

United States Senate
WASHINGTON, DC 20510

November 7, 2019

The Honorable Andrew Wheeler
Administrator, Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, D.C. 20460

RE: Docket ID: EPA-HQ-OAR-2019-0136-0352

Dear Administrator Wheeler:

Thank you for the opportunity to comment on the proposed supplemental rule establishing the 2020 Renewable Volume Obligations (RVOs). The proposed rule, which is required by law under the Renewable Fuel Standard (RFS), determines how much biofuel should be blended into the fuel supply in a given year.

The RFS also states that when developing these obligations, the administrator shall make adjustments to account for the use of renewable fuel during the previous calendar year by exempted small refineries.

Additionally, as you indicated in background information submitted with the proposed rule, the EPA is charged with ensuring that the statutory volumes are blended into the fuel supply, including 15 billion gallons of conventional ethanol. I'm disappointed that the proposed supplemental rule fails to assure that the RVOs will be met.

Nebraska is the second largest ethanol-producing state in the country with a capacity of more than 2.5 billion gallons. Ethanol plants represent \$5 billion in economic impact to the state and provide more than 1,300 full time jobs for Nebraskans.

Small Refinery Exemptions (SREs) have undermined RVOs. That has become even more apparent over the last several years. The EPA approved 85 SREs during 2016-2018, reducing the volume of biofuel blended by nearly four billion gallons. At the same time, USDA has continued to reduce its estimate for corn used in ethanol. Over the last year, USDA reduced its estimate by nearly 275 million bushels or 5 percent. Presently, corn used for ethanol production is at the lowest level since the 2015-2016 marketing year. As a result, President Trump asked both the agriculture industry and biofuel groups to help put forward a plan to ensure the statutory target of 15 billion gallons of convention biofuel would be met.

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On September 12, 2019, President Trump held a meeting in the Oval Office that I attended with five other Midwest senators, Governor Kim Reynolds of Iowa, Vice President Pence, Secretary Perdue, and yourself. My colleagues and I left that meeting with an understanding that SREs, if granted, would not reduce the 15 billion gallon conventional ethanol RFS requirement. Meaning the EPA would make sure 15 billion gallons of conventional ethanol would be mixed with gasoline. In order to meet this mandate, we discussed a proposal to consider the three-year rolling average of actual exemptions granted by EPA.

As you can imagine, my colleagues, my constituents, and I were frustrated when the most recent rule was published and put out for public comment, as it did not reflect the explanation we received at our meeting in the Oval Office. Instead, the proposal bases the three-year rolling average on the number of exempted gallons recommended by the Department of Energy (DOE), not on actual exemptions granted.

In recent years, there has been a noticeable disconnect between DOE's recommendations and EPA's actions on SREs, making it clear that EPA's final decision has resulted in waived gallons far exceeding what DOE has recommended. Given this track record of not following DOE's recommendations, biofuels producers, farmers, and I cannot have confidence that the RVOs will actually be met.

We are not the only ones who doubt the effectiveness of this proposal. The RIN market is often considered a reflection of expected RFS demand. Since this proposal was announced, RIN prices have declined to three-month lows, demonstrating that the market does not expect greater demand for biofuels as a result of what EPA has proposed in this rule.

I have concern that this proposal does not provide certainty. Without that certainty, the marketplace will not trust that this is how the policy will be enforced. The industry cannot afford to wait until the EPA issues waivers for the 2020 compliance year for the marketplace to find that out.

I urge you to use a three-year rolling average of *actual* waivers to give needed certainty to the marketplace and to ensure President Trump's commitment to our nation's biofuel producers is upheld.

Sincerely,



Deb Fischer
United States Senator