https://www.epa.gov/dockets/commenting-epa-dockets.

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA's Docket Center homepage at *https://www.epa.gov/dockets.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID–19.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2002–0037.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Jennifer Caparoso, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4063; fax number: (919) 541–0516; and email address: *caparoso.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: To allow for additional time for stakeholders to provide comments, the EPA has decided to reopen the public comment period until February 8, 2021.

Dated: December 16, 2020.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2021–00355 Filed 1–15–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 280, and 281

[EPA–HQ–OAR–2020–0448; FRL–10015–80–OAR]

RIN 2060–AU92

E15 Fuel Dispenser Labeling and Compatibility With Underground Storage Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA currently requires fuel dispenser labels for gasoline-ethanol blends of greater than 10 volume percent (vol%) ethanol and up to 15 vol% ethanol (E15). The label was designed to alert consumers to the appropriate and lawful use of the fuel. EPA is co-proposing to either modify the E15 label or remove the label requirement entirely and seeking comment on whether state and local governments may be preempted from requiring different labels on fuel dispensers. To facilitate the proper storage of E15 in underground storage tank systems (USTs), EPA is proposing to modify the UST regulations to grant certain allowances for compatibility demonstration for storage of ethanol blends. EPA is also proposing compatibility requirements for future UST installations or component replacements that would ensure compatibility with higher blends of ethanol.

DATES:

Comments: Comments must be received on or before April 19, 2021. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 18, 2021.

Public Hearing: EPA will announce the public hearing information for this proposal in a supplemental **Federal Register** document.

ADDRESSES: You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0448, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2020–0448 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://*

www.regulations.gov, including any personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: For questions regarding the E15 fuel dispenser labeling provisions of this proposed action, contact Lauren Michaels, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4640; email address: *michaels.lauren@epa.gov.* For questions regarding the E15 compatibility with underground storage tanks provisions of this proposed action, contact Elizabeth McDermott, Office of Underground Storage Tanks, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–0646; email address: *mcdermott.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the sale of gasoline. Potentially affected categories include:

Category	NAICS [1] code	Examples of potentially affected entities
Industry	111, 112	Agriculture (crop and animal production).
Industry	31–33	Manufacturing.
Industry	42, 44–45, 72 (excluding 447)	Commercial (wholesale trade, retail trade, accommodation, and food services).
Industry	447	Retail motor fuel sales.
Industry	481, 483–486, 48811	Transportation (air, water, truck, transit, pipeline, and airport operations).
Industry	5171, 2211	Communications and Utilities (wired telecommunications carriers, electric power generation, transmission, and distribution).

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. This table lists the types of entities that EPA is now aware could potentially be affected by this proposed action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this proposed action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Outline of This Preamble

I. Purpose of This Action

This action proposes modifications to EPA regulations under the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA) relating to the sale and distribution of gasoline-ethanol blends containing greater than 10 volume percent (vol%) ethanol and up to 15 vol% ethanol (E15). Recently, EPA has taken actions to provide additional opportunity for E15 within the fuels marketplace. We are proposing two sets of regulatory changes to further that end. The first proposes modifications to EPA's E15 fuel dispenser labeling requirement. The second proposes changes to EPA's Underground Storage Tank (UST) regulations regarding compatibility with gasoline-ethanol blends.

II. E15 Fuel Dispenser Labeling Revisions

This section discusses our proposed revisions to the E15 label, under the CAA.

A . Background on the E15 Label

In 2010 and 2011, in response to requests for a waiver from CAA section 211(f)(1), EPA granted two partial waivers for use of E15 [1] under CAA section 211(f)(4).[2] These waivers were

[1] For purposes of this preamble, E15 refers to gasoline-ethanol blended fuels that contain greater than 10 vol% and no more than 15 vol% ethanol content.

[2] These partial waivers are collectively referred to as ''the E15 partial waivers.'' 75 FR 68094 (November 4, 2010), 76 FR 4662 (January 26, 2011). The 2010 waiver applied to MY2007 and newer light duty motor vehicles. The 2011 waiver applied to MY2001–2006 light duty motor vehicles.

partial in that they apply to model year (MY) 2001 and newer light-duty motor vehicles and do not apply to MY2000 and older light-duty motor vehicles, all heavy-duty gasoline engines and vehicles, all highway and off-highway motorcycles, and all nonroad products. Per CAA section 211(f)(4), EPA evaluated whether the use of E15 would cause or contribute to emissions failures over the useful life of all vehicles, engines, and nonroad equipment, and determined that the use of E15 in MY2000 and older vehicles, heavy-duty gasoline engines and vehicles, and highway and off-highway motorcycles could cause these motor vehicles to exceed their emissions standards. EPA also found that the use of E15 in nonroad products could cause emissions exceedances as well as durability and materials compatibility issues.

Because the partial waivers apply only to MY2001 and newer light-duty motor vehicles, EPA promulgated regulations under CAA section 211(c) (referred to as the Misfueling Mitigation Rule or MMR) to mitigate the potential for E15 to be used to fuel vehicles, engines, and equipment for which E15 has not been approved for introduction into commerce.[3] Those regulations were needed to implement EPA's affirmative determinations that the use of E15 in MY2000 and older light-duty motor vehicles, all heavy-duty gasoline engines and vehicles, all on- and off-highway motorcycles, and all nonroad products would cause or contribute to the impairment of those vehicles' and engines' emission controls and harm public health from increases in regulated emissions. The regulations include a prohibition on the use of E15 in MY2000 and older light-duty motor vehicles, all heavy-duty gasoline engines and vehicles, all on- and off-highway motorcycles, and all nonroad products. To implement this prohibition, EPA promulgated several misfueling mitigation requirements in the MMR, a key aspect being that E15 fuel dispensers must have a specific label when a retail station or wholesale-purchaser consumer chooses to sell E15. The label was designed to alert consumers to the appropriate and lawful use of the fuel.

