

Talking Points for Small Refinery Exemptions Press Conference April 17, 2019

I am going to start by reviewing some background and facts behind the renewable fuel standard and small refinery exemptions. I'll try not to bore you, but I think the factual and legal underpinning of the RFS is vital to understanding the pending decision on small refinery exemptions and the impact those decisions will have on the future of the RFS and rural Iowa.

On January 19, 2016, then candidate Trump came to our Iowa Renewable Fuels Summit and made two very important promises to Iowa voters. First Trump pledged to protect the 15-billion-gallon RFS, stating:

“The RFS, which is Renewable Fuel Standard, is an important tool in the mission to achieve energy independence to the United States. I will do all that is in my power as President to achieve that goal... The EPA should ensure that biofuel RVOs, or blend levels, match the statutory level set by Congress under the RFS.”

Second, Trump went on to promise to remove restrictions for higher blends of ethanol like E15, stating:

“As President, I would encourage regulators to end restrictions that keep higher blends of ethanol and biofuel from being sold...I am there with you 100 percent.”

Last year on October 9th, just a couple of miles up the road from here, President Trump stated:

“My administration is protecting ethanol. Alright? That's what you wanted. Today we are unleashing the power of E15 to fuel our country all year long, not eight months.”

So the first main point I want to make is that when we talk about defending the RFS and getting year-round E15, we are asking for nothing more than what is in the law itself and what President Trump himself promised to voters.

Turning to small refinery exemptions, we really must set the record straight on some things the EPA has been saying.

The EPA under former Administrator Pruitt essentially tried to claim that EPA is forced to grant small refinery exemptions, citing court cases and something known in DC as “report language” attached to an appropriations bill. In fact, current EPA Administrator Wheeler testified before Congress last week that:

“When the agency was not issuing the waivers, we were sued three times and we lost all three cases.”

This is misleading on two fronts. First the EPA has been sued over small refinery exemption denials more than three times. They lost three times... it's funny how the EPA seems to have selective amnesia on the other cases. The fact is the vast majority of small refinery exemption denials either weren't challenged or have stood.

But more importantly, the EPA and Wheeler seem to be blatantly mischaracterizing the three court cases they do like to cite. The Courts did not rule the EPA must provide a small refinery exemption to anyone who asks. The Courts said the threshold had been set too high. Ok, but "disproportionate economic harm" still must be proved. The Courts did not say there is no threshold.

The same type of mischaracterization is occurring when Wheeler cites appropriations language on small refinery exemptions. First, report language is not part of the actual legislation – it has no force of law. It does not overrule the RFS statute itself.

So the second main point I want to make is that the EPA is under NO requirement by the law, by a Court, or by Congress to automatically grant small refinery exemptions.

Yet, to the extent the report language is instructive, what it actually instructs the EPA to do is to follow the recommendations from the DOE when granting small refinery exemptions. Again, the EPA appears to be selectively distorting this.

Former Administrator Pruitt testified several times before Congress that he was 'just doing what the DOE recommended.' But you may have seen the letter that Senator Chuck Grassley sent to DOE just last week citing data from an ongoing DC Circuit Court case where EPA's small refinery exemption approvals have been challenged. Grassley said that court filings in the case revealed DOE gave an economic harm score of ZERO in more than half of the 48 small refinery exemption requests that were reviewed.

I'd also like to share with you something I've not talked about publicly before, but I feel comfortable mentioning in light of Sen. Grassley's letter. I have personally talked with a former senior level appointee who worked for DOE Secretary Perry when Pruitt was at EPA. This former senior staffer said DOE folks would watch Pruitt testify that he 'just did what DOE recommended' and they would shake their heads in disbelief.

So the 3rd main point I'd like to make is that Congressional oversight is vital to representative government. It is a federal crime to lie to Congress. Today, IRFA calls on Congress to get to the bottom of the question Senator Grassley raised last week – did the EPA simply take the recommendations of DOE on small refinery exemptions as Pruitt testified, or did he mislead Congress and the public?

In fact, just last week on April 9th – one day before Senator Grassley sent his letter to the DOE – EPA Administrator Wheeler appeared before a House Energy and Commerce Subcommittee where Congressman Dave Loebsack asked him about how the EPA uses input from the DOE when determining small refinery exemptions. Wheeler testified of the EPA:

“We will certainly take the advice of the Dept of Energy into account. In the past we’ve taken their advice in all but one instance.”

Based on the revelations of the Grassley letter, it certainly seems that either this statement is inaccurate, or the data being provided to the DC Circuit Court is wrong. We deserve to know which.

With 39 2018 small refinery exemptions pending at EPA – enough gallons to rip the heart out of the RFS – I’ve tried to correct the record that EPA is not required to automatically grant small refinery exemptions.

If Congress wanted to automatically exempt all small refiners from the RFS it could have done so. In fact, that’s exactly what Congress did for the first two years of the program. After that, Congress required that any exemption be based on the refinery proving “disproportionate economic harm” due to compliance with the RFS.

So my 4th, final, and most important point is that Congress clearly envisioned a time when small refinery exemptions were NOT justified – when they should be denied. There are two ways to comply with the RFS. A refiner can buy a gallon of ethanol – around a buck-thirty today – to blend and get a RIN for free. Or the refiner can buy a RIN from someone else who blended the renewable fuel.

OPIS has reported that 2018 RINs have often been sold for around 8 cents for several weeks. At a time when you can avoid buying and blending a \$1.30 gallon of ethanol by instead buying a RIN for 8 cents – a price even TX Sen. Ted Cruz found acceptable – how can there be disproportionate economic harm to the one buying the 8-cent RIN?

Even Administrator Wheeler admitted just last week that RIN prices were an important factor in determining potential economic harm.

The bottom line is this: If you grant small refinery exemptions under these circumstances with 8-cent RINs, then what EPA is really saying is that they will always grant small refinery exemptions and the hope of a true 15 billion-gallon RFS is dead. That is not what Congress intended or what President Trump promised.

I started by reviewing the promises candidate Trump made to Iowa voters three years ago.

So what are the facts today?

Corn prices are down. The Ag Census released last week showed the value of Iowa’s crops have dropped 20 percent since 2012 – that’s billions in lost farm income. Iowa lost over 1,000 farms during that time of 500-plus acres.

And farm income was down again last year and is at about 50% of where it was in 2013, the last year the RFS was fully implemented.

And after the Trump Administration has failed to deny even one small refinery exemption request to date, in 2018, for the first time in 21 years, the US blended less ethanol than the year before. Keep in mind, that was a streak even the historic drought of 2012 couldn't stop.

I think its fair to say, that's not the reality that many rural voters were expecting based on candidate Trump's promises.

I want to close by saying this very clearly: given the current circumstances, granting any of the 2018 small refinery exemptions would fundamentally undermine the RFS and break President Trump's promise to protect the 15-billion-gallon RFS.

I believe there is still time to turn around the Trump Administration's record for rural America. There are a handful of steps they could take that would provide an immediate boost for farmers. First up are likely the small refinery exemption decisions. We'll be looking closely at those decisions to see if President Trump is beginning to take positive steps for rural lowans.