

UPHOLDING THE RFS: FOLLOWING THE LAW ON SREs AND WAIVERS



The Renewable Fuel Standard (RFS) is one of our nation's most successful energy policies. Despite the clear strengths of this bedrock renewable energy legislation, some refineries and the Environmental Protection Agency (EPA) are continuing attempts to unravel this policy.

10TH CIRCUIT COURT DECISION

In January 2020, the 10th Circuit Court of Appeals issued a unanimous decision that invalidated small refinery exemptions (SREs) granted by EPA to three refineries for the 2016 and 2017 compliance years. This validated what the biofuels industry had known all along: drastic increases the last few years in granted SREs violated the law.

The court was unanimous in its determination that:

- EPA cannot issue SREs to refineries that had not received SREs in previous years
- Any finding of “disproportionate economic hardship” must be tied solely to compliance with the RFS

Despite a clear legal decision, EPA has indicated the agency will not decide whether to apply the decision nationwide until the 10th Circuit decision is finally resolved, which may not be until late 2020 or later. EPA has not stated how they will address the 26 pending SREs from 2019 in light of the 10th Circuit decision.

EPA has granted **78%** more exemptions than DOE recommended in the last 3 years

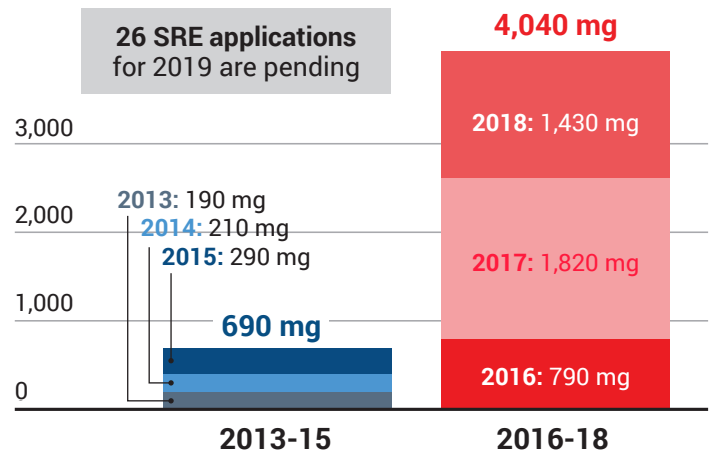
4 billion+ gallons
of biofuel lost due to exemptions granted by EPA

SOURCE: Docket ID No. EPA-HQ-OAR2019-0136

UNFOUNDED REQUESTS FOR RFS WAIVERS

In April, five oil state Governors sent a letter to EPA asking the agency to waive 2020 Renewable Volume Obligations (RVO) due to the alleged severe economic harm that would be caused by RFS compliance. They claimed that compliance with the RFS in their states, and not the Coronavirus (COVID-19) pandemic, is the primary source of difficulties for the refining sector. But blending requirements can only be waived when a state or region can demonstrate that severe economic harm to the economy as a whole is directly caused by compliance with the RFS. In reality, current refiner market conditions have resulted from the plummet in demand for gasoline across the country due to COVID-19, which has similarly impacted the ethanol industry.

SREs BY PRESIDENTIAL ADMINISTRATION



OUR ASK:

- Support having EPA apply the 10th Circuit Court decision nationwide, starting with at least the pending 2019 SRE applications
- Oppose efforts to waive the 2020 RVO in response to crashing fuel demand caused by COVID-19
- Cosponsor the RFS Integrity Act of 2019 (H.R. 3006/S. 1840) which fixes disclosure and timing issues with SRE applicants