The E15 label was designed in coordination with consumer labeling experts at the Federal Trade Commission (FTC); FTC also requires the labeling of fuel dispensers in certain circumstances.[4] EPA worked with FTC to develop the E15 label and to ensure consistency between EPA's and FTC's labels for higher level gasoline-ethanol blends such as E85 (gasoline ethanol blends containing up to 83 percent ethanol). By regulation, EPA's current E15 label can be used in lieu of FTC's label for E15.[5]

The E15 label requirement was implemented as an integral component of EPA's misfueling mitigation program. First, the E15 partial waivers include a waiver condition that fuel and fuel additive manufacturers must submit a misfueling mitigation plan (MMP) with provisions to implement all reasonable precautions to address potential misfueling, including ensuring the use of a fuel dispenser label.[6] The waiver conditions articulated in the E15 partial waivers provide that the label must convey the following information:

- The fuel being dispensed contains 15% ethanol maximum;
- The fuel is for use in only MY2001 and newer gasoline cars, MY2001 and newer light-duty trucks, and all flex-fuel vehicles;
- Federal law prohibits the use of the fuel in other vehicles and engines; and
- Using E15 in vehicles and engines not approved for use might damage those vehicles and engines.

As discussed above, the MMR also implements a label requirement for retailers and wholesale purchaser-consumers, in addition to the requirements under the waiver conditions for fuel and fuel additive manufacturers. The MMR label requirement is specified in 40 CFR 80.1501 and requires the same basic elements as required under the E15 partial waivers' label requirement. Most recently, the 2019 E15 ''substantially similar'' definition for E15 requires that fuel and fuel additive manufacturers must submit a misfueling mitigation plan with provisions to implement all reasonable precautions to address potential misfueling.[7] Thus, the E15 label is currently incorporated and required under 40 CFR 80.1501, our CAA section 211(f)(1) ''substantially similar'' definition for E15, and the CAA section 211(f)(4) E15 partial waivers.

B. E15 in the Market

In 2019, EPA extended the CAA section 211(h)(4) 1-psi volatility waiver to gasoline-ethanol blends containing between 9 and 15 percent ethanol. This has expanded the opportunity for E15 to be sold during the summer season.

In the years since the 2010 and 2011 E15 partial CAA section 211(f)(4) waivers were granted, the number of retail stations offering E15 has grown, spurred in part by the United States Department of Agriculture (USDA) biofuel infrastructure partnership (BIP) program in 2016–18[8] and the industry-sponsored Prime the Pump program, that helped provide funding for retail station upgrades. As of October 2019, there are an estimated 1,809 stations registered as selling E15 (representing only about one percent of all retail stations).[9] Figure III–1 shows the growth of E15 stations since 2012, as well as the percentage of E15 stations of all retail stations in the United States.

[3] 76 FR 44406 (July 25, 2011).

[4] FTC's regulations found at 16 CFR 306.10 (Automotive Fuel Rating Posting) require fuel dispenser labels for gasoline-ethanol fuel blends containing greater than 10 percent ethanol. The FTC regulations provide for an exemption for retailers that utilize EPA's label under 40 CFR 80.1501. See 16 CFR 306.10(a).

[5] As described later in this proposal, if we were to remove our label requirement under 40 CFR 80.1501, absent additional action from FTC, retailers would be required to use FTC's label for ethanol blends containing between 10 and 15 percent ethanol, per 16 CFR part 306.

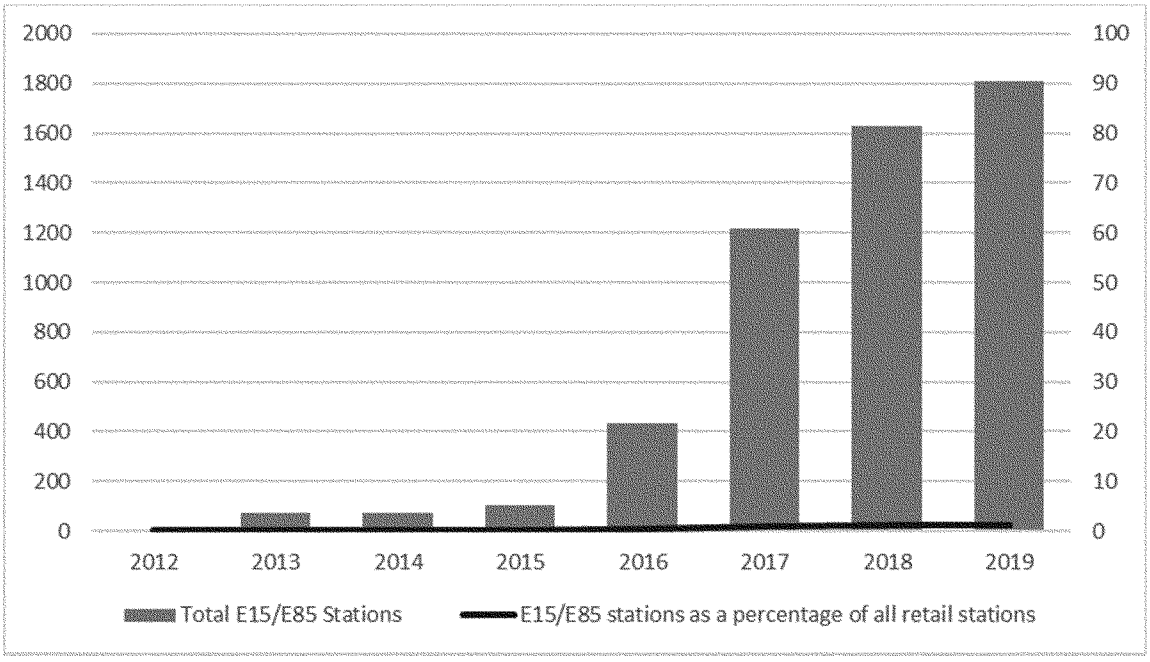
[6] 75 FR 68094 (November 4, 2010), 76 FR 4662 (January 26, 2011).

[7] 84 FR 26980, 27021 (June 10, 2019).

