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Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
EPA Docket Center (EPA/DC)
Office of Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

ATTN: Docket ID No. EPA-HQ-OAR-2018-0775

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

Dear Administrator Wheeler:

The National Farmers Union (NFU) appreciates the opportunity to comment on the proposed Modifications to Fuel Regulations to Provide Flexibility for E15 and the proposed Modifications to RFS RIN Market Regulations, both published at 84 Fed. Reg. 10,584 (Mar. 21, 2019). NFU submits these comments in support of EPA's efforts to fulfill President Trump's promise to ensure year-round sales of E15. NFU remains concerned, however, with the limited approach taken in EPA's proposal, which would still restrict blending of ethanol in certain circumstances and fails to move this country toward higher octane, low carbon fuels, such as mid-level ethanol blends (*e.g.*, E20-E40). NFU is also concerned that the proposed changes to the Renewable Fuel Standard (RFS) program have not been fully considered and urges EPA to approve year-round use of E15, along with higher blends of ethanol, by June 1, 2019. We believe EPA should not finalize the so-called RIN "reform" measures as proposed or, at a minimum, should segregate these issues as any such "reforms" require further consideration and should not delay actions on E15.

Despite assertions by some, EPA action on E15 is already long overdue. EPA and stakeholders have long considered and debated the best approaches for moving toward higher blends of ethanol. This is unlike the proposed modifications to the RFS regulations, where EPA has not adequately discussed the proposed changes with *all the relevant stakeholders* and does not appear to have addressed whether these proposed changes *will further the statute's goals*.

INTRODUCTION

NFU has nearly 200,000 family farmer, rancher, and fishermen members nationwide and organized divisions in 33 states. We have supported family agriculture and rural communities since 1902. “The family farm is the keystone of a free, progressive, democratic national society, as well as a strong America, and is the basis of a safe, secure and stable food system.”¹ The family farm system of agricultural production is truly sustainable, protecting the environment, improving the farmer’s quality of life, and enhancing the surrounding communities. Accordingly, NFU promotes the sustainable production of food, fiber, feed and fuel. Toward those ends, NFU supports the use of ethanol as a fuel additive for gasoline formulations to enhance octane levels, especially moving toward use of mid-level blends of ethanol.² Use of higher ethanol blends will provide significant benefits to the rural community and beyond. It will provide a market for the farmers’ production, expanding the economic benefits of diversifying crops and driving investments in rural communities.

In his October 2018 statement, President Trump stated to farmers: “We want to eliminate the intrusive rules that undermine your ability to earn a living, and we will protect the corn-based ethanol and biofuels that power our country.”³ Allowing E15 year-round “will strengthen America’s domestic energy production and provide a boost to America’s famers.”⁴ President Trump also referenced “his commitment to ethanol and the Renewable Fuel Standard program to give consumers more choice.”⁵ NFU urges EPA to fulfill that commitment. While NFU supports EPA action to allow for year-round E15, which is long overdue, EPA should work toward promoting mid-level ethanol blends. Facilitating use of biofuels will help support the RFS program and reduce compliance costs.⁶

NFU generally opposes the proposed RIN reform measures, which appear solely intended to lower costs for some refiners rather than improve the RFS program. It is clear that EPA hasn’t fully considered the potential implications of its RIN reform proposals on the program as a whole. As such, EPA should finalize the relevant provisions related to E15 and continue further discussions with stakeholders, including, if needed, issuing revised proposals for comment, when it can cite supporting data, explain how the “reforms” facilitate the goals of the RFS program, and protect against any unintended consequences of those proposals.

¹ Policy of the National Farmers Union, Art. I, 2019, <https://nfu.org/2018policy/>.

² *Id.* Art. VIII-C-2.

³ White House Fact Sheet, *President Donald J. Trump Is Expanding Waivers for E15 and Increasing Transparency in the RIN Market Energy & Environment*, Oct. 11, 2018, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-expanding-waivers-e15-increasing-transparency-rin-market/>.

⁴ *Id.*

⁵ *Id.*

⁶ See, e.g., James H. Stock, *The Effect of a Higher Ethanol Blend RVP Waiver on RIN Prices*, July 11, 2017, available at https://scholar.harvard.edu/files/stock/files/rvp_waiver_and_rins_stock_071117.pdf.

COMMENTS

I. NFU Supports EPA’s Revised Interpretation of Section 211(h)(4) of the Clean Air Act.

To allow for year-round E15, EPA is first 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, except that the statute provides for a 1-psi waiver for certain ethanol blends. 42 U.S.C. §7545(h). Under EPA’s proposed “new interpretation, ethanol blends containing at least 10 percent ethanol would receive the 1-psi waiver, including E15.” 84 Fed. Reg. at 10,587. While NFU notes that this is not a “new” interpretation of the statute, NFU agrees that the RVP 1-psi waiver for gasoline and ethanol blends in 42 U.S.C. §7545(h)(4) is not limited to E10 only.

