The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20469  

Docket ID No. EPA-HQ-OAR-2019-0136  

Sent via email to: a-and-r-docket@epa.gov  

RE: Request for comment on Renewable Fuel Standard Program: Standards for 2020  

Dear Administrator Wheeler:  

On behalf of the members of the American Coalition for Ethanol (ACE), I appreciate the opportunity to comment on the proposed renewable volume obligations (RVOs) for the 2020 Renewable Fuel Standard (RFS) program.  

ACE is a grassroots advocacy organization, powered by rural Americans from all walks of life who have built an innovative industry that delivers homegrown biofuel and food for a growing world. Our 500 members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry.  

Our comments will cover how EPA’s abuse of the Small Refinery Exemption (SRE) provision violates statutory authority and harms rural America, the need for EPA to restore and reallocate waived blending obligations, the need for EPA to adopt the latest GREET model with respect to the proposed rule to “reset” the 2021 and 2022 RFS volumes, and our concerns about the Agency’s regulatory approach to the retail sale of E15 through blender pumps.  

RFS Exemptions and Waivers are Harming Rural America and Violate Statutory Authority  

While EPA is proposing to maintain the 15-billion-gallon conventional biofuel blending target for 2020, the rubber-stamping of 85 refinery exemptions for the 2016 through 2018 RFS compliance years, without reallocation of the blending obligations, has effectively reduced the RFS by more than 4 billion gallons below statutory volumes. This mismanagement of the RFS has undermined the progress of the program and caused economic pain for farmers, renewable fuel producers and rural communities as evidenced by this sampling of comments:  

- Vic Miller, a member of the Iowa Corn Growers Association, recently said that EPA’s abuse of the SRE provision has put farmers “in one hell of a bad situation.” In the same announcement, Miller indicated, “Agriculture is in one hell of a bad situation right now. The government put us
in this situation. It’s time for President Trump to make rural America and the RFS great again. He made promises to American farmers and now it’s time for him to keep them.”

• Curt Mether, the president of the Iowa Corn Growers Association, recently added, “The exemptions are ridiculous and a slap in the face to farmers.” Pam Johnson, another Iowa farmer and a former president of the National Corn Growers Association, said at a recent press conference, “The small refinery waivers that came out on August 9 by President Trump are like the nail in the coffin, or the last straw, with farmers.”

• Mike Jerke, the CEO of Southwest Iowa Renewable Energy, recently said EPA’s abuse of small refinery waivers “guts the RFS and breaks the president’s promise.” He goes on to explain that the August 9 announcement of 31 SREs for the 2018 compliance year, the United States Department of Agriculture’s August 12 crop report and the trade war with China have combined to potentially take $10.6 billion away from farmers and ethanol plants and transferred much of that to oil companies.

• According to Renewable Fuels Association (RFA) analysis of Energy Department data, year-over-year ethanol use declined in 2018 for the first time since 1998, falling from 14.49 billion gallons in 2017 to 14.38 billion gallons in 2018. The national blend rate retreated from 10.13 percent in 2017 to 10.07 percent in 2018. EPA refinery waivers without reallocation of blending obligations contributed to these setbacks. Moreover, RFA says the demand destruction continues in 2019 with ethanol use on pace to be 450 million gallons lower than in 2018.

• To coincide with the announced closure of an Indiana ethanol plant and the idling of several other plants across the country, Jeff Lautt, the Chief Operating Officer for Poet, said, “Poet made strategic decisions to support President Trump’s goal of boosting the farm economy. However, these goals are contradicted by bailouts to oil companies. The result is pain for Midwest farmers and the reduction of hundreds of jobs and hundreds of millions of dollars of economic activity across Indiana.”

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As of August 30, between 15 and 20 ethanol production facilities have shut down across the U.S. with dozens of others operating below capacity. The result is a lost market for hundreds of millions of bushels of corn and the layoff of hundreds of high-skill, high-wage jobs in rural communities. Farmers are already suffering financially from weather-related disasters and the effects of trade wars; those problems are compounded when their markets are further curtailed through EPA’s SREs.

