

Below is a sample of the letter EPA sent to companies approving the first submissions of misfueling mitigation plans. Actual letter language may vary depending on a company's specific circumstances.

[Full Name]
[Title]
[Company Name]
[Address]

Dear Mr./Ms [Last Name]:

This letter is in response to your letter of [date] seeking approval for [name of company] to use the March 2, 2012 Model Misfueling Mitigation Plan (Model Plan)¹ developed by the Renewable Fuels Association (RFA) for meeting the misfueling mitigation conditions of the E15 partial waivers.² Misfueling mitigation plans are important to the successful introduction of E15 into commerce. We are approving your use of the Model Plan for dispensing E15 using the configurations specified below.

As you know, the E15 partial waivers include conditions requiring each fuel and fuel additive manufacturer subject to the waivers to submit to the United States Environmental Protection Agency (EPA) a misfueling mitigation plan (MMP), for EPA's approval, and to fully implement the EPA-approved MMP prior to introduction of the fuel or fuel additive into commerce as appropriate. The partial waivers specify that reasonable precautions include, but are not limited to, measures for labeling E15 fuel pump dispensers, providing information on product transfer documents (PTDs) and participating in a compliance survey.

On March 15, 2012, EPA concluded that the Model Plan submitted by RFA would generally be sufficient to satisfy the partial waivers' MMP requirement. EPA also stated that it would seek additional information and/or misfueling mitigation measures from companies seeking to use the Model Plan as appropriate. In a May 7, 2012 email, EPA asked companies requesting to use the Model Plan for information about potential use of blender pumps for dispensing E15. We specifically asked how blender pumps would be configured to dispense E15 with proper ethanol concentration and clear labeling. In response to the email, some companies indicated that they would dispense E15 through its own hose and nozzle clearly indicated by the required E15 label. To address E15 dispensing generally, the RFA submitted an addendum to their retailer handbook (referenced in the Model Plan) that describes several configurations of pumps and suggests

¹ The March 2, 2012 Model Plan can be found at <http://www.epa.gov/otaq/regs/fuels/additive/e15/documents/rfa-model-e15-misfueling-mitigation-plan.pdf>.

² The partial waivers issued October 13, 2010 (75 FR 68,094, Nov. 4, 2010)² and January 21, 2011 (76 FR 4,662 (Jan. 26, 2011)) allow fuel and fuel additive manufacturers to introduce into commerce gasoline-ethanol blends containing greater than 10 volume percent and no more than 15 volume percent ethanol (E15) for use in model year (MY) 2001 and newer light-duty motor vehicles.

strategies for providing appropriate ethanol concentrations and clear labeling for E15. Those configurations and EPA's assessment of them are as follows --

- “Configuration 1” is dispensing E15 from a dedicated E15 dispenser or a dedicated E15 hose at a multiple fuel dispenser.

EPA agrees that this configuration is suitable for dispensing E15 with appropriate ethanol concentrations and clear labeling.

- “Configuration 2” involves dispensing E15 from the same nozzle and hose as E10. This configuration raises the potential that a small amount of E15 left in the hose from one consumer's purchase of E15 (for use in a vehicle approved under the waiver) could be mixed with E10 dispensed by the next customer for use in a vehicle not approved for use of E15 under the waiver. Depending on the amount of fuel being dispensed and other factors, this could result in an ethanol concentration that is higher than the E10 allowed for vehicles and engines not covered by the E15 partial waivers. The RFA addendum suggests that a retailer using a single nozzle and hose to dispense both E10 and E15 require that E10 purchases be no less than 4 gallons so that any residual E15 has a minimal impact on the E10 dispensed. It also suggests that the E10/E15 nozzle be clearly labeled as requiring the minimum transaction to avoid a potential violation of federal law.

EPA agrees that this approach is suitable for dispensing E15. Specifically, for a nozzle dispensing both E10 and E15, a minimum transaction of 4 gallons must be required for E10 purchases and communicated to consumers by means of a prominently placed label stating “Minimum Fueling Volume 4 Gallons; Dispensing Less May Violate Federal Law.”³ The label must be placed where consumers will clearly see and associate it with the E10 portion of the E10/E15 dispensing unit. Successful implementation of the minimum purchase requirement is important. Depending on a retailer's specific circumstances and experience, additional steps may be needed to help ensure that consumers heed the minimum purchase labels. Overall, this approach to dispensing E15 and E10 from the same nozzle will ensure that the blender has taken reasonable and practicable steps to avoid producing E10 with greater than 10 volume percent ethanol.