[8] See Biofuel Infrastructure Partnership, *https://www.fsa.usda.gov/programs-and-services/energy-programs/bip/index;* Prime the Pump press release, *https://growthenergy.org/2018/06/20/growth-energy-prime-the-pump-success-driving-ethanol-demand.*

[9] Email from Growth Energy to EPA, October 9, 2019, ''Growth Energy Higher Blend Infrastructure.'' Available in the docket for this action.

Figure II.B-1: Growth in E15 Retail Stations Over Time



The opportunities for misfueling have changed since 2011 as well. Over time, the number of light-duty vehicles on the road that are older than MY2001 have decreased due to normal fleet turnover, resulting in a corresponding decrease in the number of miles traveled by those light-duty vehicles.[10] At the same time, we have no indication that anything has changed for the other sectors (*i.e.,* nonroad vehicles, engines, and equipment, motorcycles, and heavy-duty vehicles). We continue to believe there are millions of such products in use that could potentially be misfueled on E15.

C. Proposed Changes to the E15 Labeling Requirement

EPA has received comments from some stakeholders on other actions suggesting that the existing E15 label is no longer necessary and simply interferes with additional growth of E15 in the marketplace.[11] These commenters suggest that removal of the label or changes to the color of the label or language used on the label would increase lawful use of E15 in MY2001 and newer light-duty vehicles. Other stakeholders have suggested that the growth in E15 at retail stations exacerbates concerns over misfueling of vehicles and equipment not designed for it, and suggest that the current label is no longer explicit enough about what vehicles and engines cannot use E15 making it insufficient to protect against misfueling.[12] These commenters suggested that EPA should solicit input on the size, design, and placement of the label on the dispenser, and other characteristics of the label to more clearly communicate the fuel's ethanol content to consumers.[13]

Our proposed action to modify or eliminate the E15 label requirement would rely on our CAA section 211(c) authority to control or prohibit fuel. Under CAA section 211(c)(1), EPA may issue regulations to ''control or prohibit the manufacture, introduction into commerce, offering for sale, or sale'' of any fuel or fuel additive whose emissions products may cause or contribute to air pollution ''which may be reasonably anticipated to endanger public health or welfare,'' or whose emissions products ''will impair to a significant degree the performance of any emission control device or system which is in general use.'' In the MMR, we found that E15 would significantly impair the emission control systems used in MY2000 and older light-duty motor vehicles, all heavy-duty gasoline engines and vehicles, all highway and off-highway motorcycles, and all nonroad products. This misfueling could result in increases in hydrocarbon, carbon monoxide, nitrous oxide, particulate matter, and air toxics emissions. Any action EPA takes to modify or remove the label would need to consider this finding.

We currently have no information before us that would indicate that E15, if used in MY2000 and older light-duty motor vehicles, all heavy-duty gasoline engines and vehicles, all highway and off-highway motorcycles, and all nonroad products, would no longer cause such damage to emission control systems. However, in the intervening years since the promulgation of the MMR and the label requirement, the vehicle fleet turnover toward newer light-duty vehicles, and the feedback

[10] We received comments in rulemakings suggesting that there are still vehicles newer than MY2000 for which manufacturers' owner's manuals continue to include warnings against E15 use despite E15 being allowable for introduction into commerce in those vehicles under EPA's regulations. See discussion at 84 FR 26980, 27010 (June 10, 2019).

[11] See, *e.g.,* Comments from Growth Energy (Docket Item No. EPA–HQ–OAR–2018–0227–0053) and Renewable Fuels Association (Docket Item No. EPA–HQ–OAR–2018–0227–0037). While these represent the most recent comments received on this issue, we have included all relevant comments in the docket for this action. While these comments often include many aspects of E15 use, only comments relating to the label are considered relevant for this NPRM.

[12] See, *e.g.,* Comments from National Marine Manufacturers Association (Docket Item No. EPA–HQ–OAR–2018–0775–0534) and Petroleum Marketers Association of America (Docket Item No. EPA–HQ–OAR–2018–0227–0083). While these represent the most recent comments received on this issue, we have included all relevant comments in the docket for this action. While the comments often address many aspects of E15 use, only those comments related to the label requirement are considered relevant for this NPRM.

[13] See, *e.g.,* Comments from National Marine Manufacturers Association (Docket Item No. EPA–HQ–OAR–2018–0775–0534).

from stakeholders have led us to reevaluate the E15 label at this time.

The current label is 3 inches by 5 inches in black text on an orange background and includes the following language:

- The word ''ATTENTION,'' diagonally across the upper right corner of the label;
- The word ''E15'' at the top of the label;
- The ethanol content: ''Up to 15% ethanol'' below the word E15;
- The words and symbols ''Use only in • 2001 and newer passenger vehicles • Flex-fuel vehicles''; and
- The final two sentences: ''Don't use in other vehicles, boats, or gasoline-powered equipment. It may cause damage and is prohibited by Federal law.'' [14]

In this action, we are co-proposing two options with respect to the E15 label. Under the first option, we are proposing modifications to the label intended to provide additional clarity to consumers and decrease confusion. Under the second option, we are proposing to remove the label entirely.

1. Potential Modifications to the E15 Label

Our first co-proposal is to modify the existing E15 label, including:

- Removing the ''Attention'' stripe along the upper right corner of the label.
- Removing the phrase ''E15'' from the label, while including the language ''contains up to 15% percent ethanol''.
- Revising the language ''Use only in'' to ''Safe for use in''.
- Revising the language ''Don't use in'' to ''Avoid use in''.
- Revising the format of the word ''prohibited'' such that it is not in bold and italicized type.

We additionally propose modifications to the label in accordance with our existing alternative labels. At this time, there are two approved alternative labels for E15. One label includes the term ''or'' in between ''2001 and newer passenger vehicles'' and ''flex fuel vehicles.'' We believe the inclusion of ''or'' clarifies that both MY2001 and newer light-duty motor vehicles and flex fuel vehicles can permissibly use E15. The other approved alternative label includes ''motorcycles'' in the list of vehicles and engines in which E15 use is prohibited. Our first co-proposal proposes these modifications to the E15 label as well since we believe they more clearly convey which vehicles and engines can lawfully use E15.

