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Honorable George Bush  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C.  20500

Dear President Bush:

Several months ago, we shared with you our concern over ethanol’s role in the Reformulated Gasoline Program (RFG) under the 1990 amendments to the Clean Air Act. You responded that you shared our concern and were prepared to assist where possible. Since our letter, we have been studying this and other related issues, and have evaluated the outcome of the U.S. Environmental Protection Agency’s (USEPA) hearing on the proposed final regulations for the RFG program held in Chicago last month. Two distinct problems have emerged from our review which we would like to raise.

First, it is clear that the agriculture community, ethanol producers, and Congress believed that the 1990 amendments would allow 10% ethanol blends to be used in reformulated gasoline all year. A 10% ethanol blend cannot be readily used in reformulated gasoline during summer months because it increases the evaporative emissions of the gasoline. To date, the USEPA has declined to take into account the offsetting benefits of ethanol’s ultra clean tailpipe emissions and reduced chemical reactivity.

Second, the USEPA’s interpretation of the Clean Air Act oxygenate requirements raises the specter of significantly increased dependence on methanol imported from OPEC countries. It is estimated that by the end of the century more than half the gasoline in the nation will be reformulated with oxygenates. Multi-national oil and chemical companies are building offshore methanol plants to supply the nation’s Clean Air Act markets. The locations of these new plants include Saudi Arabia, Libya, Iran, Oman, Qatar, Indonesia, Chile, Venezuela, Canada, and Mexico--areas where natural gas, which is the raw material for methanol, can be obtained cheaply.
The trend toward the use of foreign methanol is ominous for several reasons. First, it will add to the nation’s trade deficit and increase our dependence on foreign energy sources. In fact, it will be more damaging than having the country import an equal amount of crude oil, because the value-adding work is done in foreign countries. Second, it will mean that most of the infrastructure of methanol production will be abroad, and the U.S. will assume a secondary position in the development of ethanol and methanol as replacements for gasoline in the decades ahead. Third, domestic oxygenate producers are disadvantaged by the import trend. Finally, foreign methanol production does nothing to help the nation’s natural gas industry, which is in a prolonged slump.

Because the reformulated gasoline requirement takes effect on January 1, 1995, the investment community is making decisions now. Despite some activity in the United States, there is a reluctance to expand capacity or make new investments in domestic methanol or ethanol production because of the uncertainty surrounding their role in the RFG program.

The uncertainty which exists over ethanol’s role in the RFG program and the projected role which foreign produced methanol could play in the nation’s energy future, will create a significant backlash in both the agricultural and investment communities. Without a prompt corrective regulatory or legislative initiative, ethanol’s use will be curtailed and imported methanol will dominate the market.

We would like you to consider announcing the following regulatory or legislative initiative or announcing your support for this proposal:

• By 1995, 50% of the oxygen required to be included in gasoline by sections 211(k) and 211(m) of the Clean Air Act must be derived from domestic feedstocks, and 30% must be derived from domestic renewable feedstocks. By 1997, 80% of the oxygen required to be included in gasoline by sections 211(k) and 211(m) of the Clean Air Act must be derived from domestic feedstocks, and 50% must be derived from domestic renewable feedstocks.

We believe this proposal can be implemented in the context of the current rulemaking process which USEPA is conducting under Section 211(k) of the Clean Air Act. Section 211(k) provides strong statutory support for the proposal. It requires that USEPA consider cost, air quality and non-air quality health and environmental impacts, and energy requirements in achieving reductions in ozone forming emissions in reformulated gasoline.
As you know, one of the key components of reformulated gasoline is increased oxygen content, which is mandated under the act. Use of domestic oxygenates, especially renewable domestic oxygenates, puts money back into the American economy and improves the nation's balance of trade. Domestic oxygenates reduce the problem of foreign energy dependence by providing essential energy supplies in the United States. Renewable domestic oxygenates have no adverse impact on ozone formation and recycle atmospheric carbon dioxide, rather than releasing new carbon dioxide into the air. Thus our proposal is supported by all the factors which USEPA is required to consider in its ongoing rulemaking.

One other factor that should also be considered is research being conducted by Dr. Michael S. Graboski, in cooperation with the U.S. Department of Agriculture. This study provides new evidence which seems to quantitatively substantiate supporters' arguments that ethanol should be eligible for participation in the RFG Program. We urge you to ensure that this and any other new information be given the most thorough and timely review by USEPA so it can be incorporated into their final rulemaking.

As things stand now, OPEC will benefit more from the Clean Air Act amendments than American farmers, ethanol producers, and the domestic natural gas industry. No one ever intended this to happen, but if we do not take strong action immediately, this is exactly what will happen. This initiative would help regain the support of the agricultural community, environmental interests, and ethanol producers.

It is critical that we work together, quickly, to solve the problems currently associated with implementation of the Clean Air Act amendments in a way that is environmentally sound and assures domestic sources for clean fuels. As you said when you introduced your proposed Clean Air amendments, "We need secure, reliable sources of energy right here at home. Alternative fuels are an American answer." We would welcome your support for this proposal, and hope that we can count on your leadership to ensure that our concerns are addressed.

Sincerely,

E. Benjamin Nelson
Chairman

Jim Edgar
Vice Chairman
DOMESTIC RENEWABLE OXYGENATES INITIATIVE

Briefing Materials

• Letter to President Bush
• Domestic Renewable Oxygenates Initiative Materials
• Draft Legislation

GOVERNORS' ETHANOL COALITION

July 28, 1992
July 14, 1992

Honorable George Bush
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Bush:

Several months ago, we shared with you our concern over ethanol’s role in the Reformulated Gasoline Program (RFG) under the 1990 amendments to the Clean Air Act. You responded that you shared our concern and were prepared to assist where possible. Since our letter, we have been studying this and other related issues, and have evaluated the outcome of the U.S. Environmental Protection Agency’s (USEPA) hearing on the proposed final regulations for the RFG program held in Chicago last month. Two distinct problems have emerged from our review which we would like to raise.

First, it is clear that the agriculture community, ethanol producers, and Congress believed that the 1990 amendments would allow 10% ethanol blends to be used in reformulated gasoline all year. A 10% ethanol blend cannot be readily used in reformulated gasoline during summer months because it increases the evaporative emissions of the gasoline. To date, the USEPA has declined to take into account the offsetting benefits of ethanol’s ultra clean tailpipe emissions and reduced chemical reactivity.

Second, the USEPA’s interpretation of the Clean Air Act oxygenate requirements raises the specter of significantly increased dependence on methanol imported from OPEC countries. It is estimated that by the end of the century more than half the gasoline in the nation will be reformulated with oxygenates. Multi-national oil and chemical companies are building offshore methanol plants to supply the nation’s Clean Air Act markets. The locations of these new plants include Saudi Arabia, Libya, Iran, Oman, Qatar, Indonesia, Chile, Venezuela, Canada, and Mexico—areas where natural gas, which is the raw material for methanol, can be obtained cheaply.
The trend toward the use of foreign methanol is ominous for several reasons. First, it will add to the nation’s trade deficit and increase our dependence on foreign energy sources. In fact, it will be more damaging than having the country import an equal amount of crude oil, because the value-adding work is done in foreign countries. Second, it will mean that most of the infrastructure of methanol production will be abroad, and the U.S. will assume a secondary position in the development of ethanol and methanol as replacements for gasoline in the decades ahead. Third, domestic oxygenate producers are disadvantaged by the import trend. Finally, foreign methanol production does nothing to help the nation’s natural gas industry, which is in a prolonged slump.

Because the reformulated gasoline requirement takes effect on January 1, 1995, the investment community is making decisions now. Despite some activity in the United States, there is a reluctance to expand capacity or make new investments in domestic methanol or ethanol production because of the uncertainty surrounding their role in the RFG program.

The uncertainty which exists over ethanol’s role in the RFG program and the projected role which foreign produced methanol could play in the nation’s energy future, will create a significant backlash in both the agricultural and investment communities. Without a prompt corrective regulatory or legislative initiative, ethanol’s use will be curtailed and imported methanol will dominate the market.

We would like you to consider announcing the following regulatory or legislative initiative or announcing your support for this proposal:

• By 1995, 50% of the oxygen required to be included in gasoline by sections 211(k) and 211(m) of the Clean Air Act must be derived from domestic feedstocks, and 30% must be derived from domestic renewable feedstocks. By 1997, 80% of the oxygen required to be included in gasoline by sections 211(k) and 211(m) of the Clean Air Act must be derived from domestic feedstocks, and 50% must be derived from domestic renewable feedstocks.

We believe this proposal can be implemented in the context of the current rulemaking process which USEPA is conducting under Section 211(k) of the Clean Air Act. Section 211(k) provides strong statutory support for the proposal. It requires that USEPA consider cost, air quality and non-air quality health and environmental impacts, and energy requirements in achieving reductions in ozone forming emissions in reformulated gasoline.
As you know, one of the key components of reformulated gasoline is increased oxygen content, which is mandated under the act. Use of domestic oxygenates, especially renewable domestic oxygenates, puts money back into the American economy and improves the nation’s balance of trade. Domestic oxygenates reduce the problem of foreign energy dependence by providing essential energy supplies in the United States. Renewable domestic oxygenates have no adverse impact on ozone formation and recycle atmospheric carbon dioxide, rather than releasing new carbon dioxide into the air. Thus our proposal is supported by all the factors which USEPA is required to consider in its ongoing rulemaking.

