

Renewable Fuels Association

Model

E15 MISFUELING MITIGATION PLAN

March 2, 2012

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Note: This is a model plan that companies may choose to adopt and submit to EPA for approval for the purpose of meeting the requirement for a misfueling mitigation plan under the E15 partial waivers. The Renewable Fuels Association is not responsible for implementation of this plan or liable for any failure to implement the plan. For a company adopting this plan, the plan should be read as including the company's name in each place where "plan submitter" occurs.

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I. Introduction

The purpose of this Misfueling Mitigation Plan (MMP) is to set forth how the plan submitter will comply with the misfueling mitigation conditions established by the U.S. Environmental Protection Agency (EPA or the Agency) in its October 13, 2010,¹ and January 21, 2011,² partial waivers allowing fuel and fuel additive manufacturers to introduce into U.S. commerce ethanol blends containing greater than 10 volume percent and no more than 15 volume percent ethanol (E15) for use in model year 2001 and newer light duty motor vehicles. The MMP, which is intended to reduce the potential of E15 being used in all engines, vehicles and equipment for which waivers have not been granted by the Agency, addresses the following required elements: E15 pump labeling, tracking of E15 through the supply chain through product transfer documentation, and implementation surveys of E15 content and labeling compliance.³

Because this plan has been developed as a model plan, a company that wishes to use it must notify EPA in writing that the company seeks approval of the plan for the company's use in meeting the requirements for an MMP. Before deciding whether to approve a plan, EPA may seek additional information and/or misfueling mitigation measures as appropriate in view of the company's circumstances. EPA must approve a company's submission of this MMP before the company may use it to demonstrate its compliance with the partial waiver conditions.

For any company that adopts this plan, the words "plan submitter" herein should be read to refer to the company submitting the plan for its use.

This MMP includes sections addressing the following waiver conditions:

- **Labeling:** Reasonable measures for ensuring that any retail fuel pump dispensers that are dispensing a gasoline produced with greater than 10 volume percent ethanol and no more than 15 volume percent ethanol are clearly labeled for ensuring that consumers do not misfuel the waived gasoline-ethanol blend into vehicles or engines not covered by the waiver. October 2010 Approval, Section XII.4.a; January 2011 Approval, Section VII.4.a.
- **Product Transfer Documentation (PTD):** Reasonable measures for ensuring that product transfer documents accompanying the shipment of a gasoline produced with greater than 10 volume percent ethanol and no more than 15 volume percent ethanol properly document the volume of ethanol. October 2010 Approval, Section XII.4.b; January 2011 Approval, Section VII.4.b.

¹ *Notice of Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator; Notice*, 75 Fed. Reg. 68,094 (Nov. 4, 2010) ("October 2010 Approval");

² *Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator*, 76 Fed. Reg. 4,662 (Jan. 26, 2011) ("January 2011 Approval").

³ *November 2010 Approval* at 68,150.

- **Survey:** Participation in a survey of compliance at fuel retail dispensing facilities. The survey section of this MMP indicates that the plan submitter commits to participating in a survey that the submitter will separately submit for EPA approval as meeting the specific requirements for a survey plan. The section also describes additional retailer education and outreach efforts to support the survey. October 2010 Approval, Section XII.4.c; January 2011 Approval, Section VII.4.c.

The MMP also describes in a separate section a public education and outreach campaign, which is being undertaken as an additional, voluntary effort to aid a smooth transition to E15 (not formally a part of this MMP under the waiver conditions).

In satisfying the MMP requirements in the October 2010 and January 2011 partial waivers, this MMP utilizes elements of EPA's Misfueling Mitigation Rule.⁴ In establishing this Rule, EPA indicated that manufacturers may take account of elements of the regulations in satisfying corresponding MMP elements.⁵

This plan includes the text of relevant provisions from the Misfueling Mitigation Rule published on July 25, 2011, for ease of reference. However, the plan is designed to take account of and help implement those Misfueling Mitigation Rule provisions as they exist when the plan is submitted for EPA approval and implemented. Plan submitters should be aware of any revisions that may have been made to those provisions as they submit and implement the plan.

