



South Dakota Farmers Union

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August 17, 2018

Via Electronic Filing (www.regulations.gov)

U.S. Environmental Protection Agency
EPA Docket Center
Office of Air and Radiation
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
ATTN: Docket ID No. EPA-HQ-OAR-2018-0167

Dear Acting Administrator Wheeler:

I write as the voice of the South Dakota Farmers Union membership, a group of nearly 17,000 family farmers and ranchers, many of which contribute greatly to our state and national ethanol industry. We undoubtedly express support of EPA's full implementation of the 2019 Renewable Volume Obligations (RVOs) under the Renewable Fuel Standard (RFS) program. The RFS plays a vital role in supporting farm production and rural farming communities. It is our duty as a Farmers Union to support policy that ensures the future economic and environmental well being of the state of South Dakota and our nation.

We agree with EPA's proposal that recognizes the minimum volume requirement of 15 billion gallons of conventional biofuels and includes an increase for advanced biofuels from 2018. EPA has properly proposed not to use its general waiver authority to further reduce the statutorily required volumes. We assure you, there is more than adequate supply of renewable fuels to meet (and exceed) the proposed volumes. The RFS program is not causing severe economic or environmental harm. Instead, implementation of the RFS program provides countless economic and environmental benefits, which are continually being lost due to EPA's failure to fully comply with the program.

In past years, this failure by EPA to fully implement the RFS program has not only harmed our state's farmers but also undermined the intent of Congress. Through the RFS program, Congress intended to promote biofuel production and, thereby, benefit the rural economy and the environment that so desperately needed a boost. Farmers have been entrusted as stewards of the land in the United States, but currently face significant economic hardships. These hardships often jeopardize their own financial well being, the health of their land and the sustainability of our nations food supply.

EPA's recent actions in broadening the small refinery exemptions are intolerable and have significantly reduced the demand for biofuels. The negative impact these actions have had on South Dakota's farmers and rural communities are undeniable. This July, EPA finally admitted to granting more than double the number of exemptions for 2017 than it had in prior years, without any explanation as to its authority to grant so many new exemptions. Allowing certain refineries to pick and choose when they comply with the RFS program, and to use the RFS program to make even greater profits without taking actions to promote increased biofuel production, runs counter to the intent of the program and is quite frankly, morally skewed.

EPA's expansion of the small refinery exemptions under the RFS program has largely been behind closed doors. The lack of transparency in how, when and why EPA will grant these exemptions has had negative impacts on the

market. In the 2019 RFS proposal, EPA asked for comment on how to address RIN market operations and RIN market manipulation. Recent testimony before Congress identified the lack of transparency and retroactive grants of these exemptions as contributing to the RIN price volatility being seen in the market today. EPA must make the small refinery exemption process more public and ensure its actions are consistent with the statute and intent of Congress.

In addition, it is EPA's responsibility to properly account for the volumes being lost by EPA's retroactive grants of this exemption to meet their obligation to ensure the applicable volumes are being met. EPA has ample authority to "true up" the volume requirements and to revise its procedures to stop the recent actions by EPA related to the small refinery exemptions that have wreaked havoc on the market and, in turn, on the agricultural industry. There simply is no reason for small refineries to delay in requesting extensions of their exemptions, which must be based on disproportionate economic hardship, and no authority for EPA to grant these exemptions *after* the compliance deadlines.

In whole, we urge EPA to retain the 15-billion-gallon requirement for conventional biofuels, increase the advanced biofuel volume requirement for 2019, and finalize the RVOs on a timely basis. But, EPA also must stop issuing retroactive exemptions and must take action to address the loss of biofuel demand as a result of the increase in small refinery exemptions, which have effectively, and impermissibly, further waived the statutory volume requirements.

On behalf of our membership, we recognize that this rule is limited in scope to the specifics of volume obligations under the RFS. However, our members feel it is critical that EPA adopt a more holistic and comprehensive view of the issues surrounding the use of biofuels, the resolve of which would make implementation of the RFS much more efficient for all parties.