One other factor that should also be considered is research being conducted by Dr. Michael S. Graboski, in cooperation with the U.S. Department of Agriculture. This study provides new evidence which seems to quantitatively substantiate supporters’ arguments that ethanol should be eligible for participation in the RFG Program. We urge you to ensure that this and any other new information be given the most thorough and timely review by USEPA so it can be incorporated into their final rulemaking.

As things stand now, OPEC will benefit more from the Clean Air Act amendments than American farmers, ethanol producers, and the domestic natural gas industry. No one ever intended this to happen, but if we do not take strong action immediately, this is exactly what will happen. This initiative would help regain the support of the agricultural community, environmental interests, and ethanol producers.

It is critical that we work together, quickly, to solve the problems currently associated with implementation of the Clean Air Act amendments in a way that is environmentally sound and assures domestic sources for clean fuels. As you said when you introduced your proposed Clean Air amendments, "We need secure, reliable sources of energy right here at home. Alternative fuels are an American answer." We would welcome your support for this proposal, and hope that we can count on your leadership to ensure that our concerns are addressed.

Sincerely,

E. Benjamin Nelson
Chairman

Jim Edgar
Vice Chairman
FACT SHEET

Domestic Renewable Oxygenates Initiative

- Many supporters of the Clean Air Act Amendments of 1990 believed reformulated gasoline and oxygenated fuels programs would lead to major new markets for ethanol and other domestic, renewable fuels. However, with the EPA legal interpretation of that Act, agreements at the negotiated rulemaking, and oil company projections of oxygenate use, this seems questionable.

- The Domestic Renewable Oxygenates Initiative ensures that a portion of the oxygen which is mandated by the Clean Air Act to be in gasoline comes from domestic and renewable feedstocks.

- Specifically, the Domestic Renewable Oxygenates Initiative requires 50% of the oxygen required in reformulated gasoline and oxygenated fuels to come from domestic feedstocks by 1995 and 80% by 1997. Thirty percent of the oxygen must come from domestic renewable feedstocks by 1995 and 50% by 1997.

- U.S. pays nearly $50 billion yearly for foreign energy. This Initiative is a step toward reducing a growing dependence on foreign oil and lessening the U.S. trade deficit.

- There are no negative environmental impacts from this Initiative; it does not change air quality standards and will not affect air quality gains from the Clean Air Act.

- Focus on renewable resources will provide global warming benefits since the production of fuel from renewable feedstocks produces less carbon dioxide emissions.

- Program is market-based: the market decides on the feedstocks, the type of oxygen, and the price of the fuel. The market will demonstrate the lowest cost technologies for producing renewable fuels through American innovation.

- The renewable requirement is not a mandate for any particular industry—it provides opportunities for many renewable fuels—ethanol from corn, ethanol or methanol from wood, alcohol from biomass or garbage.

- The domestic requirement is similarly flexible. It allows the use of feedstocks such as domestic natural gas, providing a market for domestic fuel and helping the depressed domestic gas industry.

- By requiring domestic feedstocks, this Initiative will provide American jobs and help local and state economies.

(GEC, 7/23/92)
ENVIRONMENTAL COMMUNITY

Domestic Renewable Oxygenates Initiative

• Domestic Renewable Oxygenates Initiative has no negative environmental impact and does not change the Clean Air Act air quality standards.

• Focuses on creating a market for all domestic renewable fuels.

• Oxygen is already required for use in reformulated gasoline and oxygenated fuels by the Clean Air Act; this bill does not change the amount of oxygen required but simply specifies the source of that oxygen.

• Provides global warming benefits through the use of renewable fuels.

• Will trigger investment and growth in clean, alternative fuels and renewable energy; this initiative provides a real market for renewable feedstocks such as biomass, corn, wood, and garbage.

• This initiative provides a chance to build strong coalitions among environmental interests, states, and renewable fuel industries. Such coalitions are vital to withstand oil industry’s opposition to widespread use of nonpetroleum fuels.

• Domestic Renewable Oxygenates Initiative could serve as first step towards programs to establish defined markets for different nonpetroleum and renewable fuels.

(GEC, 9/23/92)
NATURAL GAS

Domestic Renewable Oxygenates Initiative

- Domestic Renewable Oxygenates Initiative requires 50% of oxygen required in reformulated gasoline and oxygenated fuels to come from domestic feedstocks by 1995 and 80% by 1997. Thirty percent of the oxygen must come from domestic renewable feedstocks by 1995 and 50% by 1997.

- By 1997, domestic natural gas would be expected to capture the 30% of the gasoline oxygenate market that must be domestic but does not have to be renewable.

- Such a scenario would provide a market for 60-100 billion cubic feet/year of domestic natural gas by 1997.

- Opportunity to highlight use of natural gas in a program for cleaner air (reformulated gasoline and oxygenates) and energy security. There are no negative environmental impacts from this initiative.

- Shifts focus from alternative regulatory scenarios (i.e., RVP waiver).

- Initiative allows oxygen credits to be earned from the production of neat alternative fuels. Methanol produced from domestic natural gas would qualify for these credits, providing yet another market for domestic gas.

- Creates direct jobs for the domestic natural gas industry and indirect jobs by preventing U.S. dollars from leaving the country to pay for foreign oil.

- Links alternative fuel, state, and environmental interests in an effort to reduce U.S. dependence on imported oil and establish markets for alternative transportation fuels.

- Domestic Renewable Oxygenates Initiative could serve as first step towards programs to establish defined markets for different alternative fuels.

(GEC, 9/29/92)
Areas of the United States
Subject to the Provisions of the
Clean Air Act Amendments of 1990

Ozone Nonattainment Areas

Starting in 1995, the 9 worst Ozone Nonattainment Areas in the country (identified in the map at right) must sell only reformulated gasoline which will reduce smog-causing emissions. Currently, there are several prominent emission-reducing additives which can be added to gasolines —

• Ethanol which is produced from renewable sources like corn, wheat and sugar cane
• Methyl Tertiary Butyl Ether (MTBE) which is produced from natural gas, wood or petroleum. It is a blend of 34% methanol and 66% isobutylene ether.
• Ethyl Tertiary Butyl Ether (ETBE) which is a blend of 42% ethanol and 58% isobutylene ether.

Collectively, these areas account for approximately 25% of the motor fuel sold in the country.

Carbon Monoxide Nonattainment Areas

Areas of the country which exceed acceptable levels of carbon monoxide pollution under the Clean Air Act are required to sell oxygenated gasoline.

As of February 1992, there are 39 areas which are identified in the map at right.

To lessen carbon monoxide pollution, some of these areas have been selling gasoline containing more oxygen than gasoline sold in other parts of the country. The major gasoline additives which could be used to increase the level of oxygen are:

• Ethanol
• Methyl Tertiary Butyl Ether (MTBE)
• Ethyl Tertiary Butyl Ether (ETBE)

In 1993, an estimated 12-14 billion gallons of gasoline will be governed by the Clean Air Act provisions to reduce carbon monoxide pollution.

Sources:
Governors’ Ethanol Coalition
Demand Projections as a result of the Domestic Renewable Oxygenates Initiative proposed by the Governors' Ethanol Coalition

To meet the requirements under the Clean Air Act, Ozone and Carbon Monoxide Nonattainment Areas must sell gasolines containing a minimum percentage, by weight, of oxygen — 2% in Ozone Areas (reformulated gasoline) and 2.7% in Carbon Monoxide Areas (oxygenated gasoline).

The Governors' Ethanol Coalition has proposed the Domestic Renewable Oxygenates Initiative which would establish target categories for oxygenated additives: Domestic Renewable, Domestic and No Requirement. Domestic ethanol or any other oxygenated additives produced from a domestic renewable source would qualify under the Domestic Renewable category. Domestic natural gas (used to produce methanol for MTBE or any other oxygenated additives produced from a domestic source (including ethanol)) would qualify under the Domestic Category. Different target percentages are proposed for 1995 and 1997.

**Demand Projections**

The amount of oxygenated additives needed to comply with the Domestic Renewable Oxygenates Initiative illustrates a range — the lower projections assume use in the 9 Ozone and 39 Carbon Monoxide Nonattainment Areas and those areas which have Opted-into the Reformulated Gasoline Program as of March 1992. The higher projections estimate the amount of additional oxygenated additives needed if all eligible areas Opt-in to the Reformulated Gasoline Program.

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* Presumes additional domestic requirement would be met from natural gas (used to make methanol for MTBE). However, this requirement could also be met by additional use of ethanol.
§ Domestic Renewable Oxygenates Act—Draft Legislation

Section 1. Short Title.

This Act may be cited as the Domestic Renewable Oxygenates Act.

Section 2. Findings.

The Congress finds and declares that:

(1) the U.S. spends nearly $50 billion each year for foreign energy;

(2) reducing U.S. dependence on imported energy is a vital step toward improving the domestic economy, reducing the trade deficit, and maintaining national security;

(3) the intent of the Clean Air Act Amendments of 1990 was to increase the use of domestic, renewable fuels to improve air quality;

(4) using nonpetroleum fuels derived from renewable resources such as corn, wood, biomass, garbage and other cellulose-based materials will lessen U.S. reliance on imported energy and increase interest in sustainable energy sources;

(5) renewable fuels offer the potential to decrease carbon dioxide emissions which contribute to global warming; and

(6) increasing the amount of fuel derived from domestic, renewable feedstocks will provide domestic jobs, help American farmers, and encourage domestic investment.

