



August 1, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Request to expeditiously finalize rule approving petition from eight states to remove 1-psi RVP waiver for E10 gasoline (88 Fed. Reg. 13758; March 6, 2023)

Dear Administrator Regan,

On behalf of the Renewable Fuels Association, I write today to respectfully encourage the U.S. Environmental Protection Agency (EPA) to quickly promulgate a final rule approving the request from eight states to remove the 1-pound per square inch (psi) Reid vapor pressure (RVP) waiver for gasoline containing 10 percent ethanol (E10).¹

As you know, eight Governors submitted a petition on April 28, 2022, to permanently remove the 1-psi RVP waiver for E10 in their states beginning in the summer of 2023, pursuant to section 211 (h)(5) of the Clean Air Act. Not only would this action reduce evaporative emissions in those states, but it would also level the playing field for year-round sales of E10 and the lower-carbon, cleaner-burning E15 blend.

According to the statute, EPA should have approved the Governors' petition and implemented regulations effectuating the change no later than 90 days after receipt of the petition, which would have been July 27, 2022.² However, EPA did not propose to approve the Governors' petition until March 6, 2023—more than 200 days after the deadline for promulgation prescribed by law. And, because EPA was so late in issuing the proposed rule, it proposed to delay implementation of the Governors' petition by one full year to April 28, 2024.

EPA conducted a public hearing on the proposed rule on March 21, 2023, and accepted written comments through April 20, 2023. Only 18 members of the public testified at the hearing, with 14 expressing support for EPA's proposal to approve the petition. Moreover, EPA received only 43 written comments on the proposal (a relatively small number when compared to most EPA proposed rules), with the majority of commenters expressing support for EPA's proposal to approve the petition.

¹ See 88 Fed. Reg. 13758 (March 6, 2023).

² CAA 211(h)(5)(B) ("The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.")

Three months have passed since EPA's public comment period ended, and more than a year has passed since EPA's statutory deadline to promulgate a final rule approving the Governors' petition. And yet, despite strong public support for EPA's proposal, the agency still has not finalized the rule or publicly provided a schedule for doing so.

With the summer 2024 ozone control season just nine months away, we urge EPA to publish the final rule approving the Governors' petition as soon as possible. In its proposal, EPA suggests there is a "need for early coordination between various parties to make the necessary physical changes to the gasoline production and distribution infrastructure and the associated lead time required."³ To provide certainty to the marketplace, facilitate early coordination, and establish ample lead time, we strongly encourage EPA to finalize the rule before the end of this summer.

In addition, while potential cost and price impacts of a 211(h)(5) petition are not among the factors EPA may consider when deciding petitions submitted by Governors, we are sharing with you the enclosed analysis of real-world retail gasoline prices for lower-volatility and conventional gasoline. It shows virtually no difference between retail prices for lower-volatility gasoline and conventional gasoline in adjacent markets where the two different types of gasoline were sold during the summer 2022 ozone control season. In fact, in several of the markets examined, lower-volatility gasoline was *less expensive* than higher-volatility, conventional gasoline. Along with previous studies already submitted to EPA, this empirical data helps to debunk the exaggerated claims from some petroleum refiners and pipeline companies regarding the potential economic impacts of the Governors' petition.

In closing, we wish to thank you for your continued leadership on this issue, including the decision to issue temporary emergency fuel waivers allowing continued sales of E15 during the summers of 2022 and 2023. Your swift action helped avert fuel supply shortages, reduced emissions, and lowered pump prices for millions of American consumers.

We look forward to continuing to work together with EPA to ensure timely and successful implementation of the Governors' petition so that consumers in those eight states can permanently enjoy the benefits of year-round E15.

Sincerely,

A handwritten signature in black ink that reads "Geoff Cooper". The signature is written in a cursive, slightly slanted style.

Geoff Cooper
President and CEO

³ See 88 Fed. Reg. at 13767 (March 6, 2023).