NFU believes that the statute unambiguously provides that the 1-psi waiver applies so long as there is 10% denatured ethanol present in the fuel blend. 42 U.S.C. §7545(h)(4) (applying to “fuel *blends containing* gasoline and 10 percent denatured anhydrous ethanol”) (emphasis added). This includes, not just E15, but also mid-level ethanol blends, as they are fuel “blends containing” gasoline and 10% ethanol. See 84 Fed. Reg. at 10,587 (“ethanol blends containing *at least* 10 percent ethanol would receive the 1-psi waiver”) (emphasis added); *id.* at 10,591 (“[T]he statute sets the minimum ethanol content, such that all fuels which contain at least 10 percent ethanol may receive the 1-psi waiver, *including blends that contain more than 10 percent ethanol.*”) (emphasis added). Legislative history supports this reading—the House-passed version referenced “gasoline containing at least 10 percent ethanol” and the Senate-passed version simply referred to “fuel blends” containing 10% ethanol. H.R. 3030, §216 (as reported, 1990); S. 1630, §214 (as reported, 1990). Congress did not finalize the provision that would have limited the waiver to E10. H.R. 3030, §214 (as introduced, 1989) (EPA-HQ-OAR-2018-0775-0032). EPA admits that it had previously interpreted the provision to be limited to E10 because of the limits under Section 211(f) where, at the time, only E10 had a waiver under Section 211(f)(4), not based on the language in Section 211(h)(4).⁷ 84 Fed. Reg. at 10,590.

Even if the statute is ambiguous, as EPA now contends, EPA’s proposed reading is permissible based on Congressional intent and the national policy to increase renewable fuels, which have “beneficial environmental, economic, agricultural, energy security and foreign policy implications.” 84 Fed. Reg. at 10,592 (citing S. Rep. No. 110-228 at 110 (1989)). Congress

⁷ Although EPA appeared to have changed this interpretation to limit the 1-psi RVP waiver in Section 211(h)(4) to E10, the plain language of the statute dictates that EPA correct this error. Moreover, EPA has authority to change its mind, providing a rational basis for doing so. Indeed, American Fuels & Petrochemical Manufacturers (formerly National Petrochemical & Refiners Association) had argued that EPA should apply the RVP waiver to E15, and its application to E15 was a reasonable reading of the statute. See EPA-HQ-OAR-2010-0448-0067 at 2-5; see also EPA-HQ-OAR-2010-0448-0081 at 17 (“API encourages the agency to find a way to overcome this perceived lack of authority and to permit the RVP waiver to be extended to E15.”).

sought to increase use of ethanol and eliminate practical limitations to its use. *See also id.* (“the primary consideration underlying the 1-psi waiver is to limit gasoline volatility *while promoting the use of ethanol due to its importance to energy security and the agricultural sector*”) (emphasis added). While EPA’s proposal is focused on E15, clarifying this interpretation also helps pave the way for mid-level ethanol blends. Thus, EPA should finalize its proposed interpretation of Section 211(h)(4) that applies the RVP waiver to ethanol blends above E10, not just E15, but also mid-level ethanol blends.

EPA also can 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.

First, the gasoline portion should still be able to meet the 9.0 psi limitation where higher ethanol blends have lower RVP.⁸ Second, under the updated interpretation of the “substantially similar” provision,⁹ there would be no waiver conditions and thus, this provision would be met. Even if EPA is correct that Congress anticipated other ethanol blends to obtain a waiver, 84 Fed. Reg. at 10,592, this does not preclude EPA from finding a Section 211(f)(4) waiver is no longer required based on a substantially similar determination. EPA recognizes as much. *Id.* at 10,601 (“One implication of a sub sim interpretation that includes E15 under CAA sec. 211(f)(1) would be that a waiver under CAA sec. 211(f)(4) will no longer be necessary for E15 to be introduced into commerce.”). Finally, adding ethanol does not increase the RVP of the ethanol portion of the blend.¹⁰ Because the RVP value of ethanol blends peaks at E10, the rationale behind the proposal supports even broader recognition and acceptance by EPA that higher level ethanol blends will meet and not exceed the current RVP waiver.