While rural America suffers many oil refiners have the best of both worlds: fat profit margins and minimal RFS compliance costs. The best way to spur market-based demand for farmers and improve conditions in rural America is to increase the production and use of renewable fuels. This is even more critical given the uncertainty created by trade wars and efforts to renegotiate existing trade pacts. EPA’s rule allowing U.S. retailers the ability to offer E15 to their customers all year opens the door for greater market access long-term, but the net effect of E15 year-round is still in the hole when it comes to ethanol demand through the RFS without restoring the waived gallons for small refineries.

**EPA Needs to Restore and Reallocate Waived Blending Obligations**

The RFS contains a provision allowing so-called “small” refineries to apply for a hardship exemption if they can prove certain hardship conditions. The ethanol industry never took exception to this provision until it was misapplied by the EPA under President Trump.

For historical context, under the Obama administration, an average of 15 SRE petitions were submitted to EPA for RFS compliance years 2013 through 2015 but only about one-half of those petitions were approved during that timeframe. When EPA granted a refinery an exemption under the Obama administration, the volume of ethanol and/or biodiesel the exempt refinery would have otherwise been obligated to blend with its petroleum products was reallocated to non-exempt refineries, so the total statutory volume was maintained as required under the law.

Under the Trump administration, radical changes were made to EPA’s handling of SREs. During RFS compliance years 2016 through 2018, the average number of SRE applications skyrocketed to more than 30 per year and the average approval rate increased to 90 percent. What’s more, the Trump administration waited until after the compliance year had closed to approve “retroactive” refinery exemptions. By tilting the scale and the calendar in favor of refineries, the Trump administration has never reallocated the waived blending obligations as required by the statute. Not only has EPA allowed 85 SREs for the 2016 through 2018 RFS compliance years, it has not reallocated the 4.04 billion gallons of statutory volume exempted over that timeframe. If one were to assume, for example purposes, all this waived volume constitutes ethanol from corn, this is equivalent to losing a 1.4-billion-bushel crop, or the entire market for Minnesota corn farmers in 2018.7

By issuing so-called “hardship” waivers, EPA floods the market with RINs which refiners can bank, thereby artificially inflating the size of the RIN carryover. The total RIN supply has ballooned to more than 3 billion gallons because of the SREs. As a result, D6 RIN prices cratered. Before EPA’s dramatic abuse of SREs was made public, D6 RIN prices averaged approximately 70 cents, a strong incentive for refiners to blend ethanol. But by the end of 2018, as the supply of compliance credits swelled and RIN prices cratered, a refiner could buy more than 12 RINs (representing 12 gallons of ethanol for RFS compliance purposes) for the cost of just one gallon of ethanol, creating an even stronger artificial

incentive to buy cheap RINs and avoid blending ethanol. So far this year, 2018 vintage D6 RINs are worth approximately 5 to 7 cents while 2019 D6 RINs are trading between 10 and 15 cents. The reality is, at these prices, a refiner’s cost of RINs to be in compliance would be one-half of a cent per gallon of gasoline they refined in 2018 – and it would not have been a cost, because it is well documented that refiners make a higher per-gallon profit on non-blended gallons, ostensibly to pay for RINs. If, on the other hand, the RINs for 2018 SREs were reallocated, as required by law, larger refiners would have to buy or turn in approximately 1.5 billion RINs. Today, those RINs would cost about $120 million dollars. That may sound like a high price to some, but the top ten U.S. refiners reported net profits of more than $200 billion dollars in 2018. Reallocation of 2018 RINs represents 1/1700th of their net profit for 2018. In fact, at today’s RIN prices, to reallocate the 4 billion gallons lost to SREs would cost refiners $450 million dollars. If the top ten refining companies’ profits were $208.5 billion in 2018, reallocation of every RIN for every SRE granted by the Trump EPA would knock that down to a mere $208 billion.

