

NO FUEL CREDITS FOR BATTERIES ACT OF 2023

SEPTEMBER 1, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4469]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4469) to clarify that eRINs are not authorized for purposes of satisfying the volume of renewable fuel that needs to be contained in transportation fuel for purposes of the Renewable Fuel Program, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 4469 is to clarify that eRINs are not authorized for the purposes of satisfying the volume of renewable fuel that needs to be contained in transportation fuel for the purposes of the Renewable Fuel Standard program.

BACKGROUND AND NEED FOR LEGISLATION

Congress created Clean Air Act (CAA) section 211(o)—also referred to as the Renewable Fuel Standard (RFS)—to reduce America’s reliance on foreign sources (particularly sources located in politically unstable regions) to meet the United States’ oil needs; build domestic energy and economic security; and provide value-added opportunities for communities that produce biofuel feedstocks.¹ Enacted in 2005 and expanded in 2007, the RFS requires the Administrator of the Environmental Protection Agency (EPA) to set renewable fuel volume obligations (RVOs) for refiners, blenders, or importers of transportation fuel sold or introduced into commerce in the United States. Under the statute, the RFS originally provided for nine billion gallons of total renewable fuel in 2008; but increased that amount to 36 billion gallons by 2022—all from liquid fuels.

Compliance with the RFS, pursuant to CAA section 211(o)(5)(B), is measured using credits—called Renewable Identification Numbers (RINs). CAA section 211(o)(5)(A) authorizes credits for persons that refine, blend, or import gasoline that is compliant with RFS requirements, for generating credits for biodiesel, and for generating credits by small refineries waiving their temporary exemption from the renewable fuel volume requirement. In practice, when qualifying biofuels are produced, each gallon is assigned a RIN—a number with digits corresponding to identifying data, including the year the RIN was generated, the producer of the fuel, and the type of fuel. Until the biofuels are sold as fuel or blended into conventional fuels, the RINs are “attached” to the fuel. Once the biofuel has been blended or sold, the RINs are detached, and can then be bought and sold like other commodities.

Under the RFS, starting in 2023, EPA is authorized to “set” the fuel standards among the differing statutory categories of renewable fuel for those RVO levels.

On December 1, 2022, EPA announced a proposed rule to establish required RVO percentage standards for biofuels for 2023, 2024, and 2025 under the RFS.² Published in the Federal Register on December 30, 2022, the proposed rule also included regulatory changes to create a new program to outline how RINs from renewable electricity (eRINs) would be implemented and managed under the RFS program. This update to the RFS program would allow parties to register with EPA and generate eRINs produced from qualifying renewable biomass used as transportation fuel. On June 21, 2023, EPA announced a final rule to establish biofuel volume requirements and associated percentage standards for cellulosic biofuel, biomass-based diesel (BBD), advanced biofuel, and total re-

¹ 109 Cong. Rec. S9255 (2005) (Statement of Sen. Pete Domenici).

² See “Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes,” Proposed Rule, December 30, 2022.

newable fuel for 2023–2025.³ The final rule did not, however, contain an eRINs program.

The establishment and generation of eRIN credits was a controversial feature of EPA’s proposed “set” regulation. When the RFS was first created in the Energy Policy Act of 2005, the word “electricity” was absent from that section. Two years later in the Energy Independence and Security Act of 2007 (EISA) the notion of generating electricity from renewable fuel to serve as a transportation fuel for America’s vehicles was also not added to the CAA, including the RFS.

EISA section 206, which included five sections that dramatically expand the RFS within CAA section 211(o), only authorized EPA (outside of the CAA) to “conduct a study on the feasibility of issuing credits to electric vehicles powered by electricity produced from renewable energy sources” and “issue a report that describes the results of that study, including a description of existing programs and studies on the use of renewable electricity” to power electric vehicles. In addition, the report was required to describe “alternatives for designing a pilot program to determine the feasibility” and practicality of a program awarding RFS credits for “renewable electricity to power electric vehicles as an adjunct to the renewable fuels mandate.” To this date, the EPA has not completed or complied with the statutory report requirements. In addition, EISA required a report on options for a pilot program but stopped short of authorizing one. Since then, Congress has not amended CAA section 211(o) to introduce electricity into the RFS.

H.R. 4469 is necessary for four reasons.

First, despite the lack of clear statutory authorization, EPA and others believe EPA has the authority to create this program. For instance, eRINs advocates point to report language from one or another congressional committee focusing on the creation of a fuel pathway as justification for eRINs authority even though creating a pathway, report language, or a joint explanatory statement is not binding in the same manner as statutory language.

Second, while the final “Set” rule did not formalize the creation of an eRINs program, the rule and subsequent testimony by EPA on June 22, 2023, left open the possibility that EPA would return to creating an eRINs program in the future without going through another notice and public comment process.

Third, the proposed design of the eRINs program would insert significant uncertainty into the transportation fuels market. Under EPA’s proposal, original equipment manufacturers (OEMs) of electric vehicles would generate RINs for light-duty vehicles and then be responsible for “establishing contracts with parties that produce electricity from qualifying biogas.” In addition to serving as a direct subsidy for electric vehicles, such a delegation of RIN generation authority would directly contradict the Clean Air Act, which specifically grants RIN generation authority to “any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel greater than the quantity required.” Therefore, the proposed structure from EPA would undermine the existing RIN market.

