



April 29, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20469

Docket ID No. EPA-HQ-OAR-2018-0775

Sent via Federal eRulemaking Portal www.regulations.gov

RE: Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations

Dear Administrator Wheeler:

On behalf of the members of the American Coalition for Ethanol (ACE), I appreciate the opportunity to comment on EPA's proposed regulatory changes to allow E15 to take advantage of the 1-pound per square inch (1-psi) Reid vapor pressure (RVP) waiver and reforms to the way Renewable Identification Number (RIN) credits are handled under the Renewable Fuel Standard (RFS).

ACE is a grassroots advocacy organization, powered by rural Americans from all walks of life who have built an innovative industry that delivers homegrown biofuel and food for a growing world. Our 500 members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry.

Background and General Comments

The Clean Air Act prohibits the sale of gasoline with a RVP in excess of 9 psi (CAA sec. 211(h)(1)) during the high ozone "summer" season of June 1 – Sept. 15 in conventional gasoline areas of the country. To help allow the use of E10 year-round, Congress amended the Clean Air Act in 1990 to provide a 1-psi RVP waiver (CAA sec. 211(h)(4)) for fuel blends "containing gasoline and 10 percent ethanol" (the highest ethanol content in gasoline at the time).

In 2011 EPA approved a petition to waive the Clean Air Act (CAA sec. 211(f)(4)) to allow the use of E15, a fuel with slightly lower evaporative emissions than E10, in all light-duty vehicles made in model year 2001 and after. EPA did not allow a RVP waiver for E15 at the time. Because EPA only has volatility limits on gasoline during the high ozone "summer" season, E15 can be sold outside the June 1 – Sept. 15 time frame. In other words, year-round sales of E15 are already allowed in many areas of the country, especially those in the reformulated gasoline (RFG) program where the RVP of gasoline is limited.

At the direction of President Trump, due to the growing presence of E15 in the marketplace and changed circumstances since it was approved in 2011, EPA is now proposing to allow E15 to be sold during the "summer" season in all parts of the country.

On March 12, 2019, EPA proposed a rule that when finalized, will deem E15 as “substantially similar” (under CAA sec. 211(f)) to E10 fuel used to certify Tier 3 light-duty vehicles and offer a new interpretation of the Clean Air Act to apply the 1-psi RVP waiver (under CAA sec. 211(h)(4)) to gasoline containing at least 10 percent ethanol. “Therefore, E15, which has within it 10 percent ethanol, meets this definition and should receive the 1-psi waiver specified in the Clean Air Act.”¹

E15 is a clean, safe, and low-cost fuel which can be used in more than 90 percent of the cars on the road today. Since E15 typically costs 2 to 10 cents per gallon less than E10 and gasoline and has a higher octane rating (88 AKI), allowing its sale year-round would give consumers the option to buy a higher quality fuel and save money at the pump. It would also reduce refiner RIN costs and open market access for surplus corn.

EPA’s proposed rule would also make controversial and unwarranted reforms to the way RIN credits are handled under the RFS. These RIN reforms constitute a solution in search of a problem and should not be part of the final rule. While ACE supports providing RVP relief to E15 (preferably for all ethanol blends above E10), we oppose EPA’s RIN proposals because they would undermine ethanol use. We prefer that EPA discard the RIN reforms and proceed to issue a clean rule to grant E15 relief to E15. If EPA insists on moving forward with the RIN reforms, we urge EPA to separate these issues in a final rulemaking.

Again, we urge EPA to complete the RVP rule for E15 rule before June 1st free of unnecessary RIN reforms which would undermine ethanol demand and negate the upside benefit of E15 year-round.

Comments related to CAA sec. 211(h) RVP and 211(f) Substantially-Similar

ACE strongly supports EPA’s proposal to modify its interpretation of CAA sec. 211(h)(4) so gasoline blends “containing 10 percent ethanol,” including E15, would receive the 1-psi RVP waiver. This interpretation of 211(h)(4) is legally-defensible, is consistent with Congressional intent, and reflects the realities of today’s motor fuel market.