Section 3. Purpose.

The purpose of this Act is to

(1) lessen U.S. dependence on foreign energy; and

(2) increase U.S. production of domestic and renewable nonpetroleum fuels.

Section 4. Definitions.

(a) Renewable feedstock means a feedstock not derived from petroleum, natural gas, or coal (including peat) and from which, on an energy equivalent basis, there is no net increase in life-cycle carbon dioxide emissions (from production through utilization as a fuel) compared to similar gasoline blending components derived from crude oil.

(b) Domestic feedstock means a feedstock produced in the U.S. from components originating in the U.S. The U.S. includes the States, the District of Columbia, and the Territories.

(c) Administrator means the Administrator of the Environmental Protection Agency
Section 5. Domestic Renewable Oxygenates Requirement.

(a) In General. Not later than twelve months after enactment of this section, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall issue regulations establishing a program to require that

(1) at least 50 per cent of the oxygen required to be in gasoline by Sections 211 (k) and (m) of the Clean Air Act (42 U.S.C. §7545) shall be derived from domestic feedstocks by January 1, 1995, and 80 per cent by January 1, 1997;

(2) at least 30 per cent of the oxygen required to be in gasoline by Sections 211 (k) and (m) of the Clean Air Act (42 U.S.C. §7545) shall be derived from domestic renewable feedstocks by January 1, 1995 and 50 per cent by January 1, 1997; and

(3) The requirements of these provisions may only be met with (a) capacity which was used to produce oxygendate for gasoline in 1992 or (b) capacity to produce oxygenate for gasoline which did not exist in 1992.

(b) Applicability.

The requirements of this Act shall apply to reformulated and oxygenated fuel sold in nonattainment areas specified by the Clean Air Act as well as any area which opts-in to the reformulated gasoline program under Section 211 (k) of the Clean Air Act (42 U.S.C. §7545).

(c) Credits.

(1) The regulations promulgated under this section shall provide for the granting of an appropriate amount of credits to a person who refines or blends gasolines with oxygen which contains

(A) a greater domestic feedstock content than required in paragraph (a) (1); or
(B) a greater renewable feedstock content than required in paragraph (a) (2).

(2) Credits may be generated through the sale of blends containing qualifying oxygen as well as neat fuels.

(3) The regulations described in paragraph (1) shall also provide that a person who is granted credits may use such credits, or transfer all or a portion of such credits to another person for the purpose of complying with this section. Credits may be used during the year the credits were earned or in any subsequent years.

(d) Enforcement.

The Administrator shall have the authority to enforce this Act as part of the enforcement for the Clean Air Act reformulated gasoline and oxygenated fuels programs (42 U.S.C. §7545).
SUMMARY

Domestic Renewable Oxygenates Initiative

Basic Requirements
• The Act requires 50% of the oxygen required in reformulated gasoline and oxygenated fuels to come from domestic feedstocks by 1995 and 80% by 1997. 30% of the oxygen must come from domestic renewable feedstocks by 1995 and 50% by 1997.

• Growth in oxygenate demand must be met with capacity already used to produce oxygenates for gasoline or with new capacity. This prevents shifting of current domestic capacity now used for other functions (chemicals, solvents, glue, etc.) to this program while additional oxygenates are imported as replacements.

Environmental Impacts
• There are no negative impacts; the initiative does not change air quality standards or the requirements of the Clean Air Act.

• Oxygen is already required for use in reformulated gasoline and oxygenated fuels; this bill does not change that requirement but simply specifies the source of the oxygen.

• Provides global warming benefits through the use of renewable fuels.

Market-Based
• Credits may be earned (and traded) for gasolines which contain oxygen made from feedstocks with a greater domestic content or greater domestic renewable content.

• Neat fuels sold in nonattainment areas are also eligible to earn credits.

• Initiative is specific on basic requirement for domestic and renewable fuels but is flexible on feedstock and oxygen source. Market chooses best feedstock and type of oxygen.

Economic Issues
• Increased production of domestic fuels as required by this initiative will create domestic jobs.

• Reduces U.S. dependence on foreign oil and lessens U.S. trade deficit.

Eligible feedstocks
• Any domestic renewable feedstock for oxygen meets the domestic renewable requirement; this could include fuels like ethanol from corn, ethanol or methanol from wood, alcohol from biomass or garbage.

• Any domestic feedstock for oxygen qualifies for domestic requirement. This could include fuels like domestic natural gas, domestic methanol, and domestic ethanol.

(GEC, 7/23/92)
July 22, 1992

The Honorable
Samuel K. Skinner
Chief of Staff
The White House
Washington, D.C. 20500

Dear Mr. Skinner:

Recent proposals by the Governors' Ethanol Coalition and Senator Dole are of great concern to the petroleum industry. These proposals will interfere with the efficient functioning of fuel markets, make it more difficult to comply with the reformulated gasoline provisions of the Clean Air Act Amendments of 1990 and impose significant new costs on American consumers. We believe the Administration should strongly oppose efforts such as these which interfere with the marketplace by mandating the use of certain fuels or which have a harmful effect on air quality.

The Governors' Ethanol Coalition proposal would mandate that beginning in 1995, 50 percent of the oxygenates used in the reformulated gasoline program and wintertime oxygenated fuels program come from domestic sources. Thirty percent of the total oxygenate supply pool also would be mandated to come from "domestic renewable" sources -- in other words, an ethanol mandate use. In 1997, these requirements would increase to 80 percent domestic and 50 percent domestic renewable.

This proposal is founded on the erroneous suggestion that ethanol fuels will not play an important role in the reformulated and oxygenated fuels programs. In fact, all available oxygenates will be needed in order to meet the significantly increased demand for oxygenates that these programs will create.

The Governors' Ethanol Coalition recognizes that the higher volatility of ethanol blends increases VOC emissions and will worsen the nation's ozone nonattainment problems. That is why this approach does not include an RVP waiver. However, their solution would force refiners to compensate for ethanol's volatility effect by producing a more expensive low volatility blendstock. Thus, the petroleum industry -- an industry that has lost 450,000 jobs in the last ten years -- and more than 40,000 in 1992 alone would be forced to subsidize the expansion of the ethanol industry.
RVP level and did not in any way recognize the concept of an additional one pound waiver for ethanol blends. These RVP levels represented a significant concession by the petroleum industry. I can tell you unequivocally that I would not have signed that agreement if it had contained the one pound waiver for ethanol blends.

Again, we urge the Administration to take a strong position opposing this amendment and protecting the environmental gains contemplated in the Clean Air Act Amendments and in the reg-neg agreement.

If you have any questions or wish to discuss these issues further, please contact me.

Sincerely,

[Signature]

17
Ethanol Measure Proposed
Governors Endorse Market Guarantee

BY PAUL HAMMEL
WORLD HERALD/BUREAU

Lincoln — The federal government should guarantee a percentage of the future gasoline market to domestically produced methanol and ethanol, Gov. Nelson and Gov. Jim Edgar of Illinois said in a letter to President Bush. Nelson, chairman of the 16-state Governor's Ethanol Coalition, said the suggestion was a solution to the uncertain future of ethanol, a corn-alcohol fuel additive, under new Federal Clean Air Act standards.

Nelson has criticized the proposed standards as unfairly favoring imported methanol-based fuels over U.S.-produced ethanol, thus helping foreign oil producers over American farmers and companies.

"Since the Clean Air Act Amendment became law in 1990, it has become clear that ethanol's role in the Environmental Protection Agency's fuel program is uncertain," Nelson said in a press release Wednesday.

"Secondly, unless something is done, America will merely replace imported oil with imported oxygenated fuel," he said. "We will again become a hostage to others for our energy sources."

Proposed EPA standards scheduled to go into effect in 1995 would restrict the use of ethanol-blended gasoline in nine cities with ozone pollution problems, affecting a potential market of 18 billion gallons.

Nelson said multinational oil companies were building plants in the Persian Gulf, northern Africa, southeast Asia and South America capable of producing methanol, a competitor to ethanol.

"America has more than an ample supply of natural gas coupled with a domestic renewable fuel like ethanol to meet our needs," Nelson said. "It makes no sense to let the EPA give preference to foreign suppliers over American natural gas producers and corn growers."

Under the proposal to Bush, called the Domestic Renewable Oxygenates Initiative, the governors propose that 20 percent of the oxygenated fuel additives required by the Clean Air Act in 1995 come from domestic sources, such as methanol from natural gas, and that 30 percent come from renewable sources, like ethanol.

Two years later the percentages would increase to 30 percent from domestic sources and 50 percent renewable, domestic sources.

The governors' coalition estimated that the requirements would create a market for ethanol of up to 1.5 billion gallons a year and a need for domestic natural gas of up to 66 billion cubic feet a year by 1995.

Bob Harris, director of the Nebraska Energy Office, said the proposal was a major initiative that would mean billions of dollars in economic development in terms of jobs and sales of corn.