Thus, NFU agrees with EPA’s “new” interpretation of Section 211(h)(4) as applying the 1-psi waiver to all ethanol blends above E10, which includes mid-level ethanol blends. As such, EPA’s proposed changes to its regulations need not limit the application of the 1-psi waiver to blends up to 15%. 84 Fed. Reg. at 10,593.

⁸ NFU notes that EPA focuses exclusively on ethanol contributions to RVP value. But EPA should also consider incentivizing or requiring the petroleum industry to produce lower volatility blend stock, rather than imposing undue burdens on those seeking to use higher blends of ethanol.

⁹ This interpretation is addressed further below.

¹⁰ *See, e.g.,* Memorandum from National Renewable Energy Laboratory to Renewable Fuels Association, Mar. 26, 2012, regarding Discussion Document – Effect of Ethanol Blending on Gasoline RVP, *available at* https://ethanolrfa.org/wp-content/uploads/2015/09/RVP-Effects-Memo_03_26_12_Final.pdf.

II. NFU Opposes EPA's Limitations on Which Entities the RVP Waiver Applies.

While admitting that the 1-psi waiver applies to ethanol blends above E15, EPA then unduly complicates 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. NFU is concerned with the limitations EPA is applying to blender pumps, particularly those that use E85 blended with natural gasoline. 84 Fed. Reg. at 10,595. NFU encourages EPA to consider a more flexible approach to regulation of E15 made at blender pumps.

For example, discussions regarding "ethanol flex-fuel" in the Renewables Enhancement and Growth Support (REGS) proposed rule included allowing blender pumps to demonstrate compliance with RVP requirements simply by maintaining product transfer documents to demonstrate that they made the fuel from compliant parent blendstocks. Rather than exclude natural gasoline as a blendstock, EPA could use similar provisions to address any concerns with E85 used. These provisions would address the only purported concern of EPA that natural gasoline has higher volatility, although EPA provides no analysis of the volatility of the E85 blendstock itself and the interaction with E10.¹¹ 84 Fed. Reg. at 10,595; *cf.* EPA-HQ-OAR-2016-0041-0007 (finding fuel blends likely to meet RVP requirements despite use of natural gasoline). This is particularly troubling where, according to testimony by the Renewable Fuels Association, E15 made from E85 and E10 via a blender pump typically contains just 1% natural gasoline.

Although NFU supports a revised substantially similar determination, as further explained below, it is concerned with EPA's alternative proposal to interpret Section 211(f)(4) as applying only to fuel manufacturers, because it would impact certain entities in the supply chain differently, creating confusion or practical limitations to blending, which would undermine the purpose of moving toward year-round E15. *See, e.g.*, 84 Fed. Reg. at 10,595-10,596. NFU requests that EPA ensure that E15 can be blended in similar manner by both fuel manufacturers and oxygenate blenders during the summer season.

III. NFU Supports an Updated "Substantially Similar" Interpretation but Believes EPA Can and Must Expand that Interpretation to Include Mid-Level Ethanol Blends.

As an alternative to EPA's application of Section 211(f)(4) waiver conditions to E15, 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. NFU supports this alternative approach. In particular, EPA proposes that "E15 with an RVP of 10.0 psi is sub

¹¹ NFU opposes promulgation of any regulation that would expressly limit the use of mid-level ethanol blends in conventional vehicles, as was separately proposed in the REGS proposed rule. *See* EPA-HQ-OAR-2016-0041-0295; EPA-HQ-OAR-2016-0041-0301. For the reasons previously explained, and as noted below, we believe the statute allows for, and EPA should promote and facilitate, mid-level ethanol blends.

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. NFU agrees that E15 is “substantially similar” to E10, which is a certification fuel and, thus, the limitations under the current E15 Section 211(f)(4) waiver should be considered immaterial and removed. However, we believe EPA can, and should, ensure its updated interpretation also paves the way for mid-level ethanol blends.

EPA need not, and should not, wait until mid-level ethanol blends are more prevalent in the marketplace as it did with E15.¹² EPA recognizes that applying the RVP waiver provision to all ethanol blends above E10 “will continue to further [Congress’s] policy concerns,” affording “similar treatment to all ethanol-gasoline blends.” 84 Fed. Reg. at 10,592. EPA should do the same with respect to its substantially similar determination, paving the way for mid-level ethanol blends, which would support moving toward high octane, low carbon fuels.

- A. Ethanol is a “fuel additive” used in certification fuel, allowing higher blends of ethanol under Section 211(f)(1).