We believe these modifications to the label 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. We note that these modifications would also continue to comply with the requirements under the existing E15 partial waivers and thus would not require modifications to them.

Finally, we propose a modification to the colors utilized on the label. Consistent with the FTC fuel labels, we selected the orange color for our E15 label requirement in 2011; however, we recognize that another color may be better suited for the label. Some stakeholders [15] have suggested a blue and white label, instead of the orange label we currently use. The proposed regulatory text modifies the color of the label to a blue header, with white text, and white body with black text.[16] We alternatively propose to maintain the current orange and black label color design.

We seek comment on the proposed changes to the label, and specifically request input on what combination of modifications to the label would improve clarity regarding which vehicles can use E15 while protecting vehicles and engines for which E15 use is inappropriate. We recognize that the modifications proposed may be best implemented together, or in some alternative combination that does not include all of the proposed modifications. We specifically request information on any studies (*e.g.,* public survey or focus group studies) or information on consumer interaction with the label.

2. Potential Removal of the E15 Label Requirement

In the alternative, our second co-proposal is to remove the E15 label entirely. Selection of this option could also result in the elimination of the E15 survey requirement because it is currently required in order to verify that E15 fuel dispensers are labeled consistent with EPA's regulatory requirements, and would arguably no longer be necessary if the labeling requirement were removed.[17] Some stakeholders have suggested that removing the label would encourage the use of E15 by consumers who can lawfully use E15 but who do not do so because they are confused by the label.[18]

We note that, regardless of our proposal to remove the E15 label, the prohibition on the use of E15 in MY2000 and older light duty vehicles and all nonroad engines and equipment as codified at 40 CFR 80.1504 would remain in place. We continue to believe that E15, when used in those vehicles or engines, would cause or contribute to the impairment of emission control systems which would, in turn, result in negative effects on human health and welfare.

Were EPA's E15 label requirement to be removed, we believe that FTC's regulations would require that E15 dispensers be labeled according to FTC's label requirements.[19] We seek comment on the interaction between EPA and FTC's labels, recognizing that we cannot modify FTC's regulations in this action.

In order to completely remove the E15 label, we would need to also remove it from the requirements under the CAA section 211(f)(4) waiver, and likely clarify under the CAA section 211(f)(1) ''substantially similar'' determination that the fuel dispenser label would no longer be required. We seek comment on how to address the requirements under the CAA section 211(f) provisions.

3. Modification to Regulations

We note that we intend to finalize the proposed Fuels Regulatory Streamlining Rule (''Streamlining Rule'') with an implementation date of January 1, 2021, for most provisions, including the E15 label requirement. Under the Streamlining Rule, we proposed to transpose unchanged the current E15 misfueling mitigation measures from 40 CFR part 80, subpart N, into the new 40 CFR part 1090. Since the effective date of any final rulemaking for this action would likely be after January 1, 2021, we would effectuate the proposed E15 label modifications or removal of the E15 labeling requirement in 40 CFR part 1090.

[14] An image of the existing label is available in the memorandum ''Potential Label Changes,'' available in the docket for this action.

[15] See, *e.g.,* Comments from Growth Energy (Docket Item No. EPA–HQ–OAR–2010–0448–0083).

[16] We have provided mock-ups showing potential modifications to the label that might result from this proposal in the memorandum, ''E15 Label Revisions,'' available in the docket for this action.

[17] If we do remove the E15 label, we are not proposing to remove the Product Transfer Document (PTD) language requirements around ethanol content in gasoline-ethanol blended fuels. In addition to informing retailers of ethanol content for purposes of labeling E15 fuel dispensers, the PTD language requirements for ethanol are also necessary to identify which gasoline-ethanol blends can take advantage of the 1-psi waiver for RVP compliance.

[18] See Comments from Growth Energy (Docket Item No. EPA–HQ–OAR–2015–0202–0129).

[19] See 16 CFR part 306 and supra notes 4&5.

D. Request for Public Comment on E15 Labeling Preemption Considerations

Since promulgation of the MMR in 2011, EPA has also received information from some stakeholders that confusion is caused when there is more than one label displayed on some fuel dispensers. For this reason, EPA additionally seeks comment regarding the ability of state or local governments to require labeling of E15 pump dispensers.

As stated in the MMR,[20] EPA's authority to ''control or prohibit'' specifications for E15 pump dispenser labels is provided by CAA section 211(c)(1). Under CAA section 211(c)(4)(A), a state or local government may not adopt or enforce differing controls or prohibitions respecting labeling of E15 fuel dispensers if ''for purposes of motor vehicle emission control.'' [21] In the MMR, we also stated that we would evaluate questions regarding potential E15 pump dispenser labels preemption matters on a case-specific basis.[22]

Aside from the express preemption provided by CAA section 211(c)(4)(A), a state or local control for fuels or fuel additives may be implicitly preempted under the supremacy clause of the U.S. Constitution where the state requirement conflicts with Federal law by preventing compliance with the federal requirement, or by standing as an obstacle to accomplishment of the Federal objectives. Therefore, a state or local requirement respecting E15 pump label dispensers that is not expressly preempted under CAA section 211(c)(4)(A) nevertheless may be preempted if it meets the criteria for this constitutional conflict preemption.

In this action, we seek comment on whether there are certain types of labels that may be conflict-preempted from use. We encourage commenters to include examples of other labels they have observed that may raise such preemption questions and legal analysis to support their positions, to the extent feasible.

III. E15 Compatibility With Underground Storage Tanks

This section discusses our proposed revisions regarding compatibility with USTs.

A. Background on Underground Storage Tank Compatibility

As of 2020, EPA regulates over half-a-million UST systems that contain petroleum or hazardous substances. EPA's Office of Underground Storage Tanks was formed in response to the discovery in the early 1980s that thousands of USTs had leaked and contaminated groundwater supplies in the U.S. USTs form a crucial part of our country's fueling infrastructure. It is important for USTs to be constructed, maintained, and operated in a manner so that petroleum and other regulated substances are stored safely. We developed the UST regulation in 1988 to help owners and operators meet those goals, and a critical part of the regulation included the requirement for UST systems to be compatible with the substance stored. Incompatibility between fuels stored and UST system materials can result in equipment or components such as tanks, piping, gaskets, or seals becoming brittle, elongated, thinner, or swollen when compared with their condition when first installed. When this occurs, the UST system may fail to contain the regulated substance resulting in a release to the environment and possibly a failure to detect the release.

