RENEWABLE FUELS ASSOCIATION

TESTIMONY OF
THE RENEWABLE FUELS ASSOCIATION
BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY

RE: MODIFICATIONS TO FUEL REGULATIONS TO PROVIDE FLEXIBILITY FOR E15; MODIFICATIONS TO RFS RIN MARKET REGULATIONS (PROPOSED RULE; DOCKET NO. EPA-HQ-OAR-2018-0775)

MARCH 29, 2019
YPSILANTI, MI

Good morning. My name is Geoff Cooper and I am the President and CEO of the Renewable Fuels Association (RFA), the nation's leading trade association representing fuel ethanol producers.

RFA appreciates the opportunity to share some of our initial thoughts and comments on the proposed rule providing flexibility for E15 and modifying RFS RIN market regulations. As you know, we have continually advocated for parity in the regulatory treatment of E15 and E10 since the E15 fuel waiver petition was originally filed in 2009.

We strongly support EPA's proposal allowing E15 to take advantage of the 1-psi Reid Vapor Pressure (RVP) waiver that currently applies to E10 during the summer months. RFA agrees with EPA that our nation's fuel market has experienced "changed circumstances" since the RVP waiver was initially adopted in 1990 and we agree that "…the conditions that led [EPA] to provide the original 1-psi waiver for E10 in 1990 are equally applicable to E15 today." Extending the 1-psi RVP waiver to E15 during the summer volatility control season will open the marketplace to a fuel that provides consumers higher octane, lower cost, and reduced tailpipe emissions.

"Sub-Sim" Approach in 211(f)(1)

We firmly endorse EPA's proposal to interpret section 211(h)(4) of the Clean Air Act as being applicable to ethanol blends containing *at least* 10 percent ethanol, including E15,

and we believe EPA's justification for this interpretation is well supported by the statutory text and Congressional intent.

RFA also strongly supports EPA's recommendation to define E15 as "substantially similar" to the Tier 3 certification fuel, which is E10, and we believe the reasoning for this proposal is both legally and scientifically sound. We agree that E15 has "similar effects on emissions, materials compatibility, and driveability" as E10. However, we oppose EPA's proposal to impose certain restrictions on the use of E15 under the "sub sim" approach, including many of the conditions currently applied to E15 as a consequence of the 211(f)(4) partial waivers granted in 2010 and 2011. Moreover, there is nothing in the language of the statute that contemplates the possibility of conditions on a "sub sim" determination under section 211(f)(1). If EPA were to consider placing conditions on E15, it would have to proceed under section 211(c) in a separate rulemaking. There is no factual basis for pursuing such conditions, however, given E15's characteristics, which are either superior to E10 or, as EPA has acknowledged, substantially similar.

Interpretation of 211(f)(4)

In the proposed rule EPA also interprets the constraints in section 211(f)(4) to apply only to fuel manufacturers such as refiners and importers, but not to parties that blend oxygenate into certified fuel. Although this interpretation of section 211(f)(4) provides a separate and independent basis for the allowing applying the 1 psi waiver to E15, it would impact certain entities in the supply chain differently. Because the fuel manufacturer interpretation is an alternative basis for the action, and because the sub-sim determination would apply to fuel manufacturers and oxygenate blenders equally, RFA requests that EPA ensure the final rule allows E15 to be lawfully blended from the same gasoline blendstock that is used to make E10 during the summer by *both* fuel manufacturers and oxygenate blenders.

Further, while EPA correctly concludes that E15 produced from the same gasoline blendstock for oxygenate blending (BOB) as E10 would likely have "slightly less" evaporative emissions than E10, the Agency's review of studies focused on E15 exhaust emissions appears to exclude several important analyses that properly considered the impact of fuel blending practices and test fuel parameters on tailpipe emissions. EPA also omits studies showing that the organics emitted from the tailpipe will have a lower

ozone forming potential with E15 in comparison to E10. We encourage EPA to broaden and strengthen its review of available studies and data pertaining to E15 exhaust and evaporative emissions. RFA will provide additional information regarding these emissions studies and data in its formal written comments responding to the proposed rule.