To introduce into commerce or to increase the concentration in use of “any fuel or fuel additive” for general use in light duty motor vehicles, such “fuel or fuel additive” must be “substantially similar to any fuel or fuel additive utilized in the certification of *any model year*” vehicle or engine. 42 U.S.C. §7545(f)(1) (emphasis added). EPA defines a fuel “additive” as “any substance, other than one composed solely of carbon and/or hydrogen, that is intentionally added to a fuel named in the designation (including any added to a motor vehicle’s fuel system) and that is not intentionally removed prior to sale or use.” 40 C.F.R. §79.2(e). Ethanol is an “additive” that is utilized in the certification of vehicles or engines.¹³ With E10 being today’s gasoline certification fuel, the increase in concentration of ethanol is allowable under Section 211(f)(1).¹⁴ Moreover, pilot programs and research have found no impairment or damage to emission control devices as a result of using mid-level ethanol blends.¹⁵ As such, a correct

¹² Mid-level ethanol blends are available in the market today, but, due to EPA’s improper and outdated regulatory restrictions, these blends are generally used only in flexible fuel vehicles. EPA has approved research projects that allow use of mid-level ethanol blends in non-flexible fuel vehicles.

¹³ 79 Fed. Reg. 23,414, 23,810 (Apr. 28, 2014), codified at 40 C.F.R. §1065.710(b)(2).

¹⁴ Prior to E10 becoming a certification fuel, EPA utilized its waiver authority under Section 211(f)(4) to authorize “a specified concentration” of ethanol. 42 U.S.C. §7545(f)(4).

¹⁵ See, e.g., Weichang Yuan, *et al.*, *Comparison of real-world vehicle fuel use and tailpipe emissions for gasoline-ethanol fuel blends*, 249 Fuel 352 (Aug. 2019); Brad Brunner, Glacial Lakes Energy, and Andy Wicks, Dyno Tune Speed and Performance, *Fuel Economy and Power Generation of 30% Ethanol (E30) Splash Blended Fuel in Fuel injected Non-FFV Gasoline Engines*, Jan. 19, 2017, available at <http://www.sdfu.org/assets/docs/uploads/gle-e30-challenge-white-paper-1-19-17final.pdf>; Jim Seurer, *Value of E30 Proven in Real Time*, Ethanol Producer Magazine, Oct. 13, 2016, <http://ethanolproducer.com/articles/13784/value-of-e30-proven-in-real-time>; EPA-HQ-OAR-2016-0041-0301 at 4-9; H. Christopher Frey, *et al.*, *Comparison of Real-World Vehicle Emissions for Gasoline-Ethanol Fuel Blends*, Presentation, University of California at Riverside, Mar. 23, 2018, available at <https://fixourfuel.com/wp-content/uploads/2018/04/NCSU-Study.pdf>.

interpretation of the Clean Air Act would affirm that E15 *and* mid-level ethanol blends, such as E30, may be used in non-flexible fuel vehicles. Under this interpretation, no waiver under Section 211(f)(4) is needed and, therefore, no waiver conditions apply.¹⁶

Instead, however, EPA appears to treat E15 as a “fuel,” even though it recognizes it is substantially similar to E10.¹⁷ 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, than treating each new level of ethanol as a “fuel,” requiring a waiver under Section 211(f)(4). For example, EPA provides no indication that E16 acts any differently than E15. EPA’s treatment of E15 as a “fuel” would virtually eliminate the inclusion of “fuel additive” in the 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, which provides better emissions reductions *and vehicle performance*. Given Congress’s clear intent to promote ethanol, EPA should modify its approach or make clear that, while EPA is not choosing that particular approach, its current reading does not preclude such a determination.

EPA should not impose any conditions under Section 211(f)(1) for fuels that are substantially similar to E10 certification fuel. EPA contends that it is “reasonable to interpret [Section 211(f)(1)] as allowing EPA to apply restrictions on a sub sim determination, where the restrictions are intended to avoid the kinds of problems that prompted the prohibition against introduction into commerce.” 84 Fed. Reg. at 10,602. But, EPA’s limited interpretation of the sub-sim law for E15 allows EPA to bypass the “very definite scheme” crafted by Congress to control existing fuels. Such regulation is required under Section 211(c), not 211(f)(1). EPA’s main concern appears to be misfuelling, but EPA provides no evidence that this has been or is a problem. Evidence shows that E30 does not adversely affect conventional vehicles. If, in fact, EPA can show that there are impacts with respect to any particular level of ethanol, EPA retains authority under Section 211(c) to impose appropriate conditions on its production and use.¹⁸

- B. EPA should make clear that higher ethanol blends also meet EPA’s proposed substantially similar interpretation.

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.”

¹⁶ See EPA-HQ-OAR-2016-0041-0295 (attached).

