abuse of Secret Waivers.” The legislative hearing will consider H.R. 3006, the “Renewable Fuel Standard Integrity Act of 2019” and examine problems created by the lack of transparency in the small refinery exemption program, as well as the Environmental Protection Agency’s (EPA) recent proposal to adjust the 2020 renewable volume obligation under the Renewable Fuel Standard program (RFS).

I. BACKGROUND

Congress established the RFS in the Energy Policy Act of 2005¹ and later expanded the program through the Energy Independence and Security Act of 2007.² The RFS mandates that transportation fuel sold in the United States contain an increasing volume of renewable fuels. The program aims to curb greenhouse gas (GHG) emissions, expand the renewable fuels sector, and reduce dependence on imported oil.³

EPA administers the RFS. EPA’s responsibilities include setting the amount of renewable fuel that must be blended into the fuel supply each year, ensuring compliance via tradable credits (known as renewable identification numbers, or RINs), and issuing temporary exemptions from annual requirements to obligated parties.⁴ Each year, EPA sets volumetric renewable fuel targets for regulated parties, including fuel refiners and importers. These targets, known as the Renewable Volume Obligation (RVO), cover four categories of fuels: conventional

¹ Energy Policy Act of 2005, Pub. L. No. 109-58 (2005).

² Energy Independence and Security Act of 2007, Pub. L. No. 110-140 (2007).

³ U.S. Environmental Protection Agency, *Renewable Fuel Standard Program* (epa.gov/renewable-fuel-standard-program) (Mar. 28, 2019).

⁴ Congressional Research Service (CRS), *The Renewable Fuel Standard (RFS): An Overview* (Sept. 4, 2019) (R43325).

biofuels (e.g., ethanol produced from corn starch), advanced biofuels, cellulosic biofuels, and biomass-based diesel.⁵ Advanced biofuels must have lifecycle GHG emissions 50 percent lower than conventional transportation fuels and must be produced using feedstocks other than corn starch.

For more background on the RFS program and its requirements, see the memoranda for previous Subcommittee hearings held on [June 22, 2018](#) and [July 25, 2018](#).

II. SMALL REFINERY EXEMPTIONS UNDER THE RFS

Under the RFS, EPA may issue temporary exemptions, known as small refinery exemptions (SREs), from annual blending requirements to small refineries.⁶ Small refineries are defined by meeting three criteria. The refinery must (1) have less than 75,000 barrels per day (bpd) of average crude oil input (based on 2006 levels); (2) have less than 75,000 bpd of average total daily crude oil throughput in the most recent full calendar year; and (3) cannot be projected to exceed 75,000 bpd in the year(s) for which it seeks an exemption.⁷

Under section 211(o)(9) of the Clean Air Act, small refineries operating when the RFS was established in 2005 were exempted from RFS obligations through 2010. In all, 59 small refineries received exemptions under this provision. After 2010, the EPA Administrator determined whether to extend the exemption based upon a 2011 Department of Energy (DOE) study, which evaluated whether specific small refineries might be subject to disproportionate economic hardship if required to comply with the RFS.⁸ DOE prepared and issued a survey to the 59 small refineries that received the initial exemption. Eighteen small refineries replied, and DOE recommended that 13 of them receive a two-year extension of the exemption.⁹

Small refineries no longer receive automatic exemptions. Instead, specific refineries may petition EPA for an extension of their exemption. In its petition, the refiner must detail the factors that contribute to such hardship, including an explanation of its inability to comply with the annual requirements.¹⁰ EPA may grant the exemption if it determines that compliance with the RFS would subject the refiner to “disproportionate economic hardship” during the specified year.¹¹ Decisions on SREs are released long after the annual RVO is set. For example, in July

⁵ *Id.*

⁶ 40 C.F.R. § 80.1441 (2010).

⁷ U.S. Environmental Protection Agency, *Renewable Fuel Standard Exemptions for Small Refineries* (epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-exemptions-small-refineries) (Sept. 19, 2018).

⁸ U.S. Department of Energy, *Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship* (Mar. 2011).

⁹ *Id.*

¹⁰ *See* note 6.

¹¹ *See* note 7.

2019, EPA publicly released the decision on SREs granted for the 2018 compliance year after proposing the RVO for the 2020 compliance year.

The number of waivers granted to small refineries has increased significantly in recent years. For compliance years 2013 through 2015, EPA granted a maximum of eight waivers annually.¹² Since then, EPA granted 19 waivers for the 2016 compliance year, 35 waivers for 2017, and 31 waivers for 2018.¹³ Renewable fuel gallons waived through the SREs are not accounted for when setting the annual RVOs. Waived gallons are not reassigned to the remaining obligated parties that have not received waivers.

