



April 4, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460|
Pruitt.scott@Epa.gov

Re: Small Refinery Exemption

Dear Administrator Pruitt:

Recent reports indicate that you are receiving an increasing number of requests for small refiner exemptions under the Renewable Fuel Standard (RFS) program. Additional requests are expected after a report that the U.S. Environmental Protection Agency (EPA) granted an exemption to one of the nation's largest oil refining companies for its 2016 obligation.¹ EPA has reportedly granted "hardship waivers" to three of Andeavor's refineries despite the corporation's net profits of \$1.5 billion last year.² "Hardship waivers" were not designed for large corporations who net billions in profit each year. The National Farmers Union (NFU) is deeply disturbed by these reports, and requests that EPA cease granting these waivers.

NFU is a staunch proponent of the RFS and its benefits to family farmers and their communities. Exempting refiners from RFS compliance essentially waives away demand for corn at a time when family farmers need to significantly cut into corn oversupply and is certainly contrary to the intent of the RFS. Your actions appear to fly in the face of the Administration's numerous promises to family farmers and rural communities to support the RFS.

EPA is required to "ensure" transportation fuel sold in the United States includes the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-

¹ Jarrett Renshaw and Chris Prentice, *Exclusive: EPA gives giant refiner a 'hardship' waiver from regulation*, Reuters, Apr. 3, 2018, <https://www.reuters.com/article/us-usa-biofuels-epa-refineries-exclusive/exclusive-epa-gives-giant-refiner-a-hardship-waiver-from-regulation-idUSKCN1HA21P>.

² *Id.*

based diesel.³ Congress gave EPA limited waiver authority to reduce the applicable volumes.⁴ To use this waiver authority, EPA must comply with procedural and substantive statutory requirements. EPA has utilized this authority in reducing the statutory volumes for renewable fuel and, since 2016, has set the RFS volumes based on what it found were “reasonably attainable.”⁵ EPA also found that the volumes it was using to set the standards would not have significant economic impacts on small refiners.⁶

Separately, the statute provided a temporary exemption from the annual RFS requirements for small refineries, defined as a refinery whose average aggregate daily crude oil throughput does not exceed 75,000 barrels per day.⁷ This exemption can be extended based on a finding by the U.S. Department of Energy (DOE) or based on a petition from the small refinery. These extensions are to be based on a finding that compliance with RFS obligations will impose a “disproportionate economic hardship” on the refinery. EPA is required to account for these small refinery exemptions when it sets the standards.⁸

Reports indicate that up to 30 small refinery exemption requests may be pending at EPA,⁹ which can be compared to the 13 requests EPA indicated it received for the 2014 standards.¹⁰ The statute, however, only allows for “extensions” of these exemptions, not for “new” exemptions years after the temporary one expired. This exemption was to allow small refineries more time to prepare, but the RFS program has been in effect for over ten years. The American Petroleum Institute (API) acknowledges “refiners have had ample time to adjust their businesses to operate” under the RFS.¹¹ It cannot be that Congress intended for small refineries to seek new exemptions so many years into the program. Nor should small refineries be allowed to game the system by coming in and out of the program based on market fluctuations (or a change in administration). Given the lack of information, it is not clear what grounds EPA is claiming to grant these exemptions.

Even more troubling, EPA is granting these exemptions *after* the volumes have been set (and apparently even *after* the compliance deadlines have passed in the case of Andeavor’s small refinery exemptions).¹² In so doing, this results in a reduction of the applicable volumes set by EPA, improperly waiving additional volumes.

³ 42 U.S.C. § 7545(o)(2)(A)(i); *see also id.* § 7545(o)(3)(B)(i).

⁴ *Id.* §7545(o)(7).

⁵ *See, e.g.*, 82 Fed. Reg. 58,486, 58,513-58,514 (Dec. 12, 2017).

⁶ *See, e.g., id.* at 58,526. Several studies, including EPA’s own analysis, have concluded that RIN costs are largely recovered by refineries.

⁷ 42 U.S.C. §7545(o)(1)(K), (o)(9).

⁸ 40 C.F.R. §80.1405(c).

⁹ We believe the bulk of these requests relate to the 2017 volume requirements.

¹⁰ 81 Fed. Reg. 89,746, 89,803 (Dec. 12, 2016). As further discussed below, EPA has not provided the public with complete information on the small refinery exemptions. However, EPA has indicated that only 13 small refineries received extensions based on the DOE study. 80 Fed. Reg. 77,420, 77,510 n.222 (Dec. 14, 2015).

¹¹ *See* API Aug. 31, 2017 Comments at 2 (EPA-HQ-OAR-2017-0091-3647).

¹² It is unclear if this request was made to eliminate a deficit carryover from 2016 into 2017. If so, this also potentially allows the refinery to avoid the statutory limits on when it can carry a deficit.