¹⁷ This is because the additional ethanol concentration does not adversely impact emissions or impair emissions control. Incidentally, EPA treats all gasolines as being of homogenous composition, even though they may have distinctly different chemical compositions.

¹⁸ Section 211(c)(1) of the Clean Air Act mandates that before controlling existing fuel additives, EPA must find that fuel additive (1) causes, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare or (2) causes “emissions products” that “impair to a significant degree the performance of any emission control device or system which is [or would soon be] in general use.” 42 U.S.C. §7545(c)(1).

84 Fed. Reg. at 10,599. As such, EPA proposed interpretation here does not, and should not, limit EPA’s ability to apply a substantially similar determination to mid-level ethanol blends.

Recognizing the benefits of high-octane fuels, the Fuels Institute recently completed an analysis of the potential for increasing octane in the U.S. fuel supply, noting the regulatory process for approving new fuels presents a challenge to moving toward high-octane fuels. One need only look at the cumbersome and costly process that was required to allow E15 and the unwieldy conditions of EPA’s Section 211(f)(4) waiver for E15. Under EPA’s proposed interpretation, manufacturers of fuel with higher blends of ethanol would likely still need to pursue a Section 211(f)(4) waiver to show that the “new” “fuel” will not cause or contribute to the failure of emissions control devices. But the process established by EPA to secure such a Section 211(f) waiver is lengthy, costly, and uncertain. Such a process is unreasonable given that the effects of gasoline/ethanol blends like E20, E25, and E30 are already well-known. As such, it is simply untrue that EPA only has “sufficient data and information” regarding E15 to support its limited substantially similar determination. 84 Fed. Reg. at 10,601. EPA should, instead, streamline its interpretation of statutory fuel registration requirements. Doing so would truly fulfill the commitment President Trump has made to farmers, removing barriers to expanded use of renewable fuels. It would also create market competition, stimulate job creation, and drive down consumer fuel costs.

Although we believe EPA’s proposal imposes an undue burden on mid-level ethanol blends under Section 211(f)(1), there is sufficient information for EPA to apply its proposed interpretation to mid-level ethanol blends today.¹⁹ In other words, there is no reason to further delay introduction of mid-level ethanol blends to all vehicles, not just flexible fuel vehicles.

C. There are numerous benefits associated with using mid-level ethanol blends.

Ethanol, a renewable fuel, changes the emissions profile of gasoline, creating a cleaner, safer motor vehicle fuel. Allowing increased use of ethanol, consumers would benefit from projected fuel cost savings, reduced price volatility, increased torque in performance applications, and the energy security and environmental attributes of mid-level ethanol blends.

Increased volume of ethanol increases the octane level of gasoline across grades. In addition to its higher-octane level, ethanol also features high sensitivity and high heat of vaporization, which increase engine efficiency.²⁰ In short, ethanol offers engine knock

¹⁹ See, *supra* n.15.

²⁰ Ricardo, Inc., *The Draft Technical Assessment Report: Implications for High Octane, Mid-Level Ethanol Blends, Final Report*, at 24 (2016), available at https://ethanolrfa.org/wp-content/uploads/2016/09/ATTACHMENT-A_Ricardo-TAR-Report-for-RFA-Sept_20_2016.pdf; AIR, Inc., *Evaluation of Costs of EPA’s 2022-2025 GHG Standards with High Octane Fuels and Optimized High Efficiency Engines*, Sept. 22, 2016, Attach. 1 to Comments of Minnesota Corn Growers Association, et al., Sept. 26, 2016 (EPA-HQ-OAR-2015-0827-4167); Tim Theiss, *et al.*,

resistance at a lower cost than any other octane booster in gasoline. Higher ethanol blends can increase fuel octane without expensive refinery upgrades.

Reducing RVP value of blendstocks would encourage/lead to reduction in harmful aromatics. Real-world evidence shows use of ethanol blends reduces emissions of carbon monoxide, particulate matter, air toxic chemicals, and greenhouse gases (GHGs) compared to burning petroleum gasoline. This results in better overall air quality than when vehicles burn conventional gasoline, significantly improving public health.

Ethanol is substantially cleaner than petroleum-based octane additives.²¹ It reduces emissions of particulate matter and air toxics such as benzene, toluene, and xylene. In the proposed rule, EPA recognizes that during the expansion of E10 blending between 2007 and 2012, “aromatics levels were observed to decline by a few volume percent while pump octane levels stayed constant.” 84 Fed. Reg. at 10,604. An even greater decline in aromatics and the harmful emissions they cause would be expected to occur with a move to mid-level ethanol blends, such as E30, without any resulting loss of octane level. Indeed, EPA is directed to reduce mobile source air toxics to the greatest achievable degree. See 42 U.S.C. §7521(l).

