TAXPAYERS for COMMON SENSE

January 30, 2020

Comments to the U.S. Department of Agriculture on its Request for Information (RFI) on a Higher Blends Infrastructure Incentive Program

85 Federal Register 2699 (January 16, 2020)
Docket No: Docket ID RBS–20–Business-0002

Dear Mr. Stephenson and Administrator Brand:

Taxpayers for Common Sense (TCS) respectfully submits the following comments to the U.S. Department of Agriculture (USDA) on its "Request for Information on a Higher Blends Infrastructure Incentive Program," which was published at 85 Federal Register 2699 on January 16, 2020.

Thank you for the opportunity to offer comments on this RFI, which will determine future taxpayer subsidies for biofuels infrastructure projects. Over our 25 year history, TCS has raised serious concerns with taxpayer funding for mature biofuels industries such as corn ethanol and soy biodiesel, in addition to federal mandates and other supports that increase taxpayer and consumer costs while doing little to reduce greenhouse gas (GHG) emissions or achieve other goals in the public's interest.

Introduction

USDA seeks comment on a new taxpayer-funded biofuels infrastructure program that purports to "drive economic growth, promote health, and increase public benefit."[1] However, siphoning more taxpayer dollars to the ethanol and biodiesel industries, the main program beneficiaries, will only add to the more than 40 years of taxpayer supports to this mature industry. These subsidies have come in the form of tax breaks, consumption mandates, trade protection, loan guarantees, feedstock subsidies, and biofuel production subsidies. More recently, the federal government has also subsidized biofuel infrastructure projects even though they are already subsidized through federal tax breaks (specifically, the Alternative Fuel Vehicle Refueling Property Credit which will be in effect through the end of 2020[2]).

Most ethanol dispensed through blender pumps is derived from corn, and this is unlikely to change in the future[3] even though cellulosic ethanol was once promised to benefit from the installation of additional blender pumps. With corn ethanol already benefiting from a federal consumption mandate and other federal subsidies, taxpayers should not provide another layer of support. New and expanded subsidies will only create additional long-term liabilities and costs for taxpayers. Numerous independent experts question first-generation biofuels' ability to benefit

[1] 85 Federal Register 2699/3
[2] https://afdc.energy.gov/laws/10513
[3] https://www.nap.edu/read/13105/chapter/2

the environment or climate, reduce fuel consumption, lower fuel prices, or limit competition with the food supply.[4]

In our comments below, we detail why the USDA should abandon its plans to further subsidize corn ethanol, soy biodiesel, and other biofuels that cause more financial and environmental harm than good. We include a discussion of USDA's past support for biofuels infrastructure projects in addition to specific answers to some of the questions that USDA posed in its RFI.

History of USDA Subsidies for Biofuels Infrastructure Defies Congressional Intent

USDA has a long history of subsidizing ethanol blender pumps and storage tanks through programs that Congress did not intend to subsidize first-generation biofuels – particularly corn ethanol. USDA has so far subsidized ethanol blender pumps through two government programs – the Rural Energy for America Program (REAP) and the Biofuel Infrastructure Partnership (BIP) program funded through the Commodity Credit Corporation (CCC) – despite Congressional opposition.

Beginning in 2011, USDA unilaterally diverted $3 million in REAP funding to ethanol blender pumps even though REAP was intended to spur investment in rural renewable energy projects such as wind, solar, hydro, etc. Due to bipartisan opposition to taxpayer subsidies for blender pumps (as evidenced by two U.S. House of Representatives votes in 2011[5]), Congress prohibited USDA from subsidizing blender pumps through REAP as part of the 2014 farm bill. Congress has also wisely placed general prohibitions on corn starch ethanol benefiting from energy title programs in recent farm bills. And in case more evidence of ethanol subsidy opposition was needed, the U.S. Senate voted in 2011 to eliminate the ethanol tax credit (specifically known as the Volumetric Ethanol Excise Tax Credit, or VEETC), signaling bipartisan opposition to ethanol subsidies on both sides of Capitol Hill. VEETC and the ethanol tariff were later allowed to expire at the end of 2011.