The U.S. fuel supply has changed significantly since 1988 and use of biofuels has grown rapidly. We understand that the chemical and physical properties of biobased fuels, such as ethanol and biodiesel, can be more degrading to certain UST system materials than petroleum alone. Changes in the fuel supply have caused unintended consequences to UST systems, including equipment failure and releases to the environment. As a result, in 2015 we revised the UST regulation and required owners and operators to provide additional notification, demonstration, and recordkeeping when storing fuel blends, such as those with more than 10 percent ethanol or more than 20 percent biodiesel.[23]

The use of biofuels has continued to grow since 2015. As described in Section II.B, in June 2019, we modified fuel regulations that allow E15 to utilize the 1-psi volatility waiver, which allows for increased E15 sale in the summer. That final rule means more UST owners and operators may opt to store and sell E15 at gas stations and other fueling facilities. E15 is now used in 30 states at 1,809 stations. Because of this continued growth of biofuels in the U.S., this action proposes to revise the 2015 UST regulation to grant certain allowances for compatibility demonstration and make it less burdensome for UST owners and operators to meet the current requirements. In addition, this action proposes a requirement that UST systems installed, or UST equipment and components replaced, must be constructed with equipment and components compatible with ethanol blends up to 100 percent. This requirement would become effective one year after the effective date of the final rule.

This proposal will make it easier for owners and operators to meet compatibility requirements with their current infrastructure, if unable to demonstrate compatibility. The proposal will also help ensure the future national UST infrastructure is compatible with a broad range of biofuels that come to market so service station owners can offer more choices to consumers. The fuel supply in the U.S. is constantly evolving; because future needs are somewhat unknown, we see value in promoting UST systems that can safely store a broad range of potential emerging fuels such as higher-level ethanol blends.

B. Proposed Changes to the UST Compatibility Requirements

1. Allowance—For Secondary Containment When Unableo To Demonstrate Compatibility

In the preamble to the 2015 UST regulation, we clarified that implementing agencies could allow use of secondary containment in lieu of being able to demonstrate compatibility of all UST system equipment and components required by the regulation. EPA had not previously allowed this but is proposing to do so now in this action. Owners and operators of UST systems already in existence one year after the effective date of this rule who cannot determine compatibility (*e.g.,* cannot find installation documentation) for all equipment and components are not required to demonstrate compatibility if the UST systems have secondarily contained tanks and piping (including safe suction piping) and use interstitial monitoring. This will still sufficiently protect the environment because secondary containment will contain a leak from the primary containment of the tank and piping, and interstitial monitoring will likely detect a leak before regulated substances reach the environment.

[20] See 74 FR 44406, 44431–32 (July 25, 2011).

[21] Except that under CAA section 211(c)(4)(C)(i), states other than California may prescribe and enforce non-identical measures if they seek and obtain EPA approval of State Implementation Plan revisions containing such control measures.

[22] See 74 FR 44432 (July 25, 2011).

[23] See 80 FR 41566 (July 15, 2015).

As of 2020, all states [24] require secondary containment for new and replaced UST systems, along with the requirement for interstitial monitoring to detect potential releases. Most states' requirements target new and replaced UST systems, which avoids added expenses for owners and operators to retrofit or replace existing systems to meet the requirements. Many states, including those in New England, New York, California, and Florida, required full or partial secondary containment prior to Congress passing Title XV, Section B of the Energy Policy Act of 2005 (EPAct). This act required states receiving Federal money under Subtitle I of the Solid Waste Disposal Act to require either secondary containment and under-dispenser containment for new and replaced underground storage tank systems or evidence of manufacturer and installer financial responsibility and installer certification. By 2008, 31 states had adopted the EPAct requirement. However, states' requirements for secondary containment and interstitial monitoring can differ, including when required and allowances for use of other release detection options when owners and operators chose to install secondary containment prior to it being required.

EPA's database, populated with publicly available information gathered from the individual state UST programs, helped us understand the number of UST systems nationally that are secondarily contained and where owners and operators are using interstitial monitoring to detect releases from their UST systems. Using state-supplied data, we identified 23 states that provide data on the number of UST systems with both double-wall tanks and double-wall piping. These secondarily contained systems should generally be capable of using interstitial monitoring for release detection, although some may currently use another method. This means that approximately 24 percent of the 225,000 USTs in these 23 states should be able to use secondary containment with interstitial monitoring, if they have compatible equipment but are currently unable to demonstrate it. The percentage is likely similar across the nation, but we seek comment on this issue.

Owners and operators should be aware that only leaks from equipment or components inside secondary containment will be contained. Fuel spills may still occur if other UST system components become non-functioning due to incompatibility since the equipment or component is not inside secondary containment. For example, if spill prevention equipment (*i.e.,* spill bucket) fails due to incompatibility, small spills from the delivery hose will not be contained by the tank and piping secondary containment. We encourage owners and operators to replace equipment that they cannot demonstrate as compatible if the equipment is accessible from ground level and replaceable with minimal investment.

2. Allowance—For Already Compatible Tanks and Piping

We identified equipment for which UST owners and operators would not need to demonstrate compatibility. Based on manufacturer statements and certification by independent testing laboratories, certain categories of equipment are known to be compatible with higher blends of ethanol. We believe that steel and fiberglass tanks manufactured after July 2005 are compatible with higher blends of ethanol fuels. This means that owners and operators will not need to demonstrate compatibility for these tanks. Likewise, we understand that all fiberglass reinforced plastic (FRP) piping is compatible with higher blends of ethanol fuel, so owners will not need to demonstrate compatibility for any FRP piping.

