

# 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 31 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

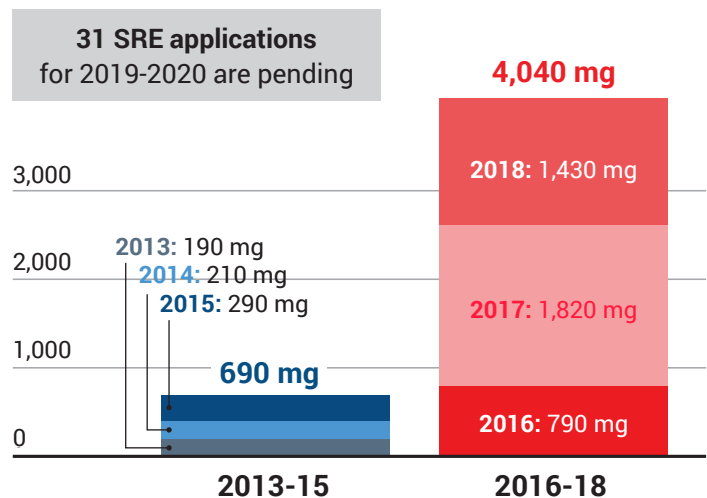
**4 billion+ gallons**  
of biofuel lost due to exemptions granted by EPA

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

## UNPRECEDENTED 67 "GAP YEAR" SRE REQUESTS

In a clear attempt to circumvent the 10th Circuit court decision, various refineries submitted 67 so-called "gap year" SRE petitions (which could eliminate another 2 billion gallons of ethanol from the marketplace) seeking economic hardship designations for years going back to 2011. Several Congressional letters have been sent to EPA and the White House urging the Administration to reject these unprecedented requests to avoid RFS obligations nine years after their compliance year. Currently, EPA is reviewing whether to grant none, some, or all of these petitions. **There are a total of 98 pending SREs.**

## SREs BY PRESIDENTIAL ADMINISTRATION



## OUR ASK:

- EPA should apply the 10th Circuit Court decision nationwide today.
- EPA should reject the 67 "gap year" SREs today.
- Support the RFS Integrity Act of 2019 of 2019 (H.R. 3006/S. 1840) which fixes disclosure and timing issues with SRE applicants.