Harris said the governors were asking President Bush to adopt the initiative through administrative proclamation. If that fails, he said, congressional action will be sought.

Harris said Congress likely would be receptive to the initiative because it means jobs and business for America and American fuels.

"This is a jobs bill, an economic development bill, a rural economic development bill," he said.

All 16 governors in the ethanol coalition have endorsed the idea, Harris said.

The coalition still is seeking changes in proposed EPA rules to allow ethanol to be used in the nine cities with ozone problems, he said, but the initiative provides another route to solidifying the future for ethanol.

Please turn to Page 17, Col. 1
Dear Ben:

I would like to provide you with some initial reaction to the proposal recently presented by the Governors' Ethanol Coalition that would require an initial 50 percent, rising to 80 percent, of the oxygenates used under the Reformulated Fuels Program be derived from domestic sources.

First, I want to emphasize that the President has a lot of people working very hard right now to find an acceptable solution to this important issue. Like the Coalition, he is committed to encouraging the use of alternative fuels that reduce our dependence on foreign oil and he fully appreciates ethanol's important contribution as a renewable energy source.

However, the specific proposal to restrict the U.S. market to a percentage of domestically produced oxygenates has our trade negotiators concerned that the proposal is at odds with our obligations under the General Agreement on Tariffs and Trade (GATT). Article III:5 of the GATT specifically prohibits the adoption of regulations that specify a given amount or proportion of any product that must be supplied from domestic sources. As the previous U.S. Trade Representative, I can provide you with lots of examples of why adherence to Article III:5 is important for our nation's workers that produce for markets around the globe. As the previous Secretary of Agriculture, I can tell you conclusively that this kind of restriction adopted by other nations can be detrimental to our export dependent farmers.

We are reviewing several options at this time and so we appreciate the Coalition's efforts to be creative -- but the domestic content restriction has too many potential downsides. I can report that we are carefully reviewing the new technical data you mentioned that was produced by Dr. Michael S. Graboski. We need to better understand the true impact of various oxygenates, such as ethanol, on ozone formation and this review has already produced some promising information that will help close the differences between ethanol and other oxygenates. Further, the Administration has taken several other steps to encourage greater ethanol use, including support for pro-rating the current excise tax for ethanol blends of less than ten percent, and increased research and development to identify ways of producing ethanol at less cost.

Ben, the President has been a long and ardent supporter of ethanol. And as you know, I first began working on ethanol programs in Nebraska more than two decades ago. We all believe ethanol has an important role to play. Therefore, while we
cannot support the Coalition's latest proposal, we do want to continue to work with you and believe that together, we will find the right way to enhance ethanol's role.

We appreciate your efforts.

Sincerely,

Clayton Yeutter
Counsellor to the President for Domestic Policy

The Honorable E. Benjamin Nelson
Chairman
Governors' Ethanol Coalition
P.O. Box 95085
Lincoln, Nebraska 68509-5085
November 1, 1992

Mr. Randy Cruise, President
National Corn Growers Association
1000 Executive Parkway, Suite 105
St. Louis MO  63141-6397

Dear Randy:

Thank you for your October 28, 1992, letter to Bill Davis.

I want to reduce our dependence on imported fuel, improve farm income, and protect the environment. Using fuels derived from renewable resources addresses all these needs. That is why I have supported expanded use of ethanol as Governor and will continue to do so as President.

Last June, I joined 16 other governors in urging the President to use domestic fuels like ethanol in implementing the Clean Air Act. This proposal would have guaranteed ethanol a market share of oxygenate blend stock which would grow to 50 percent by 1997. From the White House, Clayton Yeutter dismissed this proposal without any effort to work with us to overcome his objections, and froze the bipartisan efforts of the governors.

The Governor's Ethanol Coalition proposal would have strengthened the natural and traditional alliance between farmers and other environmental groups, while nurturing relations between these groups and the oil industry. We will all have to work hard to reestablish cooperation, rather than lawsuits and divisiveness. We are all in this together, and together we can solve the issue.

Many governors from both parties have worked for years to increase the use of ethanol. Whatever happens November 3, I will continue this pursuit. Success demands that we base decisions on good science. For something this important, we can't depend solely on an approach that might come unraveled. I welcome your suggestions on this and any issue.

Sincerely,

Bill Clinton

[Signature]
Good afternoon. I'm Ben Nelson, Governor of Nebraska. I'm here today to speak in support of EPA's renewable fuels proposal for my state and for the nineteen members of the Governors' Ethanol Coalition.

I am chairman of the coalition, and Governor Thompson of Wisconsin is vice chairman. My statement today reflects the views of the coalition on the proposed rule and the importance of ethanol to the state of Nebraska. I am pleased that other coalition governors are able to be here today to also testify in support of the proposal. Governors Bayh of Indiana, Tucker of Arkansas, and Carnahan of Missouri — all members of the coalition — could not be here today. They asked that I add their statements to the record at the end of my testimony. Governor Engler of Michigan asked me to say he supports the proposal and will submit written comments later.

The bipartisan Governors' Ethanol Coalition is dedicated to coordinating ethanol-related marketing, production, demonstration, and research activities. The coalition also provides members with a forum for proposing and responding to legislative and policy initiatives.

A little over a year ago, President Clinton, a former coalition member, promised to support a renewable oxygenate initiative that would ensure a role for renewable fuels in the reformulated gasoline program. The coalition developed such an initiative when the President was a member. It was very gratifying to those of us who worked on the initiative
to see some of those ideas reflected in EPA’s renewable fuel proposal. On behalf of the coalition, I would like to thank President Clinton and his staff, Administrator Browner, and the staff of the EPA for proposing this innovative solution to a very difficult and complex problem.

The renewable fuel proposal will have a profound and beneficial impact on the coalition’s member states and on the country as a whole. EPA has asked for comments on several key issues related to the proposed rule. I would like to focus on three of those issues today—the legal authority for the proposed rule, the economic effect, and the energy and environmental benefits likely to result from the adoption of the renewable fuel proposal.

First, with respect to the legal authority for the proposed rule. In June of 1992, Governor Edgar of Illinois and I presented testimony to the EPA regarding the role of ethanol-based fuels in the reformulated gasoline program. At that time, we discussed EPA’s legal authority for this type of proposed rulemaking. Our conclusion then remains the same today. Section 211 of the Clean Air Act clearly requires the EPA to consider a variety of economic, environmental, and energy factors in developing the reformulated gasoline rules.

Last spring, Governor Branstad of Iowa testified for the coalition on the importance of using ethanol-based fuels in the reformulated gasoline program. He also cited a host of economic, energy, and environmental factors the coalition thought EPA should consider during the reformulated gasoline rulemaking process. We have also repeated these factors in communications with President Clinton and senior Administration officials.

Each time, we have identified EPA’s legal obligation to consider factors related to the environment and the economy. I recognize that statutes can be interpreted differently by parties with different interests. However, Section 211 provides strong statutory support for a renewable fuel requirement. That section requires EPA to consider cost, air quality, environmental benefits, and energy requirements in developing the reformulated gasoline program and that is exactly what EPA has done with the proposed rule.

Second, with respect to the economic effects. As governor of a state with significant ethanol production capacity, I want to illustrate the economic impact of the renewable fuels proposal. While the proposed rule does not prescribe a specific renewable oxygenate, ethanol-based fuels will be widely used, and this increased use will have a positive effect on more than one sector of the economy.

In 1993, nearly $455 million in ethanol-related plan construction was begun or completed in Nebraska. We have seen the dramatic effect ethanol production can have on a rural state’s economy. In 1992, Nebraska produced 13 million gallons of ethanol. This year, over 80 million gallons — a 600 percent increase — will be produced. By 1998, 250 million gallons will be flowing out of the state’s plants every year. Because of the boom, it is estimated that 2,100 people will be directly and indirectly employed in this industry — more than offsetting the jobs lost from the state’s declining oil and natural gas fields.
And where are these jobs being added? In America’s smallest towns — where employment opportunities are few. And by 1995, $450 million in economic activity will be added to the state’s economy every year. This industry alone will account for a one and a half per cent growth in Nebraska’s gross state product. This represents a 25 per cent to 50 per cent increase in Nebraska’s projected economic growth.

When the renewable fuels proposal takes effect, production of oxygenates will displace imported petroleum. The coalition estimates that across the country $1 to $3 billion in capital will be invested in ethanol plant construction and expansion to meet the requirements of this proposal. An additional 23,000 to 75,000 jobs will be added every two years as long as this renewable requirement remains in effect.

The proposed renewable requirement is nothing short of a transportation fuels revolution. You are creating a new American fuels industry — one not confined to just oil fields here and there. Virtually the entire country can become a transportation fuels producer by using biomass sources to produce ethanol or methanol — switch grass in Montana, sorghum in Oklahoma, sycamores in Louisiana, poplars in Vermont, and waste paper in New York — all these can be used, as well as corn, to produce ethanol.

In the past, there has been a hesitancy to expand plant capacity or to make new investments in production because of the uncertainty surrounding the role of renewables in the reformulated gasoline program. This proposed rule now provides the financial community with the certainty it needs to make investment decisions to meet the new demand created by this initiative.

