



PO Box 2136 • 1415 12th Ave SE
Jamestown, ND 58401
800-366-8331 • 701-252-2341
ndfu.org

November 29, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
EPA Docket Center
Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
ATTN: Docket ID No. EPA-HQ-OAR-2019-0136

Submitted Electronically

Re: 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; 84 Fed. Reg. 57,677 (October 28, 2019)

Dear Administrator Wheeler:

North Dakota Farmers Union (NDFU) appreciates the opportunity to comment on the Supplemental Notice of Proposed Rulemaking in Docket ID No. EPA-HQ-OAR-2019-0136 regarding the 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; 84 Fed. Reg. 57,677. NDFU, the largest general farm organization in North Dakota, represents more than 50,000 farm and ranch families, members, and their energy and agriculture supply cooperatives. NDFU's member developed policy positions have long supported the full implementation of the Renewable Fuel Standard (RFS) program.

In the Supplemental Notice, the Environmental Protection Agency (EPA) is proposing to account for small refinery exemptions (SREs) which may be granted for compliance year 2020 by projecting the aggregate total exemptions for 2020 under the formula setting the volume standards. The EPA would revise how it estimates total gasoline and diesel fuel use by projecting the exempted volumes of gasoline and diesel fuel due to SREs by using a three-year average of the exemptions recommended by the U.S. Department of Energy (DOE).

Specifically, the EPA proposes to look at DOE exemption recommendations for compliance years 2016-2018 or alternatively for compliance years 2015-2017. The expansion of SREs in recent years makes up a significant portion of the total volume of obligated fuel and the retroactive nature of the exemptions has resulted in a reduction of the required volumes. The EPA recognizes it must take action to ensure the volume requirements because of expected SREs for compliance year 2020. However, the EPA's proposed methodology for projecting SREs underestimates their impact based on speculative policy changes in the future.

NDFU does not support the EPA's proposal to use the DOE exemption recommendations to project total aggregate potential volumes. The EPA's proposal is arbitrary because it has not followed and is not required to follow the DOE recommendations. By using the DOE exemption recommendations, the EPA would cut hundreds of millions of gallons from the 2020 targets alone. Instead of using the DOE exemption recommendations, we urge the EPA to use an average of the actual exemptions granted for compliance years 2016-2018.

While NDFU acknowledges the EPA's proposal is a positive step toward addressing the harms caused by the EPA's granting of SREs, the proposal fails to accurately account for lost gallons. If the EPA continues to grant exemption requests after the volume standards are set, the EPA must consider how to address lost volumes in setting the standards. Retroactive SREs reduce volume requirements, violating the EPA's obligation to ensure the volume requirements. We request the EPA add the lost volumes from SREs onto future volume requirements. By doing so, the EPA would be meeting its obligation to ensure the statutory volumes and obligated parties would have ample time to prepare for their obligations.

Lastly, the EPA keeps its decisions regarding exemptions confidential. Consequently, the EPA's process lacks transparency or real guidelines on how it considers and grants SREs, including the timing for seeking exemptions. The EPA's failure to provide guidelines, and in particular, set deadlines by when an exemption may be sought, renders the EPA's projections meaningless. The current process provides no way for the public to meaningfully comment on the reliability of the EPA's projections. Therefore, it is essential the EPA implement a clear process and guidelines for seeking and obtaining SREs through regulation. In addition, if the EPA has discretion to grant partial exemptions, despite the August 9, 2019 memorandum, it must codify its new approach through notice-and-comment rulemaking.

The RFS is an important policy with far-reaching direct and indirect benefits for farmers and consumers. To help ease the burden facing American farmers and ranchers, the EPA, at a minimum, must use the rolling average of the actual volumes exempted from the three most recently completed compliance years in the final rule. The EPA must address the impacts of SREs granted in earlier years by adding the lost volumes to the volume requirements for subsequent years. Further, it must also codify the criteria to be used for granting SREs and create cutoff dates for exemption requests. Finally, to facilitate full compliance with the RFS, the EPA should work toward removing barriers to E15 and higher ethanol blends.

Sincerely,

NORTH DAKOTA FARMERS UNION



Mark Watne
President