It should also be noted EPA has repeatedly indicated RIN prices do not cause hardship on refiners because they are able to recover RIN costs through the prices they charge for gasoline and diesel. Here are some examples:

- “Merchant refiners, who largely purchase separated RINs to meet their RFS obligations, should not be disadvantaged by higher RIN prices, as they are recovering these costs in the sale price of their products.” – EPA, May 2015

- “EPA has invested significant resources evaluating the impacts of high RIN prices on refiners. After reviewing the available data, EPA has concluded that refiners are generally able to recover the cost of RINs in the prices they receive for their refined products, and therefore high RIN prices do not cause significant harm to refiners.” – EPA, November 2017

- “EPA is not persuaded by arguments that merchant refiners are disadvantaged in comparison to integrated refiners in terms of their cost (RIN) of compliance.” – EPA, November 2017

Last year ACE joined with many allies to petition EPA to account for the retroactive blending obligations waived by the Agency. It has been 15 months since our petition with no meaningful response from EPA, so we recently asked the U.S. Court of Appeals for the DC Circuit to lift the stay we placed on the petition so we can restart the litigation proceedings. While we will continue to pursue our case for reallocation in court, ACE calls on EPA to take action in now to provide for the timely reallocation of the known 4.04 billion gallons EPA has waived through SREs. All the Agency needs to do is account for the

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8 EPA Preliminary assessment of RIN market dynamics, RIN prices and their effects. May 2015

9 EPA Response to comments: RFS proposed rule for 2018. November 2017

10 EPA Denial of petitions for rulemaking to change the RFS point of obligation. November 2017. [https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100TBGV.pdf](https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100TBGV.pdf)

waived volumes when it calculates the annual percentage standards for the RFS. We cannot afford to wait.

One final comment about restoring waived blending obligations. The 2020 proposed RVO is also a missed opportunity to restore the 500 million gallons back to the 2016 RFS compliance year, which the DC Circuit Court remanded to EPA in 2017. EPA blatantly ignores this court order in the proposed rule due to the “retroactive nature of an increase in the volume requirement” and the “additional burden that such an increase would place on obligated parties.”

The irony of not restoring this shortfall is that EPA found it could retroactively grant (seemingly at its sole discretion) so-called “hardship” waivers for small refineries that have erased 4 billion gallons worth of RFS blending obligations for the 2016 through 2018 compliance years. The “additional burden” placed on refiners, some of which are reporting double-digit profits, by EPA following a court order and the law would pale in comparison to the burdens this demand destruction has placed on rural America. We do not accept that restoring these gallons should not be addressed in this rulemaking and urge EPA to include these levels in the final RVO.

**EPA Needs to Adopt the Latest GREET Lifecycle Analysis for Corn Ethanol for the 2021 to 2022 Reset**

Beyond the legal justification for reallocating and restoring RFS volume obligations, corn ethanol’s ever-shrinking GHG emissions warrant increasing volumes. Since the RFS was enacted, ethanol’s carbon intensity has continued to drop while gasoline has gotten worse. Increasing the use of ethanol is one of the most meaningful ways to reduce U.S. carbon dioxide emissions today.

EPA relies upon lifecycle accounting to quantify GHG emissions under the RFS, however, your model is nearly a decade old and fails to include the continuing advancements in this science documented by the Department of Energy’s Greenhouse gas and Regulated Emissions and Energy use in Transportation (GREET) model. Nearly three decades ago, Dr. Michael Wang at the Department of Energy’s Argonne National Laboratory developed the GREET model. It is considered the gold-standard for calculating energy use, GHGs, and other regulated emissions that occur during the full lifecycle production and combustion of all transportation fuels. The assumptions used by Argonne scientists in GREET are under constant review and updates to the model occur frequently. GREET is used by the California Low Carbon Fuel Standard program and the Oregon Clean Fuels program and has more than 30,000 registered users worldwide. The latest (2018) version of the GREET model indicates that average Midwest dry mill corn ethanol production reduces lifecycle GHG emissions by 45 percent compared to gasoline.

Emerging scientific research indicates the GHG carbon intensity for corn ethanol will continue to improve. As a case in point, ACE wrote you a letter in July to inform EPA of a recently published meta-analysis showing that corn production, when all stover (residue) is left on fields, results in significant

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13 [https://greet.es.anl.gov](https://greet.es.anl.gov)
soil carbon sequestration. If taken into account by lifecycle modeling, this would shrink the GHG footprint of corn ethanol far below the current estimate used by EPA.

