RENEWABLE FUELS ASSOCIATION

June 7, 2019

The Honorable Mark Wesley Menezes
Under Secretary of Energy
United States Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Dear Under Secretary Menezes:

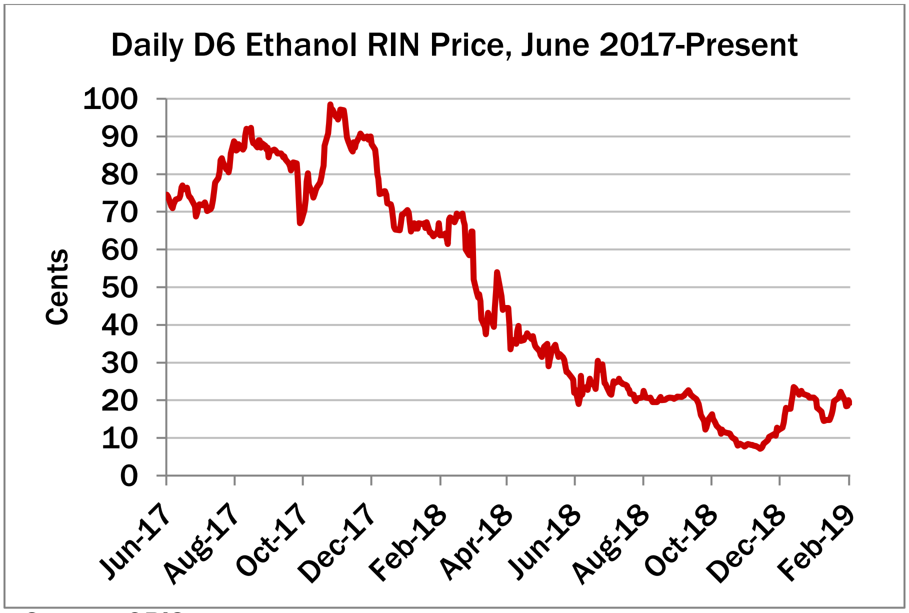
Thank you for taking the time to meet with the Renewable Fuels Association to discuss how small refinery exemptions from the Renewable Fuels Standard (RFS) are harming America's renewable fuel producers.

This note responds to your request for additional information on how small refinery exemptions reduce demand for renewable fuels as well as other matters related to increased agency transparency.

I. Demand Destruction from Small Refinery Exemptions

The surplus of renewable identification number (RIN) credits created by small refinery exemptions has two direct negative impacts for renewable fuel producers: 1) reduced demand for ethanol blending and RINs compared to RFS requirements; and 2) drastically lower ethanol and RIN pricing from that reduced demand. According to EPA, the 54 small refinery exemptions that EPA granted retroactively for compliance years 2016 and 2017 effectively returned 2.61 billion RINs to the market that would otherwise have been required for compliance by the small refineries granted an exemption.[1] Moreover, the "2016 and 2017 exemptions have directly increased the number of carryover RINs that will likely be available for compliance with the 2019 [Renewable Fuel] standards." 83 Fed. Reg. 32,024, 32,030 (July 10, 2018). Because "RIN prices vary with the supply and demand for RINs," 83 Fed. Reg. 63,704, 63,726 (Dec. 11, 2018), this glut of RINs drove down the price of RINs and renewable fuels. It also reduced the incentive for new ethanol blending, as refineries were able to utilize excess RINs for compliance with the RFS rather than purchase new volumes of ethanol.

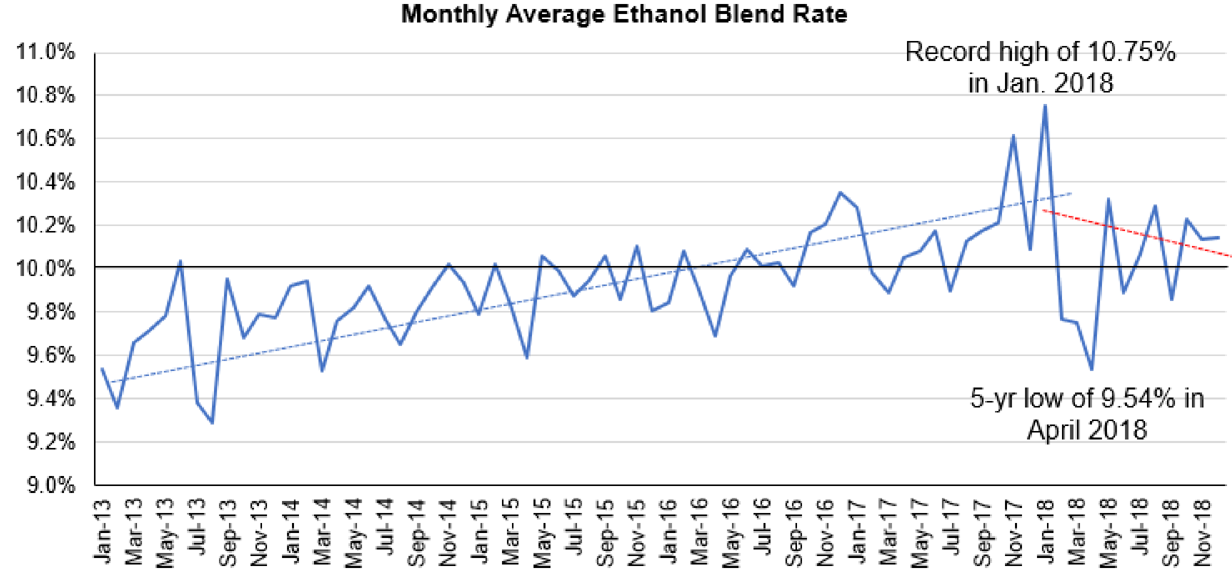
[1] *See* EPA, RFS Small Refinery Exemptions, https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.



