Growth Energy Comments on EPA's 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

Docket # EPA-HQ-OAR-2019-0136

Emily Skor
Chief Executive Officer
Growth Energy
701 8th Street NW
Suite 450
Washington, DC 20001
(202) 545-4000

November 29, 2019

TABLE OF CONTENTS

I. INTRODUCTION

Growth Energy respectfully submits these comments on the Environmental Protection Agency's proposed rule entitled *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*.[1] Growth Energy is the leading association of ethanol producers in the country, with 100 producer members and 94 associate members who serve the nation's need for renewable fuel.

In this supplement to its notice of proposed rulemaking for the 2020 Renewable Fuel Standard ("RFS"), EPA proposes to modify the formula it uses to compute annual RFS percentage standards to account for all small refinery exemptions ("SREs") applicable to that compliance year, regardless of whether those SREs have already been granted at the time the percentage standards are set. This proposal would require that when setting percentage standards for a given compliance year, EPA project ahead of time the volumes of exempt gasoline and diesel that would result from any SREs granted after the applicable percentage standards are finalized, i.e., retroactively. EPA also proposes a method of computing this projection for the 2020 compliance year: the projection would be equal to the average of what the exempt volumes would have been for compliance years 2016, 2017, and 2018, had EPA chosen to grant SREs for those years according to the nonbinding recommendations of the Department of Energy ("DOE"). (In fact, the SREs actually granted for those years far exceeded DOE's recommendations.) EPA also seeks comment on whether it should instead base the projection on the average of DOE's recommendations for compliance years 2015, 2016, and 2017. Finally, EPA proposes to change its interpretation of its exemption authority to permit the agency to grant partial SRE relief in appropriate cases.

Growth Energy applauds any step toward ending the unlawful, counterproductive practice of ignoring billions of gallons of SRE-exempt fuel when calculating the annual percentage standards. As Growth Energy and others have explained, the status quo is impermissible, violating EPA's statutory directive in several ways and creating perverse policy outcomes.[2] The Supplemental 2020 NPRM's proposal represents an opportunity to correct those flaws and falls squarely within EPA's statutory authority.

Unfortunately, the current proposal fails to provide the certainty and stability that America's farmers and biofuel producers need to rebuild after years of demand destruction. It

---

[1] *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* ("Supplemental 2020 NPRM"), 84 Fed. Reg. 57,677 (Oct. 28, 2019) (proposed Oct. 15, 2019).

[2] *See, e.g.*, Growth Energy 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 ("2020 Growth Energy Comment") at 10-12 (Aug. 30, 2019), EPA-HQ-OAR-2019-0136-0312; RFA Comments on 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 at 10-15 (Aug. 30, 2019), EPA-HQ-OAR-2019-0136-0281.

offers a solution based on inaccurate estimates that fail to account for actual data, potentially keeping billions of gallons of biofuels off the market. The president has committed to upholding the integrity of the RFS, and communities across the heartland are counting on the EPA to keep that promise by accurately accounting for lost gallons.

To improve the proposal, EPA must codify into regulation a predictable and robust projection method that ensures the requirements are met. This method should not compute projections using the counterfactual assumption that EPA followed DOE's nonbinding recommendations, as proposed.

Rather, EPA's projections should rely on the agency's actual history of adjudicating SRE applications. Such an approach will be more accurate over time. EPA should also look to the most recent data available, which for 2020 would be data from 2016, 2017, and 2018. Growth Energy further endorses EPA's proposal to begin issuing partial SRE relief where appropriate—a practice that will better enable EPA to implement the SRE provision of the statute without undermining the RFS program's overarching renewable energy mandate. Finally, EPA should disclose additional data and analysis regarding SRE decisions to provide needed public insight into EPA's decisionmaking process.

II. EPA HAS BOTH THE POWER AND THE DUTY TO ACCOUNT FOR *ALL* SMALL REFINERY EXEMPTIONS, REGARDLESS OF WHEN THOSE EXEMPTIONS ARE GRANTED

EPA should have confidence that the Clean Air Act permits it to calculate percentage standards by projecting the volume of fuels projected to later become exempt through the issuance of retroactive SREs. Indeed, the Act requires EPA to do so.

A. As Growth Energy explained in its initial comment on the 2020 NPRM and other recent submissions, and as EPA agrees in the Supplemental 2020 NPRM, the statute plainly contemplates—indeed, directs—that EPA will use some method for projecting and accounting for SRE-exempted fuel when setting percentage standards.[3] Specifically, the statute requires EPA to publish for each upcoming year "a single applicable percentage," identical across obligated parties, that will "ensure" the year's renewable fuel standard is met.[4]

---

[3] 2020 Growth Energy Comment at 3-14; Brief for Petitioners, *Growth Energy v. EPA*, No. 19-1023, at 10-21 (D.C. Cir. Oct. 4, 2019) ("2019 Growth Energy Brief"); Petition to Revise "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019" and "Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020," at 4-11 (filed Nov. 20, 2019) ("Petition to Revise"); *see also* Supplemental 2020 NPRM at 57,682 ("The statute impliedly contemplates EPA's authority to make this projection, as it requires EPA to promulgate standards by November 30 of the prior year to 'ensure[]' that the renewable fuel volumes are met, but authorizes small refineries to petition for an exemption based on disproportionate economic hardship 'at any time.'" (footnote omitted)).

[4] 42 U.S.C. § 7545(*o*)(3)(B).

To determine this statutorily prescribed percentage, EPA must project the total volume of fossil fuel that obligated parties will introduce into commerce during the upcoming year.[5] This number represents the percentage standard's denominator: the total pool of regulated fossil fuel.[6] This figure—and accordingly the percentage standard—will be accurate only if, in making the projection, EPA accounts for the volume of such fuel that is projected to be exempt. Including exempt volumes in the denominator, as EPA has done to date, guarantees that the percentage standard will not be met because the exempt refineries, by definition, are not required to turn in RINs to comply. Without such an accounting, each gallon of exempt fuel directly increases the gap between the percentage standard that must be met and the percentage actually realized.[7] Far from "ensuring" that the standards are met, setting standards without accounting for retroactive SREs virtually "ensures" that the standards are *not* met.