- “Configuration 3” involves dispensing E15 from the same nozzle and hose as higher ethanol blends (e.g., E20, E30, E50, E85). This configuration raises the potential that a small amount of a higher blend left in the hose could be mixed with E15 dispensed by a subsequent customer and, depending on the amount of fuel being dispensed and other factors, raise the ethanol concentration of the resulting fuel to more than is allowed for the MY 2001 and newer passenger vehicles covered by the E15 partial waivers. The RFA addendum suggests that a retailer using such a configuration could use a minimum transaction volume requirement and label and/or adjust the ethanol

³ If you believe a lower minimum transaction volume requirement would be appropriate for your E10/E15 nozzle (e.g., because your blender pump has relatively short hoses or is otherwise designed to result in lower amounts of residual fuel), you may seek EPA approval of a lower volume requirement.

concentrations of the fuels being blended to account for the residual fuel in the hose.

How these suggestions could be successfully employed at a particular blender pump depends on a number of variables which prevent a “one-size-fits-all” solution for every pump. At this time, EPA does not approve Configuration 3. EPA approval of one or a combination of strategies for particular dispensing situations is needed before those strategies may be used to lawfully sell E15 from the same nozzle as higher ethanol blends.

With respect to labeling of blender pumps, responses to the May 7, 2012 email, including the RFA addendum, illustrate how blender pumps dispensing E15 can be clearly labeled in accordance with the labeling requirements of the E15 Misfueling Mitigation Rule.⁴ There are several varieties of blender pumps, and any company selling E15 or ethanol for making E15 dispensed using blender pumps is responsible for placing the E15 label where consumers will clearly associate it with the nozzle, button or other mechanism used for dispensing E15.

With this letter, we are approving your use of the Model Plan so long as you dispense E15 using Configuration 1 or Configuration 2 as described above. You are not approved to use Configuration 3 or any other configuration of blender pump for dispensing E15 at this time. Use of such configurations would violate the MMP condition of the E15 waivers, and sale of any E15 or ethanol sold for E15 using such configurations would not be lawful under the Clean Air Act.

If you wish to use Configuration 3 or another means of dispensing E15 not described and approved in this letter, you may submit for EPA review and approval the specific measures (e.g., one or a combination of a minimum volume purchase amount and label, adjustment of ethanol concentrations of blendstocks or improved blender pump technology) that would be taken to ensure that appropriate ethanol concentrations are dispensed. To the extent EPA approves additional configurations that may be of general use, we will provide notice of those approvals on our E15 website (<http://www.epa.gov/otaq/regs/fuels/additive/e15>) and you may use those measures at your discretion without further notice to or from EPA.

The Model Plan commits your company to participating in a compliance survey that must be separately submitted for EPA approval before E15 may be introduced into commerce. On May 25, 2012, we approved the 2012 E15 national survey plan submitted by the Reformulated Gasoline Survey Association (RFGSA) on behalf of a number of companies. Other companies may enroll in the plan by contacting RFGSA. It is worth noting that the RFGSA plan identifies retail stations for sampling based in part on the use of blender pumps so any issues with dispensing E15 from such pumps can be identified and addressed. Failure to fully implement the Model Plan or participate in the EPA-approved survey plan will mean the E15 fuel or fuel additive introduced into commerce by your company is not covered by the EPA partial waivers.

As E15 enters the market, EPA plans to work with stakeholders to monitor the effectiveness of E15 misfueling mitigation measures, including those in the Model Plan and the approved dispensing configurations. If EPA determines that additional measures may be needed, we will notify you and may seek your input and that of other stakeholders to determine what, if any,

⁴ 76 FR 44406, July 25, 2011.

additional measures should be included in the Model Plan so that it fulfills the MMP requirement of the E15 partial waivers.

Thank you for committing to take the important steps described in the Model Plan and this letter for successfully bringing E15 to market. Let me also take this opportunity to remind you that E15 introduced into commerce, including through blender pumps, is subject to the same Clean Air Act regulatory requirements as gasoline. If you need any further assistance, please contact Robert Anderson of my staff at (202) 343-9718.

Sincerely,

Margo T. Oge
Director
Office of Transportation and Air Quality