The study, “A global meta-analysis of soil organic carbon response to corn stover removal,” is based on 409 data points and 74 trials conducted around the world to quantify stover removal effects on soil organic carbon stocks. Its authors include scientists with the Department of Energy’s Argonne National Laboratory, United States Department of Agriculture, and several land-grant universities.

A key finding of the meta-analysis is that corn stover retention increased average soil organic carbon stocks annually at a rate of 0.41 metric tons per hectare (this is equivalent to 0.62 tons of carbon dioxide per acre per year) compared to baseline values, while the removal of corn stalks, leaves and cobs reduce soil carbon stocks. The meta-analysis goes on to say changes in soil carbon stocks can alter lifecycle GHG emissions for corn-based ethanol.

ACE has repeatedly asked EPA to adopt the latest GREET model to make all GHG determinations for the RFS and we echo that recommendation in these comments. We further urge EPA to consider the meta-analysis finding that ethanol’s GHG emissions shrink under farming practices which are predominant in the U.S. Based on an average corn yield of just 150 bushels per acre and the carbon sequestration potential of 0.41 tons per hectare as described in the meta-analysis, corn ethanol’s lifecycle GHG emissions would shrink by another 20 percent compared to gasoline, exceeding the GHG thresholds to qualify as advanced and cellulosic biofuel under the RFS and justifying higher volumes.

As you work on the proposed rule to “reset” RFS volumes for 2021 and 2022, ACE urges you to adopt the latest GREET model and take this timely meta-analysis into consideration to foster more ethanol blending. It is incumbent upon EPA to make RFS volume obligation determinations on scientifically-defensible GHG assessments. We encourage you to take advantage of the latest data so corn ethanol is properly valued in the RFS for the important role it plays in reducing GHGs.

**E15 Offered Through Blender Pumps**

We appreciate EPA issued the final rule to extend the 1-psi Reid vapor pressure (RVP) waiver for E15 earlier this year, but we oppose the Agency’s regulatory approach with retailers who sell E15 using blender pumps. We believe EPA’s blender pump regulatory approach is unnecessary, does nothing to protect the environment, and could make it nearly impossible for many retailers to continue to economically buy E85 and sell less expensive fuels like E15 to their customers.

Because refiners or terminal operators have refused to make affordable volumes of E85 available to retailers, many ACE-member ethanol production companies have taken it upon themselves to direct market affordably-priced E85 to wholesalers and station owners. Most of these ethanol producers blend E85 onsite with Tier 3 certified natural gasoline denaturant. To date, most of the E15 sold at retail is mixed via blender pumps drawing from two on-spec products; E85 (containing natural gasoline) in one tank and E10 in another. The final E15 blend (94 percent E10 plus 6 percent E85) contains about one percent natural gasoline.

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Contrary to EPA’s outrageous accusation in the RVP rulemaking about the likelihood E15 made at blender pumps with E85 produced with natural gasoline would “often violate applicable RVP standards,” the RVP specification for natural gasoline used by most ethanol producers satisfies ASTM and Tier 3 requirements. The E15 Misfueling Mitigation Plan includes a third-party testing requirement which would have already shown violations if they existed and will identify violations if they occur in the future. The fact no data from current testing was included in EPA’s RVP rule would seem to indicate violations do not often occur. It makes no sense for EPA to discourage or restrict E15 sales through blender pumps when the final E15 blend meets all specifications.

If the Agency has legitimate concerns as to whether E15 sold at retail through blender pumps meets volatility, sulfur and benzene controls, it could ask retailers to demonstrate compliance using product transfer documents which would certify the source and specifications for the E85 they purchased for blender pump use. We urge EPA to clarify its regulatory guidance for retailers with blender pumps and resist the temptation to unnecessarily restrict blending E15 using E85 made with natural gasoline.

**Conclusion**

Thank you for your time and consideration of these comments. We stand ready to assist the Agency as it prepares to finalize the RVOs for 2020 and remedy the damage EPA has created through the proliferation of refinery exemptions without reallocation of the statutory blending obligations.

Sincerely,

Brian Jennings, CEO
American Coalition for Ethanol