

April 29, 2019

Comments to the Environmental Protection Agency on its Proposed Rule entitled “Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations”

84 Federal Register 10584 (March 21, 2019)
RIN: 2060-AU34
Docket No: EPA-HQ-OAR-2018-0775

Dear Administrator Wheeler:

Taxpayers for Common Sense (TCS) and National Taxpayers Union provide the following comments to the Environmental Protection Agency (EPA) on its proposed rule entitled “Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations,” which was published at 84 Federal Register 10584 on March 21, 2019. Thank you for the opportunity to offer comments on this proposed rule, which will determine the extent to which corn ethanol is able to further penetrate an already distorted marketplace.

EPA proposes to expand 15 percent ethanol (E15) sales year-round despite current prohibitions on summertime use due to ozone concerns. However, we urge EPA to abandon its current proposal due to incomplete supporting data, a failure to comprehensively assess the economic and environmental costs of expanding E15, and the numerous taxpayer and consumer costs that would result if EPA’s proposal moved forward. EPA has partially assessed the large economic costs associated with increased biofuels use in past Renewable Volume Obligation (RVO) rules and detailed the negative impacts of increased biofuels use in its second triennial report to Congress. However, this current rulemaking omits any similar analysis. Before proceeding, EPA must revisit and expand these and other analyses to assess the full costs that increased availability of E15 will pose for both taxpayers and consumers.

Expanding E15 Sales Hurts Taxpayers, Small Engines, Food and Fuel Prices, and the Environment

The ethanol industry claims E15 will help the agriculture sector rebound from lower commodity prices spurred in part by the Administration’s recent trade policies. However, throwing more subsidies and market distortions into an already heavily subsidized and distorted marketplace will not lead to long-term resiliency for agriculture. Propping up one special interest at taxpayers’ and consumers’ expense will only lead to a continued dependence on federal subsidies and more long-term costs and liabilities. After 40 years of subsidies, government mandates, and other special treatment, it is time to eliminate the carve outs and special supports for corn ethanol. Already the corn ethanol industry benefits from an annual consumption mandate through the Renewable Fuel Standard (RFS), subsidies in the farm bill energy title, and a bewildering array of other federal supports.

Expanding E15 sales year-round would be a major step in the wrong direction. Taxpayers spent \$100 million in 2015 on specialized ethanol blender pumps and storage tanks to dispense and store higher ethanol blends such as E15 through the U.S. Department of Agriculture’s (USDA) Biofuels Infrastructure Partnership program. Additional subsidies for blender pumps in USDA’s Rural Energy for America Program (REAP) cost taxpayers another \$3 million despite Congressional opposition. Allowing summertime E15 consumption may further increase these infrastructure costs, as EPA has acknowledged in the past,ⁱ in addition to other economic, consumer, and environmental costs. Furthermore, long-term liabilities and taxpayer costs linked to greater consumption of corn ethanol would be exacerbated, many of which EPA detailed in its most recent triennial report to Congress. These are discussed in turn.

Current Rule Fails to Consider Full Costs of E15 Proposal

In its proposal, EPA argues that E15 should receive a 1 psi waiver from Reid Vapor Pressure (RVP) standards during the summertime, similar to the treatment for E10. Since E15 has a higher RVP score (up to 10.0 psi), a waiver would be necessary for the fuel to be used during summer months since the Clean Air Act currently restricts RVP to 9.0 psi RVP due to air quality concerns. EPA suggests that the primary reasons for extending the 1 psi waiver to E15 would be to promote “the use of ethanol due to its importance to energy security and the agricultural sector.”ⁱⁱ Not only does EPA contradict itself on these issues in its response to questions from the Office of Management and Budget (OMB) in documents in the proposed rule docket, but at least one other “commenter” in the Administration also raised concerns that the Agency is failing to consider the full costs of its E15 proposal. Specifically, during the OMB review of this proposal, EPA wrote that ethanol consumption was unlikely to increase much if at all due to expanding E15 sales year-round. If this was true, then the purported “energy security and... agricultural sector”ⁱⁱⁱ benefits of E15 would not be realized.

On the other hand, EPA fails to consider the numerous costs of E15 that would be exacerbated by any increase in the fuel’s use, including misfueling of older vehicles and small and off-road engines that EPA acknowledges in the proposed rule. The complete environmental and economic costs of EPA’s E15 proposal should be fully assessed or else taxpayers and consumers will pay the price. The interagency “commenter” on earlier drafts of this proposal agreed by arguing the following:

“Commenter requests that EPA perform an economic analysis of the potential impacts of this rulemaking. It is highly likely that the proposed rulemaking is economically significant due to the potential impacts on the RIN marketplace and potential impacts on both GHG [greenhouse gas], evaporative emissions, and criteria pollutants. As part of this proposed rule, the agency should evaluate the potential emissions impacts and perform both the economic and air quality analysis to show those potential impacts compared to today’s baseline. Even if the emissions changes did not cause an exceedance of an individual vehicle’s emissions standards, the emissions changes would still be a change from the baseline that should be analyzed. When even small emissions changes are applied across the vehicle fleet, in particular for the older part of the fleet that appears to be most susceptible to emission increased due to higher ethanol blends, the monetized and air quality impacts may be large. EPA denied part of the E15 waiver in 2010 (5 FR 68094 (November 4, 2010)), in part because the agency was concerned the older vehicles would exceed their emission standards...”^{iv}

In the past, EPA itself has estimated and detailed some costs and negative impacts of greater biofuels – particularly corn ethanol – consumption. While we appreciate EPA’s recognition of some of these costs – for instance, higher fuel costs for consumers in its 2019 RVOs – EPA has acknowledged that these estimates provide only a small glimpse of the full picture. In its final rule for 2014-2016 RVO volumes, EPA estimated that required use of corn ethanol increased consumers’ fuel costs (as compared to gasoline) by \$424 million in 2015 and between \$453 and \$597 million^v in 2016. EPA also estimated that the increase in conventional (corn ethanol) mandated volumes from 2014 to 2016 alone would cost consumers between \$895 and \$1,181 million.^{vi} Unfortunately, EPA completely ignores these past findings in its proposed E15 rule.

Furthermore, as the Agency has noted,^{vii} these past assessments do not include any of the other taxpayer or consumer costs associated with increased biofuels use. At a minimum, the following negative impacts and associated costs should be fully assessed in EPA’s decision on year-round E15 use:

- **Increased taxpayer costs of ethanol infrastructure:** As detailed above, at least \$103 million in taxpayer dollars has already been spent on special ethanol blender pumps and storage tanks, required because ethanol is more corrosive than gasoline. Current USDA Secretary Perdue has suggested that more subsidies may be on their way due to this E15 decision.^{viii}
- **Damage to small/off-road engines and older vehicles:** The E15 partial waiver from Nov. 2010^{ix} (which allowed initial use of E15 in newer vehicles during non-summer months) detailed various concerns of using E15 in older vehicles, including materials compatibility issues, elevated emissions, and fuel and vapor leaks, not to mention problems in small engines such as lawnmowers, chainsaws, and boats as well. Replacing or repairing these engines increases costs for consumers. As EPA acknowledges, no new information exists that would demonstrate E15 could be compatible with these engines. Further, millions of lawnmower, gas trimmer, and other small-engine consumers who have used their devices almost solely in the summer months would **for the first time** confront the possibility of dumping E15 into their gas tanks if this rule takes effect.^x
- **Higher food and feed costs:** Experts including the Government Accountability Office (GAO) have detailed higher food and feed costs tied to greater use of corn ethanol (and underlying increased demand for corn).^{xi} Approximately 40 percent of the U.S. corn crop is used for ethanol production, which impacts corn prices and other commodity prices particularly during years of supply shocks such as the 2012 drought. The ethanol industry has recently admitted that ethanol increases crop prices while lobbying for greater ethanol consumption and hence higher corn prices.^{xii} Greater ethanol use pushes corn and other commodity prices upward, leading to increased costs for food and industries relying on these inputs.
- **Lower energy content of E15:** E15 will result in lower mileage per gallon as compared to E0 or E10. According to EPA's proposed rule, ethanol has "one-third less energy than gasoline on a per-gallon basis."^{xiii}
- **Negative air quality impacts:** Despite detailing negative air quality impacts from E15 use,^{xiv} particularly in the summer, the Agency is moving forward with its proposed rule. In the same breath, EPA also acknowledges that limited information on emissions impacts of E15 exists.
- **Greater – instead of lower – lifecycle greenhouse gas (GHG) emissions from corn ethanol:** As detailed in reports from the National Academies of Sciences^{xv} (NAS) and GAO,^{xvi} corn ethanol may not reduce GHG emissions. Expanding E15 use would not change this calculus since the blend would be primarily filled with corn ethanol.
- **Environmental impacts of greater corn production for ethanol:** EPA's own Second Triennial Report to Congress on the environmental impacts of the RFS^{xvii} detailed negative impacts to air, water, soil, land, and wildlife habitat due to greater corn ethanol production, which would only be exacerbated by expanding E15.
- **Increased crop insurance costs:** Planting ethanol feedstocks such as corn in risky and/or dry places such as western KS, parts of NE, SD, and ND increases federally subsidized crop insurance costs when crop production is shifted into places where corn crops are more likely to fail.

Substantially Similar Determination May Place Undue Costs on Owners of Small Engines & Older/Off-Road Vehicles

In its proposed rule, EPA attempts to justify E15 as "substantially similar" to E10 to allow year-round sales of the higher ethanol blend. However, this may in effect render the EPA's partial E15 waivers from 2010 and 2011 meaningless. These waivers allowed E15 to be used in Model Year 2001 and later vehicles but not in small engines, older vehicles, or off-road engines. In the latter case, as EPA admits, E15 causes numerous problems with materials compatibility and engine performance, and these findings have not changed since 2011. EPA seeks comment on whether some of the small engine and older vehicle

protections built into its previous partial waivers, in addition to a sister rule on E15 misfueling mitigation, should be appended to or expanded in EPA's new proposals for year-round E15 sales. If these historic protections are watered down or eliminated, engine damage and associated consumer costs would only increase further.

