

January 26, 2018

Diana Galperin
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments of the Renewable Fuels Association (RFA) in response to *Proposed Rule; Renewable Fuel Standard Program; Grain Sorghum Oil Pathway* (82 Fed. Reg. 61,205; December 27, 2017). Docket ID No. EPA-HQ-OAR-2017-0655

Dear Ms. Galperin,

The Renewable Fuels Association (RFA) appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency (EPA) relating to the Agency's proposed rule amending the Renewable Fuel Standard (RFS) regulations to define "distillers sorghum oil" and adding approved advanced biofuel pathways for certain biofuels produced from distillers sorghum oil (DSO).

RFA is the leading trade association for America's ethanol industry. Its mission is to advance the development, production, and use of fuel ethanol by strengthening America's ethanol industry and raising awareness about the benefits of renewable fuels.

RFA strongly supports EPA's proposal to add a definition for "distillers sorghum oil" to the RFS regulations and to add approved pathways to the regulation for certain advanced biofuels produced from DSO. Further, we generally agree with and support the analysis conducted by EPA that determined certain biofuels produced from DSO meet the 50 percent GHG emissions reduction threshold required for advanced biofuels.

However, we believe certain elements of EPA's proposal can be improved upon to ensure greater flexibility, resolve ambiguity, and to avoid potential unintended consequences. We are concerned that some of the proposed language may unintentionally frustrate innovation in the renewable fuels industry. We provide more detailed recommendations below.

- I. **The proposed definition would exclude DSO extracted from grain sorghum that is ultimately converted to butanol or other non-ethanol renewable fuels. EPA should revise the definition to address this issue.**

EPA's proposed definition for "distillers sorghum oil" specifies that qualifying DSO must come from grain sorghum that "is converted to **ethanol**."¹ However, grain sorghum can be used as a feedstock for other renewable fuels that may generate RINs under the RFS program, such

¹ 82 Fed. Reg. 61,212 (emphasis added)

as butanol.² Thus, the currently proposed definition would preclude DSO extracted by producers of butanol or other non-ethanol renewable fuels from qualifying as an accepted feedstock for production of approved renewable fuels and associated RIN generation. We do not believe this was EPA's intention, as the DSO extracted from grain sorghum would have the same characteristics and lifecycle GHG impacts whether the grain sorghum is ultimately used for production of ethanol or some other non-ethanol renewable fuel, like butanol.

We recommend EPA address this issue simply by replacing "ethanol" with "renewable fuel" in the definition of "distillers sorghum oil," as follows:

Distillers sorghum oil means oil recovered at a point downstream of where a dry mill grain sorghum ~~ethanol~~ **renewable fuel** plant grinds the grain sorghum, provided that the grain sorghum is converted to ~~ethanol~~ **renewable fuel**, the oil is rendered unfit for food uses without further refining, and the distillers grains resulting from the dry mill and oil extraction processes are marketable as animal feed.

We believe this simple modification, which makes use of EPA's existing definition of "renewable fuel," would improve the definition and avoid the unintended consequence of stifling innovation in the renewable fuel sector. As described later in these comments, we also recommend clarifying that the definition's term "food" refers to "human food."

II. It is unclear how the regulations would treat distillers oil extracted from the stillage resulting from fermentation of a mix of corn starch and grain sorghum starch. EPA should clarify that distillers oil extracted from a mix of corn and grain sorghum is an acceptable feedstock for RIN-generating renewable fuels.

It is not uncommon for dry mill ethanol plants in certain regions to process a mix of grain sorghum and corn simultaneously, or for frequent substitution of the two feedstocks. As EPA acknowledges, "...corn and sorghum oil extraction can occur at the same facilities."³ In these cases, commingling of distillers oil from corn and grain sorghum feedstocks is inevitable. EPA has already approved distillers corn oil as a feedstock for renewable fuel production and is proposing to approve distillers sorghum oil as well. Thus, EPA should explicitly clarify in the final rule that commingled distillers oil resulting from the processing of grain sorghum and corn is an approved feedstock for renewable fuel production.

Failure to clarify this point may lead to confusion for producers who process both corn and grain sorghum, and it would be impractical, uneconomical, and unnecessary to attempt to segregate oil extracted from corn from oil extracted from grain sorghum.

III. EPA should use the distillers sorghum oil rulemaking process to finalize revisions to the definition of "corn oil extraction," as proposed in the Renewables Enhancement and Growth Support (REGS) proposed rule

² Currently, Pathway O of Table 1 to 80.1426 allows RIN generation for butanol produced only from corn starch. However, EPA has also approved a pathway petition from Gevo, Inc., allowing the production of butanol and associated RIN generation from both corn starch *and* grain sorghum. See: <https://www.epa.gov/renewable-fuel-standard-program/approved-pathways-renewable-fuel>

³ 82 Fed. Reg. 61,207

RFA agrees with EPA's belief, as outlined in the REGS proposed rule⁴, that the current definition for "corn oil extraction" should be revised, as it is too narrow and excludes new and emerging corn oil recovery technologies. The current rulemaking on DSO provides EPA an opportunity to finalize the modifications originally proposed as part of the REGS proposal.

We agree with EPA that broadening the definition of "corn oil extraction" would enhance flexibility and support innovation under the RFS. However, we recommend a slight modification to EPA's proposed definition for "corn oil extraction" in the REGS proposal. EPA should clarify that the phrase "...rendered unfit for food uses..." means unfit for *human* food uses, not animal food (feed) uses like distillers grains.

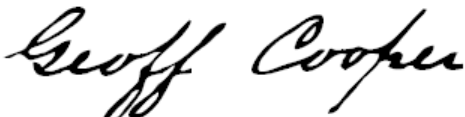
This is an important distinction because the Federal Food, Drug, and Cosmetic Act (FFDCA) defines "food" as "articles used for food or drink for man or other animals..."⁵ The U.S. Food and Drug Administration (FDA) states "...any article that is intended to be used as an animal feed ingredient, to become part of an ingredient or feed, or added to an animal's drinking water is considered a 'food' and thus is subject to regulation."⁶ Thus, we request that EPA insert the term "human" immediately before the term "food," so that the new definition reads "...rendered unfit for human food uses..."

Because FDA includes animal feed in the definition of "food," we further recommend that EPA modify the terms "Non-food grade corn oil" in pathways F and H in Table 1 to 40 CFR 80.1426. We recommend EPA add the term "human" immediately before the term "food," so that the terminology in Table 1 to 80.1426 reads: "Non-human food grade corn oil."

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Thank you again for the opportunity to comment. Please contact me at 636.594.2284 or gcooper@ethanolrfa.org should you have any questions about these comments.

Sincerely,



Geoff Cooper
Executive Vice President

⁴ 81 Fed. Reg. 80828; November 16, 2016

⁵ 21 U.S.C. 321(f) (emphasis added)

⁶ U.S. Food & Drug Administration. "Product Regulation." Available at: <http://www.fda.gov/AnimalVeterinary/Products/AnimalFoodFeeds/ucm050223.htm>