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Senators: Secretary of Agriculture Lacks Legal Authority Over Small Refineries Under Biofuel Mandate

July 1, 2019

WASHINGTON, D.C. — U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), and Sens. Shelley Moore Capito (R-WV), Mike Enzi (R-WY), Jim Inhofe (R-OK), Roger Wicker (R-MS), John Cornyn (R-TX), James Lankford (R-OK), Pat Toomey (R-PA), John Kennedy (R-LA), Bill Cassidy (R-LA), Ted Cruz (R-TX), Mike Lee (R-UT), and Steve Daines (R-MT) sent a letter to President Donald Trump regarding hardship relief for small refineries under the Renewable Fuel Standard (RFS).

In the letter, the senators ask the president to prohibit the secretary of Agriculture from influencing or interfering with the decision-making process over petitions for hardship relief from small refineries. Under the RFS, small refineries may petition the administrator of the Environmental Protection Agency (EPA) for relief from their annual obligations on the basis of “disproportionate economic hardship.” The senators explain that the law only authorizes the EPA administrator to consult with the secretary of Energy when evaluating these petitions.

Read the full letter [here](#) and below.

Dear President Trump:

Recent media reports indicate that the Secretary of Agriculture is trying to influence decisions on small refineries’ petitions for hardship relief under the Renewable Fuel Standard (RFS). We strongly oppose giving the Secretary any role in the decision-making process over the petitions. The Clean Air Act authorizes only “the Administrator [of the Environmental Protection Agency], in consultation with the Secretary of Energy,” to act on petitions from small refineries. The law does not give any authority or role over the petitions to the Secretary of Agriculture. Any effort to provide

the Secretary of Agriculture influence over the petitions requires an act of Congress.

Notably, the Clean Air Act authorizes the EPA Administrator to consult both the Secretary of Agriculture and the Secretary of Energy before taking some actions under the RFS. For example, the Administrator must consult both secretaries before determining the volume of biomass-based diesel that must be blended into the nation's fuel supply after 2012 and the volumes of renewable fuel, advanced biofuel and cellulosic biofuel that must be blended into the fuel supply after 2022.

The Administrator must also consult both secretaries before reducing, on the basis of economic harm or inadequate domestic supply, the volumes of renewable fuel, advanced biofuel, cellulosic biofuel and biomass-based diesel that must be blended into the nation's fuel supply. Finally, the Administrator must also consult both secretaries before reducing, on the basis of a feedstock disruption or other market circumstances that would increase the price of biomass-based diesel, the volumes of biomass-based diesel that must be blended into the nation's fuel supply.

These provisions stand in stark contrast to the Act's other provisions that only authorize the Administrator to consult with the Secretary of Energy on petitions for hardship relief from small refineries. As recently as last week, the nonpartisan Congressional Research Service, explained that: "In light of the Secretary of Agriculture being included with the Secretary of Energy in the other consultation requirements in the statute, a court would likely interpret the exclusion of the Secretary of Agriculture from the small refinery exemption provisions as intentional and find that Congress intended that only the Secretary of Energy be consulted for those exemptions."

For these reasons, we ask that you prohibit the Secretary of Agriculture from influencing or interfering with the Administrator's decisions concerning small refineries' petitions for hardship relief. To date, two federal appeals courts have already rebuked EPA for decisions – dating from the Obama administration – denying hardship relief to small refineries. Since you took office, your administration has rightly determined that the law requires it to grant hardship relief to small refineries. We would view any decisions to further delay, reduce, or deny hardship relief to small refineries, or reallocate the obligations of small refineries to other refineries, as the result of the Secretary of Agriculture's impermissible interference. We are confident that others, including the federal courts, would do the same.

Thank you in advance for your consideration.

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Permalink: <https://www.epw.senate.gov/public/index.cfm/2019/7/senators-secretary-of-agriculture-lacks-legal-authority-over-small-refineries-under-biofuel-mandate>

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