The Misfueling Mitigation Rule published on July 25, 2011 contains the following definitions that may be relevant to this plan:

40 C.F.R. § 80.1500 Definitions.

Blendstock for oxygenate blending means gasoline blendstock which could become gasoline solely upon the addition of an oxygenate.

Conventional blendstock for oxygenate blending means gasoline blendstock which could become conventional gasoline solely upon the addition of an oxygenate.

E0 means a gasoline that contains no ethanol.

E10 means a gasoline-ethanol blend that contains at least 9.0 and no more than 10.0 volume percent ethanol.

E15 means a gasoline-ethanol blend that contains greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol.

⁴ *Regulation To Mitigate the Misfueling of Vehicles and Engines With Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs*, 76 Fed. Reg. 44,406 (July 25, 2011) (“Misfueling Mitigation Rule”), and any revisions thereto.

⁵ *See 76 Fed. Reg. 44,406, 44,440 (July 25, 2011)*

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EX means a gasoline-ethanol blend that contains less than 9 volume percent ethanol where X equals the maximum volume percent ethanol in the gasoline-ethanol blend.

EXX means a gasoline-ethanol blend above E15 where XX equals the maximum volume percent ethanol in the gasoline-ethanol blend.

Survey series means the four quarterly surveys that comprise a survey program.

II. Labeling Measures

A. Certain Relevant Regulatory Provisions⁶

§ 80.1501 What are the labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline-ethanol blends that contain greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol?

(a) Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, gasoline-ethanol blends that contain greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol shall affix the following conspicuous and legible label to the fuel dispenser:

Attention

E15

Up to 15% ethanol

Use only in

- 2001 and newer passenger vehicles
- Flex-fuel vehicles

Don't use in other vehicles, boats, or gasoline-powered equipment. It may cause damage and is prohibited by Federal law.

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

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

(2) *Placement.* The label shall 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 shall 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 shall be placed in the location that is most likely to be seen by the consumer at the time of selection of E15.

(3) *Text.* [This provision contains certain font, size, and other formatting requirements. Please refer to the regulatory text which is in the process of revision at the time of submittal. As noted above, this plan intends to reference the currently applicable regulatory provision at any given point in time.]

(4) *Color.*

(i) The background of the top 1.25 inches of the label shall be black.

(ii) The background of the bottom 1.75 inches of the label shall be orange.

(iii) The label shall have on the upper left side of the label a diagonal orange stripe that is .3125 inches tall. The stripe shall be placed as far

⁶ Regulatory provisions are included for reference only and do not create a separate enforceable requirement.

down and across the label as is necessary so as to create a black triangle of the upper left corner of the label whose vertical side is contiguous to the vertical edge of the label and is .4375 inches long, and whose horizontal side is contiguous to the horizontal edge of the label and is 1.0 inches long. The word "Attention" shall be centered to the upper edge of this stripe.

(5) 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.

(i) If you use U.S. Mail, send a request for approval of an alternative label to: U.S. EPA, Attn: E15 Alternative Label Request, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(ii) If you use an overnight or courier service, send a request for approval of an alternative label to: U.S. EPA, Attn: E15 Alternative Label Request, 6406J, 1310 L Street, NW., 6th Floor, Washington, DC 20005. (202) 343-9038.

B. Plan Provisions

The E15 partial waivers require reasonable measures for ensuring that any retail fuel pump dispensers that are dispensing a gasoline produced with greater than 10 volume percent ethanol and no more than 15 volume percent ethanol are clearly labeled to help ensure consumers do not misfuel the waived gasoline-ethanol blend into vehicles or engines not covered by the waiver. The Misfueling Mitigation Rule requires that any retailer who sells, dispenses, or offers for sale E15 must affix a prescribed label on the fuel dispenser. The partial waiver condition related to E15 fuel pump dispenser labeling will effectively be met by compliance with the labeling provisions included in the Misfueling Mitigation Rule. Reasonable additional measures will be taken regarding labels that will help achieve compliance with the Misfueling Mitigation Rule labeling provisions.