B. By regulation, EPA defined the denominator in the equation for calculating each year's percentage standard in terms of "[t]he amount of gasoline [and diesel] projected to be produced by exempt small refineries and small refiners."[8] Those projected exempt volumes are to be subtracted from the volume of fossil fuel projected to be used in the compliance year.[9] When RFS2 began in 2010, EPA explained (correctly) that this adjustment is necessary "because the percentage standards need to be based on the gasoline and diesel subject to the renewable volume obligations[] to achieve the overall required volumes of renewable fuel."[10] And there can be no serious dispute that setting the percentage standard so as to ensure the requirements are met is not just within EPA's authority—it is its statutory mandate.

EPA could have and should have interpreted its regulation to require a projection of future retroactive exemptions. But it did not, claiming that the statute has "no provision for changing the percentage standards once they are set."[11] That was irrelevant, as it does not explain why EPA would not *project* exemptions *ex ante*. (It was also an incorrect interpretation

---

[5] *E.g.*, 74 Fed. Reg. 24,904, 24,953-54 (May 26, 2009) ("[T]he renewable fuel standards for a given year are basically the ratio of the amount of each type of renewable fuel specified in [the statute] for that year to the projected 49-state non-renewable combined gasoline and diesel volume for that year. …. In order to achieve the volumes of renewable fuels specified in [the statute], the gasoline and diesel volumes used to determine the standard must be the non-renewable portion of the gasoline and diesel pools.").

[6] *Id.*

[7] *American Fuel & Petrochemical Mfrs. v. EPA*, 937 F.3d 559, 588 (D.C. Cir. 2019).

[8] 40 C.F.R. § 80.1405; *see also* 75 Fed. Reg. 14,670, 14,867 (Mar. 26, 2010) (enacting quoted language); *id.* at 14,716 ("Small refineries and small refiners will continue to be exempt from the program … under the new RFS2 regulations. Thus we have excluded their gasoline and diesel volumes from the overall non-renewable gasoline and diesel volumes used to determine the applicable percentages ….").

[9] *See* 40 C.F.R. § 80.1405.

[10] 74 Fed. Reg. at 24,954.

[11] 77 Fed. Reg. 1320, 1340 (Jan. 9, 2012).

of the statute, as discussed *infra* p.15.) In addition, EPA pointed to how the statute permits variation from the volumetric requirements insofar as actual gasoline and diesel consumption varies from the projection at the time of the final rule, reasoning that "Congress allowed for some imprecision to exist in the actual volumes of renewable fuel that are consumed as a result of the percentage standards."[12] That too, misses the point. For one thing, when actual gasoline and diesel use vary from the projected amounts, the national *percentage standard* originally set—which is the operative obligation imposed under the program—does not change and is still met. Indeed, that is presumably why Congress specified that the obligations be defined as percentages. In contrast, when EPA sets standards without accounting for retroactive exemptions and then grants retroactive exemptions, it causes the national *percentage standard* not to be met. Moreover, there is a difference between some variation between the projected and actual volumes, on the one hand, and a projection that is known in advance to be completely wrong, which is the case under EPA's current practice of projecting that retroactively exempt volumes will be zero. As an interagency reviewer recently put it, zero is about "the least likely number you could project."[13] Indeed, what may have been a fairly minor discrepancy initially has now become massive, as the number of retroactive exemptions swelled more than 750% between 2014 and 2017, and comprised more than 7% of the total volume requirement for 2018.[14]

Given that EPA clearly knew its zero projections for retroactive exemptions were wrong and given that it had means available to develop more accurate projections, its refusal to account for retroactive exemptions violated the fundamental tenet of reasoned decisionmaking that an agency's findings must reflect the data before it.[15] Even if the statute's text and structure provides EPA some flexibility in projecting exempt volumes, EPA has no warrant to act unreasonably by blinding itself to the evidence before it.[16] It is therefore well-within EPA's power—and indeed its duty—to base its computation of the denominator in the standard equation not just on the exemptions that have been granted as of the time of the rulemaking, but also on the exemptions that EPA anticipates granting in the future.

---

[12] *Id.*

[13] Summary of Interagency Working Comments on Draft Language Under EO 12866 and EO 13563 Interagency Review ("OMB to EPA 5.15.19 10:22pm"), at 78 (PDF p.87), attached to Email from Chad Whitman to Benjamin Hengst and Jessica Mroz (May 15, 2019), EPA-HQ-OAR-2019-0136-0098; *see also* Supplemental 2020 NPRM at 57,682 (stating that EPA "anticipate[s] with a high degree of probability that there will be a non-zero aggregate exempted volume" for the 2020 compliance year).

[14] *See* EPA, *RFS Small Refinery Exemptions*, https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions (attached as Exhibit A).

[15] *E.g.*, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[16] *See Chevron v. NRDC*, 467 U.S. 837 (1984); *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

C. As Growth Energy further explained in its initial comment and elsewhere,[17] and as EPA now also acknowledges,[18] EPA's counterfactual zero-SRE projections have had horrendous consequences for the RFS program, effectively destroying the standards set and thus greatly undermining Congress's intent that the required volumes be met and that the RFS program "force the market to create ways to produce and use greater and greater volumes of renewable fuel each year."[19] For the years 2016, 2017, and 2018, EPA exempted an average of 1.35 billion gallons per year (4.04 billion gallons overall), which—because all those exemptions were granted retroactively—in turn reduced the volume requirements for those years by corresponding amounts. These exemptions took a substantial bite out of renewable fuel use: SREs reduced the total volume of renewable fuel required for 2016, 2017, and 2018 by 4%, 9%, and more than 7%, respectively. These reductions have reduced the effective volume requirements to levels on par with the levels set in the early years of the program.

This effect is also visible in RIN prices. In particular, D6 RIN prices have cratered since EPA began granting large volumes of retroactive exemptions in 2017. The price of D6 RINs has fallen from about $1.00 in late 2016 to about $0.40 in mid-2017, to about $0.20 in early 2019, and finally to about $0.10.[20] When EPA announced the 2018 exemptions, D6 RIN prices experienced their largest 3-day drop (in percentage terms) in the history of the RFS program.[21] As EPA and the D.C. Circuit have recognized, "high RIN prices" "incentivize precisely the sorts of technology and infrastructure investments and fuel supply diversification that the RFS program was intended to promote."[22] EPA thus has undermined Congress's carefully crafted incentives to increase the country's use of renewable fuels.[23]

D. As Growth Energy also explained in its initial comment and elsewhere, EPA's refusing to account for retroactive exemptions also impermissibly converts *exemptions* into

---

[17] 2020 Growth Energy Comment at 3-6; 2019 Growth Energy Brief at 10-14; Petition to Revise at 5-8.

