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Via: Federal eRulemaking Portal: <https://www.regulations.gov>

Environmental Protection Agency Docket No. EPA-HQ-OAR-2020-0448; FRL-10015-80-OAR

Re: E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks (86 Fed. Reg. 5094; January 19, 2021)

The Renewable Fuels Association (RFA) appreciates the opportunity to provide comment on the proposed rule regarding E15 fuel dispenser labeling and compatibility with underground storage tank (UST) systems.

RFA is the leading national trade association representing U.S. fuel ethanol producers. Its mission is to advance the development, production, and use of low-carbon ethanol by strengthening America's ethanol industry and raising awareness about the benefits of renewable fuels. Founded in 1981, RFA serves as the premier forum for industry leaders and supporters to address ethanol policy, regulation, and technical issues. RFA's 300-plus members are working daily to help America become cleaner, safer, more energy secure, and economically vibrant.

Under President Obama's administration, the U.S. Environmental Protection Agency (EPA) granted two partial fuel waivers under section 211(f)(4) of the Clean Air Act allowing the use of E15 as a motor fuel for light-duty vehicles built in model year (MY) 2001 or later. However, additional regulatory barriers substantially prevented the expansion of E15 following the issuance of the partial waivers in 2010 and 2011. EPA removed the most significant barrier in 2019 when it extended the 1-psi volatility tolerance provided under section 211(h) to all gasoline blends containing 9 to 15 vol% ethanol. The present proposed rule addresses two important remaining barriers—E15 dispenser labeling and demonstrations of UST compatibility.

As described more fully in the comments below, RFA believes that with a few modest revisions, the labeling modifications and UST compatibility provisions proposed by EPA will result in expanded availability and use of E15, a cleaner, more affordable fuel blend that improves our nation's energy efficiency, air quality, energy security, and resiliency to climate change. These proposed modifications should be expeditiously finalized.

I. RFA supports EPA's first proposed option for modifying the E15 label. However, two modest revisions to the proposed label are recommended.

Vehicle population data from EPA's MOVES model and the U.S. Energy Information Administration's Annual Energy Outlook confirm that more than 95% of the light-duty passenger cars and trucks on U.S. roadways today are legally approved by EPA to use E15 (i.e., these vehicles are MY2001 or later). Thus, less than 5% of the light-duty vehicles on the road today are not covered by EPA's partial E15 waivers. The share of the vehicle fleet comprised by MY2000 and older vehicles will continue to shrink, as those older vehicles are scrapped and replaced by later model year vehicles. In addition, EPA has been presented with evidence that E15 would be a suitable fuel for MY2000 and older vehicles and would not cause or contribute the failure of the emissions control devices of these vehicles.¹

While the E15 usage restrictions communicated on EPA's current pump label are meant to apply to only a small segment of today's vehicle fleet, the label also unnecessarily confuses and deters drivers of MY2001 and newer vehicles from purchasing E15. That said, we understand EPA continues to prohibit the use of E15 in MY2000 and older vehicles, motorcycles, boats, and other off-road gasoline-powered equipment. We further understand that EPA is not presently proposing to re-open or modify the partial E15 waivers that limit E15 use to MY2001 and newer vehicles.

Therefore, while RFA continues to question the long-term need for an E15 pump label, we currently support the first of the two options co-proposed by EPA (i.e., modifications to the existing label). We believe a modified label represents a reasonable "middle ground" between stakeholders who support the complete elimination of the label and those who support retaining the current label design. As EPA recognizes, improvements to the existing E15 label are warranted, such that the fuel label provides appropriate information to consumers regarding approved uses without causing unnecessary concerns that could adversely impact marketplace perceptions of E15. We agree with EPA that simple modifications would "reduce confusion about the vehicles in which E15 can be used while also alerting consumers to the vehicles and engines in which E15 should not be used."

