

April 29, 2019

The Honorable Andrew Wheeler
Administrator, Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
Docket ID No. EPA-HQ-OGC-2018-0775

Dear Administrator Wheeler:

The Nebraska Ethanol Board (NEB) appreciates the opportunity to provide these written comments in response to the U.S. Environmental Protection Agency's (EPA) proposed rule: Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations¹ (proposed rule).

The NEB, a state agency, represents Nebraska's ethanol industry, which is currently comprised of 25 ethanol plants with approximately 2.6 billion gallons per year in ethanol production capacity. The Nebraska ethanol industry is a significant economic driver to the state's economy, contributing over \$3.5 billion a year. Further, it provides a crucial value-added agriculture market to the state's farmers at this time of an ongoing downturn in the U.S. agricultural market and uncertainty in global export markets. A recent study noted a consistently positive impact to corn markets on a local basis from ethanol production. For example, a corn grower near an ethanol plant producing 220 bushels of corn per acre would receive an additional \$11.44 per acre each year.²

The NEB agrees with the EPA's revised interpretation of Clean Air Act (CAA) § 211(h)(4) that extends the 1-psi Reid vapor pressure (RVP) tolerance to gasoline-ethanol blends containing at least 10 percent ethanol, including E15. We urge the agency to finalize this interpretation before the so-called summer driving season begins on June 1, 2019.

The NEB urges the agency not to finalize its proposed changes to the renewable identification number (RIN) market, as they are at best premature and likely would further depress the RIN market and the functioning of the Renewable Fuel Standard (RFS) as Congress intended. There is no evidence of RIN

¹ Environmental Protection Agency, Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations, EPA-HQ-OGC-2018-0775, 84 Fed. Reg. 10584 (Mar. 21, 2019), Available at:

<https://www.epa.gov/renewable-fuel-standard-program/notice-proposed-rulemaking-modifications-fuel-regulations-provide>

² "Economic Impacts of the Nebraska Ethanol and Ethanol Co-product Industry 2015 to 2017," University of Nebraska-Lincoln (2019), available at: <https://agecon.unl.edu/ethanolimpacts>.

market manipulation³ and the proposed changes to that market would not address such manipulation in a constructive manner that ensures the market's proper functioning to support in intent of the RFS to promote the further production and use of the four categories of biofuels under the law.

The NEB recommends the agency take care to further study and identify any evidence of RIN market manipulation and its source and to revise any proposed changes to that market in response. This approach would enable the agency to address any evidence of RIN market manipulation in a way that is least disruptive to the market and the biofuels industry that the RFS is designed to promote.

The NEB aligns itself with the written comments to the proposed rule submitted by organizations that also support the proper implementation of the RFS to support the additional production and use of ethanol and other biofuels into the nation's fuel supply, including Renewable Fuels Nebraska, the Renewable Fuels Association, Growth Energy, the Biotechnology Innovation Organization and the American Coalition for Ethanol.

I. The NEB Supports the Proposed Extension of the 1 psi RVP Waiver to E15

The NEB generally supports EPA's proposed extension of the proposed revised interpretation of CAA § 211(h)(4) that extends the 1-pound per square inch (psi) RVP waiver to gasoline-ethanol blends containing at least 10 percent ethanol, including E15. We urge the agency to finalize this interpretation before June 1, 2019, which would enable retailers throughout the U.S. to sell E15 throughout the year for use in model year 2001 and newer light duty vehicles, including during June 1st-September 15th (the summer driving season). This change will provide an essential market signal to show ethanol industry stakeholders that demand for crops for and the production of ethanol will continue into the future. Moreover, it will provide an important additional market for Nebraska's ethanol producers that will increase over time.

The NEB encourages EPA to revise its current definition of the term 10 percent, so that the definition and its practical applications reflect the current ethanol market where there is no barrier to blending over 10 percent ethanol. The agency's definition of 10 percent has not been revised since the agency has approved E15 for use in model year 2001 and newer light duty vehicles and now requires certification of vehicles on E10 certification fuel and not E0, as the agency had required in the past. The agency knows that gasoline is now regularly blended with ethanol percentages above 10 percent. As such, EPA should clarify that the definition of 10 percent means "at least 10 percent." Currently, 10 percent can include ethanol percentages as low as nine percent. The revised definition would better reflect and accommodate the current and future capabilities of the ethanol industry.