Until 2015, exemptions had minimal effect on demand for biofuels or the price of RINs. More recently, as EPA has increased the number of SREs, there have been wide discrepancies between the official RVO and the actual quantity of biofuels that remaining obligated parties were required to blend into the fuel supply. Exemptions since 2016 are estimated to have relieved refiners from 2.61 billion ethanol-equivalent gallons.¹⁴ The large number of waivers and associated reduction in volume have lowered RIN prices and essentially reduced the RVO below the values set in the annual rules.¹⁵ Lower RIN prices have reduced compliance costs for obligated parties. However, the reduction of the RVO resulting from waivers has also lowered demand for biofuels significantly, causing economic challenges for the biofuels industry.

III. RECENT EPA RULE ON AND REFORMS TO RFS REQUIREMENTS

On May 30, EPA issued a final rule to allow gasoline blended with up to 15 percent ethanol (E15) to be sold year-round.¹⁶ This rule also included two reforms to the RIN market.¹⁷ First, it required public disclosure when RIN holdings held by an individual participant in the market exceed specific thresholds. Second, it required additional reporting of pricing and associated data related to RIN market transactions to EPA. EPA issued the rule in response to a request by the biofuels industry to encourage more vendors to make E15 available to customers year-round and to increase consumer demand for biofuels.

¹² U.S. Environmental Protection Agency, *RFS Small Refinery Exemptions* (epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions) (Oct. 18, 2019).

¹³ *Id.*

¹⁴ Renewable Fuels Association's Comments on EPA's *Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes* (Proposed Rule), Docket ID No. EPA-HQ-OAR-2019-0136 (Aug. 30, 2019).

¹⁵ *Id.*

¹⁶ U.S. Environmental Protection Agency, *Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations*, 84 Fed. Reg. 26980 (Jun. 10, 2019) (Final rule).

¹⁷ *Id.*

In late July, EPA proposed RFS volumes for 2020 and biodiesel volumes for 2021.¹⁸ In October, the Agency issued a supplemental proposed rule to modify the July proposal, increasing the biofuel blending obligation by 770 million gallons for obligated parties that did not receive exemptions from blending requirements.¹⁹ EPA chose the 770-million-gallon value based upon the average volume of fuel that would have been exempted during the three-year period from 2016 to 2018 if EPA had followed DOE’s recommendation to grant partial SREs to certain refineries, rather than granting full exemptions.²⁰

EPA issued the supplemental proposed rule in response to concerns from the biofuels industry about erosion of demand for biofuels (resulting from the large number of recent SREs). The proposal has received pushback from both the biofuels and refining industries. The refining industry – especially those refineries that do not receive SREs – would be required to take on additional compliance burdens. The biofuels industry asserts that the addition of 770 million gallons to the RVO falls short of the amount needed to restore the biofuel market and make up for gallons waived through the issuance of SREs.

IV. H.R. 3006, THE “RENEWABLE FUEL STANDARD INTEGRITY ACT OF 2019”

On May 23, 2019, Rep. Collin Peterson (D-MN) introduced H.R. 3006, the “Renewable Fuel Standard Integrity Act of 2019.” The bill sets an annual deadline of June 1 for small refineries to petition for exemption from the upcoming year’s blending requirements. H. R. 3006 also requires public disclosure of any information included in petitions for exemption from the annual blending requirements.

¹⁸ U.S. Environmental Protection Agency, *Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards and Other Changes*, 84 Fed. Reg. 36762 (Jul. 29, 2019) (Proposed rule).

¹⁹ U.S. Environmental Protection Agency, *Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, and Response to the Remand of the 2016 Standards; Supplemental Notice of Proposed Rulemaking*, EPA-HQ-OAR-2019-0136 (epa.gov/sites/production/files/2019-10/documents/rfs-2020-stands-response-remand-snp-2019-10-15.pdf) (Oct. 15, 2019) (Supplemental notice of proposed rulemaking).

²⁰ *Id.*

V. WITNESSES

The following witnesses have been invited to testify:

Geoff Cooper

President and CEO
Renewable Fuels Association

Gene Gebolys

President and CEO
World Energy

Kelly Nieuwenhuis

President
Siouxland Energy Cooperative

Chet Thompson

President and CEO
American Fuel & Petrochemical Manufacturers