The federal budget outlays can be cut under this proposal. Agricultural programs include a variety of incentives for farmers who meet certain grain production guidelines. These incentive payments can be reduced if a market for their grain exists — and the market is the reformulated gasoline program. The U.S. Department of Agriculture recently noted that excluding ethanol from the reformulated gasoline program would increase the department’s deficiency payments by $3.2 billion for the next six to seven years.

Third, with respect to the energy and environmental benefits. Many Midwestern states, including those affected by the reformulated gasoline program, import nearly all their gasoline and diesel fuel each year. Yet those states also have ethanol production facilities operating within their borders. The substitution of renewable fuels in place of imported petroleum provides clear benefits to economies of those states. Keeping dollars used to purchase renewable fuels produced from a state’s indigenous resources is critical to creating jobs and adding value to locally produced products.

Since the summer of 1990 — when U.S. oil imports exceeded our total domestic production for the first time in history — there has been an increasing awareness of the dangers to our economy and to our security resulting from such a dependence on foreign oil. Public awareness became public alarm when Iraq invaded Kuwait. Suddenly, the very real
price we pay for our growing dependence on imported energy became clear.

Today, we import a third more oil than any other nation in the world — more than 2.5 billion barrels in 1992. Every day Americans pay more than $123 million for imported oil. In 1990, we paid a staggering $45 billion for oil imports. Those exported dollars are the largest single cause of the nation’s international trade deficit — nearly $100 billion in 1993. With the adoption of the renewable fuel proposal, you will help ensure that America’s farmers and America’s ethanol producers — not foreign governments with captive petroleum monopolies — are the main beneficiaries of the Clean Air Act amendments. I have no doubt that Americans believe that this is the only correct public policy for the nation.

While the displacement of imported petroleum with renewable fuels is a modest part of the solution, it is a critical economic and national security factor that Congress clearly expected that EPA would consider in its rulemaking deliberations required under Section 211.

The renewable fuels proposal will not only help cut America’s dependence on foreign oil, but it is also consistent with national environmental goals. Greenhouse gases produced by burning fossil fuels have led to increasing concern from environmentalists and the public in the last few years. The U.S. transportation industry — which is almost totally dependent on petroleum fuels — is a major contributor of greenhouse gases. While the renewable fuel proposal only affects a small amount of transportation fuel, it is a positive step toward President Clinton’s Earth Day commitment to stabilize greenhouse gas emissions by the year 2000 and lays the foundation for more widespread use of renewable fuels in the future.

Finally, let me commend you for proposing a renewable fuels program that is generally flexible. A few minor modifications to the proposed rule, particularly in the area of renewable ether use, may be required. Specific suggested changes will be submitted before the February deadline.

On behalf of the Governors’ Ethanol Coalition, please accept my thanks for providing this opportunity to discuss the renewable fuels proposal. We look forward to working closely with the EPA, environmental interests, and Congress to find ways in which ethanol and other renewable fuels can be further used to meet the nation’s clean air and energy security goals.

I would ask that the letters in support of the renewable fuel proposal from Governor Bayh, Governor Tucker, and Governor Carnahan be included in the record.
For Immediate Release

June 30, 1994

STATEMENT BY THE PRESIDENT

I would like to commend the Environmental Protection Agency for its decision to make renewable fuels a major ingredient in reformulated gasoline under requirements of the Clean Air Act. Today, we are making good on a long-standing commitment to a cleaner environment and a stronger economy. This decision offers tremendous potential to provide the U.S. with thousands of new jobs for the future.

The use of reformulated gasoline will help to improve the quality of the air in the nation's dirtiest cities. Furthermore, a greater use of ethanol and its derivatives could help to reduce greenhouse gas emissions.

I especially support the use of ETBE, a fuel derived from ethanol, because of its special environmental promise.

Relying on renewable fuels also presents a major opportunity to farmers and other members of rural communities to get to work helping America. The rule could boost demand for corn by 250 million bushels a year.

Again, I commend EPA on this important decision to use renewable fuels to help achieve the objectives of the Clean Air Act. I believe our economy and our environment can go hand in hand. This policy is good for our environment, our public health, and our nation's farmers --- and that's good for America.

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FOR IMMEDIATE RELEASE
Thurs, June 30, 1994

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Statement of Senator Tom Daschle

Renewable Oxygenate Rule

I am pleased to be here today on the occasion of the release by EPA of the final rule on the use of renewable oxygenates in reformulated gasoline and would like to take this opportunity to commend President Clinton on fulfilling his commitment to develop an environmentally sound and economically sensible role for renewable fuels in the reformulated gasoline program. This rule stands as testament to the President’s vision for a more domestically secure and environmentally beneficial energy policy.

As most of you know, it has been a long, hard journey to reach this historic point. Throughout this process, the Administration has kept its eye on the ball. In spite of the pleadings of a variety of diverse economic interests, it has developed a rule that will promote the use of domestic renewable fuels and improve air quality.

This journey began four years ago when my colleague, Senator Harkin, and I proposed an amendment to the Clean Air Act to establish the reformulated gasoline program (RFG). That program will reduce ozone pollution and the emissions of the toxic chemicals that are normally found in gasoline.

It was our intent to create a program that would not only achieve important clean air goals, but also lay the foundation for future growth in the domestic oxygenated fuels industry, thereby reducing the nation’s dependence on imported energy. Today, even the oil companies agree that reformulated gasoline is “the most economical alternative fuel of the future...and will assist in cleaning the air for those areas of the country with severe smog problems by reducing certain hydrocarbon emissions from vehicles.”

Let no one doubt that the reformulated gasoline program will significantly improve the air quality of many our nation’s cities. This case has been well documented by the EPA.

As the authors of the legislation, Senator Harkin and I felt that renewable oxygenated fuels, such as ethanol and ETBE, and including renewable methanol and MTBE, could play a large role in reducing air pollution in our major cities. We also believed that good environmental policy and good economic policy could go hand-in-hand. In particular, ETBE, with its superior environmental properties, will be the ideal oxygenate to produce RFG in the future when environmental standards for gasoline get even more stringent.

During debate on the Clean Air Act Amendments, we were careful to declare that all fuels should be able to play a role in the reformulated gasoline program. We recognized that competition among all fuels was healthy for the marketplace.
Unfortunately, as is often the case with energy options, non-renewable fuels have gained an economic advantage through decades of subsidized use that today effectively precludes renewable fuels from playing a significant role in the marketplace. It is legitimate to ask if perpetuation of this advantage is sound long-term national energy policy.

I do not believe that it is. Therefore, to allow all fuels to play a role in the reformulated gasoline program, as was intended by Congress, it has become necessary to establish a modest requirement for the use of renewables. That is what the EPA has done.

As we prepare to inaugurate the reformulated gasoline program, we have an opportunity not only to improve air quality, but also to take a small but significant step toward energy independence. The EPA rule announced today serves both objectives. It does not discriminate between methanol-derived fuels or ethanol-derived fuels, or any other renewable fuel that may be developed in the future. It merely ensures that all fuels -- including renewable fuels -- play a role.

Our growing dependence on foreign energy supplies is worthy of our attention and concern. As we stand on the verge of implementing RFG, the U.S. for the first time in history imports over 50% of its oil, and the Department of Energy projects that by the year 2010 we will be paying over $200 billion per year for imported energy. Meanwhile, imports of non-renewable MTBE -- the chief alternative to renewable ethanol and ETBE -- are also rising.

We have seen nearly a ten-fold growth in MTBE imports in just the last four years. Without the rule announced today by EPA, imports of MTBE would continue to increase. It is estimated that MTBE imports would have to double or perhaps triple in the 1995-1996 time period.

Clearly, the invisible hand of the market has not done a particularly good job of weaning us from our dependence on imported energy. And where the market fails to achieve effectively legitimate policy objectives, it is incumbent upon a responsible government to take affirmative steps to meet those objectives. The renewable oxygenate rule is a reasonable and prudent response to legitimate environmental and balance of trade concerns.

Moreover, what we do today will lay the groundwork for the future, when reformulated gasoline will need to be even cleaner. The low vapor pressure and high octane of ETBE make it ideal for producing this cleaner gasoline. And, because the production of ETBE uses substantial quantities of natural gas, the renewable oxygenate requirement will provide considerable benefits to the domestic natural gas industry. Today's rule underscores the President's commitment to ensuring that domestically-produced ETBE plays a growing role in cleaning the nation's gasoline. I intend to do all I can to complement that effort.

Robert Frost once wrote that "two roads diverged in a wood, and I chose the road less travelled and that has made all the difference." Today the Administration chose the road that has been travelled far too little in the course of American politics. It has taken firm charge of the nation's fuel policy.

Without this rule, inaction and inertia would have led the nation into even greater dependence on imported energy. With this rule, the Clinton Administration will help wean the nation from its growing dependence on imported energy and encourage the development of even more energy-efficient alternatives in the future. That will make all the difference.
News Release
July 13, 1994
For Immediate Release

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COALITION TO SUPPORT EPA'S REFORMULATED GASOLINE PROGRAM IN COURT

LINCOLN, NEBRASKA -- Nebraska Governor Ben Nelson, Chairman of the 19-state Governors' Ethanol Coalition, said today that the Coalition would vigorously support the U.S. Environmental Protection Agency's decision to include ethanol and other renewable fuels in reformulated gasoline.