Specifically, labels meeting the requirements of 40 CFR 80.1501 will be made available to retailers free of charge for an introductory period for any fuel retailer that chooses to market E15. In addition, a "retail handbook" describing how to offer E15 in compliance with the Misfueling Mitigation Rule will be made available to retailers for an introductory period. The handbook will address, among other things, how and where to display the label in order to mitigate misfueling. In an effort to ensure timely compliance with the Misfueling Mitigation Rule, the retail handbook will help to ensure that retailers are aware of and properly implementing the labeling requirements of the rule. The handbook will also provide guidance for handling, blending, storing, and dispensing E15 in compliance with the partial waiver and regulatory requirements, including a strategy for handling the variability in ethanol and gasoline content in fuels. To the extent the plan submitter owns or operates retail facilities, it will

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implement measures in the handbook or as otherwise needed to handle, blend, store, and dispense E15 within in partial waiver and regulatory requirements and to mitigate misfueling.

Participation in a survey of retailers, as outlined below in Section IV of this MMP, will also help to ensure that retailers are complying with the Misfueling Mitigation Rule's labeling requirements.

Outreach to ethanol blenders upstream of retailers will also be conducted (likely through trade association efforts) to ensure that they are aware of the Misfueling Mitigation Rule's labeling requirements and can appropriately communicate the Misfueling Mitigation Rule's labeling provisions to their retail customers. This outreach effort may be conducted either on an individual basis or as a participant in a group of manufacturers.

III. Product Transfer Documentation Requirements

A. Certain Relevant Regulatory Provisions

§ 80.1503 What are the product transfer document requirements for gasoline-ethanol blends, gasolines, and conventional blendstocks for oxygenate blending subject to this subpart?

(a) Product transfer documentation for conventional blendstock for oxygenate blending, or gasoline transferred upstream of an ethanol blending facility.

(1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion after October 31, 2011, when any person transfers custody or title to any conventional blendstock for oxygenate blending which could become conventional gasoline solely upon the addition of ethanol, or gasoline upstream of an oxygenate blending facility, as defined in §80.2(l), the transferor shall provide to the transferee product transfer documents which include the following information:

- (i) The name and address of the transferor;
- (ii) The name and address of the transferee;
- (iii) The volume of conventional blendstock for oxygenate blending or gasoline being transferred;
- (iv) The location of the conventional blendstock for oxygenate blending or gasoline at the time of the transfer;
- (v) The date of the transfer;
- (vi) For gasoline during the regulatory control periods defined in §80.27(a)(2)(ii) or any SIP approved or promulgated under §§110 or 172 of the Clean Air Act:

(A) The maximum RVP, as determined by a method permitted under §80.46(c), stated in the following format: “The RVP of this gasoline does not exceed [fill in appropriate value]”; and

(B) For gasoline designed for the special provisions for gasoline-ethanol blends in §80.27(d)(2), information about the ethanol content and RVP in paragraphs (a)(1) through (a)(3) of this section, with insertions as indicated:

(1) “Suitable for the special RVP provisions for ethanol blends that contain between 9 and 10 vol % ethanol.”

(2) “The RVP of this blendstock/gasoline for oxygenate blending does not exceed [Fill in appropriate value] psi.

(3) The use of this gasoline to manufacture a gasoline-ethanol blend containing anything other than between 9 and 10 volume percent ethanol may cause a summertime RVP violation.

(C) For gasoline not described in paragraph (a)(vi)(B) of this section, information regarding the suitable ethanol content, stated

in the following format: “Suitable for blending with ethanol at a concentration of no more than 15 vol % ethanol.”

(2) The requirements in paragraph (a)(1) do not apply to reformulated gasoline blendstock for oxygenate blending, as defined in §80.2(kk), which are subject to the product transfer document requirements of §80.69 and §80.77.

(b) Product transfer documentation for gasoline transferred downstream of an oxygenate blending facility.

(1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion after October 31, 2011, when any person transfers custody or title to any gasoline-ethanol blend downstream of an oxygenate blending facility, as defined in §80.2(ll), except for transfers to the ultimate consumer, the transferor shall provide to the transferee product transfer documents which include the following information:

- (i) The name and address of the transferor;
- (ii) The name and address of the transferee;
- (iii) The volume of gasoline being transferred;
- (iv) The location of the gasoline at the time of the transfer;
- (v) The date of the transfer; and
- (vi) One of the statements detailed in paragraph (b)(1)(vi)(A) through (E) which accurately describes the gasoline-ethanol blend. The information regarding the ethanol content of the fuel is required year-round. The information regarding the RVP of the fuel is only required for gasoline during the regulatory control periods.

