



June 24, 2019

Iowa Renewable Fuels Association  
5505 NW 88<sup>th</sup> Street, #100  
Johnston, IA 50131

RE: Waiver Request (AI-09-1)

Dear Iowa Renewable Fuels Association:

This letter is in response to the request for a waiver of the portion of the Iowa Administrative Code Section 21-85.39 adopting by reference NIST Handbook 130 (2013) Section G, 2.1.2 which prohibits the mass marketing of E-15 one ton fuel between June 1<sup>st</sup> and September 15<sup>th</sup> of a calendar year. The above referenced section states as follows:

Section G. Uniform Engine Fuels and Automotive Lubricants Regulation

Section 2. Standard Fuel Specifications

2.1.2 Gasoline-Ethanol Blends (a)(1)1.0 psi for blends containing 9-10 percent ethanol from June 1-sept. 15.

IRFA Executive Director Monte Shaw requested the waiver based on the fact that on May 30, 2019, the United States Environmental Protection Agency (EPA) issued an amended administrative rule that withdrew the “vapor pressure” prohibition on the retail marketing of motor fuel containing 15% ethanol from June 1<sup>st</sup> through September 15<sup>th</sup> of a calendar year. While the EPA has made the above-referenced change in their regulatory structure, the National Institute of Standards and Technology (NIST) has not yet completed (the process is underway) their process to alter their requirements to reflect the EPA’s regulator change. The lag in NIST’S change of their standards creates a regulatory inconsistency between the EPA and IDALS as IDALS’ administrative rules incorporate by reference the NIST standard that contains the “vapor pressure” seasonal sales prohibition.

The criteria for reviewing a variance request is set out in Iowa Code Section 17A.9A(2). That subsection is set out below:

Upon petition of a person, an agency may in its sole discretion issue a waiver or variance from the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

- a. The application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested.
- b. The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

- c. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law.
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

#### Findings

After consultation with Mike Harrington, Bureau Chief, Weights and Measures Bureau, I find that:

1. This rule currently poses undue hardship on Iowa's renewable fuels industry and on Iowa motor fuel consumers due to the regulatory confusion created by the time lag between the EPA's change in their regulatory requirements and the NIST standards contained by reference in the cited Iowa administrative rule.
2. This waiver request does not prejudice the substantial legal rights of any person.
3. This rule is not mandated by statute or another provision of law.
4. The administrative process utilized by the EPA to adopt the rule change set out above provided all of the legally required protections to entities impacted by the removal of the seasonal "vapor pressure" prohibition on the marketing of E-15 motor fuel.

#### Conclusion

Therefore, I hereby **grant the waiver of Iowa Administrative Code 21-85.39 incorporating by reference NIST Handbook 130 (2013) Section G, 2.1.2** hereby allowing the marketing and for the sale of E-15 motor fuel in Iowa **between June 1, 2019 and September 15, 2019.**

Sincerely,



Stephen Moline  
Regulatory Division Director  
Consumer Protection & Industry Services and Food Safety & Animal Health