



American
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September 29, 2023

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

Via email: regan.michael@epa.gov

Re: Request for Implementation Delay of “Request From States for Removal of Gasoline Volatility Waiver” (Rulemaking Docket ID No. EPA-HQ-OAR-2022-0513)

The American Petroleum Institute (API) is the national trade association representing all sectors of the U.S. oil and natural gas industry, with nearly 600 members, throughout exploration, refining, pipeline, distribution, and retail. As previously noted in our April 20, 2023, comments¹ on the U.S. Environmental Protection Agency’s (EPA) proposed rule “Request From States for Removal of Gasoline Volatility Waiver²,” API supports the analysis presented by EPA in the preamble to the proposed rule and associated Technical Support Document³, specifically the proposed finding of insufficient supply. At the time of the March 2023 proposal, EPA rightly assessed the potential impacts that “the necessary quantities of gasoline may not be available in the states at the time they are required” and thus proposed a finding of insufficient supply for a 2023 implementation date. Given the delay in issuance of the final rulemaking, the same lead-time and supply concerns exist – which, if finalized, again necessitate a delay in the effective date of the proposed waiver removal. This letter serves as API’s formal petition that if EPA grants the states’ requests, implementation of the regulations be delayed at least an additional year.

API and its members continue to have significant concerns regarding the negative fuel supply impacts that would result from removal of the 1-psi E10 waiver. Removal of the waiver in specific states or regions will significantly impact the entire gasoline production and distribution

¹ API comments on “Request From States for Removal of Gasoline Volatility Waiver,” Document ID: EPA-HQ-OAR-2022-0513-0001. (*Attached.*)

² 88 FR 13758, March 6, 2023.

³ “Technical Support Document for the Proposed Removal of the 1-psi Waiver”; Docket ID No. EPA-HQ-OAR-2022-0513.



chain: 1) refiners that choose to manufacture fuels that meet the new specifications may have to modify their distribution network with the possible result of additional challenges meeting consumer demand; 2) refiners providing fuel to the impacted states would need to incur additional costs to produce the new lower-RVP gasoline; 3) the gasoline distribution segment would face increased costs to store, transport, and distribute a separate grade of gasoline for the eight-Midwest states, and those states that are adjacent or use the same distribution infrastructure; and 4) an additional grade of gasoline that cannot be used in certain areas would create fungibility concerns, and potentially constrain supply.

The same significant lead-time concerns that existed when EPA initially issued its proposed finding of insufficient supply, necessitating a delay in the effective date of the proposed waiver removal from 2023 to 2024, exist today. During routine summer transitions, refiners often begin producing lower-RVP fuel early in the year to allow terminals to turn their tanks before the May 1 EPA summer-fuel requirement. If the final rule is issued in the coming months, the proposed April 2024 implementation date would only provide a few months of lead time, which would not provide sufficient lead time to design, capitalize, and construct the infrastructure necessary to meet any new requirements. This would likely create fuel supply vulnerabilities and could make the region more susceptible to increased retail costs⁴ and fuel shortages. It is notable that this would be at a time where regions, and the nation as a whole, are already facing cost and supply challenges – which has been recognized by EPA through the issuance of a number of emergency fuel waivers.⁵

API respectfully requests that, if EPA grants the states' requests to remove the 1-psi waiver, implementation of the final regulations be delayed at least an additional year. With that stated, API anticipates requesting additional time to ensure members have the time needed to design, capitalize, and construct the infrastructure necessary to ensure systems are in place to meet any new requirements. This would provide an opportunity for the gasoline production and distribution infrastructure challenges to be addressed, while helping to mitigate potential supply and cost disruptions. A delayed implementation is preferential to a series of 20-day emergency fuel waivers that may be needed due to limited supply resulting from the aforementioned production and supply challenges. Unlike the emergency waivers issued throughout the 2022 and 2023 summer season that extended the 1-psi waiver for E15, the gasoline supply chain cannot be managed with only a 20-day lead time. Additionally, a delay of at least an additional year could provide time for policymakers to identify alternative solutions – such as S. 2707, the Nationwide Consumer and Fuel Retailer Choice Act of 2023. API strongly supports federal action in lieu of the approval of state or regional petitions, to provide parity

⁴ Baker & O'Brien, "Midwest States Gasoline RVP – 1 PSI Waiver Study," report for AFPM, February 24, 2023.