[18] *See, e.g.*, Supplemental 2020 NPRM at 57,680 ("[I]f we under-project the volume of exempted gasoline and diesel, the actual required volumes of renewable fuel will be lower than the volumes used in calculating the percentage standards.").

[19] *Americans for Clean Energy v. EPA*, 864 F.3d 691, 710 (D.C. Cir. 2017).

[20] Edgeworth Economics, *The Impact of EPA's Policies Regarding RVOs and SREs* 3 (Aug. 30, 2019), attached as Exhibit 1 to 2020 Growth Energy Comment, EPA-HQ-OAR-2019-0136-0312.

[21] *Id.* at 9.

[22] *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 919 (D.C. Cir. 2014); *see also, e.g.*, EPA, *Denial of Petitions for Rulemaking to Change the RFS Point of Obligation* 19 (Nov. 2017), EPA-HQ-OAR-2019-0136-0029.

[23] *See* Edgeworth Economics at 9 (finding that, by exempting billions of RINs for 2018 without requiring that they be made up, EPA "eliminate[d] any incentive to increase conventional biofuel production and consumption, leading to continued increases in the RIN bank and neutering the original policy mandate").

waivers of the standards, contrary to the statute's plain text and structure.[24] If Congress intended to grant EPA a power to waive volume requirements based on findings that individual refineries will suffer "disproportionate economic hardship" if they must comply, it would have said so—the waiver provisions show Congress certainly knew how to. EPA has no authority to rewrite the statute or create a new, non-textual waiver power.[25]

E. For all these reasons, EPA's prior approach was an impermissible violation of the statute, and EPA's proposal is plainly within its statutory authority. To argue otherwise, challengers to this proposed rulemaking would have to contend that the statute speaks directly and contrarily to the issue, thus *compelling* EPA to ignore the practical certainty that it will grant retroactive SREs and the effect that ignoring that certainty has on the efficacy of the program. The statute does not so speak.

1. Contrary to the views of some commentators,[26] the fact that Congress, in 42 U.S.C. § 7545(*o*)(3)(C)(ii), directed EPA to account for the behavior of small refineries in one particular respect does not mean that Congress intended implicitly to forbid EPA from taking account of small refineries in any other way. The *expressio unius* canon does not "mean that anything not required is forbidden."[27] This limitation on the canon is particularly important in the administrative law setting, "where Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved."[28] Rather, the question is whether Congress's silence on a specific issue is so closely related to issues it addressed explicitly that it is appropriate to infer from the different treatment that Congress intended to withhold authority from EPA on the silent issue.[29]

No such inference is warranted here. Section 7545(*o*)(3)(C)(ii) and the Supplemental 2020 NPRM represent two different solutions to two distinct and opposite problems:

---

[24] 2020 Growth Energy Comment at 11; 2019 Growth Energy Brief at 15-17; Petition to Revise at 8-10.

[25] *See, e.g.*, *NLRB v. SW General, Inc.*,137 S. Ct. 929, 940 (2017) (Congress's "expressi[on]" of certain types of waivers "excludes another [type of waiver] left unmentioned"); *In re Sealed Case*, 237 F.3d 657, 670 (D.C. Cir. 2001) ("Agencies are not empowered to carve out exceptions to statutory limits on their authority.").

[26] *See, e.g.*, Intervenor Final Brief, *American Fuel & Petrochemical Mfrs v. EPA*, No. 17-1258, at 19-20 (D.C. Cir. Jan. 10, 2019).

[27] 2A Sutherland, *Statutes and Statutory Construction* § 47:25 (7th ed. updated Oct. 2019).

[28] *Waterkeeper All. v. EPA*, 853 F.3d 527, 534 (D.C. Cir. 2017) (quoting *Cheney R.R. Co. v. ICC*, 902 F.2d 66, 69 (D.C. Cir. 1990)).

[29] *See, e.g.*, *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) ("[T]he canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." (quoting *United States v. Vonn*, 535 U.S. 55, 65 (2002)))

§ 7545(*o*)(3)(C)(ii) tells EPA what to do when a refinery that was exempt during the prior compliance year nonetheless used renewable fuel that year, i.e., it directs EPA to account for potential *overcompliance*.[30] In contrast, the Supplemental 2020 NPRM addresses the problem of near certain *undercompliance*. It is not surprising that Congress saw fit to address the specific situation where renewable fuel was used by exempt refineries (a problem that EPA's RIN system quickly rendered a nonissue),[31] while at the same time failing to mention the (now) much more pressing problem of unaccounted for exempt fossil fuels. Indeed, Congress likely did not consider the problem of retroactive exemptions at all, given its expectation that SREs would exist only on a "[t]emporary" basis, would be "extend[ed]" only upon a showing of "disproportionate economic hardship,"[32] and would accordingly fade away within a few years of the program's start. In fact, it would be nonsensical to infer that, by addressing overcompliance, Congress intended to bar EPA from addressing undercompliance given the statutory command that EPA "ensure" that the standards are met and the overarching objective to compel increased annual use of renewable fuel.[33]

Finally, the *expressio unius* argument proves far too much. It would mean that *any* adjustment of percentage standards to account for exempt volumes would violate the statute, even if the exemptions had already been granted at the time of EPA's rulemaking. If that were true, EPA's percentage standard formula would have been invalid from the start,[34] and EPA would be powerless to extend SREs in appropriate cases while still "ensuring" the target volumes are met. This result flies in the face of the statutory structure, as Growth Energy has already explained at length. Whatever *expressio unius* inference may exist is far too weak to justify such a disharmonious result.

2. Defenders of the status quo have made other arguments against the mechanism of accounting for exempt fuels in general, but the current proposal renders most of those criticisms moot.[35] Growth Energy has previously explained why these objections are meritless.[36] In short, as noted above, because the proposal only projects future exemptions, EPA can adopt it without

---

[30] *See* 42 U.S.C. § 7545(*o*)(3)(C)(ii) ("In determining the applicable percentage for a calendar year, the Administrator shall make adjustments … to account for the use of renewable fuel during the previous calendar year by small refineries that exempt under paragraph (9).").

