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Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
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Washington, DC 20460
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Submitted Electronically

Re: Modifications to Fuel Regulations to Provide Flexibility for E15; Modification to RFS RIN Market Regulations, Proposed Rule, 84 Fed. Reg. 10,584 (Mar. 21, 2019)

North Dakota Farmers Union (NDFU) appreciates the opportunity to comment in Docket Number EPA-HQ-OAR-2018-0775 regarding the Modifications to Fuel Regulations to Provide Flexibility for E15; and Modification to RFS RIN Market Regulations. NDFU, the largest general farm organization in North Dakota, represents more than 50,000 farm and ranch families and their energy and agriculture supply cooperatives. NDFU's member developed policy positions have long supported the use of E15, E30, and other mid-level ethanol blends.

1. Introduction

NDFU submits these comments in support of the Environmental Protection Agency's (EPA) efforts to fulfill President Trump's promise to ensure year-round sales of E15. While NDFU supports the EPA's action to allow for year-round E15, the EPA should also work toward promoting mid-level ethanol blends. NDFU supports the availability and use of high octane, low carbon fuels, like mid-level ethanol blends, because of the economic benefits to family farmers and consumers, reduced air emissions, and increased energy independence. NDFU urges the EPA to approve year-round use of E15, along with higher blends of ethanol, by June 1, 2019.

2. NDFU Supports the EPA's Revised Interpretation of Section 211(h)(4) of the Clean Air Act

To allow for year-round E15, the EPA is proposing to modify its interpretation of Section 211(h)(4) of the Clean Air Act, 42 U.S.C. §7545(h)(4), which establishes fuel volatility requirements during the "summer season." 84 Fed. Reg. at 10,585, 10,587. These volatility requirements limit gasoline to a Reid Vapor Pressure (RVP) of 9.0 psi, but provide an exception for a 1-psi waiver for certain ethanol blends. 42 U.S.C. §7545(h). Under the EPA's proposed interpretation, ethanol blends containing at least 10 percent ethanol, including E15, would receive the 1-psi waiver. 84 Fed. Reg. at 10,587. NDFU supports the RVP 1-psi waiver for gasoline and ethanol blends for E10 and E15, but also for all mid-level ethanol blends. The EPA's proposal is focused on E15, but clarifying its interpretation under Section 211(h)(4) will help pave the way for mid-level ethanol blends. Thus, the EPA should finalize its proposed interpretation of section 211(h)(4) to apply the RVP waiver to all ethanol blends above E10, including E15 and mid-level ethanol blends.

The EPA should also confirm that the "deemed to comply" provisions of Section 211(h)(4) are met for mid-level ethanol blends. Entities downstream from refiners are deemed to comply with the volatility

requirements if: (A) the gasoline portion of the blend complies with the RVP limits; (B) the ethanol portion of the blend does not exceed Section 211(f)(4) waiver conditions; and (C) no additional alcohol or additive has been added to increase the RVP of the ethanol portion of the blend. For mid-level ethanol blends, these conditions can easily be met.

3. NDFU Opposes the EPA's Limitation on Which Entities the RVP Waiver Applies

While establishing that the 1-psi waiver applies to ethanol blends above E15, the EPA should not inhibit the ability to actually sell E15 by imposing different limitations on blending based on outdated regulations. Many retail dispensers selling E15 today are blender pumps that mix E85 and E10 together to make the finished fuel. NDFU is concerned with the limitations the EPA is applying to blender pumps, particularly those that use E85 blended with natural gasoline. 84 Fed. Reg. at 10,595. NDFU encourages the EPA to consider a more flexible approach regarding the regulation of E15 made at blender pumps to ensure that E15 can be blended in similar manner by both fuel manufacturers and oxygenate blenders during the summer season.

4. NDFU Supports the EPA's Updated "Substantially Similar" Interpretation

As an alternative to the EPA's application of Section 211(f)(4) waiver conditions to E15, the EPA proposes a new interpretation of "substantially similar" gasoline fuels, which would more broadly allow sales of E15 during the summer season. 84 Fed. Reg. at 10,596. NDFU supports this alternative approach. In particular, the EPA proposes that "E15 with an RVP of 10.0 psi is sub sim to fuel used to certify Tier 3 light-duty vehicles (*i.e.*, E10 with an RVP of 9.0 psi)." 84 Fed. Reg. at 10,596. NDFU agrees that E15 is "substantially similar" to E10, which is a certification fuel and, thus, the limitations under the current E15 211(f)(4) waiver should be considered immaterial and removed. We believe the EPA can, and should, ensure its updated interpretation also paves the way for mid-level ethanol blends.