We agree the term “containing” used in CAA sec. 211(h)(4) is ambiguous and subject to EPA’s interpretation. ACE supports EPA’s interpretation that E15 “contains” 10 percent ethanol and the phrase “containing 10 percent ethanol” is a floor rather than an upper limit on ethanol content. EPA’s review of legislative history reinforces this interpretation, whereby House legislative text regarding RVP was found to employ the phrase “at least” 10 percent ethanol, suggesting a floor, and the Senate report accompanying enactment of the 1990 CAA Amendments stated that “the 1-psi waiver would allow ethanol blending to continue to be a viable alternative fuel, with its beneficial environmental, economic, agricultural, energy security, and foreign policy implications.”²

It is unquestionable that the motor fuel market has changed considerably since the Agency last issued RVP regulations in 1990. Most gasoline sold in the U.S. today is E10, there is an ever-growing presence

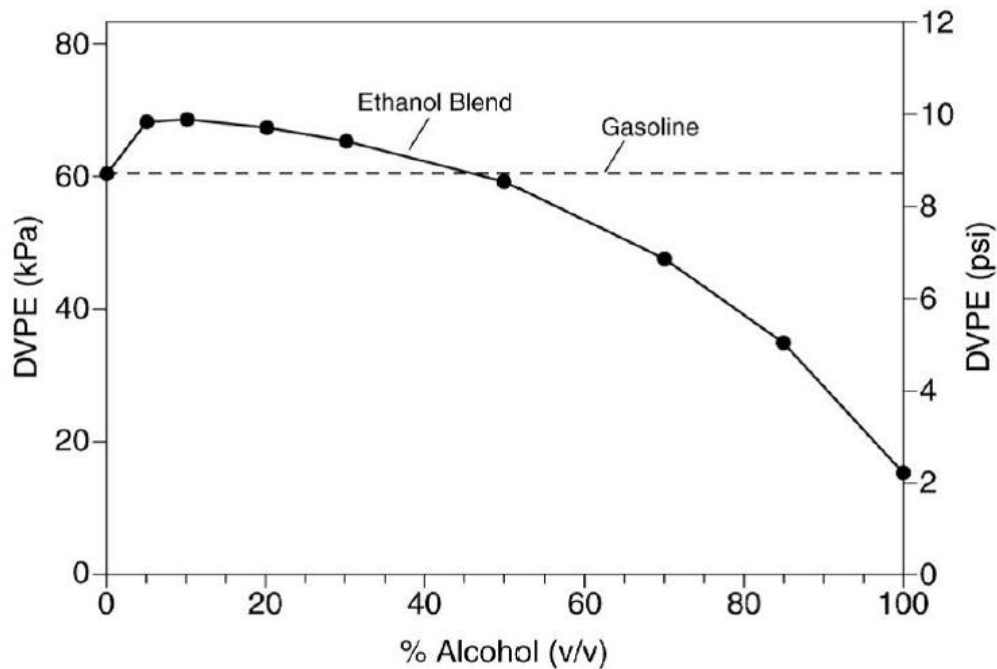
¹ Modifications to Fuel Regulations to Provide Flexibility for E15, EPA Proposed Rule, March 12, 2019

² Senate Report No. 101-228, at 110. 1989

of E15 nationwide (approximately 1,600 retail locations in 30 states), and mid-level blends ranging from E20-E30 are becoming available in many parts of the country.

One thing which has not changed over the years is that refiners have excessive control over the fuel market and erect barriers to increasing the volume of ethanol in a gallon of gasoline. For example, in the late 1980s refiners were unwilling to provide a suitable blendstock for E10 to meet RVP restrictions, so EPA was prompted to allow E10 to receive the 1-psi waiver. Today refiners refuse to provide sufficient volumes of low-RVP conventional blendstock for oxygenate blending (CBOB) into which ethanol can be blended to make E15 while still meeting the 9 psi RVP standard for gasoline in the high ozone summer season. EPA understands that refiners continue to erect barriers, so the Agency is willing to extend the 1-psi RVP waiver as a remedy, allowing 15 percent ethanol to be blended using the same CBOBs currently being supplied for the year-round sale of E10.

EPA correctly notes that adding 15 percent ethanol to the same gasoline blendstock used for E10 would have similar (if not slightly lower) evaporative emissions than E10. In fact, data on evaporative emissions suggest the Agency should take a broader view and consider allowing all mid-level blends to receive the 1-psi waiver. The chart below illustrates how the dry vapor pressure equivalent of gasoline-ethanol blends drops from about 10 psi at an E10 blend to less than 10 psi with E15 and E20 blends. Further, at higher ethanol volumes such as E30 and E40, evaporative emissions fall to 9 psi or less.