[31] *See* 74 Fed. Reg. at 24,954 (explaining that the volume of renewable fuel generated by exempt refineries is "expected to be very small" and that EPA's RIN-credit trading system accounts for such volumes in any event).

[32] 42 U.S.C. § 7545(*o*)(9).

[33] *ACE*, 864 F.3d at 710.

[34] *See* 40 C.F.R. § 80.1405 (requiring EPA at minimum to account for nonretroactive SREs when setting percentage standards).

[35] *See* Supplemental 2020 NPRM at 57,682 ("Today's approach … avoids the problems we previously identified with projecting small refinery exemptions.").

[36] 2020 Growth Energy Comment at 12-14; 2019 Growth Energy Brief at 17-21.

considering the legality of adjusting a percentage standard that has already been finalized.[37] And the proposal does not require EPA to prejudge or speculate about which entities will apply and what their economic positions will be; EPA need only estimate exempt volume in the aggregate based on past experience.[38] The statute simply cannot be read to "directly foreclose" the commonsense approach that EPA proposes to take.

F. Lastly, EPA's policy change comfortably passes muster under the principles of *FCC v. Fox Television Studios, Inc*.[39] Because the Supplemental 2020 NPRM's proposal does not contradict the factual findings that underpinned EPA's prior refusal to account for retroactive SREs, and because the proposal applies only to prospective conduct, *Fox* does not require the agency to "provide a more detailed justification than what would suffice for a new policy created on a blank slate."[40] Rather, it suffices that the new policy be permissible under the statute; that there be good reasons for it; and that the agency acknowledge its change of course.[41] For the reasons explained above, the Supplemental 2020 NPRM easily satisfies all three requirements.[42]

III. EPA'S PROPOSED REGULATORY LANGUAGE CAPTURES ITS INTENT TO ACCOUNT FOR ALL SMALL REFINERY EXEMPTIONS

EPA's proposed amendment to 40 C.F.R. § 80.1405 is not a complete solution—as discussed further below, it does not specify an adequate projection method—but it does begin to correct the serious flaw in how EPA interprets the regulation as it is written today, which was discussed above.

The proposed new language would define GE_i and DE_i to mean:

> "[T]he total amount of gasoline [or diesel] projected to be exempted in year *i*, in gallons, per §§ 80.1441 and 80.1442."[43]

This language would clearly express EPA's intent to project and account for all volumes of gasoline and diesel projected to be exempt in the upcoming compliance year, regardless of whether the associated SREs have already been granted at the time of the rulemaking. The

---

[37] *See, e.g.*, EPA Brief, *American Fuel & Petrochemical Mfrs. v. EPA*, No. 17-1258, at 73 (D.C. Cir. Jan. 10, 2019); Intervenor Final Brief at 20. Of course, as explained *infra* at p.15, implementing such a true-up mechanism would be well within EPA's statutory authority in any event.

[38] Supplemental 2020 NPRM at 57,682.

[39] 556 U.S. 502, 515-516 (2009).

[40] *Id.* at 515 (heighted justification required when the new policy "rests upon factual findings that contradict those which underlay [the] prior policy" or when the prior policy "has engendered serious reliance interests").

[41] *Id.*

[42] *See also* Supplemental 2020 NPRM at 57,681 (acknowledging change in policy).

[43] *See* Supplemental 2020 NPRM at 57,680.

proposal shifts the placement of the word "projected" in an important way: whereas the current version of the regulation calls on EPA to determine the amount of fuel "projected to be produced by exempt small refineries" (which EPA has in effect interpreted to mean "by refineries exempt at the time of the RVO rulemaking"), the new language would direct EPA to determine the amount of fuel "projected to be exempted." And for good measure, EPA would add the word "total" to modify the "amount" it must project. These changes leave no room for excluding from the projection any volumes associated with as-yet ungranted SREs, because estimating the total amount of fossil fuel projected to be exempt naturally requires projecting the volumes that will be associated with projected exemptions. Put differently, if EPA were to set GE_i and DE_i to zero without even attempting to estimate the aggregate volumes associated with projected retroactive SREs, as EPA has done in the past, the agency would not be projecting the total amount of fuel "*projected to be exempted*"—it would be projecting none of it.

Alternatively, EPA could employ a belt-and-suspenders approach and add language like the following: "The total amount of gasoline [or diesel] projected to be exempt in year *i*, in gallons, per §§ 80.1441 and 80.1442, whether the exemptions have already been or are projected to be granted in the future."

Finally, Growth Energy proposes that EPA further amend the definitions GE_i and DE_i to specify the method of projection for compliance year 2020 and beyond, in accordance with the methodological recommendations discussed below.

IV. EPA SHOULD PROJECT EXEMPT VOLUMES USING AN ADJUSTED THREE-YEAR AVERAGE OF RECENT EXEMPTIONS ACTUALLY GRANTED

EPA proposes to project the total volume of exempt gasoline and diesel for compliance year 2020 by using the average (mean) of the exemptions that EPA would have granted for compliance years 2016, 2017, and 2018 had EPA followed DOE's nonbinding recommendations.[44] EPA does not propose how it would project in future years.

EPA should take this opportunity to establish a robust, predictable approach to projection that best ensures that the statutory requirements will be met. It should do so not simply by stating how it will approach the 2020 projection; it should establish in the regulation its approach going forward. And that approach should rely not on DOE recommendations, but on a three-year average of *actual* EPA behavior. Finally, EPA should adjust the formula to account for the possibility that exemptions for the most recent year to be used in a projection may be granted after the RVOs are set.

A. EPA Should Codify a Projection Approach That Is Based On Exemptions Actually Granted, Not Nonbinding DOE Recommendations

As EPA acknowledges, the Clean Air Act requires EPA to "make an independent decision" on small refinery exemption petitions; it is not bound by DOE's recommendation or

[44] *Id.* at 57,680, 57,682.

analysis.[45] Nonetheless, EPA proposes to project the future volumes of exempt gasoline and diesel based not on its own decisionmaking history, but on the nonbinding (and ultimately less predictive) DOE recommendations.[46] EPA suggests that doing so will split the difference between past years when EPA has rounded up from DOE recommendations and years when it has rounded down.[47] But in truth, any rounding errors are dwarfed by the volume of SREs that EPA has granted beyond DOE's recommended amount. EPA should therefore adopt instead the more accurate and conceptually sound approach of basing its projections on the reality of how much fuel EPA actually exempted in the most recent compliance years for which exemptions have been granted.

