

Renewable Fuel Standards

Action needed: Use EIA data on E0 when proposing and setting 2018 RVOs.

- **The 2018 NPRM should incorporate EIA estimates of E0 consumption. This NPRM is an opportunity to correct EPA’s pattern of significantly underestimating E0 use and overstating, by hundreds of millions of gallons, the amount of ethanol used in E10. This error leads to inflated RVOs which lead to inflated RIN prices.**

In a recent analysis, EIA determined that the nation uses 5.3 *billion* gallons of E0¹. In calculating the proposed volumes for 2017, EPA chose to assume that only 200 *million* gallons of E0 will be used. As a result, EPA overstated ethanol consumption by more than 500 million gallons.

The 2017 Final Rule was based on the unfounded expectation that “the RFS program would result in all but a tiny portion—estimated at 200 million gallons—of gasoline to contain at least 10% ethanol.”² EPA adopted that position by ignoring all E0 use except projected use by recreational marine engine owners. That approach is not defensible, especially in light of EIA data showing that domestic E0 consumption exceeds five *billion* gallons. The 2018 proposed RVO should correct this mistake. Correcting this gross understatement of E0 usage requires EPA to reduce its projections of ethanol use in the United States by several hundred million gallons.

Doing so would harmonize EPA’s estimates regarding E0 consumption with the estimates of its sister agency, EIA. In the 2014-2016 Final Rule, EPA declined to rely on EIA data regarding domestic E0 use on the grounds that it was “not an appropriate basis for determining the amount of E0 actually sold at retail, and thus cannot be used to estimate likely E0 sales.”³ EIA has recognized that “actual use of E0 in vehicles, boats, and other equipment with gasoline-burning engines was likely [lower than shown in EIA data] because *some volumes of E0* that enter the domestic market *may have been* blended with ethanol *at smaller terminals that are out of scope for EIA reporting or blended at the point of retail sale.*”⁴

But EIA’s May 2016 analysis addressed this point directly. The adjusted analysis still “impl[ies] a remaining supply of . . . 5.3 *billion gallons*[] of unblended E0 to final consumers in the United States in 2015.”⁵ In other words, according to EIA’s analysis of E0 supply, EPA has underestimated E0 by 5.1 billion gallons—and, by treating that fuel as E10 instead of E0, EPA has overstated ethanol consumption by over 500 million gallons.

The docket shows that the Office of Management and Budget raised this same issue with EPA shortly after the EIA published the aforementioned article, and before EPA publicly issued the NPRM for 2017. Specifically, in response to the “illustrative” scenarios that EPA proposed for the 2017 NPRM, an OMB commentator remarked: “The E0 volumes are well below an EIA estimate of likely actual volumes

¹ EIA, Almost All U.S. Gasoline Is Blended with 10% Ethanol (May 4, 2016), <http://www.eia.gov/todayinenergy/detail.cfm?id=26092>

² 2017 Final Rule, 81 Fed. Reg. at 89775.

³ 2014-2016 Final Rule, 80 Fed. Reg. at 77,462.

⁴ EIA, Almost All U.S. Gasoline Is Blended with 10% Ethanol (May 4, 2016), <http://www.eia.gov/todayinenergy/detail.cfm?id=26092> (emphasis added).

⁵ *Id.* (emphasis added).

consumed today.”⁶ EPA responded:

We have taken the same approach to E0 volumes for 2017 as we did in the 2014-2016 final rule. Specifically, the E0 estimates in the referenced table represent the demand for E0 among owners of recreational marine engines that we believe would continue under the influence of the 2017 standards. . . . The volume of E0 consumed today among all consumers is not the basis for estimating E0 volumes for 2017. Moreover, we believe that EIA data estimates of actual E0 volumes do not account for all ethanol blending.⁷

That response is not adequate. EIA data show that EPA is certainly mistaken in the assumption that recreational marine engine owners are the only users of E0, and while EIA data may not account for all ethanol blending, rational decision-making requires EPA to make a more sincere and comprehensive effort to reconcile the *five-billion-gallon* gap between EIA’s estimate of E0 consumption and the estimate used by EPA, and to explain why EIA’s effort to adjust for E0 blended with ethanol at smaller terminals is inadequate.

To the extent EPA is purposefully ignoring all E0 except the amounts consumed by recreational marine engines in order to “incentiviz[e] the market to continue to transition from E0 to E10 and other higher level ethanol blends,”⁸ that decision is not justified. There is no factual basis for believing that the RFS program can lead consumers, in 2017 or 2018, to eliminate the 5 billion or more gallons of E0 that they have used consistently for years. The 2018 rule must take into account the actual use of all E0 and its corresponding impact on ethanol supply.

⁶ Summary of Interagency Working Comments on Draft Language under EO 12866 and EO 13563 Interagency Review 5 (May 11, 2016), <https://www.regulations.gov/document?D=EPAHQ-OAR-2016-0004-0080>.

⁷ *Id.* at 6.

⁸ 2017 Final Rule, 81 Fed. Reg. at 89775.