



EPA Says Proposal Will Extend RVP Waiver to E15, Tighten RIN Market

APRIL 5, 2019 – EPA action on biofuels last month drew both cautious praise and harsh criticism from stakeholders, generating conflicting assessments from biofuel groups and oil refiners that have already taken the issue to court.

After years of pleas from farm groups and ethanol producers, the EPA on March 12 proposed regulatory changes that would lift the ban on the summertime sales of E15 (gasoline blended with up to 15 percent ethanol) in most of the country. As part of its proposal, the EPA is also calling for changes to the renewable identification number (RIN) compliance system under the Renewable Fuel Standard (RFS) program to enhance transparency in the market and deter price manipulation.

To expand E15 sales, the rule would extend an exemption of air quality rules – the 1-psi Reid Vapor Pressure (RVP) waiver – that covers E10 gasoline to also include the higher blends. In its announcement of the proposal, the EPA conceded the summertime ban on E15 sales "has been unnecessary." The agency's proposal interprets the Clean Air Act as authorizing the waiver being applicable to ethanol blends containing *at least* 10 percent ethanol, including E15. Broad research, including that done by the agency, shows E15 poses no greater air quality risk than E10 during summer months.

USDA announced this week its own study that finds E10 emits 39 percent less carbon dioxide when compared to conventional gasoline.

RINs are serial numbers assigned to batches of biofuels to certify and track their production, use and trading. The EPA's RIN proposal is a response to a volatile fluctuation in prices of the certifications in recent years that have triggered allegations of market manipulation.

Ethanol groups said that while they are grateful that the rule is finally up for consideration, they have concerns as to whether it can be done in time, especially given a five-week holdup in its development earlier this year due to the federal government shutdown.

EPA Administrator Andrew Wheeler, who noted the rule is the result of a directive handed down by President Trump last October, says the regulation changes will be in place by June 1, the beginning of the summer driving season.

A public comment period was launched with the publication of the proposal in the [Federal Register](#) March 21 and will conclude April 29.

Ethanol industry representatives told agency officials at a public hearing in Ypsilanti, MI, last Friday that with the limited time left until the start of the summer driving season, finalizing and implementing the E15 regulatory fix remains a "tall order."

The Renewable Fuels Association and other groups have urged EPA to separate the year-round E15 provisions in the rule from the RIN reforms, which would prohibiting certain parties from being able to purchase separated RINs, require public disclosure when RIN holdings exceed specified thresholds, limit the length of time a non-obligated party can hold RIN, and increase the compliance frequency of the program from once annually to quarterly.

Implementation of the E15 rule in the short-term may also be hampered by litigation that is expected to follow its approval.

Witnesses told agency officials at last week's hearing that with ethanol plants shutting down or idling, and farmers experiencing the worst conditions in more than a decade, removing the summertime ban on E15 would send a much-needed signal to the marketplace.

The ethanol industry was slammed even harder last month when a so-called "bomb cyclone" dumped an unprecedented amount of snow and rain on the Farm Belt, massively flooding the Missouri River and leaving fields under water, roads destroyed, rail lines taken out, river locks and dams incapacitated, and crop bins swollen and bursting at their seams. At least 13 percent of the 1.06-million-gallons-per-day U.S. ethanol production capacity has reportedly been shut down as Iowa, Nebraska and Missouri struggle to recover from the natural disaster. Damages to date are estimated at well more than \$3 billion.

"Time is of the essence particularly since EPA insists on saddling the E15 rulemaking with controversial RIN reforms that will need to be carefully reviewed to ensure they don't undermine ethanol demand," said American Coalition for Ethanol (ACE) CEO Brian Jennings.

Jennings also raised the dispute that the ethanol industry is having with the EPA over the agency's granting of unprecedented numbers in recent years of Small Refinery Exemptions (SREs) that free operations from complying with the RFS if they can show it would pose a "disproportionate economic hardship." The ACE CEO said "the upside potential of E15 year-round will be blunted unless and until EPA returns sanity to the way it handles" the exemptions.

Several lawsuits have been filed by ethanol industry and related groups against the EPA for allegedly misusing the "disproportionate" hardship provisions to lower RIN prices for refiners, including some that have never invested in RFS compliance. The agency is also being sued for refusing to provide exemption data requested by the RFA and others under the Freedom of Information Act.

The EPA has approved more than 50 exemption requests – more than 90 percent of the total submitted – from compliance years 2016 and 2017, reducing ethanol demand by some 2.6 billion gallons. To date, the agency has granted 35 exemptions to the 2017 RFS alone, including five granted the same week the E15 rule was announced, and another one March 28. The agency

okayed only 24 exemptions – less than half of the total requests submitted – for 2013, 2014 and 2015 together. The EPA has received 39 exemption requests for 2018.

EPA has rejected calls from ethanol groups to reallocate the lost biofuel amounts to other refiners.

Reuters reported March 20 that the EPA is likely to issue partial waivers to some of the 39 small refineries seeking relief from the RFS in 2018. The news service said partial approvals marked "an unusual option to balance the competing interests of oil and corn producers." The report notes the agency typically either approves or denies a waiver request in full, and has only granted one partial exemption since the start of the RFS program in 2007.

At the hearing, Renewable Fuels Association President Geoff Cooper also called for severing the RVP and RIN reform provisions into two rulemaking efforts "in the event it appears from the comments submitted that the RIN reform provisions might jeopardize or complicate promulgation of the RVP measures before May 31."

On another point, Cooper also called into question the proposal's failure to extend the RVP waiver to E15 made from blender pumps.

"A majority of the retail dispensers selling E15 today are, in fact, blender pumps that mix E85 and E10 together to make the finished fuel," the RFA head said. "Under your proposal, E15 made in this manner would not qualify for the 1-psi RVP waiver, even if the finished fuel met applicable sulfur and benzene standards and had volatility of 10.0 psi or less. This seems unreasonable, especially because E15 made from E85 and E10 via a blender pump typically contains just 1 percent natural gasoline."