

February 16, 2017

EPA's Proposed Renewables Enhancement and Growth Support Rule

Docket No. EPA-HQ-OAR-2016-01041

Growth Energy respectfully submits this comment on the Environmental Protection Agency's proposed rule entitled "Renewables Enhancement and Growth Support Rule" ("NPRM").¹ Growth Energy is the leading association of ethanol producers in the country with 85 members and 96 affiliated companies who serve our nation's need for renewable fuel. Growth Energy has participated in each of EPA's major rulemakings implementing the Renewable Fuel Standard ("RFS") program and is a strong supporter of national strategies to promote the use of renewable fuel and to improve the efficiency of domestic biorefineries.

Growth Energy commends the NPRM's articulated goals of promoting the growth of low-cost ethanol blended fuels in furtherance of the RFS program and providing increased flexibility for biofuels producers through the biointermediates provisions. We have, however, a number of concerns with the rule as proposed and see substantial room for improvement to ensure the rule accomplishes its goals in the most efficient, cost-effective, and least administratively burdensome manner possible. Section I of this comment letter addresses our foremost concern: the NPRM's impact on E15. Section II provides our perspective on the ethanol flex fuel ("EFF") provisions; Section III addresses the biointermediates provisions; Section IV articulates our support for the additional cellulosic pathways; and Section V describes various suggestions and concerns regarding the array of RFS program revisions proposed in the NPRM, including the third-party engineering and quality assurance program ("QAP") updates.

Growth Energy appreciates EPA's consideration of our concerns and suggestions.

* * *

I. The NPRM will isolate E15 as the only fuel without RVP Relief.

Growth Energy's foremost concern with the proposed rule is its impact on E15. The NPRM does not directly address E15 Reid Vapor Pressure ("RVP"); however, it would isolate E15 as the only ethanol-blended fuel to not receive RVP relief in conventional fuel markets. E15 benefits our air quality by reducing greenhouse gas emissions and displacing toxic additives in gasoline, and it is imperative that it is granted the same RVP waiver as standard E10 gasoline. For most of the year, E15 can be used in more than 87 percent of cars on the road. However, without RVP relief, during the summer driving season

¹ 81 Fed. Reg. 80,828 (November 16, 2016) ("NPRM").

(June 1 to September 15), retailers cannot sell E15 as gasoline in conventional gas markets and must instead re-blend to E16 or higher and sell only to flex fuel vehicles, which comprise a mere 8 percent of cars. The RVP restrictions severely restrict retail sales of E15, create confusion for consumers at the pump, and impose substantial additional costs on E15 retailers. The restrictions serve no environmental purpose and are actually environmentally detrimental.

Specifically, with respect to costs, Growth Energy's retail partners have indicated it will be approximately \$1,500 to recalibrate dispensers from E15 to a different blend. With an estimated 800 sites selling E15 by June 1, 2017, and recalibration required twice a year that would equate to \$2.4 million in dispenser reprogramming alone. Retailers would also have to pay to relabel the pumps twice a year at an approximate cost of \$300 per dispenser, totaling \$1.44 million across 800 sites. As E15 offerings continue to spread, these costs will only increase. In sum, the millions of dollars in added costs and administrative burdens serve as deterrents to retailers who want to provide customers an additional choice at the pump, which is both cleaner and less expensive.

EPA appeared to acknowledge this critical issue at the December 6, 2016, hearing on the NPRM; however, no solution was proposed to address the concern, which Growth Energy has highlighted in numerous comments on rulemakings and other Agency meetings. The NPRM highlights this urgent need to extend the 1.0 psi waiver to E15.

On a positive note with respect to E15, Growth Energy supports EPA's pragmatic acknowledgement that it is unnecessary and impractical to require E15 retailers who blend E15 at a blender pump to be subject to the full suite of reporting and batch testing requirements of gasoline producers. *See* 81 Fed. Reg. at 80,862. It is appropriate for E15 blenders to maintain Product Transfer Documents ("PTDs") to demonstrate compliance with volatility, CHONS, sulfur, and benzene requirements.

