

Underground Storage Tanks/Fuel Dispenser Labeling: U.S. Environmental Protection Agency Proposed Rule Addressing E15



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01/26/2021

The United States Environmental Protection Agency (“EPA”) published a January 19th Federal Register Notice proposing modifications to the Clean Air Act (“CAA”) and Resource Conservation and Recovery Act (“RCRA”) relating to E15 addressing:

- Labeling
- Underground Storage Tank Compatibility

See 86 Fed. Reg. 5094.

The proposed rule addresses the sale and distribution of gasoline-ethanol blends containing greater than 10 volume percent ethanol and up to 15 percent volume ethanol.

EPA is co-proposing to either:

- Modify the E15 label; or
- Remove the label entirely and seek comment on whether state and local governments may be preempted from requiring different labels on fuel dispensers

EPA is also proposing to modify the underground storage tank (“UST”) regulations to grant certain allowances for compatibility demonstration for storage of ethanol blends. The objective is stated to be to facilitate the proper storage of E15 in USTs.

The federal agency is also proposing compatibility requirements for future UST installations or component replacements. This proposal is stated to be an attempt to ensure compatibility with higher blends of ethanol.

EPA notes that in 2019 it extended a CAA volatility waiver to gasoline-ethanol blends containing between 9 and 15 percent ethanol. Further, in the years since 2010 and 2011 E15 partial CAA waivers were granted the number of retail stations offering E15 has expanded. The Biofuel Infrastructure Partnership program and other activities are stated to have spurred in part this growth.

The agency estimates that as of October 2019 an estimated 1,809 stations registered as selling E15.

Two labeling options EPA is considering include:

- Modifications to the label intended to provide additional clarity to consumers to decrease confusion (labeling revisions described in the Federal Register preamble)

- Removal of the label entirely

EPA states that it believes the labeling modifications would reduce confusion about the vehicles in which E15 can be used. It also states that the revisions would also alert consumers to the vehicles and engines in which E15 should not be used. Comment is requested on what combination of modifications to the label would improve clarity addressing these issues.

EPA notes that selection of the elimination of the E15 label requirement could also result in the removal of the E15 survey mandate. This is because it is currently required in order to verify the E15 fuel dispensers are labeled consistent with EPA's regulatory requirements. The agency states that they would arguably no longer be necessary if the labeling requirement was removed.

As to UST compatibility, EPA notes that over 500,000 UST systems that contain petroleum or hazardous substances are regulated pursuant to the RCRA rules. The proposed rule provides that owners and operators of UST systems in existence one year after the effective date of the rule who cannot determine compatibility (i.e., cannot find installation documentation) for all equipment and components would not be required to demonstrate compatibility if the UST systems have secondarily contained tanks and piping (including safe suction piping) and use interstitial monitoring. The agency believes that such secondary containment would contain a leak from the primary containment of the tank and pumping. Also, it states that the interstitial monitoring would likely detect a leak before regulated substances reached the environment.

EPA states it has already identified equipment for which UST owners and operators would not need to demonstrate compatibility. It believes steel and fiberglass tanks manufactured after July 2005 are compatible with higher blends of ethanol fuels. As a result, owners and operators would not need to demonstrate compatibility for these USTs.

EPA is also proposing that owners and operators storing motor fuel used in over-the-road vehicles would be required to ensure that new or replaced UST system equipment and components (including pipe dopes and sealants) are compatible with ethanol blends up to 100 percent. This would apply regardless of whether the UST currently stores or will store ethanol blends. Further, the agency includes UST systems storing over-the-road diesel because it states that service stations may in the future change to storing gasoline with higher blends of ethanol.

A copy of the proposed rule can be downloaded [here](#).