With GHG emissions from the transportation fuel sector continuing to increase,²² ethanol further provides GHG emissions reductions. The RFS program has provided greater GHG reductions than EPA had estimated.²³ While the carbon intensity of gasoline *is increasing* with greater use of unconventional fossil fuels, energy use in ethanol production and lifecycle GHG emissions have decreased with changes in farming practices and increased intensification (e.g., higher yields).²⁴ As EPA has found, the land use, land-use change, and forestry sector

Summary of High-Octane Mid-Level Ethanol Blends Study, ORNL/TM-2016/42 (July 2016), Attach. to Comments of the Renewable Fuel Association, Sept. 26, 2016 (EPA-HQ-OAR-2015-0827-4174).

²¹ Testimony from the American Fuel Petrochemical & Manufacturers before the U.S. House Energy and Commerce Subcommittee on the Environment on April 13, 2018 acknowledged that increased octane levels at the refinery level, rather than blending higher levels of ethanol, also increase emissions at the refinery (<https://docs.house.gov/meetings/IF/IF18/20180413/108122/HHRG-115-IF18-Wstate-ThompsonC-20180413.pdf> at 13). See also Comments of the Renewable Fuels Association, Oct. 5, 2017, at 5 (EPA-HQ-OAR-2015-0827-9735).

²² EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2017, at ES-12 (2019), available at <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2017>.

²³ Life Cycle Associates, *GHG Emissions Reductions due to the RFS2: A 2018 Update*, Feb. 6, 2019, available at <https://ethanolrfa.org/wp-content/uploads/2019/02/LCARFSGHGUpdatefinal.pdf>.

²⁴ See, e.g., Jan Lewandrowski, et al., *The greenhouse gas benefits of corn ethanol – assessing recent evidence*, Biofuels (2019), DOI: 10.1080/17597269.2018.1546488 (finding corn ethanol's current GHG profile at 39–43% lower than gasoline and noting opportunities to produce ethanol in 2022 with emissions that are 47.0–70.0% lower than gasoline); see also ICF, *A Life-Cycle Analysis of the Greenhouse Gas Emissions of Corn-Based Ethanol*, Report prepared for U.S. Department of Agriculture (Jan. 2017), available at https://www.usda.gov/oce/climate_change/mitigation_technologies/USDAEthanolReport_20170107.pdf.

resulted in a net increase in carbon stocks (*i.e.*, net CO₂ removals).²⁵ This has occurred despite the loss of cropland and the struggle to retain existing agricultural lands against the ongoing pressures from urban and industrial expansion.

The results of climate change, brought on by GHG emissions to the earth's atmosphere resulting from human activity, will be detrimental to both human health and the economy. As a family farm organization, NFU is particularly concerned with the challenges that climate change poses to family farmers' ability to pursue improvements in global food security.²⁶ Anticipated disruptions to agricultural production caused by climate include: rising temperatures; changes in precipitation; increasing frequency of extreme weather events; new pest, disease and weed pressures; and increases in heat stress on livestock. As formidable as these challenges may be, farmers, ranchers and rural communities can contribute to climate resilience and help circumvent serious harms to the economy and human health.²⁷ Efforts by farmers, ranchers and rural communities along this front are supported by the biofuels industry that eases the burdens on farmers and provides additional markets to facilitate a move toward sustainable practices and climate mitigation actions. The EPA should provide and enforce incentives that would support climate resiliency goals.²⁸

²⁵ EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2017, *supra* n.22, at 6-1; see also Bruce A. Babcock and Zabid Iqbal, *Using Recent Land Use Changes to Validate Land Use Change Models*, Iowa State University Center for Agricultural and Rural Development, Executive Summary (2014), available at <http://www.card.iastate.edu/products/publications/pdf/14sr109.pdf> ("The contribution of this study is to confirm that the primary land use change response of the world's farmers from 2004 to 2012 has been to use available land resources more efficiently rather than to expand the amount of land brought into production. ... Our conclusion that intensification of agricultural production has dominated supply response in most of the world does not rely on higher yields in terms of production per hectare harvested. Any increase in yields in response to higher prices would be an additional intensive response."); Renewable Fuels Association, *USDA Data Show Cropland Reductions in Counties with Ethanol Plants from 1997-2012*, April 3, 2017, available at <http://www.ethanolrfa.org/wp-content/uploads/2017/04/USDA-Data-Show-Cropland-Reductions-in-Counties-with-Ethanol-Plants-from-1997-2012-1.pdf>.