E15 Made at Blender Pumps

In addition, RFA encourages EPA to consider a more flexible approach to regulation of E15 made at blender pumps. A majority of the retail dispensers selling E15 today are, in fact, blender pumps that mix E85 and E10 together to make the finished fuel. Much of the E85 that is used to make E15 via blender pumps today contains natural gasoline denaturant that meets Tier 3 sulfur limits. Under your proposal, E15 made in this manner would not qualify for the 1-psi RVP waiver, even if the finished fuel met applicable sulfur and benzene standards and had volatility of 10.0 psi or less. This seems unreasonable, especially because E15 made from E85 and E10 via a blender pump typically contains just 1 percent natural gasoline.

Rather than effectively eliminate the use of natural gasoline as a component of E85 and E15 altogether, we recommend that EPA adopt the approach to E15 made at blender pumps first proposed in the Renewables Enhancement and Growth Support (REGS) rule. Under that approach, EPA proposed to allow entities who manufacture E15 at blender pumps to use product transfer documents (PTDs), in lieu of performing batch testing, to demonstrate compliance with applicable sulfur, benzene, CHONS, and volatility requirements. RFA believes the approach proposed in the REGS package is reasonable and we encourage the Agency to finalize that approach in the rulemaking under consideration today.

RIN Reforms

In regard to the proposal's RIN reform concepts, RFA generally opposes any changes that would reduce RFS compliance flexibility, diminish liquidity in the RIN market, give certain parties in the marketplace unfairly advantaged positions, add unnecessary complexity, increase administrative burdens, or impugn the RIN market's ability to incentivize expansion of renewable fuel consumption. RFA does not believe any of the four main options proposed represent an improvement or enhancement of the current

RIN program. It is our understanding that the purpose of the RIN reform concepts is to enhance transparency in the marketplace; we do not believe any of the four primary proposed options would accomplish that objective, however.

At the same time, as we have expressed to EPA in the past, we believe there is more the Agency could do to enhance RIN market transparency and public visibility. For example, providing the "RINs Holding Report" in more frequent intervals (e.g., weekly or monthly) would help market participants and the public better understand what broad categories of parties are holding and transacting RINs in near real-time. We also believe EPA should finalize the proposals included in the REGS rule regarding disclosure of certain information related to small refinery exemptions, as this would help the public understand what parties are being exempted from their obligations to obtain and surrender RINs to demonstrate compliance with RFS obligations.

Whereas we see little or no value in the four primary RIN reform concepts proposed in this rulemaking, some of the ideas presented in the proposal's discussion of "Enhancing EPA's Market Monitoring Capabilities" may indeed enhance transparency and likely warrant further exploration. However, we do not believe any of the RIN reform concepts discussed in the proposal should be finalized at this time.

Small Refinery Exemptions

While RFS small refinery exemptions (SREs) are not the explicit subject of this rulemaking or today's hearing, we feel compelled to remind EPA that continued abuse of the SRE program would significantly undermine the ethanol market expansion intended to result from finally allowing year-round sales of E15. In other words, continued SREs threaten to derail the central objective of the rulemaking under consideration today.

Already, more than 2.6 billion gallons of RFS demand have been erased from 2016 and 2017 obligations, and consequently, our industry in 2018 saw the first annual decrease in domestic ethanol consumption in 20 years. As EPA considers the 39 pending requests for 2018 small refiner exemptions, we strongly urge the Agency to exercise more restraint, and assure that any supposed "economic harm" is truly related to RFS obligations. We urge you to deny requests that are clearly not warranted and reallocate any volume that is waived—as directed by the statute. Frankly, if EPA uses RIN prices as a measure for "economic harm," the Agency should not be granting any 2018 waivers—

as RIN prices were at a five-year low and traded for less than a dime at certain points during the year.

Severability

Finally, we continue to believe it is very important that the Agency sever the RVP and RIN reform provisions into two rulemaking efforts in the event it appears from the comments submitted that the RIN reform provisions might jeopardize or complicate promulgation of the RVP measures before May 31. The two disparate pieces of this rulemaking have different time constraints, separate legal authorities and objectives, wholly distinct policy justifications, and different economic impacts. Accordingly, even if EPA decides not to sever the RVP and RIN reform provisions in two separate rules, we ask that EPA clarify in the final rule that any RIN reform provisions are severable from the E15 RVP parity provisions, in the event either or both sets of provisions are challenged judicially.

Thank you and I look forward to your questions.