



GOVERNORS' BIOFUELS COALITION

• Nebraska Gov. Pete Ricketts, Chair • Iowa Gov. Kim Reynolds, Vice Chair
• Executive Director, Larry Pearce

August 23, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Subject: Demonstration of mid-level ethanol blends in state-owned legacy vehicles

Dear Administrator Pruitt:

This letter follows up on my June 12 letter and describes a regulatory pathway for EPA to authorize the demonstration of mid-level ethanol fuel blends. My Coalition colleagues and I seek to assess the effects of these fuels on vehicle performance, fuel economy, and emissions control systems by using them in state-owned fleet vehicles, including non-flex-fuel vehicles (non-FFVs).

To undertake such a program, the states need EPA to grant exemptions from two sets of rules.

First, EPA rules prohibit selling, dispensing, or transporting gasoline that exceeds the applicable Reid vapor pressure (RVP) standard, 40 C.F.R. § 80.27(a)(2). Currently, EPA's rules interpret the *Clean Air Act* to impose a more stringent RVP standard on gasoline blended with more than 10 percent ethanol. *Id.* § 80.27(d)(2). Mid-level ethanol blends produced by adding more ethanol to regular gasoline may exceed this standard.

Second, EPA has previously interpreted the *Clean Air Act* to limit the amount of ethanol that may be blended into gasoline for use in non-FFVs. The basis for this interpretation was the "sub-sim" law—section 211(f) of the *Act*—which prohibits the sale (or increased concentration) of fuels and fuel additives that are not "substantially similar" to a fuel or fuel additive used in new-vehicle certification testing. 42 U.S.C. § 7545(f)(1)(B); see, e.g., *Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent*, 76 Fed. Reg. 4662, 4682 (Jan. 26, 2011) (granting a waiver of the sub-sim law to allow gasoline with up to 15% ethanol for use in some non-FFVs). Although ethanol recently began to be used as a fuel additive in the certification of new gasoline-fueled vehicles, see 40 C.F.R. § 1065.710(b)(2), EPA has not yet reinterpreted "substantially similar" to allow increased concentrations of ethanol in gasoline or repealed

labeling rules intended to deter the use of higher-ethanol blends in non-FFVs. 40 C.F.R. § 80.1501.

In addition, informal guidance from former EPA officials also implies that using mid-level blends in non-FFVs might violate provisions of the *Clean Air Act* relating to fuel registration and tampering with emissions control systems. See Letter from Adam M. Kushner, Director, EPA Office of Enforcement and Compliance Assurance Air Enforcement Division, to Bob Greco, Director, American Petroleum Institute Downstream and Industry Operations (July 31, 2008) (citing 42 U.S.C. §§ 7522(a)(3)(A), 7547(d)).

Without endorsing continued application of EPA's past interpretations of the *Clean Air Act*, it would be prudent to obtain an exemption from any conceivable limitation of mid-level ethanol blends to FFVs. Cf. 40 C.F.R. § 80.1504(a)(3) ("No person shall... [b]e prohibited from manufacturing, selling, introducing, or causing or allowing the sale or introduction of gasoline containing greater than 10 volume percent ethanol into any flex-fuel vehicle."). EPA may grant such a testing exemption under 40 C.F.R. § 1068.210 ("[EPA] may exempt engines/equipment that you will use for research, investigations, studies, demonstrations, or training.").

EPA has granted exemptions for state-led vehicle research in the past. For example, EPA granted South Dakota a waiver under 40 C.F.R. § 80.27(e) to allow the state to use E15 in excess of the applicable RVP standard in state-owned vehicles. See Letter from John Wiehrauch, Center Director, EPA Fuels Compliance Center, to Hunter Roberts, Energy Policy Director, South Dakota Governor's Office of Economic Development (May 29, 2014).

Your approval of this request to use higher ethanol blends will allow us to demonstrate that these blends improve vehicle performance and do not impair emission control systems.

Thank you.

Sincerely,



Pete Ricketts
Chairman and
Governor of Nebraska

cc:

Member Governors
The Honorable Dennis Daugaard
The Honorable Kim Reynolds