



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY 19 2022

THE ADMINISTRATOR

Re: May 21, 2022, E15 Reid Vapor Pressure Fuel Waiver

Dear Governors:

By this letter the U.S. Environmental Protection Agency is issuing a temporary waiver under Clean Air Act (CAA) Section 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7454(c)(4)(C)(ii)(I), to address extreme and unusual fuel supply circumstances caused by the war in Ukraine that are affecting all regions of the Nation.

The CAA and the implementing regulations at 40 C.F.R. Part 1090 require the use of low volatility gasoline during the summer months in order to limit the formation of ozone pollution. These regulations are found at 40 C.F.R. § 1090.215. *See also* www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure. These gasoline volatility regulations apply to retailers and wholesale purchaser-consumers beginning on June 1, 2022, and to all other persons beginning May 1. Specifically, the regulations require parties upstream of retailers and wholesale purchaser-consumers to turn over their storage tanks to low volatility summer gasoline and stop selling higher volatility winter gasoline by May 1 so that retailers and wholesale purchaser-consumers can meet the applicable low volatility gasoline standards by June 1.

Russia's unjustified, unprovoked, and unconscionable war against Ukraine, and its ongoing destructive military campaign, has had a profound impact on global and domestic energy markets. The U.S. Department of Energy has been monitoring market supply disruption caused by Russia's war in Ukraine on an ongoing basis and updating EPA on its findings. On March 8, 2022, President Biden issued Executive Order 14066 to, among other things, prohibit importation into the United States of Russian crude oil, petroleum fuels, oils and products of their distillation, and liquified natural gas. The United States previously imported 672,000 barrels per day of Russian petroleum and petroleum products that will no longer be available to domestic refiners and consumers. On March 31, 2022, President Biden found that Russia's war on Ukraine caused a severe energy supply interruption and directed the Secretary of Energy to draw down and sell up to one million barrels of crude oil from the Strategic Petroleum Reserve per day over the next six months. The release of crude oil from strategic reserves by the United States and other nations may mitigate the severe disruption to global oil markets caused by Russia's destabilizing actions but will not fully offset the loss in supply. Likewise, while high oil prices are a strong incentive for increased domestic oil production, the leadtime necessary to bring on line new oil wells to offset the loss of Russian crude supplies extends well beyond the market conditions described above over the next four to five months.

All available information suggests that the current shortage brought on by Russia's actions has continued since the EPA's last action and may perhaps worsen in the future. Recent evidence of Russian atrocities against Ukrainian civilians may broaden the scope of sanctions and import bans for Russian energy products imposed by the international community. Further, the withdrawal of global investment and technical capability from Russia's energy sector is likely to continue to degrade its production capacity. At the same time, Russian refining output has declined by 0.5 million barrels per day. These crude oil disruptions, record usage of existing refineries, and even stronger international demand, have put significant pressure on the ability of domestic gasoline and other petroleum product supply to meet demand.

The EPA also believes that the current extreme and unusual circumstances affecting global supply will continue in the near term, while the pressure on U.S. markets, including production and distribution of gasoline and other petroleum products, may worsen considering that crude oil disruptions, record usage of existing refineries, and even stronger international demand, have put significant pressure on the ability of domestic gasoline and other petroleum product supply to meet demand. This dynamic is moving domestic refining production away from gasoline, even as the U.S. enters the summer driving season, when demand historically increases and refiners normally increase gasoline output.¹ EPA has concluded, with DOE's concurrence, that it is in the public interest to again take action to address the supply circumstances that prevent distribution of an adequate supply of gasoline to consumers.

The Clean Air Act provides the EPA with the authority to temporarily waive a control or prohibition if the Administrator makes certain determinations. CAA § 211(c)(4)(C)(ii)(I-III). In particular, the statute authorizes the EPA to determine there are "extreme and unusual fuel [] supply circumstances" that prevent the distribution of an adequate supply of gasoline to consumers. CAA § 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(I). Here, the EPA is exercising its statutory discretion to identify a lack of an "adequate fuel supply" under these very unique circumstances where there has been a particularly unexpected and extreme form of disruption. This extreme and unusual fuel circumstance is the result of Russia's war in Ukraine, and related global supply issues, events that could not reasonably have been foreseen and are not attributable to a lack of prudent planning on the part of suppliers of the fuel to these areas. CAA § 211(c)(4)(C)(ii)(II), 42 U.S.C. § 7545(c)(4)(C)(ii)(II).

Furthermore, I have determined that it is in the public interest to grant this waiver. CAA § 211(c)(4)(C)(ii)(III), 42 U.S.C. § 7545(c)(4)(C)(ii)(III). The agency in taking this action is seeking to address the extreme and unusual fuel supply circumstances in the market by allowing the continued sale of E15 during the summer driving season. Absent this action, retailers that currently sell E15 (gasoline with 85 percent petroleum gasoline content) would need to stop selling the fuel and instead only sell E10 (gasoline with 90 percent petroleum gasoline content). This switch, from E15 to E10, would increase the demand for petroleum based gasoline at the very time that the agency has identified a fuel supply issue due to the war in Ukraine. The agency's waiver action here will eliminate the need for retailers to shift to E10 and in the process

