

United States Senate

WASHINGTON, DC 20510

January 31, 2022

The Honorable Michael Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Docket ID Nos. EPA-HQ-OAR-2021-0566; EPA-HQ-OAR-2021-0324-0002

Dear Administrator Regan:

We write to you regarding the December 2021 release of two Environmental Protection Agency (EPA) proposed rules relating to the Renewable Fuel Standard (RFS).

By taking the actions below you can ensure farmers and biofuel producers have confidence that you are making the RFS a priority. We support your efforts to bring more transparency and consistency in the program's implementation. While there are aspects of these rules that support our homegrown energy future, our constituents need to see improvements to the proposal.

The RFS is a significant tool for EPA to reduce the carbon footprint of our transportation sector, and we urge you to take the following actions when finalizing these rules:

1. Maintain the blending requirements for 2022, including the 250 million gallon remand. We support the Administration's proposed volumes for 2022 across all categories of renewable fuel, including the requirement of 15 billion gallons for conventional biofuel and the restoration of the first 250 million gallons illegally waived from the 2016 RVO, as well as the commitment to provide for the final 250 million gallons in 2023. It is past time that EPA finally addressed the U.S. Court of Appeals for the District of Columbia's July 2017 remand of the 2014-2016 RVO in *Americans for Clean Energy v. EPA* and restored the 500 million gallons that were improperly waived. We urge you to maintain the strong blending requirements for 2022 and finalize the supplemental volume of 250 million gallons in 2022.
2. Deny all pending Small Refinery Exemptions (SREs). Following several years of EPA undermining the total volumes in the RFS through the issuance of 88 Small Refinery Exemptions (SRE), we support the Administration's proposal to deny all SRE petitions pending before the agency. Denying these pending petitions would be a positive step toward bringing integrity and transparency back to the RFS.

More importantly, we urge EPA to finalize its proposed change in approach to SRE eligibility, which notes that "small refineries fully recover the costs of RFS compliance through higher prices on sales of gasoline and diesel, and that as a result they do not suffer economic hardship due to the RFS." The January 2020 Tenth Circuit decision in *Renewable Fuels Association v. EPA* found that EPA may only grant relief when the agency finds that a small refinery would suffer disproportionate economic hardship due to compliance with the RFS program. Applying this standard nationwide would help

prevent future misuse of the SRE authority.

3. Eliminate the proposed retroactive cuts to the 2020 RVOs. We are extremely concerned about the proposal to retroactively waive 2.96 billion gallons of renewable fuel from the 2020 RVOs. These biofuel volumes were finalized over two years ago in December 2019, and adjusting them downward after the fact would set a troubling precedent and negatively impact the entire agriculture and fuel supply chain.

You have stated that the goal of EPA with respect to the RFS is to get the program “back on track” and provide “more certainty in the decisions that we’ve made.” Re-opening RVOs that have already been finalized while setting a precedent that future Administrations and EPA Administrators may retroactively lower previously finalized RVOs does the opposite of providing more certainty in the program. It would undermine confidence in any finalized RVO by rendering them a moving target at best—and irrelevant at worst.

Moving forward with these retroactive cuts fails to consider the self-correcting mechanism built-in to the RFS that adjusts biofuel blending to reflect lower gasoline usage. We urge you to eliminate the proposed retroactive cuts to the 2020 volumes and require obligated parties to comply with the 2020 standards that were finalized in 2019.

4. Set 2021 volumes at the statutory levels. We are also concerned that EPA has proposed to use reset authority retroactively to establish RVOs for 2021 that are equal to actual and projected volumes of renewable fuel used in the U.S. last year. The Administration cannot meet its ambitious climate goals without providing for growth and certainty in the RFS.

Finally, we request that EPA finalize this rule as quickly as possible. By taking the above actions, EPA can quickly restore integrity, stability, and growth to the RFS and the U.S. biofuel sector while ensuring that the program continues to reduce greenhouse gas emissions, diversify our fuels, drive down gas prices, strengthen our national security, and drive rural economic opportunity.

Thank you for your consideration.

Sincerely,



Amy Klobuchar
United States Senator



Charles E. Grassley
United States Senator



Tammy Duckworth
United States Senator



Roger Marshall, M.D.
United States Senator



Tammy Baldwin
United States Senator



Joni K. Ernst
United States Senator



Richard J. Durbin
United States Senator



Deb Fischer
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Tina Smith
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John Thune
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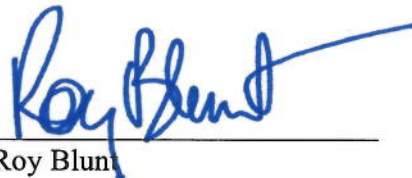
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