II. Ethanol Flex Fuel Provisions

Growth Energy supports EPA's common-sense re-designation of E16-50 from gasoline to part of a larger E16-E83 EFF family. This characterization is within EPA's legal authority and will not give rise to environmental protection concerns given the proposed EFF standards. Moreover, as the Agency acknowledges, it is both illogical and impractical to subject a blender of, for example, E30 to the stringent gasoline refiner requirements when E30 currently cannot be used as conventional gasoline.

Growth Energy also agrees with the flexibilities afforded full-refiners, bulk blender-refiners, and blender pump-refiners in complying with EFF quality requirements; however, additional enhanced flexibilities should be afforded to ethanol facilities to spur production of low-cost EFF. Specifically, the NPRM imposes more stringent requirements on natural gasoline blendstock than are necessary to ensure that finished EFF meets the 10 ppm sulfur/.62 benzene specifications. It is Growth Energy's understanding based on engagement with both our members and producers in the natural gasoline liquids space that natural gasoline meeting the NPRM's requirements is not currently available in quantities

sufficient to supply the market² or at a reasonable cost to consumers. Thus, the NPRM will ultimately necessitate the use of other refined, hydrocarbon blendstocks, which would ultimately raise costs for consumers of E85 and midlevel ethanol blends.

Growth Energy supports the alternative approach to the unnecessarily stringent natural gasoline standards EPA identified in the NPRM. *See* 81 Fed. Reg. at 80,857-80,858. Natural gasoline producers should be able to certify natural gasoline at levels above the NPRM's specifications, which ethanol facilities could then use at appropriate quantities when blended denatured or undenatured ethanol to produce EFF meeting the EFF sulfur and benzene requirements.³

Growth offers for EPA's consideration the following additional comments regarding aspects of the EFF proposal:

a. EFF Batch Certification

For EFF full-refiners, EPA proposed that samples for batch certification must be "drawn from the top, middle, and bottom of the tank." 81 Fed. Reg. at 80,859. At present, it is not possible to draw samples from the middle and top of the tank. As EPA is likely aware, due to air pollution concerns, regulators have required a floating roof on these tanks, and to help minimize vapor production, many ethanol tanks have been built without sampling standpipes. Many tanks only have single sample taps at a fixed location. Given this limitation, EPA should only require sampling from the available sample tap. EPA should allow individual facilities to show homogeneity in their product through their established quality assurance procedures.

b. EFF Hand-Blending

Growth Energy suggests that EPA reconsider its proposed exclusion of the "hand blend" option for certification of EFF blendstocks. *See id.* Current industry practice includes hand blends of EFF for in-line blending systems. While the EPA suggests that an unacceptable variability may be present in the EFF composition, the EPA provides no guidance on what variance would be acceptable versus unacceptable. Many facilities use in-line blending to create denatured fuel ethanol where the natural gasoline inclusion tolerance must fall within a 0.5% volume tolerance (between 1.96% volume and 2.50% volume). In fact, these systems control the product composition in a much tighter band. We fail to see how a tolerance significantly less than 0.5% volume can provide excessive variability in a blend where the hydrocarbon component is measured by whole percentages, such as E51, E70 or E85.

c. CHONS Controls for EFF

² For ethanol facilities that would produce EFF using natural gasoline, infrastructure constraints would necessitate that the natural gasoline used as denaturant and the natural gasoline blended to create E85 are one-in-the-same.

³ Growth Energy refers EPA to POET, LLC's comment letter filed on the NPRM docket for additional detail regarding natural gasoline availability, cost, and less restrictive means to ensure EFF produced with natural gasoline meets the proposed environmental standards.

