



April 20, 2023

U.S. Environmental Protection Agency,
EPA Docket Center, Air Docket
Mail Code 28221T,
1200 Pennsylvania Avenue NW,
Washington, DC 20460

Docket ID No. EPA-HQ-OAR-2022-0513

INTRODUCTION

The Energy Marketers of America (EMA) is a federation of 47 state and regional trade associations representing family-owned and operated small business energy marketers throughout the United States. Energy marketers represent a vital link in the motor and heating fuels distribution chain. EMA members supply 80 percent of all finished motor and heating fuel products sold nationwide including renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. The vast majority of these energy marketers qualify as small businesses under U.S. Small Business Administration size categories for both wholesale and retail entities. Moreover, energy marketers are the last link in the petroleum distribution chain and depend entirely on the efficient and uninterrupted supply of finished fuels from upstream refineries and terminals in order to meet consumer demand.

COMMENTS

EMA believes the Governors' petition requesting the removal of the 1-pound per square inch (psi) Reid vapor pressure (RVP) waiver for summer gasoline-ethanol blends containing 10 percent ethanol (E10) will lead to widespread and chronic gasoline shortages in the eight-state region where it would apply as well as in non-petitioning border states utilizing the same supply chain. EMA understands that the EPA has little to no discretion to reject the Governors' petition and that the purpose of the Notice of Proposed Rulemaking (NPRM) is to seek comment on the proposed delay of the 1-pound RVP waiver until April 28, 2024.

Essentially, the NPRM would require a lower volatility conventional gasoline before oxygenate blending (CBOB) to be produced, distributed and sold in the petitioning states. However, in many areas, this new, low volatility fuel would have to be produced, distributed and sold alongside fuel designed to comply with the 1-pound RVP waiver required by non-petitioning states. This requires segregation of the lower volatility CBOB from blendstocks formulated to meet the 1-pound RVP waiver.

Currently, most refineries, pipelines, breakout stations and supply terminals lack the required infrastructure for dual fuel distribution. As a result, each link in the distribution chain will be required to choose whether to invest in new infrastructure to accommodate dual fuel distribution or simply supply the new low volatility CBOB product. The impact on each link in the distribution chain varies depending on whether they provide gasoline only in the petitioning states, or in non-petitioning states as well.

Distribution links that supply product to both the petitioning and non-petitioning states would be significantly affected by removal of the 1-pound RVP waiver because they face a difficult choice: invest in infrastructure necessary to segregate RVP CBOB and low RVP CBOB or simply produce and or distribute only one of the RVP CBOBs. Those that choose to invest in infrastructure upgrades face significant disruptions since only one RVP CBOB blend could be distributed during lengthy permitting and construction process in a market that requires both RVP CBOBs. Infrastructure upgrades would be complicated and require substantial coordination since all parties along the distribution chain would be required to make similar upgrades or be forced to find new suppliers distributing a single RVP CBOB. The same is true for distributors who choose to supply a single RVP CBOB rather than invest in infrastructure upgrades. These distributors would be required to realign with single CBOB suppliers if upstream distributors choose infrastructure upgrades. Either way, the realignment of a tightly coordinated distribution chains would be chaotic, lengthy and very costly and cause severe disruptions in supply to both petitioning states and the non-petitioning states alike.

EMA supports EPA's decision to delay removal of the 1-pound waiver until April 28, 2024, to prevent the expected supply disruptions that would result from the petitioner's request. It is too close to the upcoming summer driving season to successfully institute such a change without severe downstream supply consequences. Additional delays will be required in the future to provide sufficient time for gasoline producers and distributors to prepare for the addition of a low RVP CBOB in the current gasoline distribution chain.

Impact on Small Business Energy Marketers

EMA disagrees strongly with EPA's conclusion that removal of the 1-pound RVP waiver would have a minor impact on gasoline retailers. Removal of the 1-pound waiver will have a profound effect on small business energy marketers. To be clear, the eight state Governors are not petitioning for removal of the 1-pound RVP waiver pursuant to Clean Air Act section 211(h)(5) because it increases emissions. Instead, the petitioners are using section 211 (h)(5) as a loophole to accomplish what the U.S. Supreme Court told the EPA it could not do through the rulemaking process during the previous administration; permit the year-round sale of E15 gasoline. Nevertheless, the petitioners could eventually succeed, and that's unwelcome news for small business energy marketers and consumers alike.