Despite these Congressional roadblocks and bipartisan opposition to ethanol subsidies, in 2015, USDA unilaterally created a new program – BIP – to further subsidize ethanol blender pumps and storage tanks. Soon thereafter, TCS awarded then-Secretary Tom Vilsack its Golden Fleece award for failing to heed Congressional intent and end USDA's expensive practice of subsidizing ethanol blender pumps at taxpayer expense. While these programs may have successfully placed blender pumps and special ethanol storage tanks throughout the country, consumers don't regularly fill up with E15, E85, or other higher ethanol blends even though many own compatible flex-fuel vehicles.[6] Many factors contribute to this, including ethanol's lower mileage per gallon as compared to gasoline, the higher expense of ethanol vs. gasoline particularly

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[4] https://www.nap.edu/read/13105/chapter/2; https://cfpub.epa.gov/si/si_public_file_download.cfm?p_download_id=536328&Lab=IO; https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/45477-Biofuels2.pdf

[5] http://clerk.house.gov/evs/2011/roll125.xml; http://clerk.house.gov/evs/2011/roll454.xml

[6] https://farmdocdaily.illinois.edu/2013/01/expanding-the-ethanol-blend-wall.html

outside the Midwest, and numerous warranty, misfueling, and safety problems that higher blends may cause with small and off-road engines and vehicles manufactured before Model Year 2001.[7]

The Energy Information Administration (EIA) projects that this lack of consumer demand is unlikely to significantly change in the future. In fact, EIA estimates that overall U.S. ethanol consumption will decline between now and 2030 (and through 2050 as well) as gasoline consumption simultaneously declines due to the use of more fuel-efficient vehicles.[8] This is the primary reason why the ethanol industry is seeking taxpayer subsidies for blender pumps to dispense higher blends of ethanol, theoretically increasing demand for the industry's product if it were not for the aforementioned issues with consumer uptake of blends like E15 and E85.

Corn ethanol has a history of having its hand in programs it was not originally meant for - including REAP and the Bioenergy Program for Advanced Biofuels (BPAB). For more information, please see our fact sheets on these programs, available here: https://www.taxpayer.net/agriculture/rural-energy-for-america-program/ and https://www.taxpayer.net/energy-natural-resources/bioenergy-program-for-advanced-biofuels-fact-sheet-2/, respectively. The industry has also already reached its 15-billion-gallon mandate in the Renewable Fuel Standard (RFS). If Congress intended for the industry to produce more than this annual volume, then policymakers would have mandated the industry to do so. Forcing more ethanol that consumers don't want into an already distorted marketplace will not promote economic growth, health, or increase public benefits. It will only cost taxpayers more and lead to additional costly market distortions and duplicative government interventions.

Responses to Specific Questions in the RFI

Below, we have provided specific answers to some of the questions that USDA posed in its RFI on the potential for a new taxpayer-funded biofuels infrastructure program:

- **Question 4.a:** "What are the most appropriate higher biofuel blend levels (for both ethanol and biodiesel) that the program should be incentivizing?"

  Response: Consumers - not the federal government - should determine which biofuel blends they would like to purchase. The federal government should not pick winners and losers and spend taxpayer dollars on programs that interfere in the marketplace.

- **Question 4.c (and Question 4.e, which is similar):** "Should there be a requirement for certain dispenser configurations such as shared hoses (as practicable and allowed by law, for higher biofuel blends to share a pump hose with existing fuels)?"

  Response: Taxpayers should not be forced to subsidize biofuel dispensing equipment or storage tanks that are not compliant with federal regulations aimed at transparency, consumer protection, and public/environmental health. USDA subsidies should not promote projects that can lead to costly misfueling, consumer confusion, warranty, or

[7] https://www.eia.gov/todayinenergy/detail.php?id=38532, https://www.govinfo.gov/content/pkg/FR-2011-07-25/pdf/2011-16459.pdf
[8] https://www.eia.gov/outlooks/aeo/excel/aeotab_17.xlsx

safety problems, or water pollution caused by ethanol's increased corrosiveness leading to leaking underground storage tanks. This would further result in the federal government subsidizing counter-productive programs that cause additional unintended consequences and long-term liabilities for taxpayers, such as water pollution.

- **Question 4.d:** "Should there be a requirement for signage (as allowed by law) and marketing?"