For other equipment, we are unaware of a fixed date or fixed category in which all equipment by any manufacturer is known to be compatible. As such, other than for the tank and piping items identified earlier in this section, owners and operators must adhere to the requirement in 40 CFR 280.32 to demonstrate compatibility.

However, we understand that some models of many equipment and components that must be demonstrated compatible were already compatible with higher blends of ethanol decades before these blends became common. UST owners and operators may already have this equipment installed. If they can demonstrate compatibility of certain existing equipment, they will not need to replace all of their equipment to demonstrate compatibility with higher blends of ethanol.[25]

For example, we understand that the following UST system equipment and components were available after the 1988 UST regulation and are compatible with higher blends of ethanol:

- Unlined steel single-wall tanks
- Unlined steel double-wall tanks

In addition, we understand that the following UST system equipment and components were available in a higher ethanol compatible version from at least one manufacturer as early as the years listed below. Many owners and operators might have a compatible piece of equipment, which can be confirmed and demonstrated as compatible by verifying documentation associated with the equipment manufacturer and installation.

- Single-wall fiberglass tanks: 1995
- Double-wall fiberglass tanks: 1990
- Flexible piping: 2011
- Fiberglass containment sumps: 1995
- Pumping equipment: 2010
- Spill equipment: 2015
- Release detection equipment: 2006
- Overfill equipment: 2006

We are requesting comment on the accuracy of this information and seek additional information on this matter.

3. Compatibility Requirements for New Installations and Replacements

We are proposing that owners and operators storing motor fuel used in over-the-road vehicles must 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 applies regardless of whether the UST system currently stores or will store ethanol blends. This includes UST systems storing over-the-road diesel because service stations may in the future change to storing gasoline with higher blends of ethanol. However, we believe USTs storing fuel for emergency power generators and other off-road fuel used (such as fuel for construction equipment) should be exempt from this requirement. We seek comment on other potentially applicable exemptions. If an owner or operator is replacing specific equipment or components, such as a submersible turbine pump or containment sump, then only that replacement must be compatible with ethanol blends up to 100 percent. For entirely new UST system installations or replacements, the entire system must be compatible with ethanol blends up to 100 percent. We would require UST owners and operators to retain compatibility documentation for all new system equipment and components, including pipe dope, sealants, and gaskets, which are a common source of incompatibility.

This proposed requirement would become effective one year after the effective date of the final regulation. Since UST systems typically stay in the ground for decades—40 percent of active USTs are more than 30 years old—transitioning to compatible UST

[24] States includes all 50 states, 5 territories, and the District of Columbia.

[25] See *https://flexfuelforward.com/flexcheck.*

systems for emerging fuels can be very difficult. Implementing this requirement now will help ensure future fuel storage infrastructure can reliably store a larger variety of fuels. One hundred percent ethanol compatible material is readily available on the market today for all UST system equipment and components. The additional cost of a fully ethanol compatible system would be relatively minimal as a percentage of total cost of installation. This additional up-front investment would also avoid potentially significant upgrade costs, if future fuels contain greater volumes of ethanol or other alcohols.

C. Updates to State Program Approval Requirements

EPA has long recognized that, because of the size and diversity of the regulated community, state and local governments are in the best position to oversee USTs. State and local authorities are closer to the situation in their domain and are in the best position to set priorities. The 2015 state program approval (SPA) regulation in 40 CFR part 281 sets criteria state UST programs must meet to receive EPA's approval to operate in lieu of the Federal UST program. The SPA regulation sets performance criteria states must meet to be considered no less stringent than the Federal UST regulation and provides requirements for states to have adequate enforcement.

Much of the responsibility for implementing these proposed changes falls to state agencies. EPA will work with states to update their UST regulations and will support them in achieving state program approval. These proposed changes to the 2015 UST regulation, when final, will initially only apply to UST facilities in Indian country and in states that do not have SPA (owners and operators in states that do not have SPA must comply with the Federal UST regulation and their state regulations). For states that do have SPA these proposed changes will not apply until each state undertakes its own rulemaking. As of the date of publication of this notice, 15 [26] states do not have state program approval. For a list of states with state program approval, see *www.epa.gov/ust/state-underground-storage-tank-ust-programs.*

EPA is proposing to change the 2015 SPA regulation (40 CFR part 281) and make it consistent with these proposed revisions of the compatibility requirements of the 2015 UST regulation (40 CFR part 280). Specifically, EPA proposes that states require UST systems that store motor fuel for use in over-the-road vehicles be compatible with ethanol blends up to 100 percent when a new system is installed or when equipment and components are replaced. Since this is a more stringent requirement than what EPA required in its 2015 UST regulation, states would need to have or adopt this additional provision to be considered no less stringent than the corresponding Federal requirements.

States will have three years from the effective date of a final rule to submit to EPA a revised SPA application, including this change to their states' UST regulations. Since many states have recently been through this SPA application approval process for the 2015 UST regulation, EPA intends to make this additional modification to SPA an expedited process. EPA welcomes additional feedback on this.

D. Overview of Estimated Costs

The regulatory changes proposed today would provide cost savings to UST owners and operators as well as impose costs, and EPA is seeking comments on both.

1. Allowances—For Secondary Containment When Unable To Demonstrate Compatibility and for Already Compatible Tanks and Piping

The allowance described in this proposal for UST systems with secondary containment using interstitial monitoring when unable to demonstrate compatibility will provide owners and operators cost savings. Under this allowance, UST system owners and operators seeking to store ethanol blends up to 100 percent will not have to upgrade certain equipment and components simply because they are unable to demonstrate compatibility for that equipment and those components. As described in this preamble it is EPA's understanding that approximately 24 percent of all UST systems should be able to use secondary containment with interstitial monitoring, if they have compatible equipment but are currently unable to demonstrate it. This could mean that a significant portion of all facilities that seek to store higher blends of ethanol but are unable to demonstrate may not have to replace certain equipment. A rough estimate of replacement cost avoidance from this allowance can be made from informal estimates EPA has gathered from industry and regulators:

- Replacing tanks: $150,000 per tank.
- Replacing piping: $150,000 per facility.
- Ancillary equipment upgrades (most variable and configuration dependent): $1,000 $10,000 per UST system.