(A) For gasoline containing no ethanol (E0), the following statement; “E0: Contains no ethanol. The RVP does not exceed [fill in appropriate value] psi.”

(B) For gasoline containing less than 9.0 volume percent ethanol, the following statement: “EX—Contains up to X% ethanol. The RVP does not exceed [fill in appropriate value] psi.” The term X refers to the maximum volume percent ethanol present in the gasoline.

(C) For gasoline containing between 9.0 and 10.0 volume percent ethanol (E10), the following statement: “E10: Contains between 9 and 10 vol % ethanol. The RVP does not exceed [fill in appropriate value] psi. The 1.0 psi RVP waiver applies to this gasoline. Do not mix with gasoline containing anything other than between 9 and 10 vol % ethanol.”

(D) For gasoline containing greater than 10.0 volume percent and not more than 15.0 volume percent ethanol (E15), the following statement: “E15: Contains up to 15 vol % ethanol. The RVP does not exceed [fill in appropriate value] psi;” or

(E) For all other gasoline that contains ethanol, the following statement: “EXX—Contains no more than XX% ethanol,” where XX equals the volume % ethanol.

(2) Except for transfers to truck carriers, retailers, or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraph (b)(1) of this section if such codes are clearly understood by each transferee.

(c) The records required by this section must be kept by the transferor and transferee for five (5) years from the date they were created or received by each party in the distribution system.

(d) On request by EPA, the records required by this section must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by EPA, electronic records shall be converted to paper documents.

B. Plan Provisions

The E15 partial waivers require reasonable measures for ensuring that product transfer documents accompanying the shipment of a gasoline produced with greater than 10 volume percent ethanol and no more than 15 volume percent ethanol properly document the volume of ethanol. The Misfueling Mitigation Rule requires that parties that transfer blendstocks, base gasoline for oxygenate blending, and/or E15 include the ethanol concentration of the fuel in product transfer documents (PTDs). The waiver condition related to PTDs will effectively be met by compliance with the PTD provisions of the Misfueling Mitigation Rule. The plan submitter will take reasonable additional measures as appropriate to the submitter's role in the supply chain to inform those with whom they have contractual relationships for the sale of ethanol and E15, including ethanol blenders, of the Misfueling Mitigation Rule's PTD requirements found at 40 C.F.R. § 80.1503(b)(1)(vi)(D). This communication may occur through normal business communication. Auxiliary efforts may include industry-sponsored educational webinars, technical briefs, and other regulatory awareness efforts such as nonprofit organization committee communications.

IV. Survey of Fuel Retail Dispensing Facility Compliance

A. Certain Relevant Regulatory Provisions

§ 80.1502 What are the survey requirements related to gasoline-ethanol blends?

Any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend that is intended for use in or as E15 shall comply with the survey program requirements in either paragraph (a) or paragraph (b) of this section. These same parties are also subject to paragraphs (c), (d) and (e) of this section regardless of whether they choose the survey program requirements in paragraph (a) or paragraph (b) of this section. In the case of ethanol producers and ethanol importers, the ethanol that is produced or imported shall be deemed as intended for use in E15 unless an ethanol producer or an ethanol importer demonstrates that it was not intended for such use.

(a) *Survey option 1.* In order to satisfy the survey program requirements, any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend intended for use in or as E15 shall properly conduct a program of compliance surveys in accordance with a survey program plan which has been approved by EPA in all areas which may be reasonably expected to be supplied with their gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend if these may be used to manufacture E15 or as E15 at any time during the year. Such approval shall be based upon the survey program plan meeting the following criteria:

(1) The survey program shall consist of at least quarterly surveys which shall occur during the following time periods in every year during which the gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer introduces E15 into commerce:

- (i) One survey during the period January 1 through March 31;
- (ii) One survey during the period April 1 through June 30;
- (iii) One survey during the period July 1 through September 30; and
- (iv) One survey during the period October 1 through December 31.