ACE believes EPA is taking a needlessly narrow approach by “not changing our interpretation of the way the CAA controls fuels and the way our regulations regulate fuels in any way other than providing the 1-psi waiver to gasoline containing greater than 10 volume percent ethanol as a consequence of interpreting the 1-psi RVP waiver to apply to E15.” By taking such a rigid position with respect to statutory controls and EPA’s own regulatory scheme, the Agency is acting no different than refiners in erecting market barriers to the availability of higher ethanol blends. We urge EPA to revisit this position before issuing a final rule because the rulemaking is a timely opportunity to take steps to deregulate the fuel market for higher ethanol blends.

With respect to CAA sec. 211(f), ACE strongly supports clarifying EPA’s substantially-similar interpretation, making it clear the conditions placed on E15 in 2010 and 2011 do not restrict the application of the 1-psi RVP waiver. We also support EPA’s determination that E15 is substantially-similar under CAA sec. 211(f) to E10 fuel used to certify Tier 3 light-duty vehicles. Indeed, another factor which has contributed to the changing fuel market is EPA’s decision in the Tier 3 Motor Vehicle Emissions and Fuel Standards Rule to update the test fuel from indolene (gasoline without any ethanol) to E10 for the certification of all light-duty and heavy-duty motor vehicles.

Finally, ACE strongly opposes EPA’s proposal to seek certain conditions on the use of E15 under the substantially-similar interpretative rulemaking.

E15 offered through Blender Pumps

Unfortunately, EPA’s proposal contains certain poison pills incompatible with the goal of allowing greater market access to E15. One such provision would deny the 1-psi RVP waiver to a retail station which blends E15 using E85 which was denatured with “natural gasoline.”

As it currently stands, EPA’s proposed prohibition of blending E15 using E85 made with natural gasoline would make it impossible for many retailers to continue to economically buy E85 and sell less expensive fuels like E15 to their customers.

Because refiners or terminal operators have refused to make affordable volumes of E85 available to retailers, many ACE-member ethanol production companies have taken it upon themselves to direct market affordably-priced E85 to wholesalers and station owners. Most of these ethanol producers blend E85 onsite with Tier 3 certified natural gasoline denaturant. To date, most of the E15 sold at retail is mixed via blender pumps drawing from two on-spec products; E85 (containing natural gasoline) in one tank and E10 in another. The final E15 blend contains about one percent natural gasoline. Contrary to EPA’s outrageous accusation in the rulemaking about the likelihood E15 made at blender pumps with E85 produced with natural gasoline would “often violate applicable RVP standards,” the RVP specification for natural gasoline used by most ethanol producers satisfies ASTM and Tier 3 requirements. The E15 Misfueling Mitigation Plan includes a third-party testing requirement which would have already shown violations if they existed and will identify violations if they occur in the future. The fact no data from current testing was included in EPA’s rule would seem to indicate

violations do not often occur. It makes no sense for EPA to restrict this blender pump activity when the final E15 blend meets all specifications.

If the Agency has legitimate concerns as to whether E15 sold at retail through blender pumps meets volatility, sulfur, and benzene controls, it could ask retailers to demonstrate compliance using product transfer documents which would certify the source and specifications for the E85 they purchased for blender pump use. We urge EPA to make this change before issuing the final rule.

RIN Reform Comments

Defying any logical, market, or technical basis, EPA has saddled the RVP rulemaking with four controversial and unnecessary “reforms” to the way RIN credits are handled under the RFS. It is a rare instance when our comments are identical to those of the American Petroleum Institute (API), but with respect to EPA's ongoing quest to countermand the RIN system that serves as the currency of the RFS, both ACE and API have called EPA's RIN reforms “a solution in search of a problem that doesn't exist.”

Remarkably, EPA's proposed rule acknowledges a problem does not exist, indicating the Agency has “yet to see data-based evidence” of RIN market manipulation. Nevertheless, EPA is proposing sweeping reforms to 1) require public disclosure when RIN holdings held by an individual actor exceed specified limits, 2) require the retirement of RINs for the purpose of compliance in real time, 3) prohibit entities other than obligated parties from purchasing separated RINs, and 4) limit the length of time a non-obligated party can hold RINs.

Most of these so-called reforms would have the effect of reducing liquidity in the RIN market, consolidate power in the hands of certain oil refiners, and limit fuel wholesalers, blenders and retailers from using RIN value to sell higher blends of ethanol. Taken together, the RIN reforms constitute another poison pill which is incompatible with the goal of making E15 available to consumers year-round.

Specifically, the proposals to prohibit entities other than obligated parties from purchasing separated RINs and limit the length of time a non-obligated party can hold separated ethanol RINs would harm blenders and retailers, who are using RIN value to help sell higher ethanol blends, and undermine ethanol use in the future.