²⁶ See M.E. Brown, *et al.*, *Climate Change, Global Food Security, and the U.S. Food System*, U.S. Global Change Research Program, at 111-112 (2015), available at http://www.usda.gov/oce/climate_change/FoodSecurity2015Assessment/FullAssessment.pdf.

²⁷ See *id.* at 112 (Throughout the food system, "effective adaptation can reduce food-system vulnerability to climate change and reduce detrimental climate change effects on food security....").

²⁸ A recent report by the United Nations Intergovernmental Panel on Climate Change identified the need for action at local levels and adaptation as needed to address climate change impacts (<http://ipcc.ch/report/sr15/>).

IV. EPA Should Not Finalize the RFS RIN Reforms as Proposed and, if it Continues to Believe Such Proposals May have Merit, it Should Not Hold Up Finalizing Provisions Allowing Greater Ethanol Use.

While NFU agrees that “more frequent RIN retirement could help smooth demand for RINs across the year,”²⁹ 84 Fed. Reg. at 10,615, and generally agrees with providing more transparency on RFS volume obligations, EPA provides no support or rationale for why the proposed reforms related to RIN holdings and purchases are needed or would further *Congressional* goals. EPA does, however, note that such changes would impose an additional \$20 M in reporting costs alone. In its Regulatory Flexibility Act analysis, EPA also ignores the potential burdens on small producers if the current fuel distribution and RIN markets must be changed as a result of the proposed RIN reforms. Often small producers rely on third parties to reduce compliance costs associated with RIN requirements. The limits proposed by EPA may result in these entities leaving the market, imposing greater burdens on smaller entities. There is no justification for these added burdens.

NFU further notes that the credit program was intended to incentivize taking actions *to exceed* the volume requirements. EPA should not impose any requirements that may undermine those incentives. Indeed, EPA has indicated that it has “yet to see data-based evidence of RIN market manipulation.” 84 Fed. Reg. at 10,607. Moreover, EPA has consistently stated that refiners generally recover their RFS compliance costs, which it acknowledges in the proposal. *Id.* While EPA states that changes to the RFS regulations should be “*beneficial for the RFS program.*” *Id.* at 10,609 (emphasis added), EPA provide no explanation as to the benefit to the RFS program by the proposed limitation on RIN holdings and purchases versus speculative hypotheticals related to RIN prices. As EPA indicated, RIN liquidity and flexibility supports the RFS program. Non-obligated parties do not have incentives to hold RINs. Producers recover costs. Marketers/Retailers seek to reduce costs to their customers. While there may be some merit to increasing the frequency of compliance with the renewable volume obligations, NFU does not believe that the so-called RIN “reforms” otherwise provide value to supporting the RFS program, as opposed to simply trying to reduce costs of a subset of refiners. NFU understands President Trump asked EPA to “consider” changes, but it has done so, and such “consideration” should not hold up EPA action on E15.

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

Although EPA provides no evidence of RIN-market volatility that would be resolved by the proposed RIN reforms, there are clear, and less burdensome, actions EPA can take to address current RIN-market speculation and manipulation. That is, EPA should address the

²⁹ Because we believe EPA should not grant retroactive exemptions, EPA should not provide for special treatment for small refineries as part of its proposal for quarterly RIN retirement requirements.

adverse effects of EPA’s recent actions regarding small refinery exemptions where economists found that the RIN market was relatively stable until such actions. Even the American Petroleum Institute (API) has noted that “[s]mall refinery exemptions, especially when granted retroactively, introduce additional uncertainty and RIN market disruptions.”³⁰ It also punishes those that have responded to Congress’s directives and EPA’s own requirements, rewarding those that have refused to acknowledge this country’s need for diverse sources of energy, including renewable energy.

In particular, EPA is required to “ensure” transportation fuel sold in the United States includes the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel. 42 U.S.C. § 7545(o)(2)(A)(i); *see also id.* § 7545(o)(3)(B)(i). Congress gave EPA limited waiver authority to reduce the applicable volumes. *Id.* §7545(o)(7). To use this waiver authority, EPA must comply with procedural and substantive statutory requirements.

Separately, the statute provided a temporary exemption from the annual RFS requirements for small refineries, defined as a refinery whose average aggregate daily crude oil throughput does not exceed 75,000 barrels per day. 42 U.S.C. §7545(o)(1)(K), (o)(9). This exemption can be extended based on a finding by the U.S. Department of Energy (DOE) or based on a petition from the small refinery. These extensions are based on a finding that compliance with RFS obligations will impose a “disproportionate economic hardship” on the refinery. EPA is required to account for these small refinery exemptions when it sets the standards. 40 C.F.R. §80.1405(c). EPA, however, has used these exemptions to reduce the required volumes. For 2017 alone, this amount has reached over 1.8 billion gallons of lost demand (to date).

