

Testimony of
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**EPA Public Hearing on the Proposed Modifications to Fuel Regulations to Provide Flexibility for E15;
Modifications to RFS RIN Market Regulations Rule
Docket ID No. EPA-HQ-OAR-2018-0775
Ypsilanti, Michigan
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Thank you for the chance to speak today. I am Monte Shaw, Executive Director of the Iowa Renewable Fuels Association.

Who says time travel doesn't exist? In preparing for today, I was reminded of testifying a little over two years ago in Chicago on the proposed REGS Rule. From my perspective, what started back then as an effort to address a few common-sense issues morphed into what was a complex, far-reaching, perhaps good-intentioned, but often mis-guided set of disparate proposals. The REGS rule's inability to offer real-world workable solutions to many of the issues it raised led to its demise. That cannot be allowed to happen to this draft rule.

And today's proposed rule has some similarities in that regard. While our three-minute time limit necessitates that we focus on needed changes to the proposal, let me first start by noting a big difference between REGS and this "modifications" rule. This rule goes to the heart of the regulatory vortex that disallowed the sale of E15 to the majority of the country during the summer months and would, if the good parts of the proposal are finalized, establish a reasonable, intellectually-consistent, legally-defensible solution.

Loudly and clearly, I want to thank President Trump for directing the EPA to begin this process and to EPA leadership for including in this proposal many of the best pathways and justifications for allowing year-round E15 sales.

I want to highlight two such points that must be included in the final rule.

CCA Sec. 211(h)(4)

The EPA's proposed interpretation of 211(h)(4) is long overdue. As someone old enough to have been taught about Venn diagrams in school, I can assure all present today that E15 contains 10 percent ethanol...and a little more. Acknowledging that the one-pound waiver applies to all ethanol blends with "at least" 10 percent ethanol, brings the regulations in line with the ordinary meaning of the words and the extensive Congressional record on this point. I was genuinely impressed with the clear and comprehensive justification for this change.

Substantially Similar

Second, we urge the EPA to finalize the proposed interpretation that E15 at 9 psi RVP is sub sim to the certification fuel, which is now E10. All along, we have asked for E15 to be treated the same as E10. By finalizing this alternative, EPA will ensure that all members of the fuel supply chain are treated equally and have the ability to bring E15 into commerce.

Natural Gasoline in Blender Pumps

But now let us turn to the parts of the proposed rule that remind me of my REGS testimony.

Once again, the EPA is trying to rewrite history, creating a parallel world where millions of dollars of investment are put at risk. Due to a lack of availability of E85 at terminals or E85 offered at outrageously high prices, many ethanol plants around the country began blending their own E85 for sale to retailers. Iowa has many such plants. And since it is already on hand as a denaturant, they often use natural gasoline to create E85. This E85 sometimes goes into blender pumps where it is used to create, among other blends, E15.

This has been done since at least 2011 and the EPA never said a word about it – even as USDA was pouring \$100 million into blender pumps – until the proposed REGS rule tried to pretend it's been illegal all along. In the two years since the REGS rule stalled, no one has been told to stop. Here again, we have a rule that tries to claim the use of natural gasoline in E85 used in a blender pump is essentially illegal because it triggers fuel manufacturer requirements.

We feel strongly that these provisions are a change in policy and regulation. We think the Administrative Procedures Act does apply and public comments should be taken. Today, IRFA calls on EPA to issue a supplemental notice to call for public comments on this issue.

While explaining your proposed changes to 211(h)(4), EPA laid out an eloquent case of the “changed circumstances” and “inherent authority” to revise past decisions that “are not carved in stone.” We only ask the EPA to bring the same spirit to E85 and natural gasoline.

The terms “oxygenate blender” and “fuel manufacturer” do not exist in law, only regulations. They predate the widespread use of blender pumps. EPA does not need to shoe-horn blender pumps into one definition or the other. You need to determine a common-sense, real-world solution to regulate the use of E85 in blender pumps that ensures final fuel specifications are met without creating the very type of “market limitations” that you claim to want to prevent in earlier sections of this draft rule.

Refiners can use natural gasoline to create a BOB that is eventually blended into E15. There is a regulatory program appropriate to large refiners to ensure the final blend meets specs.

Ethanol plants should also be allowed to use natural gasoline to create E85 that is eventually blended into E15. A regulatory program can be instituted appropriate for blender pumps that will ensure the final E15 blend meets all specs, including volatility and sulfur.

Afterall, the EPA itself proposed such a program in the REGS rule – where ethanol plants certify that their E85 is appropriate for use in creating E15 and those product transfer documents (PTDs) are retained by the blender pump retailer to prove compliance.

Ethanol plants in Iowa today are sourcing appropriately speced natural gasoline for use in E85 that blends down to E15 that meets all finished blend specs for E15.

If the E15 meets the specs, the EPA should not care if natural gasoline is used in the E85, just as they don't care if natural gasoline is used in a BOB. Let me be clear, we are not asking the EPA to turn a blind eye or to allow E85 to be used in blender pumps that would create an off-spec E15. If an ethanol plant is unable or unwilling to source the proper natural gasoline, then their E85 should not be used to create E15. But don't outlaw this option for ethanol plants that are doing it right today.

Just as with the one-pound waiver for E15, the EPA must recognize the changes in the marketplace and seek to create a regulatory pathway that achieves congressional intent of limiting emissions without restricting competition and lower-priced alternatives. The EPA should not ignore their previously proposed solution to this marketplace reality.

RIN Reform

Last but certainly not least, IRFA wants to strenuously object to RIN reform Number Four that would put retailers and other ethanol blenders in an untenable financial position. The lack of symmetry between the restrictions on RIN generators and the flexibility granted to obligated parties is simply staggering.

The EPA openly admits it has no evidence of RIN market manipulation. Yet, this proposal would manipulate the RIN market into a grotesque caricature of itself.

This proposal puts a gun to the head of Iowa's retailers, forcing them to sell 100 percent of their RINs each quarter, while allowing refiners to only retire 80 percent of their obligation each quarter, with additional flexibility to push off that compliance into future quarters. The obvious result to any first-year econ student is that RINs will become essentially worthless as obligated parties calmly wait for the clock to tick down on retailers. This proposal creates a market barrier to the expansion of E15 as big or bigger than the RVP regulatory barrier that EPA proposes to remove.

I think it is instructive to remember that RINs were designed by Congress to be more than mere electronic compliance chits. RINs are the heart-and-soul of the market-based flexibility in the RFS that allows obligated parties to comply either by blending their own renewable fuels or by acquiring RINs from another blender.

In that sense, the value of a RIN is essentially the price a refiner is willing to pay in order to NOT blend a physical gallon of renewable fuel. Conversely, a RIN represents the incentive for a blender or retailer to add an incremental gallon of renewable fuel to the market.

If you adopt RIN procedures that eviscerate the value of RINs, as this proposal does, then you have eviscerated the incentive to expand the use of renewable fuels, which is the main purpose of the RFS. With no actual market manipulation to address, this proposal wrecks of a backdoor attempt to simply rip the heart out of the RFS. It must not stand.

Conclusion

We look forward to submitting more substantial comments for the record. And even as we strongly urge the EPA to address the two misguided and unworkable parts of this rule we highlighted today, I do want to end by commending the EPA for including a solid and defensible plan for granting year-round E15 sales that, if adopted, would be a boost to the RFS, fuel consumers, renewable fuels producers, farmers, and rural America. And of course, we want to urge the EPA to finalize this rule before June 1st. Thank you.