In addition, ethanol is an "additive" that is utilized in the certification of vehicles or engines. Because E10 is a gasoline certification fuel, an increase in concentration of ethanol is allowable under Section 211(f)(1). Accordingly, a correct interpretation of the Clean Air Act would affirm that E15 and mid-level ethanol blends may be used in non-flexible fuel vehicles without the need for a waiver under Section 211(f)(4). However, the EPA appears to treat E15 as a "fuel," despite recognizing that it is substantially similar to E10. Under Section 211(f)(1), mid-level ethanol blends simply increase the concentration of ethanol, which is used in certification fuel. This is a simpler way to allow E15, and paves the way toward mid-level ethanol blends, rather than treating each new level of ethanol as a "fuel," requiring a waiver under Section 211(f)(4). The EPA's treatment of E15 as a "fuel" would virtually eliminate the inclusion of "fuel additive" in Section 211(f)(1) and creates unnecessary hurdles for new fuels to enter the marketplace. This is unreasonable for fuels that would simply add ethanol. The EPA should modify its approach or explain that, while the EPA is not choosing that particular approach, its current reading does not preclude such a determination.

Further, the EPA should also make clear that higher ethanol blends meet the EPA's proposed substantially similar interpretation and should not impose any conditions under Section 211(f)(1) for fuels that are substantially similar to E10 certification fuel. The EPA acknowledges that Section "211(f)(1) does

not define specific criteria for how to determine whether an ethanol blend is substantially similar to certification test gasoline.” 84 Fed. Reg. at 10,599. As such, the EPA proposed interpretation does not, and should not, limit EPA’s ability to apply a substantially similar determination to mid-level ethanol blends.

5. The EPA Should Not Finalize the RFS RIN Reforms as Proposed and the RFS RIN Reforms Should Not Hold Up the EPA from Finalizing the Provisions Allowing Greater Ethanol Use

While NDFU agrees that “more frequent RIN retirement could help smooth demand for RINs across the year,” 84 Fed. Reg. at 10,615, and generally agrees with providing more transparency on RFS volume obligations, the EPA provides no support or rationale for why the proposed reforms related to RIN holdings and purchases are needed or would further Congressional goals.

The credit program was intended to incentivize taking actions that exceed the volume requirements and the EPA should not impose any requirements that undermine those incentives. The EPA states that changes to the RFS regulations should be “beneficial for the RFS program.” 84 Fed. Reg. at 10,609. But the EPA provides no explanation as to the benefit provided to the RFS program by limiting RIN holdings and purchases. As the EPA indicated, RIN liquidity and flexibility supports the RFS program. Non-obligated parties do not have incentives to hold RINs. While there may be some merit to increasing the frequency of compliance with the renewable volume obligations, NDFU does not believe that the RIN reforms otherwise provide value to supporting the RFS program, as opposed to simply trying to reduce costs of a subset of refiners. Consideration of RFS RIN reforms should not hold up the EPA’s action on E15.

6. NDFU Supports Increased Transparency but Believes EPA Should Focus on Providing More Information and Resolving Issues Related to Small Refinery Exemptions

Although the EPA provides no evidence of RIN-market volatility that would be resolved by the proposed RIN reforms, there are clear, and less burdensome, actions the EPA can take to address the current RIN market speculation and manipulation. The EPA should address the adverse effects of the EPA’s recent actions regarding small refinery exemptions.

The EPA is granting small refinery exemptions after the renewable fuel volumes have been set, and sometimes after the compliance deadlines have passed. The EPA’s proposal makes reference to “unretiring” RINs but this has the potential to increase the RIN bank and reduce renewable fuel demand in 2019 and even 2020. This would result in a reduction of the applicable volumes set by the EPA and would constitute an improper waiving of additional volumes. At the very least, it renders the minimum volumes set by the EPA meaningless. Even if there were some grounds to grant these exemptions, the EPA can no longer avoid its obligation to follow Congress’s directives. Reducing the actual volumes required and market uncertainty have significant adverse impacts on the rural economy.

It is equally concerning that these actions have been taken without any transparency. Public notice and comment is required for waivers under the statute, and the EPA is granting these exemptions, and therefore waivers, without any public input. While the EPA has provided some information on the number

of exemption requests, more information on the grounds and process for granting those requests is required. There should be public input on the process.

NDFU requests that the EPA cease granting these waivers or take action to adjust for these additional waivers and comply with its obligations under the statute. The EPA should also adjust its process in the future to ensure these exemptions do not reduce the applicable volumes required under the RFS.

7. Conclusion

NDFU respectfully requests the EPA make appropriate regulatory changes to allow for year-round E15 and support increased use of mid-level ethanol blends, which are high octane, low carbon fuels. The support and use of E15 year-round and higher ethanol blends can provide a much needed economic boost to family farmers and rural communities by providing jobs and creating stability in markets as well as providing significant air quality benefits.

NDFU also requests that the EPA not finalize the RIN reform measures as proposed or, at a minimum, segregate these issues as any such reforms should not delay the EPA's actions on E15. NDFU generally opposes the proposed RIN reform measures, which appear solely intended to lower costs for some refiners rather than improve the RFS program. As such, the EPA should finalize the relevant provisions related to E15 and should act as expeditiously as possible, segregating the proposed RIN reforms as appropriate to do so.

Sincerely,

NORTH DAKOTA FARMERS UNION



Mark Watne
President