Unfortunately, most fuel marketers cannot offer and sell E15 because it is not compatible with most retail underground storage tank systems currently in operation across the U.S. The EPA's Office of Underground Storage Tanks (OUST) highlighted a particularly alarming compatibility issue regarding "pipe dope" in an agency guidance document. Pipe dope is essentially the glue that holds UST systems together. Pipe dope is used to join all threaded connections in the underground pipes that carry fuel from the UST to pump dispensers on the island where consumer fueling occurs. Typically, there are over 100 such connections held together by pipe dope in a six- dispenser UST system. The EPA provides the following guidance on pipe dope compatibility:

*"Higher-ethanol compatible pipe dope was available beginning around 2007. Despite that, UST systems installed then and since to store lower levels of ethanol, such as E0 or E10, **probably have pipe dope compatible only with lower levels of ethanol.** Storing greater than 10 percent ethanol in those UST systems means **the pipe dope is incompatible.** Because higher-ethanol compatible pipe dope is more expensive, pipe dope compatible only with lower levels of ethanol to be stored in those UST systems may have been used, rather than higher-ethanol compatible pipe dope. Liquid tight seals at joints in the UST system are essential in preventing releases of regulated substances to the environment. **If pipe dope or sealants are incompatible with the fuel stored, they may lose their ability to seal properly and release fuel to the environment.***

This means an owner or operator considering storing regulated substances containing greater than 10 percent ethanol in a system, which was not explicitly installed with the intent of storing regulated substances with greater

*than 10 percent ethanol, will presumably need to modify each threaded connection point where pipe dope seals the threads. To avoid violating the compatibility requirements in 40 CFR 280.32, each thread or junction must be re-sealed with compatible pipe dope if owners and operators wish to store ethanol blends greater than 10 percent and they currently have pipe dope incompatible with such blends in their UST system. Otherwise, they may not store those blends. In some UST systems, these joints may be buried beneath the surface and not in contained sump areas; it may be necessary to excavate to access them.*¹

E15 Compatibility Costs

Removing and replacing UST piping is a prohibitively expensive process. Piping is often buried four or more feet underground depending on the size of the tank and number of dispensers. Asphalt and concrete over piping must be removed by jackhammer. Dirt and protective backfill must be expertly excavated from over and under the piping to provide access. All piping connections including, pipe to pipe connections, pipe to containment sumps connections, pipe to dispenser connections must be disconnected, (if possible), carefully cleaned, fitted and otherwise prepared for reconnection with E15 compliant pipe dope. Moreover, all this must be done by skilled tank installers. These retrofit upgrades are costly. UST system retrofits or replacement can cost more than \$100,000 per site in capital expenditures. These expenditures are far beyond the ability of small business fuel retailers with multiple sites to pay. These costs increase well beyond the retrofit itself due to lost fuel sales revenue and in-store convenience items during the 5 to 10 days the site must close to accommodate the upgrade process.

Determination of Insufficient Supply

Unfortunately, EPA failed to consider the full impact of year-round sales of E15 on small business energy marketers when analyzing factors contributing to possible supply disruptions due to removal of the 1-pound RVP waiver. An EPA determination for justifying a delay of the effective date of the 1-pound RVP waiver is based on assessment of three potential supply constraints: (1) The already low gasoline inventories; (2) The 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; and (3) The physical loss of supply necessary to produce a lower RVP gasoline. EMA believes both the UST E15 compatibility issue and UST upgrade costs meet all three supply constraint assessment factors; inventory supplies at retail stations will be low; supply constraints due to the inability of small business energy marketers to undertake costly infrastructure upgrades; and redirection of blendstocks to facilities in non-petitioning states where retail stations can dispense finished product. EMA urges EPA to include both UST compatibility and retail infrastructure cost issues when determining insufficient supply for the purposes of extending the 1-pound RVP removal date as proposed in the NPRM, as well as in any future assessment of insufficient supply allowed under CAA section 211(h)(5)(C).

Reinstatement Procedure

In addition to proposing regulatory changes to effectuate the removal of the 1-psi waiver in the petitioning states, the EPA is also proposing a regulatory mechanism for states to request the reinstatement of the 1-psi waiver under CAA section 211(h)(5). This would be available for the petitioning states, as well as any other state for which EPA removes the 1-psi waiver upon a request under CAA section 211(h)(5) in the future. EMA supports a reinstatement process modeled after existing regulations under 40 CFR part 1090.295 that allow for the removal of the 7.8 psi low-RVP fuels program. However, EMA requests that any reinstatement process adopted by the EPA allows for a rapid turnaround time to alleviate the supply disruptions that will surely result from removal of the 1-pound RVP waiver.

¹ "Compatibility – Pipe Dope and Sealants," September 2018 <https://www.epa.gov/ust/underground-storage-tank-ust-technical-compendium-about-2015-ust-regulation#compatibility>

CONCLUSION

EMA supports the EPA's proposal in the NPRM to delay the effective date of removal of the 1-pound waiver to April 28, 2024. EMA believes that removal of the 1-pound RVP waiver will result in a disruption of the gasoline distribution supply chain in both the petitioning and non-petitioning states that utilize the same suppliers. There is no time to implement such a major shift in the supply stream before the start of the summertime driving season. EMA believes future delays will be needed to attempt to head off supply constraints resulting from the Governors waiver petition. EMA also supports the EPA's effort to create a reasonable 1-pound RVP waiver reinstatement process that petitioning states will need to normalize gasoline supply chains.

Thank you for the opportunity to comment. Please feel free to contact me should you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Mark S. Morgan, Esq." in a cursive style.

Mark S. Morgan, EMA Regulatory Counsel
Energy Marketers of America
300 New Jersey Avenue, NW, Suite 900
Washington, D.C. 20001
mmorgan@emamerica.org
(202) 487-4536