As the chart below illustrates, EPA has consistently exempted far greater volumes of fuel than recommended by DOE. In 2017 alone, EPA's actual exemptions exceeded DOE's recommendation by *7.8 billion* gallons.

Compliance Year	Exempted Volume of Gasoline and Diesel Under DOE Recommendations (millions of gallons)[48]	Exempted Volume of Gasoline and Diesel Under SREs Actually Extended by EPA (millions of gallons)[49]	Difference (millions of gallons)
2015	3,040	3,070	30
2016	4,380	7,840	3,460
2017	9,520	17,050	7,530
2018	7,890	13,420	5,530

The NPRM nevertheless suggests that predicting exemptions for 2020 based on past DOE recommendations is appropriate because EPA "anticipate[s]" this approach "will result in an exempted volume that is on the aggregate consistent with DOE's recommendations."[50] EPA explains that, whereas DOE has recommended partial exemptions, EPA has taken a binary approach, denying or granting applications only in full. But now EPA indicates it will adopt DOE's practice of granting partial exemptions where appropriate going forward. EPA further notes that projecting based on DOE recommendations is a "middle ground" between its all-or-nothing extremes in recent years.

---

[45] Supplemental 2020 NPRM at 57,681; *see also Hermes Consol.*, 787 F.3d at 575; *Ergon-W. Va., Inc. v. EPA*, 896 F.3d 600, 612 (4th Cir. 2018); *see* 42 U.S.C. § 7545(*o*)(9)(B)(ii) (requiring EPA to consider DOE's recommendation "and other economic factors").

[46] Supplemental 2020 NPRM at 57,681-57,682.

[47] *Id.*

[48] *Id.* at 57,682.

[49] EPA, *RFS Small Refinery Exemptions* (attached as Exhibit A).

[50] Supplemental 2020 NPRM at 57,682.

EPA's reasoning is flawed and not a basis for departing from the far more straightforward and appropriate approach of projecting what EPA will do based on what it actually has done. *First*, there are substantial reasons to doubt that the DOE recommendations will provide the best projection of what EPA will do, even just in 2020. EPA recognizes that it "cannot predict with certainty the approach" that it will in fact take, and that "[t]he statute directs EPA to make an *independent* decision as to SRE petitions based on DOE's recommendation and other economic factors."[51] Indeed, EPA's grant of an exemption was recently vacated when the court concluded that EPA had relied reflexively on a "facially-deficient recommendation" by DOE.[52] Moreover, as the above table demonstrates, whatever EPA did several years ago, in the three most recent years, *all* departures have been upward, and all have departed upward to an unprecedented degree. And although EPA points to its interpretation that it will now start granting partial relief, it does not follow from this that the partial relief that EPA will grant will necessarily hew closely to the DOE recommendations in aggregate.

Second, and more fundamentally, EPA should codify into regulation a projection approach that is durable and predictable even in the face of changes in how EPA and DOE approach their respective assignments. A projection approach that is tethered to DOE recommendations would be constantly subject to uncertainty and potential revision, as each year it would be uncertain whether and to what extent EPA's exemption decisions would match DOE's recommendations. The strong possibility would exist—even if entirely inadvertent—that EPA would systematically grant higher (or lower) exemptions than DOE recommendations, thereby systematically failing to ensure that the requirements are met (or systematically imposing greater burdens on obligated parties than necessary to meet RFS requirements), militates heavily against EPA's proposed approach. These complications would be compounded by court decisions, changes in DOE policy that EPA chooses not to adopt, and various other factors that could result in divergence between the DOE and EPA approaches. EPA may claim that it will adjust its projections as circumstances change; indeed, it specifically recognizes that it has "retain[s] authority to adjust the standards as appropriate should [its] approach to 2020 small refinery exemptions significantly change."[53] But that just creates another basis for market uncertainty that thwarts the goals of the RFS program. The market should know how EPA will approach its task so that it can make the necessary investments to achieve the statutory requirements.

None of these complications is necessary. If EPA simply tethers its projections to averages of its own historical SRE grants, then it will be making a prediction based on the most reliable indicator available—its own decisionmaking processes. Moreover, this projection approach would be naturally self-correcting. If EPA grants a much higher number of exemptions in a given year than the three-year projection indicated, that higher grant of exemptions would factor into three following years' estimates, ultimately making up the underprojection over the next three years. The reverse would occur if EPA overprojected for a given year. Market

[51] *Id.* at 57,861-57,862 (emphasis added).

[52] *Ergon-W. Va.*, 896 F.3d at 613.

[53] Supplemental 2020 NPRM at 57,682.

players would have every reason to expect that over the long run, EPA's projections will match its grants and thus that the statutory requirements will be met.

For these reasons, Growth Energy urges EPA to codify a projection approach that is based on actual SRE grants. Although EPA may believe that, in light of claimed changes to EPA policy, DOE recommendations would provide a better projection approach for 2020, as discussed above there are substantial reasons to doubt that assumption. But in any event, EPA should be establishing a robust, long-term approach that best provides market certainty that the requirements will be met.[54]

B. EPA Should Base Its Projections On The Volumes Associated With Exemptions Granted For Years *i*-2, *i*-3, And *i*-4, Rather Than Older Years

Because exempt volumes can vary from year to year, EPA proposes to project future volumes by looking to a three-year average. Specifically, EPA proposes to project the exempt volume in compliance year 2020 by averaging the relevant data from 2016, 2017, and 2018.[55]

So long as the "relevant data" are actual exempt volumes, and not just DOE recommendations (as discussed above), Growth Energy accepts this approach. The projections should be based on data from the most recently completed years. The more recent years will provide a more accurate basis for projecting future exemptions than earlier years because the circumstances that determine "disproportionate economic hardship" for any given year—the RFS standards and the economic conditions faced by small refineries—will likely be most similar to the conditions present in the nearest proceeding years. In the case of the 2020 RVO rulemaking, which is set to be finalized during 2019, the three most recently completed years will be 2016, 2017, and 2018, and therefore the projection should be based on those years' data. For these same reasons, EPA should not adopt the "alternate approach" mentioned in passing to base the 2020 projection on data from the years 2015, 2016, and 2017.[56]