Growth Energy supports EPA's determination that additional CHONS controls are not necessary for EFF or natural gasoline blendstock. *See* 81 Fed. Reg. 80,853. There is no known engine failure data due to catalyst issues in flex fuel vehicles associated with non-CHONS elements in EFF. Accordingly, additional control measures are not appropriate and would only further burden EFF producers that utilize natural gasoline blendstock to produce low cost EFF.

d. Compliance Date for EFF Provisions

EPA has proposed that requirements for EFF would apply to EFF full-refiners and bulk blender-refiners beginning January 1, 2018, with a two-month lead time for registration submittal, and certified natural gasoline producers' requirements would apply December 1, 2017, also with a two-month lead time for registration. *See* 81 Fed. Reg. at 80,870. Growth Energy is concerned that, depending on when the rule is finalized, this schedule for compliance obligations may be aggressive and difficult to meet, especially for certified natural gasoline producers. For example, if capital projects are indeed required, feasible, and justifiable, the industry will need more than this allotted time to implement those projects. The industry will need appropriate time to analyze their production streams, engineer treatment solutions, solicit competitive bids and construct and install the new equipment. Many large pumps, compressors, and vessels have a six- to nine-month lead time. Requiring completion of these projects by December 1, 2017, would simply not be feasible. Two years after the publication of the final rule would allow reasonable time to design, engineer, and build solutions if such work is made necessary by the final specifications/rules.

e. Denatured fuel ethanol (DFE) should not be prohibited as a parent blend at a blender pump

Growth Energy encourages EPA to reconsider its proposed prohibition on DFE as a parent blend. The availability of DFE at a blender pump is a lower cost way to produce EFFs. EPA's concerns with blending DFE at a blender pump appear to be primarily safety-related rather than environmental. There are numerous engineering solutions that may be utilized to mitigate these safety concerns (including E85 compatible flame arrestors and blanketing of headspace with an inert) and to ensure DFE can safely be blended at a blender pump. Were EPA to prohibit DFE as a parent blend at a blender pump, it would eliminate further development and innovation of such engineering solutions thereby foreclosing an additional lower cost avenue to production of EFF. EPA's expressed aim in the REGS rule is directly contrary to this outcome, which would also undermine the goals of the RFS program.

We respectfully suggest that EPA should leave such safety determinations to the Authorities Having Jurisdiction (state and local fire marshals) over these types of concerns and not impose a federal regulatory roadblock to use of DFE as a parent blend at a blender pump.

f. EFF Sampling Survey

Growth Energy opposes the NPRM's proposal to include an EFF sampling survey program to which EFF producers would be subject. The E15 survey on which this proposal is based has proven costly and burdensome on E15 producers, and it does not appear that these costs outweigh the benefits. Moreover, an EFF sampling survey is not necessary for compliance assurance given the NPRM's other provisions.

III. Biointermediates

Growth Energy supports the use of biointermediates for the production of renewable fuels, as it will create further opportunities for the industry to produce advanced biofuels using waste products from non-biofuel plants, like breweries. However, under the NPRM, these non-biofuel producers would be obligated to comply with the extensive Renewable Fuel Standard (RFS) protocols in order to engage with biofuel producers. We do not think non-biofuel producers should be required to comply with the RFS since they are not producing fuel, and because it would de-incentivize them from providing biomass to ethanol plants to produce cellulosic biofuel.

It is appropriate for the registered renewable fuel producers to retain the obligations under the RFS, which would include recordkeeping requirements for biointermediate batch information and the like. Additionally, the renewable fuel producer should include in its registration a third-party engineering report that includes an evaluation of the biointermediate feedstock sources and processes; however, the biointermediate producer should not have an independent obligation to engage a third-party auditor through the QAP process or otherwise. As currently framed in the NPRM, the burdens imposed on a biointermediate producer would likely be so significant as to dissuade such parties from providing renewable biomass to produce advanced biofuels.

For example, a craft brewery with limited resources and which has devoted those resources towards perfecting its craft would surely be dissuaded from making a waste alcohol stream available to an ethanol producer if in order to do so the brewer had to (1) register with EPA, (2) subject itself to QAP audits, (3) learn and engage with the EMTS, and (4) risk incurring liability for innocent mistakes made in complying with these foreign and cumbersome requirements. These regulatory burdens would overpower an entity otherwise inclined to engage in a mutually beneficially business relationship with a renewable fuel producer that would ultimately result in lower cost renewable fuels for consumers. This result should be avoided.