Separated ethanol RINs have helped fuel wholesalers, blenders, and retailers invest in infrastructure to store and handle ethanol-blended fuel and sell blends above E10 to consumers. Because some refiners have refused to blend ethanol with their gasoline, entrepreneurial blenders and retailers are capitalizing on the economic opportunity to acquire separated RINs and using the proceeds to reduce pump prices. In other words, they retain the RIN and subtract its value from the ethanol-blended fuel they supply to retailers resulting in a low net fuel price. For example, if a gallon of ethanol is selling for \$1.35 and a D6 RIN is worth 35 cents, a wholesaler can supply “RINless” ethanol-blended fuel for a net price of just \$1.00 per gallon. This helps retailers make blends such as E15 and E85 price competitive for their customers. It also helps them afford equipment upgrades to sell higher ethanol blends.

Unfortunately, RIN value has cratered because EPA continues to grant so-called RFS hardship waivers to small refineries (and refuses to reallocate the blending obligations to other refiners). In 2017, the average ethanol RIN price was 70 cents. RIN value collapsed by approximately 80 percent in 2018 and today ethanol RINs trade for about 15 cents.

In the past, EPA has said both standalone (merchant) refiners and integrated refiners with downstream assets recover RIN compliance costs through the prices they charge for gasoline. The Agency's RIN reforms make us wonder if EPA still adheres to this fact. If EPA's goal is to reduce RIN prices, RVP relief for E15 alone is the solution. The quickest way to reduce RIN prices is to increase the supply of RINs. The quickest way to increase the supply of RINs is to blend more ethanol. The quickest way to blend more ethanol is to provide RVP relief for E15.

Of the four RIN proposals, the only one which ACE may remotely support in concept is the first aimed at shedding light on parties who presumably amass a substantial stockpile of RINs. We have historically supported changes that would improve transparency in the RIN marketplace, and believe EPA's Small Refinery Exemption dashboard is a small step in the right direction with respect to providing more transparency about RINs. However, we cannot endorse the first RIN reform at this time and would need to know much more information from EPA about why it is needed, why EPA would single out D6 RINs when there is no evidence of manipulation, and how it would impact the marketplace.

Likewise, it is possible ACE could support some form of reporting requirements and/or third-party monitoring of RIN trading. Doing so would likely be enough to prevent any actual manipulation, and more likely prove manipulation of RINs imagined by some refiners and EPA doesn't exist. In either case, the changes necessary to more closely track those transactions would be burdensome, but imminently preferable to the market-destroying regulations EPA is proposing with this rule.

The proposed additional government regulation of RINs would place new burdens on the businesses who have facilitated higher ethanol blending and made RINs available to obligated parties who claim to be unable to blend and would likely require the creation of an entire new bureaucracy to police what is currently being handled by the market. Small businesses have invested hundreds of millions of dollars in infrastructure to do the ethanol blending some refiners insist they cannot do, and RINs are the way those small businesses get paid for performing those services for refiners. The proposed new regulations would take market-driven incentives away from businesses, stranding their investment and turning control of RINs over to obligated parties that have refused to take any action to assure long-term compliance with the RFS. In effect, EPA would order small businesses to spend their money to do the blending for refiners who refuse to obey the law, and then hand over those credits at a price controlled by the refiners.

The petroleum industry relies heavily on third-party trading of oil and oil product-related financial instruments to improve liquidity and manage risk. Understandably, the oil industry has opposed many attempts to place limits on who can trade securities and how much they can trade, knowing that doing

so could disrupt their ability to reliably provide fuel to the marketplace by limiting the ability to protect themselves from volatility. Limiting who can buy, sell or trade RINs would not eliminate the potential for manipulation, but instead, could concentrate the ability of some remaining party to do some of the things small refiners have incorrectly claimed are happening in the market today.

Forcing non-obligated parties to sell their D6 RINs every quarter simply allows obligated parties to wait until the blender decides to offer them at a “clearance price” every 90 days. But that would not prevent an obligated party from making the type of market-controlling purchases EPA apparently fears. In fact, without retailers blending or other third-party traders buying RINs from non-obligated parties and making them available to refiners and importers for compliance at competitive market prices, what would stop a large refiner from arranging to buy RINs each quarter, hold the maximum it is allowed to own until a non-compliant refiner pays whatever price the holder demands?

