



October 14, 2022

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Request for Delay of Implementation for Midwestern Governors' Notice to Opt-Out of E10 RVP Waiver

Dear Administrator Regan:

We write to express our serious concerns with the recent notice ("Notice") provided to EPA by governors ("Governors") of states ("States") seeking to opt-out of the Reid vapor pressure ("RVP") waiver for E10.¹ The Clean Air Act ("CAA") does not compel EPA to grant these ill-advised requests, and indeed we believe the best reading of the CAA would instead compel EPA to deny them. However, given the insufficient supply of gasoline and serious harm to U.S. fuels markets and consumers that would start just six months from now if EPA were to grant these requests, this letter serves as a petition to delay implementation of the regulations.²

¹ See Letter from Iowa Governor Kim Reynolds et al. to Michael Regan, Administrator, U.S. EPA (April 28, 2022), <https://governor.iowa.gov/sites/default/files/documents/Governors%20Letter%20to%20EPA%20on%20RVP%20Waiver%204.28.22.pdf>.

See also Letter from Ohio Governor Mike DeWine to Michael Regan, Administrator, U.S. EPA (June 10, 2022), https://content.govdelivery.com/attachments/OHIOGOVERNOR/2022/06/10/file_attachments/2182189/FINAL%20USEPA%20Letter%206-10-22.pdf.

² 42 U.S.C. § 7545(h)(5)(C)(ii)(I).

Under this petition, EPA must analyze the impact on the supply of gasoline to the impacted States in the region, in consultation with the Department of Energy.³ We are independently analyzing the supply and market impacts of these requests and expect to submit a supplementary petition. However, based on our expertise and understanding of fuels markets, and preliminary consultations with independent market experts, we believe that requiring a new fuel to be in place for the 2023 summer driving would result in an insufficient supply of gasoline for PADD 2, in particular.

Excluding the States from the 1 psi RVP waiver would increase the cost to produce gasoline for use in the area by requiring that refiners produce two new boutique, lower RVP blendstocks (regular and premium) to comply with RVP limits. Implementing this change in 2023 does not allow an adequate lead time to add infrastructure or make other modifications to accommodate the new boutique gasoline grades. This includes, among other challenges, the inability of in-region refiners to transport and store light-end refinery products currently blended into summer gasoline.

Granting the petition would also significantly impact logistics. Because most of PADD 2 and much of PADD 3 operate under the same fuel specifications, including 9 psi RVP, fungible blendstocks can be transported via pipeline. This allows pipeline companies to eliminate or reduce transportation time from origin to terminal. Thus, as Magellan Midstream explains, pipeline companies can “provide access to gasoline at any of our terminals once we receive gasoline into our system from a refiner or third-party pipeline without waiting on the physical transit time to move the product from the origin to a terminal.”⁴ Without the RVP waiver, this efficiency would be compromised and could lead to increased outages and insufficient supply of gasoline that would likely result in increased costs for consumers.

Pipeline companies may not have adequate infrastructure at most terminals to accommodate new grades of gasoline without investments in new storage and other infrastructure, which often requires at least 24 months to accomplish. For example, without logistical modifications, Magellan Midstream states they “are unable to transport the special grades of gasoline (83 & 91 R+M/2 octane) north of Oklahoma from Gulf Coast origins on Magellan’s pipeline system.” The result would be fewer suppliers and reduced supply in the affected states.⁵

Reducing fungibility increases logistical complexity and segregation requirements. Specifically, a new gasoline blend would (1) necessitate segregated storage, segregated pipeline deliveries, and additional testing; (2) reduce pipeline operating efficiencies; (3) increase delivery times; (4) reduce realized pipeline capacity/gasoline deliveries; and (5) possibly increase delivery costs for gasoline-importing states.

Likewise, there may be other limitations relating to rail or tank truck supply or logistics, as well as limitations surrounding permitting, that could exacerbate gasoline supply shortages and increase costs and emissions compared to moving products by pipeline.

³ 42 U.S.C. § 7545(h)(5)(C)(ii)(I). EPA previously recognized the importance of supply issues in its Phase I and II volatility regulations by excluding Hawaii and Alaska from RVP restrictions. *See* Martel et al., Regulation of Fuel and Fuel Additives 446-47, in Domike & Zacaroli, eds., *The Clean Air Act Handbook* (4th ed. 2016).

⁴ *See* Letter from Bruce Heine, Vice President Government and Media Affairs at Magellan Midstream Partners, L.P. to Michael Regan, Administrator, U.S. EPA (September 16, 2022).

⁵ *ibid*

The MathPro Study submitted in support of the Governors' petition relies on incorrect assumptions. It is premised on using a simplified aggregate "model" refinery in each of PADDs 1-4 to represent all refineries within each PADD, which does not account for individual refinery capabilities and assumes efficiencies that are not realized. In addition to assuming a three-year lead time is available to make capital improvements, there are other erroneous assumptions in the MathPro Study that undermine the study's conclusions relating to costs and supply chain impacts.

We also note that the Governors requested in November 2021 to work with EPA and to receive "guidance regarding the process for securing an exclusion from the 1-psi ethanol waiver" including what documentation is needed. Administrator Regan has also indicated that EPA is working with the governors of Illinois, Iowa, Minnesota, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin "to allow year-round E15 sales permanently."⁶ We request a copy of all formal and informal guidance that has been provided to the Governors concerning submission of a petition and what supporting documentation EPA may require.

Although the delay sought by this petition would not remedy the severe supply and logistical challenges caused by removing the RVP waiver that has been in place for over 40 years, it would partially mitigate the damage and allow policymakers to consider other alternatives to achieve their policy goals.

Sincerely,

American Fuel & Petrochemical Manufacturers
Energy Marketers of America
Illinois Fuel & Retail Association
Indiana Food & Fuel Association
International Liquid Terminals Association
Liquid Energy Pipeline Association
Michigan Petroleum Association / Michigan Association of Convenience Stores
Nebraska Petroleum Marketers & Convenience Store Association
North Dakota Petroleum Council
North Dakota Petroleum Marketers Association
South Dakota Petroleum and Propane Marketers Association
Wisconsin Petroleum Marketers & Convenience Store Association

cc:

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⁶ Chris Clayton, EPA Chief Touts Biofuel Policies, Progressive Farmer (Sept. 13, 2022), <https://www.dtnpf.com/agriculture/web/ag/news/business-inputs/article/2022/09/13/epas-regan-agency-track-rfs-set-e15>.