The NEB agrees with EPA that E15 at 10 psi is substantially similar (sub sim) to E10 certification fuel at 9 psi with respect to the impact of the fuels on emissions, materials compatibility and drivability. Further, we agree with the agency that there is nearly no difference on the impact to tailpipe emissions between E15 and E10. However, we stress that additionally E15 provides even greater benefits to reducing harmful air emissions, which has additional benefits to health and the environment. For instance, E15 has even greater benzene emissions benefits associated with E10 due to the even lower aromatic content of the fuel from the additional increase in ethanol content.⁴

³ See CFTC Chairman J. Christopher Giancarlo, Testimony before the United States Senate Committee on Agriculture, Nutrition, and Forestry (Feb. 15, 2018) (CFTC Chairman explains that the CFTC was "not able to find any misbehavior in the [RIN] market.").

⁴ Mueller, S. UIC Study PM and Benzene in Splash Blended Fuels with Ethanol. (May 2017). Available at http://www.erc.uic.edu/assets/pdf/UIC_Cook_County_Slides.pdf; Chillrud, R. Environmental and Energy Study Institute.

The NEB urges EPA to finalize the proposed rule to remove any suggestion that E15 is sub sim only for use in Tier 3 vehicles certified using E10 certification fuel and to clarify that it is sub sim to E10 in all model year 2001 and newer light duty vehicles. There is no evidence of any functional difference in the impacts of E15 versus E10 in model year 2001 and newer light duty vehicles or in Tier 3 vehicles certified using E10 certification fuel. In fact, as EPA acknowledges, there are no functional differences from the additional five percent ethanol in E15 with respect to emissions, materials compatibility and drivability.

II. EPA Should Severe and Reconsider its Proposed Changes to the RIN Market from the Extension of the 1 psi RVP Waiver to E15; the Proposed RIN Market Reforms are Premature and Would Harm the Ethanol Industry

The NEB urges the agency not to finalize its proposed RIN market regulation reforms since there is no evidence of RIN market manipulation⁵ or that the proposed market changes would address any such alleged manipulation. At the same time, it is highly likely that the proposed RIN market changes would place undue burdens on biofuels market stakeholders, reduce market liquidity and increase market volatility at the expense of further investment in and production and use of biofuels, including ethanol, into the U.S. transportation fuel supply. This likely impact would come at a time when RIN prices are at record lows due to the agency's regulatory actions in previous rulemakings for the annual renewable volume obligations and its increased issuance of small refinery exemptions since 2017, without reallocating the waived gallons among remaining obligated parties.⁶

The proposed RIN market reforms are designed to address a problem for which there is no evidence, while causing great harm to the biofuels industry. The proposed changes would (1) effectively prohibit non-obligated parties from purchasing separated RINs, and (2) limit the time period that non-obligated parties may hold separated RINs. These changes would take away a tool currently used by blenders and retailers to make further investments in biofuels. They use value they achieve from separated RINs to facilitate sales of higher ethanol blends at prices that are attractive and competitive for their customers. The value from the separated RINs also promotes their ongoing investments in infrastructure to store and sell higher ethanol blends. Taking away this tool without evidence of actual RIN market manipulation unnecessarily undercuts the further market opportunity that would be accomplished by extending the 1 psi RVP waiver to E15.

Given that the proposed RIN market reforms are designed to address a problem that may not actually exist, while causing great harm to the biofuels industry, the NEB urges EPA to severe the proposed reforms from any final rule extending the 1 psi RVP waiver to E15. Further, the agency should undertake additional study and analysis to assess any actual RIN market manipulation and revise the reforms to narrowly address any such specific threats. This action is consistent with the agency's role as the primary regulator of the RFS and would be consistent with congressional intent under the statute.

"Ethanol Reduces a Variety of Harmful Emissions, New Study Finds". (Oct. 28, 2016). Available at <https://www.eesi.org/articles/view/ethanol-reduces-a-variety-of-harmful-emissions-new-study-finds>

⁵ See *ibid.* note 3.

⁶ Irwin, S. "Why are Ethanol Prices So Low?." *farmdoc daily* (9):23, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, (Feb. 8, 2019). Available at <https://farmdocdaily.illinois.edu/2019/02/why-are-ethanol-prices-so-low.html>

III. Conclusion

Thank you for considering the NEB's comments on the proposed rule. We urge the agency to act before June 1, 2019 to extend the 1 psi RVP waiver to E15, revise its definition of 10 percent to mean "at least 10 percent," and clarify that E15 is sub sim to E10 in all model year 2001 and newer light duty vehicles. Further, we urge the agency to sever its proposed changes to the RIN market from the final rulemaking given the significant harm they would likely cause to the biofuels industry, while likely failing to address any alleged RIN market manipulation, especially when there is no evidence of such manipulation to date. Instead, the NEB encourages EPA to conduct further study and analysis of any RIN market manipulation and revise proposed changes to that market in order to address specific evidence of manipulation without causing undue harm to the biofuels industry.

Sincerely,

Sarah T. Caswell
Administrator