If EPA’s obsession with trying to control RINs proves nothing else, it shows the Agency does not understand the real impacts of its interference in the marketplace. Because RINs represent a small fraction of a larger fraction of the cost of a barrel of oil, even at one dollar per RIN, the impact on the price of a gallon of gasoline is about five cents. However, that five cent cost is quickly erased and turned into a profit based on savings refiners achieve making lower octane base fuel and utilizing less expensive ethanol to create market compliant fuels. RINs aren’t part of the cost of gasoline, they reflect obligated parties’ refusal to comply with the RFS which requires the use of cleaner fuels.

Severability

With just over 30 days to go until the start of the 2019 summer driving season, time is of the essence. We encourage EPA to move forward to finalize a rule allowing RVP relief for E15 but to cast aside the unnecessary and harmful proposals to reform the RIN market. If EPA insists on moving forward with the RIN reforms, we urge EPA to separate these issues in a final rulemaking.

Given how EPA’s RIN reforms have divided the oil sector, with API expressing blanket opposition and some merchant refiners expressing support, we are concerned that if EPA insists on combining RVP and RIN reform in a singular final rule it will put year-round E15 use in jeopardy.

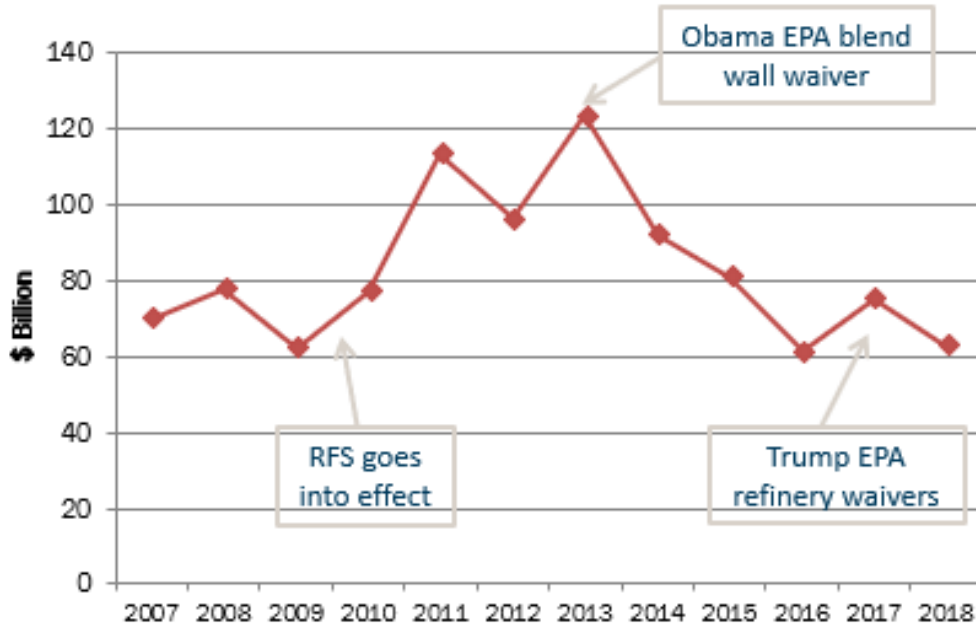
Small Refinery Exemptions and the need for Reallocation of Waived Gallons

The only market manipulation the RIN market has experienced is a direct result of EPA’s mismanagement of the RFS through issuance of blanket Small Refinery Exemptions (SREs) over the past two years with no reallocation of the waived gallons. While we expect EPA will respond that this topic is outside the scope of the current rulemaking, our members firmly believe the upside potential of E15 year-round will be blunted unless and until EPA returns sanity to the way it handles SREs under the RFS.

Under President Obama, EPA bowed to oil refiners and waived RFS blending obligations below statutory levels due to the so-called “blend wall,” sending net farm income into a freefall. ACE and others filed suit, and in 2017, the U.S. Court of Appeals for the DC Circuit ruled EPA violated the statute and ordered

the restoration of 500 million gallons back to the 2016 RFS compliance year. So far EPA has not followed the court order.