⁵ U.S. EPA "2023 Fuel Waivers": <https://www.epa.gov/enforcement/fuel-waivers#2023>.



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between E10 and E15, avoid deleterious impacts of state-specific and regional requirements, and provide regulatory certainty to the entire industry.

Thank you for your consideration, please do not hesitate to contact me if you should have any questions.

Sincerely,

A handwritten signature in black ink that reads 'Will Hupman'.

c: Mr. Joseph Goffman, U.S. Environmental Protection Agency
Ms. Sarah Dunham, U.S. Environmental Protection Agency
Mr. Paul Machiele, U.S. Environmental Protection Agency
Ms. Lauren Michaels, U.S. Environmental Protection Agency
Mr. Neelesh Nerurkar, U.S. Department of Energy

April 20, 2023

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

Filed electronically: <https://www.regulations.gov/>

Re: Request From States for Removal of Gasoline Volatility Waiver (Docket ID No. EPA-HQ-OAR-2022-0513)

1. Introduction

The American Petroleum Institute (API) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rule "Request From States for Removal of Gasoline Volatility Waiver," to remove the 1-psi volatility waiver for gasoline-ethanol blends containing 10 percent ethanol (E10) in eight Midwestern states in response to petitions from the states' governors. (88 FR 13758, March 6, 2023.) API is the national trade association representing all sectors of the U.S. oil and natural gas industry, with nearly 600 members, throughout exploration, refining, pipeline, distribution, and retail.

API supports the analysis presented by EPA in the preamble to the proposed rule and associated Technical Support Document.¹ API supports EPA's findings of potential negative impacts regarding costs and supply throughout the entire fuel production and distribution system in granting state-by-state removals of the 1-psi waiver for E10. We also support EPA's proposed finding of insufficient supply, necessitating a delay in the effective date of the proposed waiver removal to 2024. Further, the EPA analysis provided in the fuel supply impacts section regarding pipelines and pipeline breakout terminals properly identifies the impacts to those facilities.

2. Fuel Supply Impacts

API and its members have significant concerns regarding the negative fuel supply impacts that would result from removal of the waiver – including boutique fuel concerns, as well as concerns regarding fuel manufacturing and distribution – all of which could lead to potential fuel supply vulnerabilities and make the region more susceptible to increased retail costs and fuel shortages creating potential upward pressure on costs.

As acknowledged by the agency in its proposal, granting the requested removal of the 1-psi waiver in certain Midwest states would create a new or "boutique" fuel for the region. While some of the impacted states would be supplied by a new fuel that completely replaces their existing higher-RVP fuel; the new low-RVP fuel would be an additional grade of gasoline in other states. Thus, granting a 1-psi waiver impacts not only those states requesting the new lower-RVP fuel but also impacts states that have not asked for the waiver. The non-waiver states that supply gasoline to the waiver-requesting states could see a loss of fungibility of the gasoline flowing into their region due to the upward pressure on

¹ "Technical Support Document for the Proposed Removal of the 1-psi Waiver"; Docket ID No. EPA-HQ-OAR-2022-0513.

costs that result from a lower RVP product. For example, a recent study compared spot prices of RBOB and CBOB in the Chicago gasoline market and found that the summer “RVP ‘cost’ averaged 8.1 (~8) cents per gallon (cpg) per 1 psi in 2019 and 9.7 (~10) cpg per 1 psi during 2022.”² Additionally, refiners that choose to manufacture fuels that meet the new specifications may have to modify their distribution network with the possible result of adding pressure to supply the fuel necessary to meet consumer demand. API is concerned about the potential impacts on fuel production and distribution.