For compliance year 2018, EPA has seen a record number of exemption requests. The statute, however, only allows for “extensions” of these exemptions, not for “new” exemptions years after the temporary one expired. This exemption was to allow small refineries more time to prepare, but the RFS program has been in effect for over ten years. API acknowledges “refiners have had ample time to adjust their businesses to operate” under the RFS.³¹ It cannot be that Congress intended for small refineries to seek new exemptions so many years into the program. Nor should small refineries be allowed to game the system by coming in and out of the program based on market fluctuations (or a change in administration). Given the lack of information, it is not clear what grounds EPA is claiming to grant these exemptions. There have also been reports of possible “partial” exemptions, rather than denying those exemptions for failure to show a *hardship*. It is unclear where such authority can be found in the statute.

³⁰ API Feb. 12, 2018 Letter, available at <http://www.api.org/~media/Files/News/Letters-Comments/2017/API-Letter-2-12-18.pdf>.

³¹ See API Aug. 31, 2017 Comments at 2 (EPA-HQ-OAR-2017-0091-3647).

Importantly, EPA is granting these exemptions *after* the volumes have been set (and apparently even *after* the compliance deadlines have passed. EPA’s proposal refers to “unretiring” of RINs, yet NFU is unaware of any statutory or regulatory authority to do so. This has the likelihood to increase the RIN bank and reduce demand in 2019 and even 2020. In so doing, this results in a reduction of the applicable volumes set by EPA, improperly waiving additional volumes. At a minimum, it renders the volumes EPA sets, which are to be *minimums*, meaningless. Even if there were some grounds to grant these exemptions, 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.

Equally concerning is that these actions have been taken without any transparency, which violates central tenets of responsible governance. We cannot hold our officials accountable for their actions when they are taken behind closed doors. Indeed, the statute requires public notice and comment for waivers under the statute, and EPA is granting these exemptions (and therefore waivers) without any public input. While EPA has provided some more information on the number of exemption requests, more information on the grounds and process for granting those requests is required. There also should be public input on the process.

As NFU has pointed out in prior letters to EPA urging greater transparency on the small refinery exemptions, EPA has previously indicated that it did not deem all information regarding the requests constituted confidential business information (CBI). 81 Fed. Reg. 80,828, 80,909 (Nov. 16, 2017) (proposing to “codify a *determination* that basic information related to EPA actions on petitions for RFS small refinery and small refiner exemptions may not be claimed as confidential business information”) (emphasis added). EPA has neither finalized this proposal, nor has it explained its apparent change in position, where, since the November 2016 proposal, EPA has refused to release this basic information purportedly based on CBI claims. Recently, EPA issued a notice requesting further comment on this proposed determination, although it is unclear how that proposal will impact previously issued and pending requests. NFU will provide additional comment on this issue in response to that notice but is supportive of EPA’s determination and proposal to codify it. The lack of transparency has caused market uncertainty, many refiners release information on their small refinery exemptions, and there is no justification for treating this information as confidential. As noted above, however, NFU urges EPA to provide more transparency on the process of granting exemptions as well.

In short, NFU asks that EPA cease granting these waivers or act to adjust for these additional waivers and comply with its obligations under the statute. EPA should also adjust its process in the future to ensure that these exemptions do not reduce the applicable volumes required under the RFS. EPA has agreed it is not impracticable to require these requests be submitted to seek *prospective* relief, and Administrator Wheeler recently indicated that it is the

small refineries that choose to wait to submit their requests.³² We look forward to working with you to address this important issue.

CONCLUSION

The family farm forms the backbone of this country. As discussed above, biofuels have played an important role in supporting family farms, which have faced significant pressure to stay in production and a struggling economy. NFU strongly encourages EPA to make appropriate regulatory changes to support increased use of mid-level ethanol blends, which are high octane, low carbon fuels. As has been shown by numerous studies, ethanol provides significant air quality benefits, in addition to providing much needed jobs and creating stability in markets providing benefits and promoting investments in the rural economy.

NFU does appreciate EPA's efforts to approve E15 and should act as expeditiously as possible, segregating the proposed RIN "reforms" as appropriate to do so. We stand ready to offer any support and assistance EPA may find helpful regarding these matters. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Johnson". The signature is fluid and cursive, with a large initial "R" and "J".

Roger Johnson
President

³² Testimony, Hearing before the House Subcommittee on Environment and Climate Change, House Energy and Commerce Committee, Apr. 9, 2019.