Net Farm Income and EPA Mismanagement of the RFS

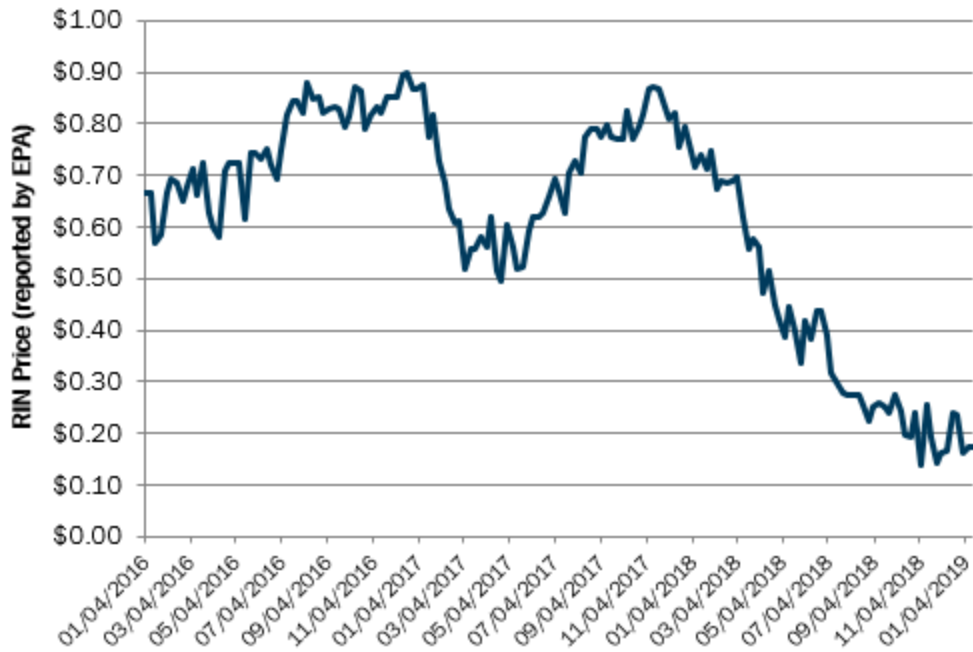


Under President Trump, EPA has retroactively granted more than 50 so-called “hardship” waivers for small refineries, erasing 2.61 billion gallons worth of RFS blending obligations for the 2016 and 2017 compliance years. This is equivalent to eliminating the market for Indiana’s corn growers who produced just over 900 million bushels in 2017. EPA’s mismanagement of the RFS has contributed to a 50 percent cut in net farm income and rising farm debt. If the 40 SRE petitions pending for the 2018 compliance year are also approved by EPA, it will make bad conditions even worse for rural America. While designed for small refineries, companies such as ExxonMobil and Chevron have benefited from EPA’s hardship waivers. Refiners are reporting double-digit profits, but the heart of America is being left behind. The best way to spur market-based demand for farmers and improve economic conditions in rural America is to increase the production and use of renewable fuels. This is even more critical given the uncertainty created by trade wars and efforts to renegotiate existing trade pacts.

Refinery Waivers Remove the Incentive to Blend Ethanol

According to the Renewable Fuels Association, year-over-year domestic ethanol use declined in 2018 for the first time since 1998, falling from 14.49 billion gallons in 2017 to 14.38 billion gallons in 2018. The national ethanol blend rate retreated from 10.13 percent in 2017 to 10.07 percent in 2018. EPA refinery waivers contributed to these setbacks.

Ethanol RIN Prices Collapse Under Small Refinery Exemptions



Ethanol RIN credit prices averaged approximately 70 cents in 2016 and 2017. But in 2018, as EPA retroactively granted more than 50 SREs and allowed the refineries to keep the compliance credits, a surplus of RINs led to an 80 percent collapse in prices. Low RIN prices took pressure off refiners to blend ethanol. At the beginning of 2018, a 70-cent ethanol RIN was a strong incentive for refiners to blend ethanol. But by the end of 2018, as the supply of compliance credits swelled and RIN prices cratered, a refiner could buy more than 12 RINs (representing 12 gallons of ethanol for RFS compliance purposes) for the cost of just one gallon of ethanol, creating an even stronger artificial incentive to buy cheap RINs and avoid blending ethanol. As EPA’s waivers took pressure off refiners to blend in 2018, ethanol prices fell to record lows and many farmer and locally-owned ethanol plants were forced to reduce output or shutdown.

The 2020 RVO and 2021-2022 “Reset” are Opportunities to Reallocate Blending Obligations

Sometime this year EPA is expected to propose the rule to set 2020 blending obligations and a parallel rule to “reset” RFS volumes for years 2021 through 2022. ACE urges EPA to use these upcoming rulemakings as an opportunity to increase undifferentiated renewable fuel volume beyond 15 billion gallons for 2020 to 2022 by reallocating the 2.61 billion gallons waived so far for small refineries and following the court order to restore the 500 million gallons to the 2016 compliance year.

Thank you for your time and consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Jennings". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Brian Jennings, CEO
American Coalition for Ethanol