³See “Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes,” Final Rule, July 12, 2023.

Last, the eRINs program was designed in a way that would destabilize the use of liquid fuels and the vehicles that use them in the United States as well as threaten the availability of reliable and affordable transportation fuel options for cars driven by the majority of Americans. Congress never delegated authority this sweeping to EPA, and this legislation makes that clear.

COMMITTEE ACTION

On June 22, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials held a hearing on a discussion draft titled “No Fuel Credits for Batteries Act of 2023,” which was subsequently introduced as H.R. 4469. The title of the hearing was “Driving Affordability: Preserving People’s Freedom to Buy Affordable Vehicles and Fuel.” The Subcommittee received testimony from:

- Joseph Goffman, Principal Deputy Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency;
- Chet Thompson, President and CEO, American Fuel and Petrochemical Manufacturers;
- Neil Caskey, CEO, National Corn Growers Association;
- Scott Lambert, President, Minnesota Auto Dealers Association; and
- Genevieve Cullen, President, Electric Drive Transportation Association.

On July 12, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials met in open markup session and forwarded H.R. 4469, without amendment, to the full Committee by a record vote of 12 yeas and 7 nays.

On July 27, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 4469, without amendment, favorably reported to the House by a record vote of 26 yeas and 22 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 10**

BILL: H.R. 4469, the No Fuel Credits for Batteries Act of 2023

AMENDMENT: A motion by Mrs. Rodgers to order H.R. 4469 favorably reported to the House, without amendment (Final Passage).

DISPOSITION: **AGREED TO**, by a roll call vote of 26 yeas to 22 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky		X	
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson				Rep. Clarke		X	
Rep. Walberg				Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer	X			Rep. Dingell		X	
Rep. Dunn	X			Rep. Veasey			
Rep. Curtis	X			Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw	X			Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber	X			Rep. Schrier		X	
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher		X	
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks							
Rep. Cammack	X						
Rep. Obermolte	X						

07/27/2023

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY,
AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 4469 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to clarify that eRINs are not authorized for the purposes of satisfying the volume of renewable fuel that needs to be contained in transportation fuel for the purposes of the Renewable Fuel Standard program.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 4469 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII, the following related hearing was used to develop or consider H.R. 4469:

- On June 22, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials held a hearing titled “Driving Affordability: Preserving People’s Freedom to Buy Affordable Vehicles and Fuel.” The Subcommittee received testimony from:
 - Joseph Goffman, Principal Deputy Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency;
 - Chet Thompson, President and CEO, American Fuel and Petrochemical Manufacturers;
 - Neil Caskey, CEO, National Corn Growers Association;
 - Scott Lambert, President, Minnesota Auto Dealers Association; and,

◦ Genevieve Cullen, President, Electric Drive Transportation Association.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 4469 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of H.R. 4469 contains the short title of the “No Fuel Credits for Batteries Act of 2023.”

Section 2. Clarification the ERINS not authorized

Section 2 of H.R. 4469 contains two parts: (1) the clarification that there is no authority under the CAA to authorize the generation of credits or RINs for electricity as a transportation fuel; and (2) the definitions used in the legislation.

Section 2(a)(1) prohibits the Administrator of the EPA from authorizing the generation of credits for electricity generated from renewable fuel for the purposes of satisfying the volume of renewable fuel that needs to be contained in transportation fuel for the purposes of the RFS program—CAA section 211(o)(2). While the Committee understands that eRINs have never been generated for transportation fuel and acts of Congress generally add to or subtract from something in the law, the Committee believes the declaratory statement in section 2(a)(1)—which is intentionally drafted outside of the RFS to avoid the appearance that legal authority is being removed—is essential both to remind EPA as well as put it on notice as to its actual statutory authority.

Given that EPA has expressed a willingness to revisit regulations creating eRINs, and RIN credits are able to satisfy obligations for the current compliance year or the following compliance year, section 2(a)(2) prohibits the use or transfer of any eRINs credits generated before the date of enactment. The Committee intends this provision to address any gap between a future EPA eRINs proposal and the date of enactment of H.R. 4469.

Section 2(b) defines “renewable fuel” and “transportation fuel” using their RFS meanings contained in CAA section 211(o)(1).

H.R. 4469 reiterates Congress’ intent to authorize the generation of RINs under CAA section 211(o) for transportation fuel containing liquid fuels only, and *not* to authorize the generation of RINs for electricity from renewable resources.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

MINORITY VIEWS

We oppose H.R. 4469, legislation that would prevent the Environmental Protection Agency (EPA) from allowing the generation of credits for renewable electricity for transportation fuel (eRINs) under the Renewable Fuel Standard (RFS). H.R. 4469 turns a blind eye to years of regulatory and Congressional direction to EPA in support of generating eRINs and hamstring opportunities for using renewable electricity in the transportation sector.