While RFA generally supports the specific label, modifications proposed by EPA (as outlined at 86 Fed. Reg. 5098), we recommend two additional slight revisions to the proposed label design, as follows:

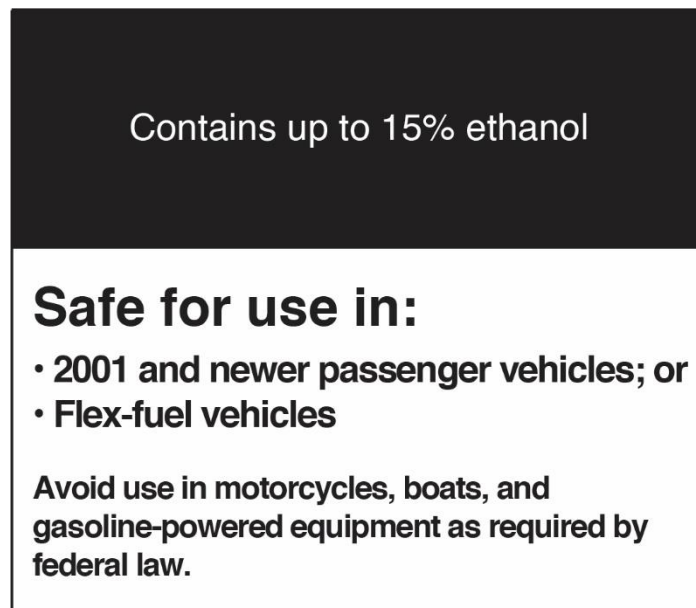
1. **Use a black header for the label, rather than a blue header.** The use of a black header rather than a blue header will keep label printing costs down (i.e., two colors rather than three), while retaining a simple and clean design. In addition, anecdotal

¹ <https://ethanolrfa.org/wp-content/uploads/2015/09/Ricardo-Technical-Assessment-E15-MY1994-2000.pdf>

conversations with retailers suggest they prefer neutral colors for labels, so as not to conflict with dispenser branding and paint/color schemes.

2. **Slightly revise the text at the bottom of the label to improve clarity.** We recommend striking “other vehicles” from the text at the bottom of the label because the statement “Safe for use in: 2001 and newer passenger vehicles; or Flex-fuel vehicles” already makes clear that E15 use is not allowed other vehicles. Additionally, we recommend striking “It may cause damage” from the second sentence at the bottom of the label because the available testing results and scientific evidence do not justify this statement.

The label mock-up below includes RFA’s recommended revisions.



- II. **EPA should clarify that its mandatory E15 label preempts the ability of state and local governments to require duplicative and redundant E15 dispenser labels.**

EPA’s proposal seeks comment on labeling preemption consideration, in light of the fact that “...confusion is caused when there is more than one [E15] label displayed on some fuel dispensers.”

EPA alone has the authority to “control or prohibit” the contents and design of E15 pump labels under section 211(c)(1) of the Clean Air Act, and section 211(c)(4)(A) clearly prevents state or local governments from attempting to enforce differing “control or prohibition” by adopting a requirement for unique labels.

In addition, and as recognized by EPA, certain state or local label requirements may prevent, or stand as an obstacle to, compliance with federal requirements. This would lead to a violation of the supremacy clause of the U.S. Constitution. For example, if a state or local E15 label is required in a certain jurisdiction, a retailer operating in that jurisdiction may

incorrectly assume the state or local label supersedes the federal label or simultaneously complies with both the state/local and federal labeling requirement. In another example, a gasoline retailer may have room for only one E15 label on its dispenser; if it chooses to affix the state/local label instead of the federal label, the state/local labeling requirement would be seen as an obstacle to compliance with the federal labeling requirement.

Recent events have underscored the importance of EPA clarifying that the federally required E15 label forecloses on the ability of state and local governments to adopt their own duplicative labeling requirement. Indiana Senate Bill 303, which as of April 19 was awaiting approval by the Governor, requires state gasoline retailers to display a new label on fuel pumps that dispense E15.² The bill establishes that retailers "...must display the statement 'Attention: E15. Check owner's manual for compatibility and warranty requirements.' or a similar statement approved by the United States Environmental Protection Agency." Further, the bill "requires that this statement be displayed on a fuel dispenser next to the fuel grade selection button, as a part of or in addition to the label about the use of ethanol in certain vehicles and certain engines that is required under current federal regulations."

By attempting to establish a new control or prohibition that differs from the federal requirement, the proposed Indiana E15 label would clearly violate section 211(c)(4) of the Clean Air Act. And, by requiring that the Indiana label be displayed "next to the fuel grade selection button" and "*as a part of*" the EPA E15 label, the bill may result in retailers placing the Indiana label *over the top of* the existing E15 label. This would clearly violate the supremacy clause of the U.S. Constitution.

