

Year-Round Sale of E15

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Within Congress, interest and concern continues in the year-round sale of E15—a fuel blend of 15% ethanol and 85% gasoline. Until this year E15 generally could not be sold during summer months because it did not meet the [Reid Vapor Pressure \(RVP\) requirements](#), which limit fuel volatility under the Clean Air Act (CAA), for the summer ozone season (June 1-September 15). On May 30th, the U.S. Environmental Protection Agency (EPA) [promulgated a final rule](#) allowing year-round E15 sales. A potential issue for Congress is if EPA should have the authority to interpret the CAA as it did to make such a change, or if Congress chooses to stipulate how E15 will be treated under the CAA.

Clean Air Act RVP Requirements

The Clean Air Act authorizes the EPA Administrator to [regulate fuels and fuel additives](#). Among other pollutants, the CAA regulates [ground-level ozone](#) (“smog”), which negatively impacts human health among other environmental effects. One of the requirements to reduce smog is a limit on gasoline volatility because volatile compounds evaporate and contribute to smog formation. [RVP](#) is a common metric of gasoline volatility; the lower the RVP, the less volatile the gasoline. RVP requirements in §211(h) of the CAA—which apply to the 48 contiguous states and the District of Columbia—generally prohibit the sale of gasoline with an RVP greater than 9 pounds per square inch (psi) during the high ozone season (i.e., the summer months). The act provides some exceptions, including a waiver—the “one pound waiver”—stipulating that ethanol-gasoline fuel blends containing 10% ethanol (E10) are subject to a 10 psi RVP limit, given certain conditions. Further, the act provides exclusions from the waiver such that, upon notification by a governor that the RVP limit granted for E10 will increase air pollutant emissions in that state, the Administrator must revert to the 9 psi limit for that area. In some areas of the country, generally based on [nonattainment for ozone](#), more stringent RVP limits apply (e.g., 7.0 or 7.8 psi RVP for conventional gasoline), with the one pound waiver added on.

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Authority to Lift the E15 Summer Months Restriction

At issue is whether EPA has the authority to grant E15 the one pound waiver that allows for the year-round sale of E15. On at least two occasions, EPA reported that it lacks the authority to include blends with over 10% ethanol in the one pound waiver. EPA stated in a July 2011 [E15 Misfueling Mitigation Final Rule](#) that "... section 211(h)(4) of the CAA and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9–10 [% by volume] ethanol." However, in May 2017, the EPA Administrator [stated](#) that EPA was undertaking a statutory analysis of the RVP waiver for inclusion of E15. In the [2019 final rule](#), EPA reports that it has the authority to extend the waiver to E15.

Federal Agency Actions

Under the [final rule](#) EPA is to generally allow E15 to be sold year-round, among other provisions. In short, to do this, EPA modified its interpretation of CAA Sec. 211(h)(4) to interpret "containing" to mean "containing at least" 10% ethanol. This modification establishes a lower limit for ethanol content eligible for the one pound waiver instead of an upper limit. EPA also reports that E15 is "substantially similar" to E10 allowing E15 with an RVP of 10 psi to be introduced into commerce during the summer. EPA states it is removing certain limitations on the volatility of E15 promulgated in the [E15 Misfueling Mitigation Rule](#), among other things.

Legislative Action

Multiple bills in the 116th Congress address E15, although they are not directly associated with RVP and year-round sales of E15. For example, H.R. 1024 addresses labeling requirements for fuel pumps that dispense E15. H.R. 104 would prohibit the sale of gasoline that contains greater than 10% ethanol and would repeal the waivers granted to E15. Legislation introduced in the 115th Congress (H.R. 1311, S. 517) would have given ethanol-gasoline fuel blends containing over 10% ethanol (e.g., E15) a waiver from the CAA RVP limits.

Legislative Issues and Options

Stakeholders have varying perspectives on EPA's 2019 decision to allow the year-round sale of E15. The renewable fuel industry [generally agrees](#) with EPA's decision, while the petroleum industry and many environmentalists [disagree](#). Some in the renewable fuel industry [believe E15](#) will enhance competition and will help to strengthen the rural economy. Some in the oil and natural gas industry [do not favor](#) year-round sales of E15 due to concerns about vehicle performance and legal concerns, among other considerations. The American Fuel and Petrochemical Manufacturers [filed a petition](#) for review of the rule with the U.S. Court of Appeals for the D.C. Circuit.

Congress could consider whether to leave the CAA as is, to amend RVP requirements under the CAA to include higher ethanol-gasoline fuel blends, or to underscore that E15 is not to receive an exemption from the RVP requirements. To inform this decision, Congress may consider how year-round E15 sales might affect other federal programs (e.g., Renewable Fuel Standard) and associated stakeholders, such as the petroleum industry, environmental organizations, and the advanced and conventional biofuel industries.

(Portions of this CRS Insight are sourced from CRS Insight IN10703, *Reid Vapor Pressure Requirements for Ethanol*, issued on May 18, 2017, available to congressional clients upon request from the author.)

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