BACKGROUND

Congress established the RFS to reduce greenhouse gas (GHG) pollution and expand the nation's supply of renewable fuels while also reducing reliance on imported oil. The RFS has spurred significant market growth for renewable fuels, providing strong economic opportunity across the biofuels sector.

While the Majority's report details the history of the RFS, it fails to acknowledge the decade-plus history of EPA regulatory action regarding renewable electricity and the RFS. There has been over a decade of regulatory action regarding an eRIN program at EPA. Starting in 2010, EPA finalized a rule to allow renewable electricity to count as a renewable fuel under the RFS, as long as it was made from renewable biomass, and it was used as a transportation fuel.¹ In 2014, EPA approved a pathway for eRIN generation from biogas. While the pathways were approved, EPA had yet to put in place a mechanism for eRIN generation.² In 2016, EPA proposed the "Renewable Enhancement and Growth Support Rule," which requested comment from stakeholders on how EPA should structure its eRIN generating mechanism.³ At the end of 2022, EPA put out a proposed rule with a detailed compliance mechanism structure for eRINs.⁴ During a Subcommittee on Environment, Manufacturing, and Critical Materials legislative hearing, EPA testified that the eRIN proposal received such extensive feedback that the Agency chose to further engage with stakeholders before finalizing.⁵

Furthermore, the Majority asserts that the definition of transportation fuel under the Clean Air Act (CAA) Section 211(o)(1) is for transportation fuel containing only liquid fuels. However, nowhere

¹ Environmental Protection Agency, *Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard*, 75 Fed. Reg. 14669 (Mar. 26, 2010) (final rule).

² Environmental Protection Agency, *Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Mis-fueling Mitigation Requirements*, 79 Fed. Reg. 42127 (July 18, 2014) (final rule).

³ Environmental Protection Agency, *Renewables Enhancement and Growth Support Rule*, 81 Fed. Reg. 80828 (Nov. 16, 2016) (proposed rule).

⁴ Environmental Protection Agency, *Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes*, 87 Fed. Reg. 80754 (Dec. 30, 2022) (proposed rule).

⁵ House Committee on Energy and Commerce, Testimony of Joseph Goffman, Principal Deputy Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency, *Hearing on Driving Affordability: Preserving People's Freedom to Buy Affordable Vehicles and Fuel*, 118th Cong. (June 22, 2023).

in the CAA does it specify that a transportation fuel must be a liquid fuel, which EPA confirmed at the Subcommittee on Environment, Manufacturing, and Critical Materials hearing.⁶ Therefore, renewable electricity captured from biogas to power an electric vehicle would constitute a transportation fuel under the CAA. The Majority claims to be for an “all of the above” energy approach, yet H.R. 4469 picks winners and losers in the renewable fuels market, and is a deliberate attack on renewable electricity, simply because the Majority is opposed to EVs.

At the Subcommittee legislative hearing, and during Committee consideration of H.R. 4469, Subcommittee Ranking Member Tonko explained the hypocrisy in the Majority’s opposition to eRINs. Currently, the RFS rewards biogas that is turned into renewable natural gas to fuel a natural gas-powered vehicle. There is no reason why the RFS program should not offer the same support for biogas to power an electric vehicle (EV). Provided that a fuel source meets the definition of an eligible feedstock, the source should be able to benefit from the RFS, regardless of the type of vehicle they power. H.R. 4469 cuts off an entire class of stakeholders, including farmers, municipalities, and landfill operators, from the same economic and market opportunities granted to liquid renewable fuel producers. Electricity is an increasingly expanding portion of our renewable fuel supply and eRINs are an important component of supporting vehicle electrification and reducing harmful GHG emissions. eRINs help accomplish the end goal of the RFS program of reducing GHG emissions and increasing national security with home-grown fuels.

EPA has the authority to allow fuels produced from eligible feedstocks to generate renewable electricity to participate in the RFS. In addition to over a decade of regulatory action outlined above, Congress has explicitly directed EPA to continue working on eRINs, appropriating funds for EPA to process applications for the electric pathway under the RFS in 2020, which H.R. 4469 blatantly ignores.

SUMMARY OF H.R. 4468

Section 2 of H.R. 4469 blocks EPA from allowing the generation of credits for renewable electricity for transportation fuel under the RFS, despite two pathways already being approved. H.R. 4469 limits the availability of fuel captured from biogas from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and separated municipal solid waste digesters.

CONCLUSION

Contrary to Republican claims, the eRIN program would not destabilize the use of renewable liquid fuels and the vehicles that operate with liquid fuels. Forming an eRIN program would merely put renewable electricity on an even playing field with the other transportation fuels under the RFS, providing the renewable electricity stakeholders the same economic benefits granted to renewable liquid fuel producers. Expanding opportunities under the RFS

⁶House Committee on Energy and Commerce, *Hearing on Driving Affordability: Preserving People’s Freedom to Buy Affordable Vehicles and Fuel*, 118th Cong. (June 22, 2023).

for renewable electricity will further our environmental and public health goals.

For the reasons stated above, we dissent from the views contained in the Committee Report.

FRANK PALLONE, Jr.,
Ranking Member, Committee on Energy and Commerce.