"It is unfortunate that the nation's petroleum, methanol and refining interests have taken this course," Nelson said. The Governor said he learned today that the American Petroleum Institute and the National Petroleum Refiners Association would be filing a lawsuit attempting to overturn EPA's decision.

According to Nelson, the EPA has assured him that the federal agency is in the strongest position possible to defend its reformulated gasoline rules in court. "I've learned that EPA's rules are challenged in court at least 90 percent of the time," Nelson said, "but nearly all the challenges are unsuccessful."

"The Governors' Ethanol Coalition is determined to assemble all the facts -- both scientific and legislative -- to support the EPA rule," Nelson said. "We have worked together for three years to include ethanol's role in reformulated gasoline. Now, the ethanol industry is on the verge of becoming the new American energy industry -- creating jobs and industrial development all across the nation. America's energy security and balance of trade will also be improved by ethanol's use in reformulated gasoline.

According to Nelson including ethanol in EPA's reformulated gasoline program would affect less than one percent of the transportation market in the nation. Without this rule, only petroleum-based oxygenates would be used,

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and there would be no competition in the marketplace where reformulated gasoline is used. Nelson said EPA's rule encourages competition in the marketplace.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN PETROLEUM INSTITUTE and
NATIONAL PETROLEUM REFINERS ASSOCIATION,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
and CAROL M. BROWNER, Administrator,
U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

No. 94-1502
and Consolidated Cases

BRIEF OF AMICUS CURIAE GOVERNORS’ ETHANOL COALITION

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February 8, 1995
FINAL BRIEF

Oral Argument scheduled for
February 16, 1995
Statement of Issues

The Governors’ Ethanol Coalition adopts EPA’s Statement of Issues.

Statute and Regulations

Relevant statutes and regulations accompany EPA’s and Petitioners’ briefs.

Interest of Amicus

The Governors’ Ethanol Coalition (Coalition) is an association of the governors of 19 states which includes Arkansas, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, South Dakota, Texas, and Wisconsin. Governor Nelson of Nebraska is chairman, Governor Thompson of Wisconsin is vice chairman, and Governor Edgar of Illinois is the Coalition’s immediate past chairman.

Under the Clean Air Act (Act), each Coalition state is charged with achieving or maintaining compliance with National Ambient Air Quality Standards. See, e.g., 42 U.S.C. §§ 7410, 7471, 7502. The Chicago and Milwaukee-Racine areas, which cover portions of three Coalition states, are among the nation’s nine worst areas for ozone and have been designated by the Environmental Protection Agency as Severe Ozone Nonattainment Areas. 40 C.F.R. §§ 81.314, 81.315, 81.350 (1994). There has been growing evidence, recognized by the EPA, that air pollution is often a regional problem best addressed by regional strategies and that the effect of transport of ozone precursors on a given area’s air quality must be considered in reaching attainment. Therefore, Coalition states that are not subject to the reformulated gasoline program (RFG) or that have not elected to participate in the RFG program also have a real interest in this program and its air quality effects.
The RFG program promulgated under section 211(k) of the Act, including the Renewable Oxygenate Requirement (ROR), will govern the composition of reformulated gasoline sold in the Chicago and Milwaukee-Racine areas and the composition of conventional gasoline sold throughout Coalition states. The RFG program is a part of the plans by which some Coalition states intend to comply with the Clean Air Act’s requirements. The ultimate form of the program will affect the ability of the Coalition states to comply.

The Environmental Protection Agency expects the ROR to increase ethanol use and corn production. Coalition states produce much of the nation’s corn — ethanol’s most common feedstock — and much of the nation’s ethanol production also occurs in the Coalition states. Whether this Court approves EPA’s rule will have a significant impact on the economies of Coalition states.

Many areas in the Coalition are subject to the Clean Air Act’s wintertime oxygenated fuels program. Ethanol is commonly used in these areas to meet the requirements of this program. Ethanol is also commonly used in conventional gasoline. Many states rely heavily on the availability of ethanol as a critical component in strategies to achieve the greatest reduction of harmful emissions in a cost effective manner.

The Coalition has publicly stated its concern that the RFG program, absent the ROR, will threaten the continued production of ethanol. In 1992, Governor Nelson and Governor Edgar wrote President Bush to express their concern:

The uncertainty which exists over ethanol’s role in the RFG program and the projected role which foreign produced methanol could play in the nation’s energy future, will create a significant backlash in both the agricultural and investment communities. Without a prompt corrective
regulatory or legislative initiative, ethanol's use will be curtailed and imported methanol will dominate the market.

As things stand now, OPEC will benefit more from the Clean Air Act amendments than American farmers, ethanol producers, and the domestic natural gas industry. No one ever intended this to happen, but if we do not take strong action immediately, this is exactly what will happen. R. IV-D-200 at 16 (App. 1277).

At the time, the governors' recommended that their concerns be addressed by a Domestic Renewable Oxygenates Initiative, requiring that 30 percent of the oxygenates used in RFG be from domestically produced renewable fuels by 1995. The ROR will achieve that goal. The Coalition is therefore filing this brief in support of EPA and the ROR.

Statement of the Case

The Governors' Ethanol Coalition adopts EPA's Statement of the Case. The Coalition also believes the following additional background is necessary to understand fully the development of the ROR.


\footnote{"R.\" refers to the Certified Index of the Record filed by Respondent EPA on August 29, 1994, as amended on September 28, 1994. EPA incorporated the record from its Docket Nos. A-91-02 and A-92-12 into the record of the proceeding below.}
EPA proposed in 1987 (and established on an interim basis) a one pound per square inch (psi) waiver for ethanol in fuel volatility regulations.2/ 52 Fed. Reg. 31274, 31292-94. EPA finalized this waiver in 1990. Notice of Final Rulemaking, "Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1992 and Beyond," 55 Fed. Reg. 23658, 23665 (June 11, 1990). The waiver was made part of the Clean Air Act by the 1990 amendments.3/ Recognizing the effect of volatility controls on the ethanol industry, Congress noted:

This provision will allow ethanol blending to continue to be a viable alternative fuel, with its beneficial environmental, economic, agricultural, energy security and foreign policy implications. Sen. Rep. No. 228, 101st Cong., 1st Sess. (1989) at 110.

Congress similarly expected renewable fuels to play a significant role in the reformulated gasoline program. Representatives and senators debating the Clean Air Act anticipated that ethanol and ETBE would provide a significant market for surplus corn, reducing farm subsidies, and improving farm income. See, e.g., 136 Cong. Rec. 12880 (Remarks of Representative Madigan); 136 Cong. Rec. 12894 (Remarks of Representative Alexander); 136 Cong. Rec. H2768 (Remarks of Representative Richardson). The expected market share for ethanol was quite consistent with the 30 percent proposed by EPA in the ROR. Representative Michel specifically noted projections that ethanol will constitute up to

2/ As explained in the Brief of Respondent Environmental Protection Agency, the addition of ethanol increases the volatility of a gasoline blend by one psi. Thus, to meet the same volatility requirements as conventional gasoline, ethanol would have to be blended with a special, low-volatility gasoline.

3/ Public Law 101-589, Nov. 15, 1990, 104 Stat. 2399. The final public law included no short title, but it was commonly referred to in Congressional debates as the Clean Air Act Amendments of 1990.
30 percent of the oxygenate market. 136 Cong. Rec. H2843 (1990). Representative
Richardson, sponsor of the RFG amendment, noted estimates that twice as much methanol as
ethanol will be used to meet the oxygen requirement. 136 Cong. Rec. H2768 (1990).

In order to develop regulations, EPA entered into a Regulatory Negotiation (Reg-Neg)
with a number of interested parties. In order to expedite the regulatory process, EPA issued
a Notice of Proposed Rulemaking, ("Regulation of Fuels and Fuel Additives: Standards for
Reformulated Gasoline" (NPRM), which was published in the Federal Register on July 9,
1991 (56 Fed. Reg. 31176) (App. 278)). The NPRM was intended to set forth the
participants’ positions.

The negotiations culminated in an Agreement in Principle, which included the
participants’ acceptance of an outline of underlying principles of the reformulated gasoline
program. EPA issued a Supplemental Notice of Proposed Rulemaking, "Regulation of Fuels
and Fuel Additives: Standards for Reformulated and Conventional Gasoline" (SNPRM),
386), as an implementation of the outline. The SNPRM provided that, prior to 1997, EPA
would certify reformulated gasolines according to a "simple model." Under the simple
model, EPA would judge whether a fuel meets emission reduction requirements for volatile
organic compounds (VOCs) according to the fuel volatility, with no exceptions for ethanol.
57 Fed. Reg. at 13417-18 (App. 387). The consistency of this result with various parties’
understanding of the regulatory negotiation has been the subject of much debate. R. (A-91-
Supporters of renewable fuels, including the Coalition, told EPA that the volatility requirements for the reformulated gasoline program (like those in the fuel volatility rules) would severely damage, if not cripple, the ethanol industry. As the regulatory process moved forward, EPA continued to develop of the "complex model," which would allow EPA to establish emission reduction standards in lieu of the simple model standards. It quickly became apparent, however, that the most significant determinant of VOC emissions would be volatility, and that the ethanol industry would suffer the same handicaps under the complex model. As EPA subsequently explained:

(E)thanol cannot be splash-blended into unmodified gasoline and still have the blend comply with the RFG emission performance standards. Instead, either special reduced-volatility ("sub-RVP") blendstocks would be necessary during the summer or the ethanol will have to be converted into ETBE. Many in the ethanol industry have continued to express concern that refiners would not produce such blendstocks. If that were to occur, ethanol producers would lose access during the summer months to those current markets which will be covered by the RFG program. This . . . could also lead to a reduced market share in RFG in winter months. 59 Fed. Reg. at 39262 (App. 1913).