In addition, EPA should go further than the Supplemental 2020 NPRM and specify how the projection will be calculated for years beyond 2020. That is, instead of defining the projection for the specific year 2020 as the average of data from the years 2016-2018, EPA should phrase the calculation using more general variables. Specifically, it should define the

---

[54] And to whatever extent the SREs granted in 2020 ultimately prove to be lower than a projection based on actual SRE grants from 2016-2018, that just speaks to how much volume EPA has impermissibly allowed to be lost from the statutory requirements in those prior years through what it now recognizes was its improper approach of setting standards without accounting for retroactive SREs. That approach has led to a significant expansion in the size of the carryover RIN bank, which can easily accommodate any amount of overprojection that might result from using actual past SREs to project the 2020 SREs.

[55] Supplemental 2020 NPRM at 57,682.

[56] *Id.* at 57,683 ("We also request comment on an alternative approach using the average volume of gasoline and diesel that would have been exempted from 2015-2017 … as our projection for the exempted volumes of gasoline and diesel in 2020.").

projection for compliance year *i* in terms of the actual exempt volumes for years *i*-2, *i*-3, and *i*-4, by adding the underlined language:

> "The total amount of gasoline [or diesel] projected to be exempt in year *i*, in gallons, per §§ 80.1441 and 80.1442, whether the exemptions have already been or are projected to be granted in the future, where the projection shall equal the mean of (a) the total amount of gasoline exempt in year *i*-2, (b) the total amount of gasoline exempt in year *i*-3, and (c) the total amount of gasoline exempt in year *i*-4."

Codifying a general standard in this way will give greater certainty to industry actors over the life of the RFS program.

C. EPA Should Further Specify A Projection Formula That Anticipates That Exemptions for Year *i*-2 Might Issue After The Year *i* Standards Are Set

One further modification to the projection formula is necessary to eliminate potential undercounting. As explained above, EPA should project the volume of gasoline and diesel exempt in compliance year *i* by taking the average of the total volume of exempt gasoline and diesel associated with the SREs granted for compliance years *i*-2, *i*-3, and *i*-4. But it may be theoretically possible that EPA would grant exemptions for compliance year *i*-2 *after* EPA has finalized the percentage standards for year *i*.[57] Unless the formula is further modified, any exemptions for compliance year *i*-2 that issue after the year *i* standards are finalized would be excluded from the three-year average for purposes of setting the year *i* standards, potentially resulting in the under-projections of the SREs for that year.

To ensure that all relevant exemptions are included in the average that constitutes EPA's projection, EPA should take any orphaned exemptions and include them in the average that constitutes the projection for the next compliance year. EPA could accomplish this by adding the double-underlined language to the definitions of *GEi* and *DEi* that were proposed above:

> "The total amount of gasoline [or diesel] projected to be exempt in year *i*, in gallons, per §§ 80.1441 and 80.1442, whether the exemptions have already been or are projected to be granted in the future, where the projection shall equal the mean of (a) the total amount of gasoline exempt in year *i*-2, (b) the total amount of gasoline exempt in year *i*-3 plus the total amount of gasoline exempt in year *i*-3 that was not previously included in the calculation of GE_{i-1} [or DE_{i-1}], and (c) the total amount of gasoline exempt in year *i*-4."

[57] For example, the SREs for 2018 were granted in August 2019. If EPA had been delayed by a few months, they could have been granted after the 2020 rule will be finalized in November 2019. If the rule was then finalized before the March 2020 demonstration deadline, the RINs unretired from these exemptions could include 2018 RINs that could still be submitted for compliance.

Alternatively, EPA could achieve the same goal by taking the average of the volume associated with SREs granted *in the three most recent calendar years* regardless of what compliance years they apply to (as opposed to the SREs applicable to the three most recent compliance years). For example, in projecting the exempt volumes for 2020, EPA could take the average of (1) the total volume associated with any exemptions that were granted during the calendar year 2016; (2) the same total for 2017; and (3) the same total for 2018—regardless of the compliance years to which those exemptions apply. EPA could accomplish this by adding the double-underlined language to the definitions of *GEi* and *DEi* that were proposed above:

> "The total amount of gasoline [or diesel] projected to be exempt in year *i*, in gallons, per §§ 80.1441 and 80.1442, whether the exemptions have already been or are projected to be granted in the future, <u>where the projection shall equal the mean of the total amount of gasoline [or diesel] that EPA declared in years *i*-2, *i*-3, and *i*-4 to be exempt."</u>

This method would avoid the concern of delayed exemptions because all exemptions would be counted based on the date they were granted.

V. IF EPA DECLINES TO BASE ITS PROJECTIONS ON EXEMPTIONS ACTUALLY GRANTED, EPA SHOULD AT LEAST ADOPT A FAILSAFE TO INCREASE ITS PROJECTIONS' LONG-TERM ACCURACY

A projection mechanism that is based on actual SREs granted over years *i*-2, *i*-3, and *i*-4—as Growth Energy described above—would not merely provide a more accurate projection in a given year. It also would have the crucial and elegant effect of fully accounting for all actual exempt volumes over the long-term. That is because, as explained above, a projection based on actual SRE grants naturally trues-up variation in SREs over time—higher than projected SREs granted in year *i* will be offset by lower projections in years *i*+2, *i*+3, and *i*+4, and vice versa. On the other hand, using DOE recommendations (or a more ad hoc approach) risks introducing systematic differences between EPA's projected SREs and the SREs actually realized, and thus risks inaccuracy in the final standards. Accordingly, were EPA to nonetheless base its exemption projections on DOE recommendations, it should adopt a failsafe to at least achieve greater accuracy over the long-term. Growth Energy presents here two such mechanisms.

A. EPA should specify that, if the actual SREs for any given compliance year exceed the projected SREs based on DOE's recommendations, EPA will thenceforth base its SRE projections on prior actual SREs as Growth Energy proposed in Part IV above.