In addition, the other allowance proposed in this regulation to eliminate the requirement to demonstrate compatibility for all steel and fiberglass tanks manufactured after July 2005, and all FRP piping should provide some additional cost savings. EPA is seeking to verify this understanding and is looking for additional information or data to better understand the cost implications of today's proposal.

2. Compatibility Requirements for New Installations and Replacements

This proposal imposes compatibility requirements for up to 100 percent ethanol for certain (*i.e.,* storing motor fuel used in over-the road-vehicles) new installations and replacements of UST system equipment and components regardless of whether the UST system currently stores or will store ethanol blends. This means, for example that an UST owner and operator needing to replace equipment such as a containment sump or spill bucket must make that replacement with equipment that is compatible with up to 100 percent ethanol. EPA understands that the marginal cost for any new UST system equipment or components compatible with up to 100 percent ethanol is minimal compared with the overall project costs (*i.e.,* design, construction, installation etc). EPA estimates the additional costs for purchasing up to 100 percent compatible equipment or components could be significantly less than 5% of the overall project costs and is seeking comment on this estimate. Some major UST components and equipment manufactured today (*e.g.,* tanks, piping) are all already compatible with up to 100 percent ethanol so there is no cost increase to accommodate the higher blends for those purchases. However, there is certain equipment where the cost of the up to 100 percent ethanol compatible model may be higher (*e.g.,* overfill device).

EPA is seeking to verify this understanding and is looking for additional information or data to better understand the cost implications of this action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders.*

[26] States and territories without SPA—AK, AZ, CA, FL, IL, MI, NJ, NY, OH, WI, WY and AS, GU, CNMI, VI.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action because it raises novel legal or policy issues. Nevertheless, after reviewing information regarding this action, the Office of Management and Budget waived review of this action.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action. We seek comment on any burdens and costs associated with this rulemaking.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2655.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This proposed regulation would either change the existing, approved E15 label (approved under OMB Control Number 2060–0675)—or remove it entirely. Should the E15 label be modified, then there would be a cost associated with affixing the amended label to pumps from which fuel is dispensed. We have also allowed that some parties may need to purchase labels. Parties required to affix labels are typically parties who own or operate retail stations or wholesale-purchases consumer facilities. Should the E15 labeling requirement be removed entirely, then there would no longer be any E15 label required and we would anticipate a cost savings to industry.

This proposed regulation would also require owners and operators of underground storage tanks (UST) to maintain records of compatibility at new UST installations and replacements storing motor fuels used in over the road transportation. This new requirement is only intended for UST systems storing motor fuel used in over-the-road transportation, not for UST systems fueling emergency power generators nor other UST systems used for off-road purposes such as construction equipment. In the existing regulation, owners and operators of USTs storing product containing more than 10 percent ethanol or more than 20 percent biodiesel are required to maintain records to demonstrate compatibility with the product stored. This action proposes to grant certain allowances for this current UST system compatibility demonstration requirement, which reduces information collection burden for some UST systems. The existing requirements for owners and operators of USTs are under OMB Control Number 2060–0068.

Respondents/affected entities: Retailers and wholesale purchaser-consumers who dispense E15; owners and operators of UST systems.

Respondent's obligation to respond: Mandatory under 40 CFR part 80, subpart N, (E15 labeling)—and 40 CFR part 280, subparts B and C; and 40 CFR part 281, subpart C (UST).

Estimated number of respondents: 1,801 retail and wholesale purchaser-consumers for the E15 labeling provisions and 10,331 owners and operators for the UST provisions.

Frequency of response: Once, as needed and on occasion.

Total estimated burden: 37 hours (per year) for the E15 labeling and 2,799 hours (per year) for USTs. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,785 (per year) for E15 labeling, which includes $2,952 annualized capital or operation & maintenance costs; and $65,515 for UST, which includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to EPA using the docket for this action. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than February 18, 2021. EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are retail motor fuels firms and small government jurisdictions.

With respect to the E15 fuel dispenser label portion of this action, the proposed changes to the E15 label under option 1 of this action do not substantively alter the regulatory requirements on parties that make and distribute E15. The removal of the E15 label under option 2 of this action would reduce burden on all regulated parties that sell E15, including small entities, and therefore would not impose any requirements on small entities.

With respect to the E15 compatibility with underground storage tanks provisions of this action, in EPA's 2015 UST rulemaking we determined that less than 1 percent of potentially affected small firms in the retail motor sector (NAICS 447) would experience an impact over 1 percent of revenues, but less than 3 percent of revenues and that no small firms would have impacts above 3 percent of revenues.[27] In the 2015 rulemaking we also determined that no small government jurisdictions would be impacted at 1 percent or 3 percent of revenues.[28] Since this action proposes a small change to the 2015 regulation, we do not expect any significant impacts to small entities. EPA seeks comment on any cost impacts.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed $100 million in any one year.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. The E15 label portion of this action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. For the E15 compatibility with underground storage tanks portion of this action, the total costs of this proposed rule (direct compliance costs, notification costs and

[27] See 80 FR 41620–21 (July 15, 2015) and Section 5.4 of the Regulatory Impact Analysis (RIA) for that action, ''Assessment Of The Potential Costs, Benefits, And Other Impacts Of The Final Revisions To EPA's Underground Storage Tank Regulations.''