  Response: EPA regulations already require E15 pumps to be labeled accordingly to help draw consumers' attention to the problems that higher blends of ethanol can cause to older, small, and off-road engines.[9] Consumers are prohibited from fueling off-road equipment, ATVs, small engines (such as lawnmowers and chainsaws), and Model Year 2000 and older vehicles with E15 since EPA notes that "significant adverse consequences for their emission control performance" could arise.[10] USDA should not interfere with any current labeling requirements, and if anything, should work with EPA to help minimize consumer confusion and misfueling of E15 in particular at the pump.

- **Question 4.e:** "Should USDA insist on consistent terminology and branding and naming of E15 and/or B20 or other higher biofuel blends?"

  Response: USDA should not be in the business of subsidizing biofuels infrastructure projects that confuse consumers and/or lead to costly engine repairs, damage, or failure. EPA's standards and regulations on E15 pump labeling are already in place, and again, USDA should work with EPA to minimize consumer confusion and misfueling at the pump.

- **Question 7:** "From your perspective, how much post-award reporting is reasonable for recipients of funding? E.g. quarterly or annual reporting of higher blend fuel sales by the participant?"

  Response: At a minimum, and for transparency and accountability, USDA should release a proposed rule on its specific future plans to subsidize biofuels infrastructure projects. USDA should seek public comment on such a rule if and when it is drafted so taxpayers have an opportunity to respond to specific USDA proposals. If subsidy recipients are later granted funding, at the very least, details such as the name of the recipient, location,

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9 https://nepis.epa.gov/Exe/ZyNET.exe/P1009LS8.txt?ZyActionD=ZyDocument&Client=EPA&Index=2006%20Thru%202010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C06THRU10%5CTXT%5C00000023%5CP1009LS8.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=3; https://www.govinfo.gov/content/pkg/FR-2011-07-25/pdf/2011-16459.pdf

10 76 Federal Register 44412/2, available at https://www.govinfo.gov/content/pkg/FR-2011-07-25/pdf/2011-16459.pdf

subsidy amount, and specific project description and outcomes should be publicly released in a timely manner.

- **Question 10:** "Please provide feedback on the effectiveness of the 2015-2019 Biofuels Infrastructure Partnership (BIP) program."

  Response: In addition to our comments above, we urge USDA to publicly release more information about the effectiveness (or ineffectiveness) of BIP before any additional taxpayer funding goes out the door. To date (and to our knowledge), only a "List of States receiving BIP Grants"[11] has been released by USDA, and this provides an insufficient amount of detail for both USDA and taxpayers to make informed decisions about whether or how future taxpayer dollars should be spent.

- **Additional Comment on Biodiesel Subsidies:**

  Please note that while our comments above focus more on ethanol, given USDA's historic subsidies for the industry, the mature biodiesel industry does not need any further taxpayer subsidies either. The industry already benefits from a maze of duplicative subsidies, including the following: (1) an annual government-set consumption mandate, (2) a $3 billion-per-year biodiesel tax credit in effect through the end of 2022, and (3) other federal subsidies, including USDA energy title programs (please see above for more information).

Conclusion

The USDA has a history of failing to heed Congressional intent concerning federal taxpayer support of first-generation biofuels subsidies. While Congress has repeatedly voted against corn ethanol and biofuels infrastructure subsidies, USDA continues to seek more ways to redirect taxpayer dollars to the mature corn ethanol and soy biodiesel industries. Past experience tells us that Congress has not authorized that Congress has not authorized taxpayer funds to be used for the types of biofuel infrastructure projects that USDA intends to promote. Taxpayers should not be forced to spend money on programs that never received Congressional authorization, nor should USDA misuse the CCC for special interest projects such as biofuels promotion.

We respectfully urge USDA to spend taxpayer dollars according to Congressional intent. Proposals to further subsidize the mature ethanol and biodiesel industries should be abandoned. Taxpayers cannot afford more duplicative, market-distorting biofuels subsidies in the face of a trillion dollar deficit.

Thank you for considering our comments on this RFI. Please contact our organization if you have any questions.

[11] https://www.fsa.usda.gov/programs-and-services/energy-programs/bip/index