Daily D6 Ethanol RIN Price, June 2017-Present

Source: OPIS

The reduced incentive led to reduced blending of ethanol into gasoline. Following the issuance of numerous small refinery exemptions in early 2018, both the volume of ethanol blended and the average ethanol concentration in gasoline declined. Ultimately, the 2018 ethanol blend rate was much lower than predicted by the Energy Information Administration (EIA) in early 2018.[2] Not only was actual 2018 ethanol blending lower than projected, it was also lower than the previous year.



Monthly Average Ethanol Blend Rate

[2] *See* U.S. EIA, Short-Term Energy Outlook. (January 2018). https://www.eia.gov/outlooks/steo/archives/jan18.pdf (2018 projection).

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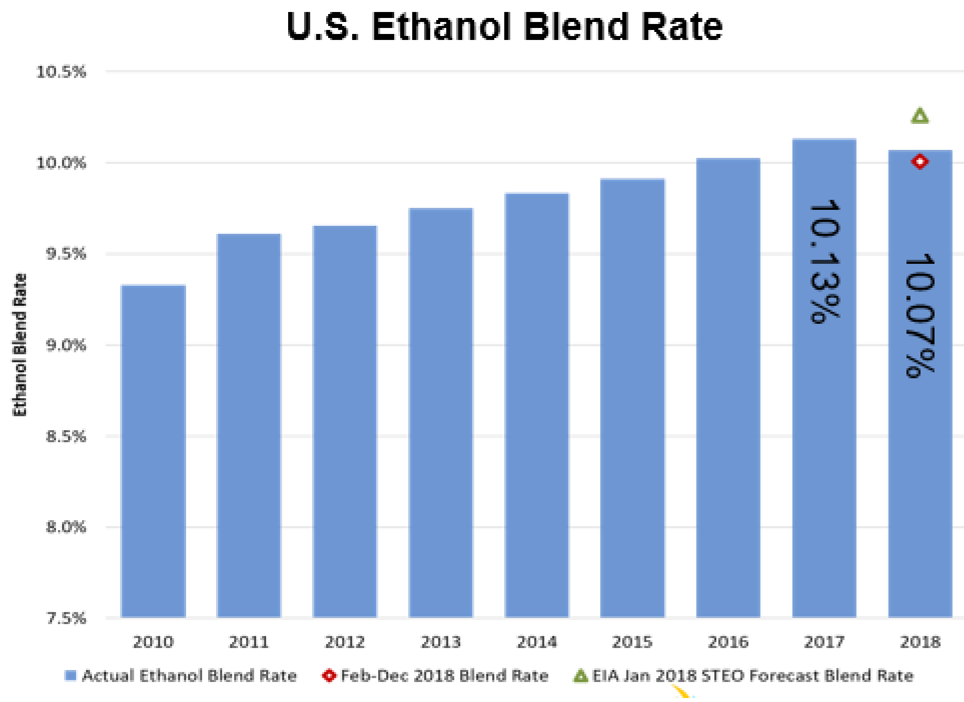
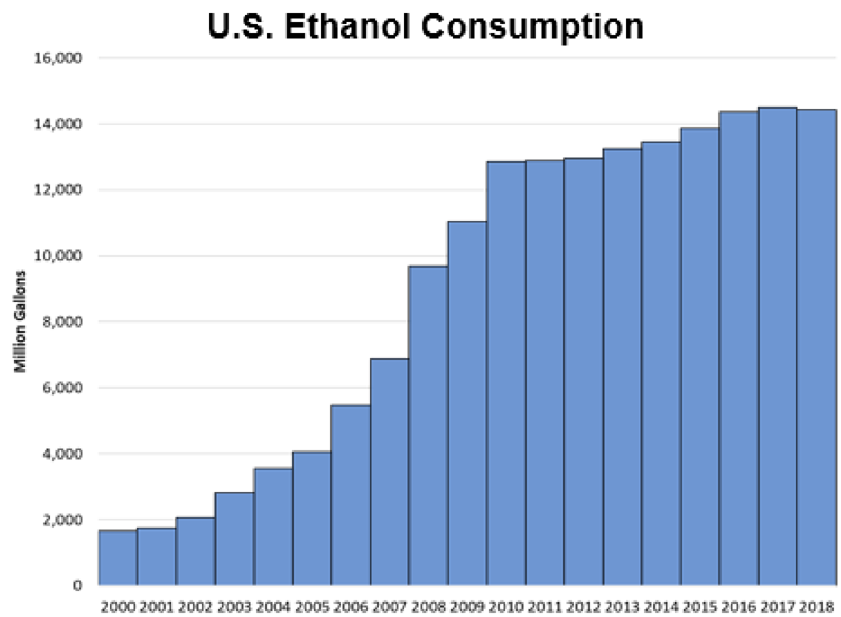