This recent example from Indiana demonstrates the need for EPA to clarify that its federal E15 labeling requirement preempts any effort to require a state or local E15 label.

III. RFA strongly supports EPA's proposed changes to UST compatibility requirements.

As recognized by EPA, important changes have occurred in recent years in both the retail fuel marketplace and in the manufacturing (i.e., materials and compatibility) of underground storage tank systems. We strongly agree with EPA that these changes warrant revisions to the 2015 UST regulations that will "grant certain allowance for compatibility demonstration and make it less burdensome for UST owners and operators to meet current requirements." We also agree that the likelihood for continued expansion of higher ethanol blends justifies the proposal by EPA to require that newly installed or replaced UST systems be compatible with fuel blends containing up to 100% ethanol.

a. RFA supports the proposal to allow the use of secondary containment in lieu of demonstrating compatibility of all UST system equipment.

We are aware of many retail operators who are unable to demonstrate the compatibility of their existing UST system equipment in a manner that complies with the 2015 UST regulations. However, many of these retailers have secondary containment and monitoring

² <http://iga.in.gov/legislative/2021/bills/senate/303#digest-heading>

systems that would detect and contain any leak from primary containment systems (i.e., tanks, piping, etc.). Thus, we strongly support with EPA's proposal allowing UST system owners to forgo the compatibility demonstration if their UST systems have secondary containment. We agree with EPA that secondary containment "will still sufficiently protect the environment" even in the unlikely event of a leak.

b. RFA supports the proposal allowing for UST system compatibility determinations based on manufacturer statements and certification by testing laboratories.

RFA agrees with EPA that the UST systems and components installed after certain dates (i.e., when manufacturers adopted compatible materials) are fully compatible with E15. It is reasonable to assess compatibility based on what is known about the age of UST systems and components and manufacturer statements regarding compatibility.

c. We support EPA's proposed compatibility requirements for new installations and replacements but believe EPA should reconsider proposed exemptions from this requirement.

EPA notes in the proposal that "transitioning to compatible UST systems for emerging fuels can be very difficult." Thus, EPA is proposing to ensure that "future fuel storage infrastructure can reliably store a larger variety of fuels." This would be accomplished by requiring that new or replaced UST systems and components, including pipe dopes and sealants, are "compatible with ethanol blends up to 100 percent." As a longtime proponent of "future-proofing" retail stations, RFA strongly supports this proposal and agrees with EPA's rationale.

However, we recommend that EPA reconsider the potential exemption from this requirement for USTs storing fuel for emergency power generators and other off-road fuel. Recent research and development show E98 and E100 blends as being highly promising low-carbon fuel sources for emergency and peak-shaving power generation, as well as off-road heavy-duty engines. Thus, we believe it is necessary to ensure fuel storage and dispensing facilities affiliated with these emerging markets are well-positioned to integrate low-carbon ethanol as the fuel source for these uses.

d. EPA should slightly shorten the time allowed for states to submit revised State Program Approvals (SPAs) adopting these changes to federal UST regulations.

As acknowledged by EPA, many states will need to revise state and local UST regulations to reflect the changes made by EPA to its regulations governing UST compliance demonstrations. EPA's proposal suggests that "states will have three years from the effective date of a final rule to submit to EPA a revised SPA application" that outlines the changes made to state and local regulations. Given that states just went through the SPA application approval process for the 2015 UST regulation, they are familiar with the process and should not need as much time to submit new SPA applications reflecting the UST compatibility demonstration changes. Thus, we recommend EPA should give states two years, rather than three years, to submit SPAs.

IV. Conclusion

Again, RFA appreciates the opportunity to provide feedback on EPA's proposed rule regarding E15 fuel dispenser labeling and compatibility with underground storage tank (UST) systems.

As described in these comments, RFA believes the labeling modifications and UST compatibility provisions proposed by EPA, along with our recommended modifications to certain provisions, will result in expanded availability and use of E15. We encourage EPA to expeditiously finalize these modifications.

Please feel free to contact us if you have any further questions.

Sincerely,

Kelly Davis
VP of Regulatory Affairs