

November 30, 2022

The Honorable Frank Pallone  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Tom Carper  
Chairman  
Committee on Environment and Public Works  
U.S. Senate  
Washington, DC 20510

The Honorable Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Shelly Moore Capito  
Ranking Member  
Committee on Environment and Public Works  
U.S. Senate  
Washington, DC 20510

Subject: S. 5145, the Consumer and Fuel Retailer Choice Act of 2022

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

Earlier this year governors from nine Midwest states including Illinois, Iowa, Kansas, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin<sup>1</sup> 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 with the 2023 summer ozone control season.<sup>2</sup> 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 states.<sup>3</sup>

API believes that if these petitions result in final regulatory action, then the resulting state-by-state outcome would likely have a negative impact on the reliability of gasoline supply to consumers in these states. To avoid these negative regional impacts and provide national certainty, API supports S. 5145, the Consumer and Fuel Retailer Choice Act of 2022, legislation introduced by Senator Deb Fischer (R-NE) that would grant the 1-pound RVP waiver for E15, maintain it for E10, and nullify the governors' petitions.

Under the Clean Air Act, upon receipt of the notification of petition from the state(s), the EPA is required to promulgate a regulation that rescinds the 1-pound waiver for E10. 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, recognizing that the structural changes needed to accomplish

<sup>1</sup> As of October 26, Kansas and North Dakota have rescinded their requests.

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

<sup>3</sup> 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.

the governors' request may not be achievable before this time. A better approach would be 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, we urge Congress to pass S. 5145.

Sincerely,



Will Hupman

Vice President, Downstream Policy  
American Petroleum Institute