In response, EPA developed modifications to the proposed reformulated gasoline program to provide incentives for refiners to provide the necessary sub-RVP blendstocks for ethanol blending. These modifications were contained in a new Supplemental Notice of Proposed Rulemaking, published on February 26, 1993. 58 Fed. Reg. 11722 (App. 485). Despite EPA’s efforts to develop an RFG program that did not cripple the ethanol industry, comments on the proposal uniformly concluded it was unworkable. In its place, EPA developed the ROR.

By this time, EPA was rapidly approaching a December 1993 court imposed deadline for issuing rules for the reformulated gasoline program. Waxman et al. v. EPA, et al., Civil
Action No. 92-1320 (D.C. Dist. Ct.). EPA did not have time to receive and consider public comments on the ROR. Even if EPA had wished to promulgate the ROR without comment, however, significant differences from the previously proposed renewable oxygenate proposal would have precluded such action. See, Shell Oil Co. v. EPA, 950 F.2d 741, 751 (D.C. Cir. 1991). Instead, EPA simultaneously promulgated the remainder of the reformulated gasoline regulations and proposed the ROR as an amendment to those regulations. After a period of comment and some modifications to the proposal, EPA issued the ROR on June 30, 1994.

Thus the ROR is the end product of a seven year systematic and deliberate effort by Congress and EPA to achieve emission reductions in a manner that also furthers the use of renewable fuels.

Summary of Arguments

The Coalition strongly supports the Renewable Oxygenate Requirement (59 Fed. Reg. 39258, August 2, 1994) (App. 1909), and that amends the reformulated gasoline program as set forth in 59 Fed. Reg. 7716 (February 16, 1994) (App. 1576). The Coalition believes that the ROR is a compelling solution to meet the emission reduction requirements of Section 211(k) of the Clean Air Act while also balancing the broad policy objectives of Congress explicitly stated in Section 211(k)(1) of the Act:

Within one year after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost
of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements. [Emphasis added.]

The ROR satisfies the broad policy objectives of Section 211(k), and other explicit and implicit policy objectives of Congress evidenced by other provisions of the Act (See, e.g., Section 211(h) of the Act, the Biomass Energy and Alcohol Fuels Act of 1980, Omnibus Budget Reconciliation Act of 1987, and National Energy Policy Act of 1992.) These national policy objectives foster the expansion of renewable fuels as follows:

- reducing global warming
- conserving the nation’s limited fossil fuel supplies
- decreasing the country’s dependence on foreign oil
- reducing the supply of grain from excess agricultural production through the use of ethanol.

These policy objectives are extremely important in light of historical imperatives and both past and recent events. The formative background to these policies is the crisis faced by this country during the Arab oil embargo, the resulting shortages of gasoline and other fuel supplies and long, frustrating gasoline lines. The nation also experienced extreme inflationary impacts of rapid and significant increases in the cost of gasoline and other fuels because of the changes in foreign oil supplies. Recent events in Kuwait which threatened a significant percentage of the world’s oil supply, and, in part, prompted the nation’s involvement in the Gulf War, underline the necessity of meeting these broad energy policy objectives. Without the ROR, it is clear from the record that MTBE — a derivative of oil — will become the oxygenate of choice and may, in fact, be the only oxygenate available in the future. The record also shows that the majority of MTBE will be produced off-shore and
will, in effect, increase the nation’s reliance on foreign oil — clearly contrary to Congressional energy policy objectives.

In addition to its energy policy objectives, it is clear that Congress intended the EPA Administrator to consider economic effects in promulgating any regulation under the Act. The Administrator properly considered the economic effects in creating the RFG program, including the economic effects on renewable oxygenates. The record shows that without the ROR, summertime use of ethanol will decrease and will negatively impact its wintertime availability. Over the long term, production of ethanol would decrease, resulting in very limited supplies of ethanol. An RFG program that does not accommodate ethanol’s place in the oxygenate market through some means is likely to result in severe economic consequences to ethanol producers, distributors, and corn farmers. Moreover, the development of other economically viable renewable oxygenates will be severely affected by any national program which provides disincentives for using ethanol. A detailed discussion of these economic effects on the coalition’s 19 member states appears in Section II of this brief.

The ROR is neutral with respect to ozone air quality and emissions of toxic air pollutants. Ethanol is one of the oxygenates used during the wintertime in carbon monoxide nonattainment areas to achieve reductions in carbon monoxide emissions. The ROR will positively impact carbon monoxide air quality by ensuring that there are no adverse regulatory impacts from the RFG program that will affect ethanol supplies in these areas.

Thus, the Environmental Protection Agency in promulgating the ROR, which is the result of a lengthy and considered regulatory process, properly sought to accommodate a
broad range of interests affected by the RFG program. That EPA acted properly and within
its authority in promulgating the ROR cannot be doubted, especially in light of the Supreme
Court’s decision in *Chevron, U.S.A. v. The Natural Resources Defense Council*, 467 U.S.
part) that:

> *The power of an administrative agency to administer a congressionally
created...program necessarily requires the formulation of policy and the rules to fill
any gap left, implicitly or explicitly, by Congress.* If Congress has explicitly left a
gap for the agency to fill, there is an express delegation of authority to the agency to
ecludate a specific provision of the statute by regulation. Such legislative regulations
are given controlling weight unless they are arbitrary, capricious or manifestly
contrary to statute. Sometimes the legislative delegation to an agency on a particular
question is implicit rather than explicit. In such a case, a court may not substitute its
own construction of a statutory provision for a reasonable interpretation made by the
administrator of an agency. [Emphasis added.]

While mandating consideration of both nonair quality and air quality related health
and environmental impacts and energy requirements, Congress was silent as to how these
broad policy objectives of Section 211(k)(1) of the Act were to be addressed. Through the
ROR, EPA acted in a reasoned and thoughtful manner to fill this gap, while also achieving
the emission reduction requirements of Section 211(k). Thus, it is clear that EPA did not act
arbitrarily, capriciously or manifestly contrary to the Act in addressing these policy concerns,
nor in otherwise carrying out its authority under other provisions of Section 211(k). As we
will support in greater detail later, the ROR, therefore, is a legitimate exercise of EPA’s
authority and must stand.

**Argument**

I. *Sections 211(k) and 301(a) of the Act Authorize EPA to Include the Renewable
Oxygenate Rule as Part of the Reformulated Gasoline Rule*
July 28, 1999

Governor Bill Graves, Chairman
Governor Tom Vilsack, Vice Chairman
Governors’ Ethanol Coalition
P.O. Box 95085
Lincoln, Nebraska 68509-5085

Dear Governors Graves and Vilsack:

For more than 20 years, I have believed that a healthy domestic ethanol industry can contribute to a variety of national policy objectives. Most obviously, it enhances farm income and strengthens our rural economy. But it also improves air quality, reduces oil imports and lowers net budget outlays.

The creation of the Reformulated Gasoline (RFG) program as part of the 1990 Clean Air Act Amendments established a minimum oxygen standard that has significantly increased demand for ethanol and other oxygenates. The benefits of this program for the nation have been impressive. Since taking effect in 1995, the RFG program has exceeded the emissions reduction goals set by Congress, reduced oil imports by over 250,000 barrels per day and increased substantially demand for agricultural and other domestic raw materials.

The presence of MTBE in water supplies in California and elsewhere now poses a serious threat to the RFG program. Questions have been raised about the continued utility of the oxygen requirement, and the suggestion has been made that refiners be granted additional flexibility in making clean-burning RFG.

For ethanol supporters, this debate brings both opportunities and risks. Clearly, the removal of MTBE from RFG could potentially open the door to expanded ethanol usage nationwide. However, that result is not inevitable. In fact, one possible scenario—an MTBE ban, coupled with elimination of the oxygen requirement—could inadvertently return ethanol to the pre-1995 era of flat growth.

In recent months, Senators Feinstein and Boxer have been working with me to explore alternatives to the RFG oxygen requirement that would provide the necessary flexibility for California and other states to address their MTBE water contamination problem, while providing a solid future for ethanol. This process, which is on going, has produced a proposal that addresses the legitimate concerns that have been raised about MTBE without sacrificing the many proven benefits of oxygenates in cleaner burning gasoline.

In return for allowing states to waive the oxygen requirement, this proposal would establish a renewable...

http://www.ethanol-gcc.org/daschle.htm

11/5/2003
fuels standard, applicable to all gasoline sold in the U.S., that would more than double ethanol production over the next ten years. In addition, it would empower EPA and states to regulate MTBE and other fuel components.