The volume of ethanol consumed in the U.S. fell from 14.49 billion gallons in 2017 to 14.38 billion gallons in 2018.[3] That represented the first such annual decline in two decades.

[3] The actual blend rate for 2018 was 10.06%, less than the 2017 blend rate of 10.13%, and lower than the 10.26% blend rate predicted by EIA. *See* U.S. EIA, Short Term Energy Outlook Data Browser (May 2019), https://www.eia.gov/outlooks/steo/data/browser/#/?v=0&f=M&s=0000000000000000000000000000000o000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000100000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000000&start=200908&end=201812&chartindexed=0&map=&linechart=~EOTCSHR&id=&maptype=0&ctype=linechart. Although the drop in the blend rate are fractions of a percent, they nonetheless represent hundreds of millions of gallons of lost demand. The difference between the projected blend rate of 10.26% and the actual blend rate of 10.06% amounts to nearly 300 million gallons of lost ethanol blending.



And while EIA data shows that ethanol production increased very slightly from 2017 to 2018 (to 16.06 billion gallons in 2018 from 15.94 billion gallons in 2017 from),[4] this was not due to increased domestic consumption, but rather to increased exports of renewable fuel.[5]

In sum, without the large number of small refinery exemptions, both ethanol blending rates and ethanol prices would have been higher. I have enclosed an analysis from RFA on this topic.

II. Greater Transparency

In addition, we discussed EPA's proposal to determine that certain basic information related to small refinery exemptions could be released to the public. Specifically, EPA proposed that the "petitioner's name, the name and location of the facility for which relief was requested, the general nature of the relief requested, the time period for which relief was requested, and the extent to which EPA granted or denied the requested relief" could no longer be claimed as confidential business information.[6] EPA acknowledged that basic facts related to government

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[4] *See* note 3, *supra* (expressing production as 1.04 million barrels per day (bpd) to 1.05 million bpd).

[5] *See* EIA, U.S. Exports of Fuel Ethanol, https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=M_EPOOXE_EEX_NUS-Z00_MBBL&f=M.

[6] *See* 81 Fed. Reg. 80,909–80,910 (Nov. 16, 2016). EPA has published on its website a notice soliciting additional public comment on this portion of the proposed rule, although this has not been published in the Federal Register yet. *See* https://www.epa.gov/sites/production/files/2019-05/documents/sre-cbi-deter-notice-2019-04-11.pdf.

decisions are also not entitled to CBI treatment under FOIA Exemption 4."[7] RFA encourages DOE to propose and finalize a similar determination, regardless of what EPA decides to do. I have attached the most recent notice from EPA for your review.

III. Intra-Agency Reporting

Lastly, and related to the subject of transparency, we discussed the 2017 Interior and Environment Appropriations Senate Report language. That Senate Report tasked EPA with sending a report to DOE and Congress each time it departs from DOE recommendations on small refinery exemptions.[8] Although post-enactment legislative report language does not amend a statute, to the extent that EPA relies upon this Senate report and other small refinery-related report language to justify its changed approach to disproportionate economic hardship *related to RFS compliance*, EPA should be consistent and also send DOE a report revealing why EPA disagrees.

Understanding EPA's reasoning for its small refinery exemptions is important. While EPA retains ultimate authority for granting an extension of an exemption, the statute requires consultation with DOE and EPA's consideration of DOE's study on small refineries.[9] Congress has determined that DOE has the technical expertise to assess economic hardship. To the extent that EPA relies on "other economic factors"[10] in making decisions that depart from DOE recommendations, DOE—and the public—should know whether those other factors relate to "compliance with the requirements" of the RFS[11], as the statute requires, or are in fact unrelated to the RFS. We appreciate your recognition of this point at our meeting.

Thank you again for your time. On behalf of RFA, I would be happy to respond to any further questions you may have.

Best regards,

Geoff Cooper
President and CEO, Renewable Fuels Association

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[7] *Id*.

[8] *See* S. Rep. 114-281 (June 16, 2016) ("Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition.")

[9] 42 U.S.C. §§ 7545(o)(9)(A)(ii), (B)(ii).

[10] *Id*. § 7545(o)(9)(B)(ii).

[11] *Id*. § 7545(o)(9)(A)(ii)(I).