

OPMCA

FuelingMatters

Contact Us

Jennifer Rhoads
President & CEO
614.947.8646 x1
jrhoads@opmca.org

Candace Frank
Director, Membership & Special Projects
614.947.8646 x2
cfrank@opmca.org

Federal Appeals Court Strikes Down Rule Allowing Summertime E15 Sales

Court finds U.S. EPA misinterpreted the statutory language and scraps Trump-era rule.

The U.S. Court of Appeals for the District of Columbia Circuit last week scrapped EPA's Trump-era rule authorizing the use of E15 during the summer driving season. In a unanimous opinion issued July 2, the three-judge panel struck down EPA's interpretation of Clean Air Act language relating to waivers from summertime RVP limits. EPA's original interpretation of the one-pound per square inch RVP waiver applied to E10 fuel only. The Trump administration reinterpreted the language in a 2019 rulemaking so that the one-pound waiver extended to E15 blends as well. However, the court found that the EPA misinterpreted the statutory language and ruled that the one-pound waiver cannot be extended to blends higher than E10.

The opinion effectively blocks the summertime sale of E15 fuel in non-RFG areas. The ruling deals a blow to biofuel producers who hoped the 2019 rule would boost E15 market share and reopen shuttered ethanol processing facilities. This is the second substantial legal loss for the biofuels industry in as many weeks. Last week, the U.S. Supreme Court upheld EPA's authority to issue extensions of small refiner waivers from blending mandates under the Renewable Fuels Standard (RFS). The two rulings will significantly slow the penetration of higher content ethanol blends into the retail market.

In addition, the rulings mean fewer obligated parties will be participating in the RINs market. Fewer parties chasing fewer blending credits will result in significantly lower RIN prices. This in turn, this will calm current volatility in the RINs market where prices have soared since the summertime E15 rule was issued. The court, however, did not go beyond its analysis of the Clean Air Act waiver language and address small gasoline retailer arguments that the E15 rule would force them to sell E15 and be saddled with undue and onerous compliance burdens.

It is not clear how the court ruling will affect E15 sales this year now that the summer driving season has arrived. There is typically a short period of legal limbo after such decisions by federal appeals courts to allow the losing parties time to file for a rehearing of a three-judge ruling before all active judges in the circuit. In this case, there are currently 11 active judges in the District Columbia Circuit. However, a rehearing is unlikely because such proceedings are generally disfavored by the court and require a majority of active judges within the circuit to approve.