¹ For instance, the recently issued EIA Summer Fuels Outlook notes "we expect that the combination of rising employment and decreasing effects of the COVID-19 pandemic on travel will increase U.S. gasoline consumption during the summer." U.S. Energy Information Administration's "Summer Fuels Outlook." (Apr. 12, 2022)

will prevent the increased demand for petroleum gasoline that would otherwise occur. Since E15, allowed under this waiver, is required to meet the same volatility standard as E10, no overall change in evaporative emissions impacts are projected to occur as a result of this action. This is because it is the volatility of the gasoline blend that drives evaporative emissions, not the ethanol content. The EPA has similarly found in comparing exhaust emissions between E10 and E15, that some criteria pollutants would have relative increases (NO_x) and others have similar decreases (VOC and CO) while still others are less certain (PM), these changes are all relatively small. In the E15 CAA sec. 211(f)(4) partial waivers, we determined that effects of this magnitude were too small to cause or contribute to MY2001 and newer light duty motor vehicles to exceed the vehicles' certified exhaust emissions standards.² After weighing the societal benefits of an incrementally higher volume of gasoline being made available to the public, and considering that no significant change in air pollution is projected to occur as a result of this action, the EPA concludes that this action is in the public interest.

In addition, I have determined that this waiver applies to the smallest geographic area necessary to address the fuel supply circumstances described in this action. CAA § 211(c)(4)(C) (iii)(I), 42 U.S.C. § 7545(c)(4)(C) (iii)(I). In determining the geographic scope of this action to include, all states and regions within states which currently have the 1 psi waiver for E10 (about two-thirds of US gasoline), the EPA has sought to maximize the increase in fuel volumes by maintaining the availability of E15. In areas of the country where the 1 psi increase for E10 is not allowed through state or the EPA regulations (e.g., in reformulated gasoline areas) E15 can already be sold in the summer and no action is needed to continue to allow the sale. Hence, the geographic extent of the waiver represents the smallest geographic area necessary to continue to allow E15 sales and through that ensure the largest increase in gasoline volume possible without extending the waiver into regions of the country where it is not necessary.

Therefore, to minimize or prevent disruptions of the supply of gasoline, I am waiving the condition in CAA§ 211(h)(4), 42 U.S.C. § 7454(h)(4) that allows “fuel blends containing gasoline and 10 percent denatured anhydrous ethanol” to exceed the applicable RVP standard by 1 psi for fuel blends containing gasoline and between 9 and 15 percent denatured anhydrous ethanol (E15) that is distributed and sold in areas within the contiguous United States where the 1 psi waiver applies to E10.³ Under this temporary waiver, regulated parties may produce, sell, and distribute summer gasoline that exceeds the applicable RVP standard at 40 C.F.R. § 1090.215(a)(1) and (2) by one psi if the fuel blend is E15. This waiver is effective May 21, 2022, and will continue for 20 days. The scope and effect of this action are the same as the existing emergency fuel waiver that expires on May 20, 2022. It is the agency's intention to continue to

2 Modifications to Fuel Regulations To Provide Flexibility for E15; Modifications to RFS RIN Market Regulations 26980 Federal Register / Vol. 84, No. 111 / Monday, June 10, 2019.

3 As described above, EPA is limiting this waiver to the areas where it anticipates the waiver will increase availability of E15 by allowing for use of existing blendstock. Thus, this waiver does not apply to reformulated gasoline (RFG) covered areas because the 1.0 psi allowance for RVP standards as specified in CAA§ 211(h)(4), 42 U.S.C. § 7454(h)(4), does not apply to RFG. This waiver also does not apply in areas where EPA has approved a regulation into a state implementation plan (SIP) that limits the applicability of the 1.0 psi allowance. For example, several states including New York, Vermont, and Maine do not allow the use of the 1.0 psi allowance statewide. Other states including Texas and Arizona limit the 1.0 psi allowance to specific portions of the state. Some states including Nevada (statewide), Indiana (portion) and Michigan (portion) only allow the 1.0 psi allowance for E10.

issue new waivers effectively extending (renewing) this waiver until such time as the extreme and unusual fuel supply circumstances described in this action are no longer present.

Gasoline that does not meet the applicable RVP requirements may not be introduced into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in the designated states after June 10, 2022 unless the EPA renews the waiver. Any gasoline meeting the conditions of this waiver that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers may be distributed and sold in subject areas in the designated states until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in these areas may continue selling or dispensing gasoline that meets the conditions of this waiver after June 10, 2022, until supplies in their E15 storage tanks are depleted.

This waiver applies only to the applicable federal requirements cited above. Regulated parties who produce, sell, and distribute E15 must continue to comply with all applicable requirements and conditions that do not relate to RVP in 40 C.F.R. Part 1090 and in the EPA's decisions under CAA § 211(f)(4) to allow the introduction into commerce of E15 for use in MY2001 and newer light-duty motor vehicles.⁴ Other state or local requirements or restrictions related to this matter may need to be addressed by the appropriate authorities.⁵ The EPA recognizes that this is an evolving situation that is causing rapid changes to fuel supply dynamics. Should conditions warrant, this waiver may be modified, terminated, or renewed as appropriate. The effective date of this decision is May 21, 2022, and, pursuant to 40 C.F.R. 23.3, on that date, it will be deemed issued for purposes of judicial review.

If you have questions, you may call me, or your staff may contact Kurt Gustafson of the EPA's Office of Transportation and Air Quality at (202) 403-4419.

Sincerely yours,

A handwritten signature in black ink that reads "Michael S. Regan". The signature is written in a cursive, flowing style.

Michael S. Regan

cc: Secretary of Energy

⁴ See 75 FR 68094 and 76 FR 4662.

⁵ Several states have adopted regulations for purposes other than motor vehicle emissions control that limit the applicability of the 1.0 psi allowance to E10.