As API has previously noted in comments and testimony to the agency, removal of the 1-psi E10 waiver in specific states would significantly impact the entire gasoline production and distribution chain – specifically, with regard to upward pressure on costs, supply, and investments.

a. Potential cost impacts

Studies show that refiners in, and those providing fuel to, the impacted states would need to incur additional costs to produce the new lower RVP gasoline. Described in more detail in independent studies performed by Baker and O’Brien³ and MathPro,⁴ refiners would need to employ various options to meet the new requirement. Some of these options would be more operational, while others may require more significant capital investments. They also found that the gasoline distribution segment would face increased costs to store, transport, and distribute another grade of gasoline. Even in states where the low-RVP fuel replaces the current higher RVP gasoline, there would be impacts related to distribution of the new fuel. These modifications would likely result in upward pressure on costs which could impact customers and end users.

At a time when the Midwest region has faced sustained pricing increases⁵ and instability, API is concerned about the potential impacts on an already unstable situation.

b. Fuel supply vulnerabilities

An additional grade of gasoline that cannot be used in certain areas would create fungibility concerns, and potentially constrain supply. As noted in the Baker & O’Brien study, granting of the waiver would likely result in a reduction of fungible volumes of gasoline supplies, with associated distribution challenges.⁶ This could leave the region significantly more vulnerable to fuel supply disruption events such as a refinery outage or an extreme weather or other unforeseen event resulting in the possibility of a “retail price differential spike in excess of 60 cpg.”⁷ EPA rightly assesses the potential impacts of “the necessary quantities of gasoline may not be available in the states at the time they are required” and has thus proposed a finding of insufficient supply for a 2023 implementation date.

c. Regulatory certainty

Regulatory certainty and lead time are both essential in the deployment of changes to the fuel production and distribution system. Where capital investments are needed, many considerations are factored into the decision to

² Baker & O’Brien, “Midwest States Gasoline RVP – 1 PSI Waiver Study,” report for AFPM, February 24, 2023, (see AFPM comments).

³ *Ibid.*

⁴ MathPro Inc., “Assessment of a 1 psi Reduction in the RVP of CBOB In the Summer Gasoline Season,” report prepared for The Renewable Fuels Association, December 1, 2021; Docket ID No. EPA-HQ-OAR-2022-0513-0004.

⁵ 88 FR 13767, March 6, 2023.

⁶ Baker & O’Brien.

⁷ *Ibid.*

undertake a capital project. As noted by the MathPro refinery modeling study, such projects will be necessary for at least some portion of the industry.

3. Leadtime and Implementation Considerations

API does not agree with the request to implement the program for the summer 2023 season. There is insufficient time to make necessary investments and supply a low-RVP fuel. Further, potential cost pressures would be exacerbated without adequate lead-time. As such, if EPA finalizes approval of the governors' request which we do not support, API endorses the proposed April 2024 implementation date. Further, API anticipates requesting additional time to ensure members have the time needed to design, capitalize, and construct the infrastructure necessary to ensure systems are in place to meet any new requirements. Accordingly, we note a recent letter from Ohio Governor DeWine (see attached) expressing support for an April 2024 effective date, noting that "if it appears that Ohio consumers may be negatively affected by constrained supply or higher costs, [he] will seek an additional delay."⁸

4. Alternative: API supports Federal legislation that would provide a level playing field for the sale of E10 and E15

As expressed in the attached letter to House and Senate leadership, API strongly supports federal action in lieu of the approval of state-by-state petitions.⁹ Federal legislation would provide parity between E10 and E15, avoid deleterious impacts of state-specific and regional requirements, and provide regulatory certainty to the entire industry. Specifically, API supports S.785/H.R.1608, the Consumer and Fuel Retailer Choice Act of 2023. The legislation would grant the 1-psi waiver for E15, maintain the waiver for E10, and would apply such requirements nationwide, avoiding the need for individual state or regional petitions.

5. Reinstatement of Volatility Waiver

EPA has proposed to allow a state to opt out of their previous request to remove the volatility waiver if the state simply submits a request for reinstatement, resolves any SIP actions (if applicable), and provides a notice-and-comment process to notify the public before implementing any request. API supports this approach to reinstating the volatility waiver as it recognizes the opportunities to add additional fungibility to the fuel supply by eliminating a requirement for a boutique fuel in their state.

Thank you for the opportunity to provide comments on this proposed rule. If you have any questions, please do not hesitate to contact me.