[28] Id.

state program costs) will be small. In our much larger rule in 2015 these total costs were only $9 million which is not considered to be a substantial compliance costs under Federal requirements. Therefore, we believe Executive Order 13132 will not apply to this rule which we expect to have lower costs than the 2015 rule. EPA is requesting comment on the expected costs of this proposed rule. In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA will specifically solicit comment from state and local government during the comment period.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes to either change EPA's existing E15 label or remove the labeling requirement entirely. There are no additional costs for sources in the energy supply, distribution, or use sectors.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This proposed action does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). For the E15 label portion of this action, this proposed rule maintains the prohibition on the use of E15 in 2000 and older light duty vehicles, as well as all motorcycles, and nonroad vehicles, engines, and equipment, which could result in increases in emissions. For the E15 compatibility with underground storage tanks portion of this action, EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

V. Statutory Authority

Statutory authority for the E15 label portion of this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Statutory authority for the E15 compatibility with underground storage tanks section of this action comes from the Resource Conservation and Recovery Act sections 9001 *et seq.,* 42 U.S.C. 6991 *et seq.*

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Fuel additives, Gasoline, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Parts 280 and 281

Environmental protection, Administrative practice and procedure, Hazardous substances, Petroleum, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 80, 280, and 281 as follows:

PART 80—REGISTRATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

■ 2. Revise § 80.1501 to read as follows:

§ 80.1501 Labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline that contains greater than 10 volume percent ethanol and not more than 15 volume percent ethanol.

(a) Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing E15 must affix the following conspicuous and legible label to the fuel dispenser:

Contains up to 15% ethanol
Safe for use in

- 2001 and newer passenger vehicles; or
- Flex-fuel vehicles

Avoid use in other vehicles, motorcycles, boats, or gasoline-powered equipment. It may cause damage and is prohibited by Federal law.

(b) Labels under this section must meet the following requirements for appearance and placement:

(1) *Dimensions.* The label must measure 3 and 5/8 inches wide by 3 and 1/8 inches high.

(2) *Placement.* The label must be placed on the upper two-thirds of each fuel dispenser where the consumer will see the label when selecting a fuel to purchase. For dispensers with one nozzle, the label must be placed above the button or other control used for selecting E15, or in any other manner which clearly indicates which control is used to select E15. For dispensers with multiple nozzles, the label must be placed in the location that is most likely to be seen by the consumer at the time of selection of E15.

(3) *Text.* The text must be justified and the fonts and backgrounds must be as described in paragraphs (b)(3)(i) through (vi) and (b)(4)(i) through (iv) of this section.

(i) The ethanol content: ''Contains up to 15% ethanol'' must be in 18-point, center-justified, white, Helvetica Black font in the top 1.25 inches of the label.

(ii) The words ''Safe for use in'' must be in 20-point, left-justified, black, Helvetica Bold font in the bottom 1.875 inches of the label.

(iii) The words, and symbols ''• 2001 and newer passenger vehicles; or • Flex-fuel vehicles'' must be in 14-point, left-justified, black, Helvetica Bold font.

(iv) The remaining two sentences must be in 12-point, left-justified, Helvetica Bold font.

(4) *Color.* (i) The background of the top 1.25 inches of the label must be blue.

(ii) The background of the bottom 1.875 inches of the label must be white.

(5) *Alternative labels.* (i) Alternative labels to those specified in this section may be used if approved by EPA in advance. Such labels must contain all of the informational elements specified in paragraph (a) of this section, and must use colors and other design elements similar in substance and appearance to the label required by this section. Such labels may differ in size and shape from the label required by this section only to a small degree, except to the extent a larger label is necessary to accommodate additional information or translation of label information.

(ii) A request for approval of an alternative label must be sent to the attention of ''E15 Alternative Label Request'' to the address in § 80.10(a).

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

■ 3. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(g), 6991(h), 6991(i).

■ 4. Amend § 280.20 by adding a sentence after the first sentence in the introductory text to read as follows:

§ 280.20 Performance standards for new UST systems.

* * * Owners and operators must also comply with the requirement of § 280.32(b) when equipment or components are installed or replaced, as applicable. * * *

* * * * *

■ 5. Amend § 280.32 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 280.32 Compatibility

* * * * *

(b) In addition to the requirements at § 280.20, owners and operators of UST systems which will store motor fuel used in over-the-road vehicles must ensure that equipment and components, including pipe dopes and sealants, that are installed or replaced on or after [1 year after effective date of final regulations] are compatible with ethanol blends up to 100 percent. Owners and operators must keep documentation of compatibility in accordance with paragraph (c)(1) of this section and keep documentation on compatibility of pipe dopes and sealants.

(c) Owners and operators must notify the implementing agency at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the implementing agency. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

(1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options, though no demonstration is required for tanks manufactured on or after July 2005 or for any fiberglass piping:

(i) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(ii) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

(2) All UST systems must be compatible with the substance stored in accordance with paragraph (a) of this section but for any UST system installed prior to 1 year after the date of publication of the final rule in the **Federal Register** for which compatibility cannot be demonstrated in accordance with paragraph (c)(1) of this section, the regulated substance may be stored if the tank and piping are secondarily contained and use interstitial monitoring in accordance with § 280.43(g). Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST system.

(3) Use another option determined by the implementing agency to be no less protective of human health and the environment than the options listed in paragraph (c)(1) of this section.

(d) Owners and operators must maintain records in accordance with § 280.34(b) documenting compliance with paragraph (b) *of this section* for the life of the UST system and paragraph (c) of this section for as long as the UST system is used to store the regulated substance.

§ 280.34 [Amended]

■ 6. Amend § 280.34 paragraph (a)(2) by removing ''(§ 280.32(b))'' and adding ''(§ 280.32(c))'' in its place; and in paragraph (b)(3) by removing ''(§ 280.32(c))'' and adding ''(§ 280.32(b) and (c))'' in its place.

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

■ 7. The authority citation for part 281 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991(c), 6991(d), 6991(e), 6991(i), 6991(k).

■ 8. Amend § 281.32 by revising paragraph (c) and the first sentence of paragraph (g) to read as follows:

§ 281.32 General operating requirements

* * * * *

(c) Be made of or lined with materials that are compatible with the substance stored; in order to ensure compatibility, the state requirements must also include provisions for demonstrating compatibility with new and innovative regulated substances or other regulated substances identified by the implementing agency or include other provisions determined by the implementing agency to be no less protective of human health and the environment than the provisions for demonstrating compatibility; for UST systems that will store motor fuel used in over-the-road vehicles, all newly installed or replaced equipment or components, including pipe dopes and sealants, must be compatible with ethanol blends up to 100 percent;

* * * * *

(g) Have records of monitoring, testing, repairs, compatibility demonstration, and inspections. * * *

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