These additional waivers appear to be significant. According to the U.S. Energy Information Administration (EIA), the three “small refineries” owned by Andeavor represent over 2.3 billion gallons of production capacity,¹³ resulting in a reduction of the 2016 RFS requirements by almost 200 million ethanol-equivalent gallons.¹⁴ This approval also comes *after* the U.S. Court of Appeals for the District of Columbia Circuit held that EPA misapplied its waiver authority when it set the 2016 renewable fuel volume requirement.¹⁵ And, this is in addition to the 390 million RINs that already did not need to be retired based on exemptions previously granted for 2016.¹⁶ Estimates indicate that the requests that have been submitted could represent a reduction of approximately 1 billion gallons of renewable fuel for 2017.¹⁷ But, EPA and its implementing regulations are required to “ensure” the applicable volumes are met. Even if there were some grounds to grant these exemptions, EPA can no longer avoid its obligation to follow Congress’s directives.

These exemptions also have a deleterious impact on volumes needed in later years, given the ability of obligated parties to use prior-year RINs. EPA has acknowledged that the grant of these exemptions, after the fact, allow additional RINs to enter the market.¹⁸ Even API has noted that “[s]mall refinery exemptions, especially when granted retroactively, introduce additional uncertainty and RIN market disruptions.”¹⁹ Reducing the actual volumes required and market uncertainty have significant adverse impacts on the rural economy. It also punishes those that have responded to Congress’s directives and EPA’s own requirements, rewarding those that have refused to acknowledge this country’s need for diverse sources of energy, including renewable energy.²⁰

Equally concerning is that these actions have purportedly been taken without any transparency, which violates central tenets of responsible governance. We cannot hold our officials accountable for their actions when they are taken behind closed doors. Indeed, the

¹³ EIA, List of U.S. Refineries, 2017, available at *Oil Crude and Petroleum Products Explained: Refining Crude Oil*, https://www.eia.gov/energyexplained/index.cfm?page=oil_refining#tab4 (last updated June 22, 2017). One of the Andeavor refineries is listed by EIA as having 73,800 barrels/day capacity, just under the 75,000 barrel/day threshold for small refiners under the RFS.

¹⁴ This is based on an average yield for gasoline and diesel fuel production for U.S. refineries based on EIA data (https://www.eia.gov/dnav/pet/pet_pnp_pct_dc_nus_pct_a.htm).

¹⁵ EPA must still “true-up” the 2016 renewable fuel volume requirement in light of the Court’s decision.

¹⁶ 82 Fed. Reg. at 58,393 n.28.

¹⁷ Renewable Fuels Association, *EPA Actions on the RFS are Destroying Demand for Ethanol and Corn* (Mar. 2018), available at [http://www.ethanolrfa.org/wp-content/uploads/2018/03/EPA-Demand-Destruction .pdf](http://www.ethanolrfa.org/wp-content/uploads/2018/03/EPA-Demand-Destruction.pdf).

¹⁸ 82 Fed. Reg. at 58,393 n.28, 58,494. Reuters reported that Andeavor sold some 100 million RINs to its competitors in recent weeks that could have been used to meet these obligations. See *supra* n.1.

¹⁹ API Feb. 12, 2018 Letter, available at <http://www.api.org/~media/Files/News/Letters-Comments/2017/API-Letter-2-12-18.pdf>.

²⁰ While acknowledging its obligation to ensure the applicable volumes, EPA declined to consider comments on its process and the impacts of granting the small refinery exemptions after it sets the standards. EPA, *Renewable Fuel Standard Program Standards for 2018 and Biomass-Based Diesel Volume for 2019: Response to Comments*, EPA-420-R-17-007, at 217 (Dec. 2017).

statute requires public notice and comment for waivers under the statute, but EPA is granting these exemptions (and therefore waivers) without any public input.

This Administration has provided little, if any, information on small refinery exemptions, which is causing speculation and market disruptions that you have indicated needs to be addressed.²¹ NFU supports the request submitted by the Renewable Fuels Association in January of this year for more information on the small refinery exemptions, and greater transparency and public input on the process.²²

In short, NFU asks that EPA cease granting these waivers or act to adjust for these additional waivers and comply with its obligations under the statute. EPA should also adjust its process in the future to ensure that these exemptions do not reduce the applicable volumes required under the RFS. We look forward to working with you to address this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Johnson". The signature is fluid and cursive, with the first name "Roger" and last name "Johnson" clearly distinguishable.

Roger Johnson

President

²¹ The prior Administration provided some guidance on how it handles small refinery exemptions, but EPA has not updated its small refinery exemption webpage since May 2017. <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-exemptions-small-refineries> (last updated May 16, 2017).

²² EPA has already indicated that it did not deem all information regarding the requests constituted confidential business information. 81 Fed. Reg. 80,828, 80,909 (Nov. 16, 2017) (proposing to “codify a *determination* that basic information related to EPA actions on petitions for RFS small refinery and small refiner exemptions may not be claimed as confidential business information”) (emphasis added). This would also provide more information on RIN availability and provide greater transparency in the RIN market. Thus, it is unclear why EPA has declined to provide more information to the public, even in light of Freedom of Information Act requests. *See supra* n.1.