There are a number of studies, assessments, and rulings under EPA jurisdiction of a regulatory nature that have the ability to limit ethanol use and in some case prohibit it. Conversely, addressing these issues would open the market to higher ethanol blends without further mandates or requirements and eliminate the RIN issue by marginalizing the cost. In doing so we would significantly protect the public health by replacing harmful aromatic compounds with clean burning ethanol. It would be entirely appropriate for EPA to acknowledge the relationship of the following issues to a successful RFS and as measures being wholly consistent with the Agency's mission to protect public health.

- 1. Correct EPA Interpretation of 211(f) Substantially Similar Law.** Boyden Gray & Associates—on behalf of the Urban Air Initiative, National Farmers Union, and numerous other stakeholders—has filed a legal memorandum with EPA to correct its mistaken interpretation of the so-called "sub-sim" provision in the Clean Air Act. UAI et al. submitted comments in opposition to EPA's 2017 REGS rule, which would have codified its prohibition against using E15 and higher blends in non-FFV vehicles. [EPA did not finalize the REGS Rule, therefore EPA's sub-sim position has NOT been codified.] However, as of January 1, 2017, E10 is the nation's certification fuel (meaning that ethanol is a fuel additive used in certification and therefore cannot be controlled under 211(f)). If EPA wishes to control the use of E15/E30 blends in standard (non-FFV) vehicles, the legal burden of proof is on it to show that higher ethanol blends damage emissions control systems, or exacerbate tailpipe emissions.

We are extremely concerned that EPA added the REGS rule to the unified agenda of proposed rules for this year as it contains this prohibition of higher blends and should be struck from the rule before it goes any further.

- 2. Certification Fuel Approval.** EPA should expeditiously approve the use of a mid-level ethanol certification fuel (e.g., E25 – E30), allowing manufacturers to design optimized, high compression vehicles for use of 98 – 100 RON gasoline as #1 above is implemented over time.
- 3. MOVES2014 Model Reform.** EPA/OTAQ should suspend use of its defective MOVES model—which relies on manipulated fuel samples provided by oil interests—and remedy its many flaws. Contrary to what

happens in the real world, EPA added toxic aromatics and other “high boilers” to higher octane ethanol blends, and then deceptively attributed the higher emissions to ethanol rather than aromatics. States that use the MOVES Model for State Implementation Plan compliance will be deterred from permitting use of EXX blends until this model is corrected.

4. **Redo EPA’s 2007 Mobile Source Air Toxics (MSAT) Cost – Benefit Rule.** EPA used obsolete and fallacious factual predicates [1] in its 2007 MSAT rule which were deliberately shaped to show that replacing toxic aromatic hydrocarbons (BTEX) with higher octane ethanol would not be cost effective. If EPA fulfilled its mandatory obligation under Section 202(l) of the Clean Air Act, and controlled BTEX content in order to reduce MSAT emissions “to the greatest achievable degree”, the MOVES model would by definition become unusable.
5. **Lifecycle Analysis.** EPA should immediately revise its outdated estimate of ethanol’s lifecycle carbon emissions (last iteration was in 2010), and bring it into line with the updated Argonne National Laboratory GREET model. Among other changes, EPA’s LCA models should recognize the ability of high-yield corn to restore soil organic matter, which transforms corn acres into substantial carbon sinks. Both EPA and CARB should adjust their carbon intensity (CI) factors for corn ethanol downward
6. **Minimum 98 – 100 RON Gasoline Standard.** Take advantage of the newly announced GHG – CAFE rulemaking to require an orderly transition to a nationwide minimum 98 – 100 RON gasoline standard. [Precedent: successful transition from leaded to unleaded gasoline in the 1980s.]
7. **Reinstate some meaningful vehicle credits** to incentivize automakers to design engines to utilize ethanol's high octane. FFV credits have been effectively eliminated despite being no cost to consumers or taxpayers. Automakers have particularly expressed interest in being able to pro-rate the FFV credits calculated on E85 usage to mid level blends that would be used to provide the above noted octane.
8. Correct the Agency's longstanding misinterpretation of the Vapor Pressure Waiver, which former Administrator Pruitt repeatedly indicated EPA could do.

The Trump administration has vowed to reduce, correct or streamline existing regulations, eliminate unnecessary regulations, and generally be proactive in opening the domestic energy market, every single one of these measures is appropriate to that objective with the added benefit of improving air quality and protecting public health.

Importantly they are all within your ability to address and we urge that you do so.

Respectfully,

Doug Sombke, S.D. Farmers Union President