IV. Cellulosic Pathways

Growth Energy supports EPA's proposal to add new pathways for short-rotation poplar and willow trees to help expand cellulosic biofuel production. Growth of low GHG cellulosic fuels is important not only in environmental benefits gained but for the overall success of the RFS program. The agency is on firm footing with its analysis of lifecycle GHGs from these sources.

V. RFS Program Updates

Growth Energy offers for EPA's consideration the following additional comments regarding aspects of the NPRM's RFS proposal:

a. Renewable Volume Obligation for Natural Gasoline

Growth Energy strongly agrees with EPA's proposal to decline to require EFF producers who utilize natural gasoline blendstock in the production of EFF to be subject to a Renewable Volume Obligation ("RVO"). *See* 81 Fed. Reg. 80,871. We fully concur that imposition of an RVO (1) may be a

significant administrative burden on both EFF producers/blenders and the Agency, and (2) would deter additional growth of EFFs in direct tension with the goals of the RFS program. First, as a practical matter, it would be very difficult for NGL producers of certified natural gasoline blendstock (on whom the RVO would fall) to identify what volume of NGL was purchased for use as an EFF blendstock as opposed to denaturant use. Similarly, as EPA correctly noted, an RVO associated with uncertified natural gasoline blendstock would potentially result in numerous additional small parties becoming subject to RVO requirements, which would entail similar concerns to those explained at length in EPA's proposal to deny petitions to move the point of obligation. *See* "Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation," EPA, (November 2016) *available at* <https://www.epa.gov/sites/production/files/2016-11/documents/420d16004.pdf>. These additional burdens, both practical and financial, would likely suppress additional growth of lower cost EFFs produced using natural gasoline, thus working at cross purposes with the RFS Congress envisioned.

b. Carbon Capture & Sequestration

Overall, Growth Energy supports EPA's proposal to allow carbon dioxide generated from ethanol fermentation that is captured and sequestered as a lifecycle GHG emissions reduction technology. *See* 81 Fed. Reg. at 80,878. Growth Energy specifically supports the "displacement approach" articulated in the NPRM, whereby carbon dioxide captured as a co-product from the ethanol process displaces carbon dioxide from geologic reservoirs in beverages and other commercial uses. *See* 81 Fed. Reg. at 80,881. This technology can significantly enhance the RFS program's GHG reduction goals.

c. Enhanced requirements for third-party engineers and quality assurance program (QAP) auditors

The NPRM states EPA's concern that invalid RIN generation is due, at least in part, to insufficient independence of third-party auditors and conflicts of interest between renewable fuel producers and third-party professional engineers. EPA does not explain, however, how the burdensome requirements proposed on third-party auditors will cure the purported RIN fraud concerns, which, as an aside, are largely a non-issue within the ethanol industry. Nowhere does the NPRM identify the costs associated with these enhanced requirements, but it is obvious that a requirement that a facility use a different third-party auditor from its triennial reviewer will impose not-insubstantial costs on renewable fuel producers associated with finding a new consultant appropriate to take on the work, and getting the new reviewer up to speed with the facility. *See* 81 Fed. Reg. at 80,905. These burdens should be appropriately evaluated before EPA implements additional requirements for third-party auditors that may not even yield the benefits sought.

Additionally, there is no reason that a third-party auditor could not fulfill its obligations to be impartial simply because it has provided consulting advice to the producer multiple years in the past. *See id.* This proposal would unnecessarily winnow down the pool of companies able to provide these needed resources to the plants, and, in any event, three years is an excessive time frame to exclude producers and third-parties from working with one another. In sum, Growth Energy requests that EPA reconsider whether the burdens imposed on industries that have not had significant issues with fraud are appropriate for the possible benefits associated with the enhanced requirements.

d. Confidential Business Information

Growth Energy agrees with EPA's assessment that "most RIN-related information is generally entitled to treatment as CBI." 81 Fed. Reg. at 80,910. Growth Energy wishes to emphasize that maintaining company and facility information, fuel and co-product production information, and feedstocks as confidential in the context of EMTS transactions is of the utmost importance, as disclosure of such information could have significant adverse consequences for the businesses involved.