Sincerely,



c: Lauren Michaels, Office of Transportation and Air Quality

⁸ Letter from Ohio Governor Mike DeWine to U.S. EPA Administrator Michael Regan, March 31, 2023.

⁹ API Letter of Support for S.785 and H.R.1608 – Consumer and Fuel Retailer Choice Act of 2023, March 23, 2023.



MIKE DEWINE

GOVERNOR OF OHIO

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March 31, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Office of the Administrator, 1101A
Washington, D.C. 20460

Dear Administrator Regan,

Thank you for issuing the proposed rule to remove the one part per square inch (PSI) Reid vapor pressure (RVP) waiver for summertime E-10, as requested by my letter of June 10, 2022. I also appreciate that you have proposed an effective date of April 2024, such that Ohio's refineries will not experience operational disruptions this coming summer. My team continues to engage with our refineries, retailers, and agricultural sector to ensure that there will be no interruption in fuel supply or price, associated with the elimination of the waiver.

While Ohio stands ready to lead in this space, a federal legislative solution would address production and distribution concerns associated with a state-by-state approach. I applaud the efforts of the United States Senate to introduce bipartisan legislation on this topic. Ideally, such legislation will be enacted before April 2024, the proposed effective date of the rule. Absent such a solution, if it appears that Ohio consumers may be negatively affected by constrained supply or higher costs, I will seek an additional delay.

Very respectfully yours,

A handwritten signature in blue ink that reads "Mike DeWine".

Mike DeWine
Governor



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Amanda Eversole
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March 23, 2023

The Honorable Tom Carper
Chair
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Cathy McMorris Rodgers
Chair
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Shelley Moore Capito
Ranking Member
Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Frank Pallone
Ranking Member
House Committee on Energy and Commerce
2322 Rayburn House Office Building
Washington, DC 20515

Subject: S.785 and H.R. 1608 - Consumer and Fuel Retailer Choice Act of 2023

Dear Chair Carper, Ranking Member Capito, Chair McMorris Rodgers and Ranking Member Pallone:

In 2022, governors from ten Midwest states - Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin¹ - requested that the U.S. Environmental Protection Agency (EPA) promulgate a regulation to remove the 1-pound Reid Vapor Pressure (RVP) waiver for 10-percent ethanol blends in gasoline (E10) beginning in the 2023 summer ozone control season.² The stated intent of this action was to provide year-round certainty for retail sales of 15-percent ethanol blends of gasoline (E15) in their respective states.³

If these petitions result in final regulatory action in 2023, American Petroleum Institute (API) believes the resulting state-by-state outcome would likely have a negative impact on the reliability of gasoline supply to consumers in these states. As a result, API supports S.785, *Consumer and Fuel Retailer Choice Act of 2023* (legislation introduced by Sen. Deb Fischer [R-NE]) and the U.S. House of Representatives companion bill, H.R. 1608 (introduced by Rep. Ashley Hinson [R-IA-02]), both of which would grant the 1-pound RVP waiver for E15, maintain it for E10 and nullify the governors' existing petitions. These pieces of legislation would serve to avoid detrimental regional impacts and provide increased national certainty with regard to supply.

In a September 2022 letter to EPA, API noted that granting the governors' petition and requiring action before summer 2023 would likely create supply constraints for gasoline in the Midwest, thereby negatively impacting consumers. API requested that EPA delay implementation until May 1, 2024, in recognition that the structural changes needed to accomplish the governors' request may not be achievable before this time. A better approach would be adoption of federal legislation that allows for the year-round sale of E15 nationwide, invalidates the pending requests from the Midwest governors and preserves the 1-pound waiver for E10. Accordingly, API urges Congress to pass S. 785 and H.R. 1608 to protect consumers prior to final EPA action on the governors' requests.

Sincerely,

Amanda E. Eversole

¹ As of October 26, 2022, Kansas and North Dakota have rescinded their requests.

² The summer ozone control season requires EPA-controlled fuels at the terminal between May 1 and September 15.

³ Reynolds, Kim, et al. Received by Michael Regan, 28 Apr. 2022. The letter cites "allowing the year-round sale of E15" as the reason for the notification.