A mechanism of this type is necessary to ensure that EPA does not continually base its projections on DOE recommendations that turn out not to resemble the reality of actual SRE grants. EPA's rationale for projecting GE_i and DE_i based on DOE recommendations depends on its assumption that, in the aggregate, future SREs granted will—contrary to past practice—closely align with the amount of SREs recommended by DOE.[58] But that assumption may prove

[58] *See* Supplemental 2020 NPRM at 57,681.

untrue, as EPA admits.[59] If EPA continues to grant SREs substantially beyond DOE's recommendations but nonetheless uses those recommendations as the basis for computing GE_i and DE_i, then EPA will systematically underproject the volumes of exempt fossil fuels. The result would be a rule that fails to achieve EPA's stated goal of accurately accounting for exempt volumes, but that continues EPA's failure to comply with its statutory duty to "ensure" that the RFS requirements are met.[60] By instead switching to projections based on actual SREs in the event that DOE recommendations turn out to be an inaccurate predictor, EPA would at least increase the accuracy of its projections going forward.

B. EPA should adopt a "true-up" mechanism to correct any differences between projected and actual SREs after the fact. As Growth Energy has explained in its initial comment and other submissions, EPA has ample authority to perform such ex post corrections.[61] Indeed, as noted above, the Supplemental 2020 NPRM recognizes that EPA "retain[s] authority to adjust the standards as appropriate should [its] approach to 2020 small refinery exemptions significantly change."[62] For support of this proposition, EPA cites *ACE* and correctly describes that decision as "upholding EPA's authority to promulgate late renewable fuel requirements so long as EPA reasonably balances the burdens and benefits of its approach."[63] In *ACE*, the issue was EPA's promulgation of renewable fuel requirements well after the compliance year ended.[64] The same would be true here. Thus, EPA may alter the standards not just during the compliance year, but after the compliance year when the actual SRE grants are known.

Such ex post adjustments would reasonably balance the benefits and burdens to market players. The benefits would be immense—ensuring that the statutory requirements are met. The burdens would be minimal. All obligated parties would already be on notice of the statutory requirements and EPA's intent to correct for discrepancies in the projection of SREs, so a true-up would simply fulfill those clear and certain expectations. Insofar as EPA under-projects the SREs, it will unretire RINs to exempt refineries that nonexempt refineries could then acquire to meet any increased obligation. And if EPA over-projects the SREs, obligated parties could stand to benefit from the true-up.

---

[59] *See id.* at 57,682 ("we cannot predict with certainty the approach that we will in fact take once we have received and reviewed petitions").

[60] *See id.* at 57,680 ("We believe the newly proposed definitions are a reasonable measure to appropriately account for volumes that may become exempted after the promulgation of the final rule establishing the percentage standards and furthers Congressional intent to 'ensure' the renewable fuel volumes are met.").

[61] 2020 Growth Energy Comment at 12-14; 2019 Brief Growth Energy Brief at 17-21; Petition to Revise at 10-11.

[62] Supplemental 2020 NPRM at 57,682.

[63] *Id.* at 57,682 n.35.

[64] *See* 864 F.3d at 716.

EPA would have several different methods available to implement an ex post true-up. It could revise the percentage standards for the compliance year in question, or it could increase the volume requirements for a compliance year in the future when the discrepancy is known (e.g., year *i*+2). Increasing the volume requirements for a future compliance year would be justifiable both under EPA's statutory duty to ensure the requirements are met, and because the statute requires only that EPA ensure that "at least" the statutory volume is consumed; EPA is free to set requirements that exceed the statute.[65] In truing up the volume, EPA could make up the difference between the projected and actual *volume* of SREs. Alternatively, it could make the necessary adjustments so that the *percentage standard* that existed at the time the RVO was set (i.e., the statutory volume divided by the projected fossil fuel consumption) is realized. Growth Energy stands ready to provide technical assistance to EPA to develop a true-up mechanism should EPA decline to base projections on actual past SREs.

VI. EPA IS CORRECT TO INTERPRET THE CLEAN AIR ACT TO ALLOW PARTIAL SREs

The Supplemental 2020 NPRM also solicits comments on EPA's proposal to begin the practice of granting "partial" SRE extensions, despite having deemed the practice inconsistent with the "'best' interpretation" of the statute in a memorandum dated August 9, 2019.[66] The memorandum reasoned that the Clean Air Act authorizes EPA to grant only "an extension of the exemption under subparagraph (A),"[67] and that all exemptions under paragraph (A) were complete (in the sense that they exempted the refineries from all RFS regulations), not partial.

EPA is correct that it may lawfully depart from the position it took in the August 9 memorandum. Nothing in the statute speaks directly to whether EPA may *partially* "extend." As the NPRM observes, "[n]o statutory language exists characterizing the scope of an exemption; there are no terms employed such as 'partial' or 'full.'"[68] Thus, the operative question under the *Chevron* framework is whether the newly proposed reading is reasonable in light of the structure and purpose of the Clean Act Act's RFS provisions.[69] It is; nothing in the structure or purpose of the statute would be impaired by the granting of partial exemptions (where disproportion economic hardship would otherwise exist).

VII. EPA SHOULD INCREASE TRANSPARENCY AROUND SREs

EPA should also adopt new disclosure practices to shed light on its SRE decisions and the DOE recommendation process in particular, which would acquire new significance under EPA's proposal.

---

[65] 42 U.S.C. § 7545(*o*)(2)(A)(i).

[66] Supplemental 2020 NPRM at 57,681 & n.25.

[67] 42 U.S.C. § 7545(*o*)(9)(B)(i).

[68] Supplemental 2020 NPRM at 57,681.

[69] *See, e.g.*, *AFPM*, 937 F.3d at 574 ("Under *Chevron*, the court defers to the EPA's interpretation if the statutory text is ambiguous and the EPA's interpretation is reasonable.").