Conclusion

In conclusion, EPA must abandon its current proposal to expand E15 use year-round. Congress has already justifiably rejected past attempts to expand E15 sales during summer months. Finalizing this proposal would only further increase the numerous taxpayer and consumer costs already associated with greater federally-mandated biofuels use. These costs should be fully considered as EPA determines its next steps.

We thank you for considering our comments.

Sincerely,



Ryan Alexander
President



Pete Sepp
President



ⁱ Environmental Protection Agency, "Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass- Based Diesel Volume for 2017; Final Rule," December 14, 2015, at 77457/1. Docket No. EPA-HQ-OAR-2015-0111. <https://www.govinfo.gov/content/pkg/FR-2015-12-14/pdf/2015-30893.pdf>

ⁱⁱ Environmental Protection Agency, "Modifications to Fuel Regulations To Provide Flexibility for E15; Modifications to RFS RIN Market Regulations," March 21, 2019, at 10592/3. Docket No. EPA-HQ-OAR-2018-0775. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2018-0775-0002&contentType=pdf>

ⁱⁱⁱ *Id.*

^{iv} Office of Management and Budget, "Summary of Interagency Working Comments on Draft Language under EO 12866 and EO 13563 Interagency Review. Subject to Further Policy Review," March 11, 2019, at 2-3. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2018-0775-0071&attachmentNumber=6&contentType=pdf>

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- ^v Environmental Protection Agency, “Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass- Based Diesel Volume for 2017; Final Rule,” December 14, 2015, at 77488/2. Docket No. EPA–HQ–OAR–2015–0111. <https://www.govinfo.gov/content/pkg/FR-2015-12-14/pdf/2015-30893.pdf>
- ^{vi} Environmental Protection Agency, “Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass- Based Diesel Volume for 2017; Final Rule,” December 14, 2015, at 77488/2-3. Docket No. EPA–HQ–OAR–2015–0111. <https://www.govinfo.gov/content/pkg/FR-2015-12-14/pdf/2015-30893.pdf>
- ^{vii} Environmental Protection Agency, “Renewable Fuel Standard Program: [Proposed] Standards for 2019 and Biomass- Based Diesel Volume for 2020,” July 10, 2018, at 32051. Docket No. EPA–HQ–OAR–2018–0167.
- ^{viii} Clayton, Chris, “Worries Over EPA E15 Rule,” October 25, 2018. <https://www.dtnpf.com/agriculture/web/ag/news/world-policy/article/2018/10/25/ag-secretary-perdue-hears-concerns-2>
- ^{ix} Environmental Protection Agency, “Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator,” November 4, 2010, at 68122/1. Docket No. EPA–HQ–OAR–2009-0211. <https://www.govinfo.gov/content/pkg/FR-2010-11-04/pdf/2010-27432.pdf>
- ^x Environmental Protection Agency, “Cleaner Air: Gas Mower Pollution Facts,” <https://www.peoplepoweredmachines.com/faq-environment.htm>.
- ^{xi} Government Accountability Office, “Biofuels: Potential Effects and Challenges of Required Increases in Production and Use,” August 2009. <https://www.gao.gov/new.items/d09446.pdf>
- ^{xii} Wisconsin State Farmer, “Year-round E15 proposal vital to producers,” March 13, 2019. <https://www.google.com/amp/s/amp.wisfarmer.com/amp/3144199002>
- ^{xiii} Environmental Protection Agency, “Modifications to Fuel Regulations To Provide Flexibility for E15; Modifications to RFS RIN Market Regulations,” March 21, 2019, at 10606/1. Docket No. EPA–HQ–OAR–2018–0775. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2018-0775-0002&contentType=pdf>
- ^{xiv} See *e.g.*, Environmental Protection Agency, “Modifications to Fuel Regulations To Provide Flexibility for E15; Modifications to RFS RIN Market Regulations,” March 21, 2019, at 10599/1-2. Docket No. EPA–HQ–OAR–2018–0775. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2018-0775-0002&contentType=pdf>
- ^{xv} National Research Council, “Potential Economic and Environmental Effects of U.S. Biofuel Policy,” 2011. <https://www.nap.edu/read/13105/chapter/2>
- ^{xvi} Government Accountability Office, “Renewable Fuel Standard: Program Unlikely to Meet Its Targets for Reducing Greenhouse Gas Emissions,” November 2016, at 4. <https://www.gao.gov/assets/690/681252.pdf>
- ^{xvii} Environmental Protection Agency, “Biofuels and the Environment: The Second Triennial Report to Congress,” June 29, 2018. https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=341491