This approach would have the following benefits:

- It would substantially increase domestic corn demand, leading to billions of dollars in additional income for farmers.
- It would create additional value for ethanol usage in non-RFG areas, like South Dakota, Nebraska, Minnesota and Iowa, by allowing ethanol blenders in those states to gain credits that they could sell to refiners in other parts of the country who choose not to use ethanol.
- It would provide maximum flexibility in using ethanol in gasoline by allowing the requirement to be met with ethanol blending in those areas and during seasons where it is most cost-effective.
- It would ensure a certain and growing future for the ethanol industry.

As you undoubtedly know, the debate over the future of the oxygen standard is approaching a critical juncture. The Blue Ribbon Panel established earlier this year by EPA Administrator Carol Browner recently recommended ways to provide additional flexibility to the RFG program. While acknowledging the value of domestic renewable fuels like ethanol in our nation's fuel supply, the panel recommended repeal of the RFG oxygen requirement.

The attached draft proposal is the product of months of consultation with experts in both the public and private sectors and draws upon the deliberations of EPA's Blue Ribbon Panel as well as valuable input from many of my colleagues in the Congress. Again, it was developed in response to concern about MTBE water contamination and is designed to provide states with the flexibility they need to deal with this problem without sacrificing the many benefits ethanol and other oxygenates provide.

I recognize you are extremely busy. However, I value your input, and things are moving very quickly here in Washington on this issue. Consequently, I would appreciate it if you would review these materials and let me know your reaction to the proposal as soon as possible. Should you have any questions about any of this, please feel free to call my Legislative Director, Eric Washburn, at 202/224-2321.

Thank you in advance for your consideration. I look forward to working with you to build upon our past achievements.

Sincerely,

[Signature]

Tom Daschle
United States Senate
TAD/ew

http://www.ethanol-gec.org/daschle.htm

11/5/2003
September 14, 1999

The Honorable Thomas A. Daschle
United States Senate
509 Hart Senate Office Building
Washington, DC 20510

Dear Senator Daschle:

Thank you for your recent letter asking for the views of the Governor’s Ethanol Coalition concerning proposed legislation that would address the issue of MTBE water contamination and promote the expanded use of renewable ethanol in cleaner burning gasoline.

The coalition shares your view that the establishment of the minimum oxygen standard in the reformulated gasoline provisions of the 1990 Clean Air Act Amendments has contributed substantially to national environmental, agricultural and energy security goals. The outstanding success of the reformulated gasoline program in areas such as Chicago and Milwaukee, where ethanol has been the oxygenate of choice, is proof that the original premise of the Daschle-Dole reformulated gasoline provision was sound and has, in fact, surpassed expectations.

Unfortunately, leaking gasoline tanks, gasoline spills, and two-stroke engines have caused the unforeseen presence of MTBE in water supplies in California and elsewhere. This poses a serious threat to the reformulated gasoline program in general, and along with it, the future of ethanol. We commend you and your colleagues for seeking a proactive solution to this problem, and appreciate your seeking the coalition’s comments on this important matter.

We have reviewed the draft legislation you provided. Although we view this proposal as important, it is paramount that Congress require that the U.S. Environmental Protection Agency use all of its existing regulatory authority to ensure ethanol plays a vital role in the Phase II RFG program. The coalition looks forward to taking an active role in discussions related to the legislation. Specifically, we would like to make the following recommendations and observations:

Reid Vapor Pressure Requirements. The coalition supports a comprehensive review of scientific studies concerning the reactivity of ozone-forming components of gasoline. We have asked EPA Administrator Browner to immediately address this issue because it has a direct impact on the viability of ethanol in the Phase II RFG program. The predictive air quality models currently used by the U.S. Environmental Protection Agency to reflect the reactivity of ozone-forming components of gasoline do not accurately capture the carbon monoxide reduction benefits of ethanol. Contemporary scientific studies indicate that ethanol reduces carbon monoxide emissions which in turn may reduce the ozone-forming potential of gasoline containing ethanol. Recognition of this benefit and incorporation of this value in the predictive air quality models will more accurately recognize the contribution of ethanol to air quality improvements.
Empowering States to Regulate MTBE. The coalition supports the concept to empower states to regulate MTBE as a result of demonstrated water contamination problems. As long as states meet reasonable criteria to protect against arbitrary and capricious actions, governors should be given the authority to protect water supplies and public health.

Minimum Oxygen Standard. As drafted, the bill appears to impose a blanket repeal of the minimum oxygen standard effective January 1, 2001. We would strongly urge that the bill be changed so that instead governors could selectively petition to waive the minimum oxygen standard upon certification that the state, or area, has an identifiable problem with MTBE. The coalition believes there is no reason for reformulated gasoline areas such as Chicago and Milwaukee – where ethanol-blended reformulated gasoline is widely accepted – be forced out of a proven and effective program.

Renewable Fuels Standard. In return for granting refineries greater flexibility, by allowing governors the opportunity to waive the minimum oxygen standard, the coalition supports the concept of a renewable fuels standard. The renewable fuels standard would establish a minimum requirement for ethanol use averaged on a national basis, steadily increasing to 2.1 percent by January 2009. The coalition believes this is an excellent way to ensure sustainable and orderly growth in ethanol production. As confirmed by the U.S. Department of Agriculture analysis you provided, the national benefits due to improved farm income, economic development, and improved environment and energy security will be substantial. The credit trading mechanisms will encourage the most efficient use of ethanol blends, and allow refineries maximum flexibility in logistics and transportation.

Protecting Against Air Quality Deterioration. The coalition also supports the concept to ensure that no air quality “backsliding” occurs in states seeking authority to waive the Minimum Oxygen Standard. These provisions, as written, currently require refineries to ensure that their gasolines burn at least as clean as “in-use” performance of reformulated gasoline in 1997 and 1998. We believe that this is the least that should be done. If possible, this provision should be strengthened, so that we do not forfeit the important environmental gains of the Phase II RFG requirements.

ETBE Testing. Finally, the coalition endorses your proposal’s call for federal funding of comprehensive testing of health effects and water behavior characteristics of ETBE. As you know, EPA’s Blue-Ribbon Panel recommended that further work was needed to determine ETBE’s potential advantages. Coalition member states like Nebraska have led the ETBE research effort in recent years and preliminary indications are that ETBE is much less soluble in water, and far more biodegradable. If it can be conclusively shown that ETBE is far less likely than MTBE to appear in water supplies, the stage could be set for Midwestern ethanol and Gulf Coast ether producers to combine forces to the benefit of their respective businesses, farmers, and the environment.

Once again, Senator Daschle, thank you for your leadership in promoting expanded ethanol use. We appreciate your consideration of these comments, and look forward to working with you to secure a sustainable future for the nation’s ethanol industry.

Sincerely,

Bill Graves, Chair
Governor of Kansas

Thomas J. Vilsack, Vice-Chair
Governor of Iowa

c. Member Congressional Delegations
July 19, 2000

Honorable Robert C. Smith
Senate Environment and Public Works Committee
Room SD 410
Dirksen Building
Washington, D.C. 20510

Dear Chairman Smith:

As organizations representing 32 states, we are committed to maintaining the air quality benefits of the reformulated gasoline program (RFG) while protecting the citizens of our states from further drinking water contamination caused by the continued use of MTBE in gasoline and from unwarranted hikes in gasoline prices. We are pleased to learn of the progress the Senate Environment and Public Works Committee is making to craft legislation that will build the national consensus necessary to resolve this problem this year.

Forging consensus on such a complex issue is a worthy challenge. While our states are not in agreement on the efficacy of the oxygenate standard, we all agree that the consequence of inaction on MTBE this year is unacceptable. Thus, in a spirit of cooperation we have come together in support of the following principles for legislative action:

- MTBE must be phased out nationally as expeditiously as possible, but no longer than 4 years; states should be provided financial assistance in dealing with MTBE clean-up; and, EPA will work to insure that consumers are provided information about the characteristics and health affects of gasoline constituents and additives;

- In order to provide states and refiners with increased flexibility in meeting RFG standards, the oxygen content requirement may be waived at the request of a governor. Recognizing the attendant public policy goals of the Clean Air Act’s oxygen requirement (e.g., national security, rural economic stimulus, competition, global warming), Congress must adopt a competitive Clean Alternative Fuels Program that
will allow steady expansion of domestically-produced renewable fuels such as ethanol, including provisions which would promote new biomass production; and,

- The air quality and public health benefits of RFG and the oxygenate standard should be preserved, including a cap to prevent any increase in the use of aromatics in RFG. Toward this end, EPA must be required to perform comprehensive testing of gasoline components and renewable fuels to ensure that the full environmental attributes of all fuel constituents are understood and credited.

Mr. Chairman, we all agree that MTBE must be removed from gasoline as expeditiously as possible. We believe these legislative principles provide a framework that will allow refiners to move quickly away from MTBE, while preserving the air quality, energy security and economic goals of the 1990 Clean Air Act Amendments. By adding flexibility to the oxygen requirement in the RFG program, while phasing out MTBE, we will ensure that public health is protected while at the same time supporting efforts to lower gasoline prices nationally. We commit to working with you over the next several months to assure prompt passage of legislation consistent with these principles.

Sincerely,

Governor George E. Pataki
State of New York for NESCAUM

Governor Thomas Vilsack
State of Iowa and Chair
Governors' Ethanol Coalition

Governor Jeanne Shaheen
State of New Hampshire for NESCAUM

Governor Mike Johanns
State of Nebraska and Vice Chair
Governors' Ethanol Coalition