First, as explained in Growth Energy's initial comment on the 2020 NPRM, EPA should adopt the public access provisions of the proposed REGS rule as well as the additional disclosure practices for small refinery exemptions that Growth Energy has proposed.[70]

Second, especially if EPA finalizes its proposal to base its projection on DOE recommendations rather than on actually granted exemptions, EPA should adopt a set of disclosure practices to make EPA's standard-setting practices more predictable to the market. Specifically, EPA should publish data reflecting DOE's annual SRE recommendations on EPA's public website. EPA already uses its website to "publish[] data on a number of items of interest to stakeholders,"[71] including data intended to "summar[ize] small refinery exemption decisions each compliance year."[72] If EPA bases its SRE projections on DOE recommendations, that summary will be incomplete unless it also contains data reflecting the number of SRE petitions that DOE recommended granting in full, granting in part, and denying in each compliance year, as well as the expected amounts of exempt gasoline and RVOs that would have resulted from those recommendations. While DOE recommendations have always played a central role in the SRE decision process, they would be even more important under EPA's proposal to use them as the determinants of GE_i and DE_i in setting annual percentage standards, and under EPA's intended practice of hewing more closely to DOE recommendations when adjudicating SRE applications.[73] Indeed, those recommendations would be so significant to EPA's decisionmaking that EPA already disclosed some of the requested data in the course of explaining its proposal.[74] Rather than stopping at this single ad hoc disclosure, EPA should publish to its website full data on DOE recommendations from previous compliance years and update it with data on future compliance years going forward.

Additionally, EPA should disclose the specific standards and specific analyses it uses to adjudicate SRE applications beyond the DOE recommendations. As EPA explains in its proposal, the agency understands the Clean Air Act as "direct[ing]" it to perform "[its] own review and analysis" and make a decision "independent" of DOE's recommendation, taking into account "'other economic factors,' refinery-specific information, and other persuasive evidence."[75] But EPA has never revealed how it performs that independent review in general or in specific cases. And as Growth Energy has explained, final decisional documents elucidating and applying this standard (which is hardly self-defining) constitute "working law" subject to

---

[70] *See* 2020 Growth Energy Comment at 33-43.

[71] 83 Fed. Reg. 63,704, 63,707 (Dec. 11, 2018).

[72] *See* EPA, *RFS Small Refinery Exemptions*, tbl.2 (attached as Exhibit A).

[73] *See* Supplemental 2020 NPRM at 57,681-82.

[74] *See id.* at 57,682 ("To project the exempted volume under this methodology, it is instructive to look back at what the exempted volumes of gasoline and diesel in previous years would have been had EPA followed DOE's recommendations, including granting partial exemptions. These volumes [for compliance years 2015 through 2018], along with the Renewable Volume Obligation (RVO) that would have been exempted, are shown in Table II.B-1.").

[75] Supplemental 2020 NPRM at 57,681 & n.19 (quoting 42 U.S.C. § 7545(*o*)(9)(B)(ii).

mandatory disclosure.[76] Public disclosure of EPA's standards, analyses, and final decisions on this front is the only way for the public to understand how EPA actually evaluates SRE applications and DOE's recommendations, and the only way to ensure that EPA's decisions are lawful and predictable. EPA should therefore make these records public as a matter of course.

VIII. CONCLUSION

For the reasons set forth above, EPA should amend § 80.1405 in a way that (1) makes clear that the projections referred to in *GEi* and *DEi* are intended to account for all SREs applicable to year *i*, including any retroactive SREs; (2) defines *GEi* and *DEi* in terms of the average fuel volumes actually exempt in the most recent years for which there is relevant data, rather than the amounts recommended to be exempt by DOE and rather than based on data from earlier years; and (3) accounts for the possibility that the volume of exempt fuel for year *i*-2 may continue to increase even after year *i*'s percentage standard is finalized. Failing that, EPA should switch to projecting based on actual past SREs if projecting based on DOE recommendations turns out to underproject, or retroactively "true up" each projection to the extent it turns out to have been inaccurate. EPA should also implement its plan to grant partial SREs where appropriate. Finally, EPA should adopt public disclosure practices to achieve greater transparency and predictability regarding SREs and annual standard setting.

[76] *See* 2020 Growth Energy Comment at 42 (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 152 (1975); *Public Citizen, Inc. v. Office of Mgmt. & Budget*, 598 F.3d 865, 872, 875 (D.C. Cir. 2010); *Tax Analysts v. IRS*, 117 F.3d 607, 609, 617 (D.C. Cir. 1997); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866-869 (D.C. Cir. 1980); *Sterling Drug, Inc. v. FTC*, 450 F.2d 698, 708 (D.C. Cir. 1971)).

Exhibit A

RFS Small Refinery Exemptions

Section 211(o)(9)(A)(i) of the Clean Air Act (CAA) and 40 CFR 80.1441(a)(1) exempted small refineries from the Renewable Fuel Standard (RFS) program through compliance year 2010. CAA section 211(o)(9)(A)(ii) authorized EPA to extend the exemption for two years. For 2011 and 2012, 24 small refineries were granted an exemption under this provision. Beginning with the 2013 compliance year, small refineries may petition EPA annually for an exemption from their RFS obligations. EPA may grant the extension if it determines that the small refinery has demonstrated disproportionate economic hardship per CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2). EPA's decision to grant an exemption has the effect of exempting the gasoline and diesel produced at the refinery from the percentage standards of 40 CFR 80.1405. The exempted refinery is not subject to the requirements of an obligated party for fuel produced during the compliance year for which the exemption has been granted.

EPA intends to coordinate the timing of future small refinery exemption decisions and updates to this RFS data website such that refineries receiving exemptions and other interested parties receive the same RIN market information at the same time.

Last updated date: Oct, 18, 2019

Table 1: Exempted Volume of Gasoline and Diesel Each Complian...

Compliance Year	Estimated Volumes of Gasoline and Diesel Exempted (million gallons)	Estimated Renewable Vo Obligations (RVO) Exem (million R
2013	1,980	
2014	2,300	
2015	3,070	
2016	7,840	
2017	17,050	1
2018	13,420	1
2019	0	

Export Table

*All numbers in Table 1 are rounded to the nearest 10 million gallons or RINs

Table 2: Summary of Small Refinery Exemption Decisions Each Compliance Year

Compliance Year	Number of Petitions Received	Number of Grants Issued	Number of Denials Issued	Number of Petitions Declared Ineligible or Withdrawn
2013	16	8	7	1
2014	13	8	5	0
2015	14	7	6	1
2016	20	19	1	0
2017	37	35	1	1
2018	42	31	6	3
2019	5	0	0	0

Export Tab