(2) The survey program plan shall meet all of the requirements of paragraph (b), except paragraphs (b)(4)(ii) and (b)(4)(v) of this section. The survey program plan shall specify the sampling strata, clusters and area, and number of samples to be included. Notwithstanding paragraph (b)(2) of this section, in order to comply with this paragraph the survey plan need not be conducted by a consortium.

(b) *Survey option 2.*

(1) To comply with the requirements under this paragraph (b), any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer

who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend intended for use in or as E15 must participate in a consortium which arranges to have an independent survey association conduct a statistically valid program of compliance surveys pursuant to a survey program plan which has been approved by EPA, in accordance with the requirements of paragraphs (b)(2) through (b)(4) and (b)(6) of this section.

(2) The consortium survey program under this paragraph (b) must be:

(i) Planned and conducted by a survey association that is independent of the ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted. In order to be considered independent:

(A) Representatives of the survey association shall not be an employee of any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer;

(B) The survey association shall be free from any obligation to or interest in any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer; and

(C) The ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted shall be free from any obligation to or interest in the survey association.

(ii) Conducted at retail outlets that sell gasoline; and

(iii) Represent all gasoline dispensed nationwide.

(3) *Independent Survey Association Requirements.* The consortium described in paragraph (b)(1) of this section shall require the independent survey association conducting the surveys to:

(i) Submit to EPA for approval each calendar year a proposed survey program plan in accordance with the requirements of paragraph (b)(4) of this section.

(ii) Obtain samples of gasoline offered for sale at gasoline retail outlets in accordance with the survey program plan approved under this paragraph (b), or immediately notify EPA of any refusal of retail outlets to allow samples to be taken.

(iii) Test, or arrange to be tested, the samples required under paragraph (b)(3)(ii) of this section for Reid vapor pressure (RVP), and oxygenate content as follows:

(A) Samples collected at retail outlets shall be shipped the same day the samples are collected via ground service to the laboratory and analyzed for oxygenate content. Samples collected at a dispenser labeled E15 in any manner, or at a tank serving such a dispenser, shall also be analyzed for RVP. Such analysis shall be completed within 10 days after receipt of the sample in the laboratory. Nothing in this section shall be interpreted to require

RVP testing of a sample from any dispenser or tank serving it unless the dispenser is labeled E15 in any manner.

(B) Any laboratory to be used by the independent survey association for oxygenate or RVP testing shall be approved by EPA and its test method for determining oxygenate content shall be a method permitted under §80.46(g), and its test method for determining RVP shall be the method permitted under §80.46(b).

(iv) In the case of any test that yields a result that does not match the label affixed to the product (e.g., a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as “E15” or a sample containing greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as “E15”), or the RVP standard of §80.27(a)(2), the independent survey association shall, within 24 hours after the laboratory receives the sample, send notification of the test result as follows:

(A) In the case of a sample collected at a retail outlet at which the brand name of a gasoline refiner or gasoline importer is displayed, to the gasoline refiner or gasoline importer, and EPA. This initial notification to a gasoline refiner or gasoline importer shall include specific information concerning the name and address of the retail outlet, contact information, the brand, and the ethanol content, and the RVP if required, of the sample.

(B) In the case of a sample collected at other retail outlets, to the retailer and EPA, and such notice shall contain the same information as in paragraph (b)(3)(iv)(A) of this section.

(C) The independent survey association shall provide notice to the identified contact person or persons for each party in writing (which includes e-mail or facsimile) and, if requested by the identified contact person, by telephone.

(v) Confirm that each fuel dispenser sampled is labeled as required in §80.1501 by confirming that:

(A) The label meets the appearance and content requirements of §80.1501.

(B) The label is located on the fuel dispenser according to the requirements in §80.1501.

(vi) In the case of a fuel dispenser that is improperly labeled, or whose fuel does not meet the RVP standards of §80.27(a)(2) the survey association shall provide notice as provided in paragraphs (b)(2)(iv)(A) through (C) of this section.

(vii) Provide to EPA quarterly and annual summary survey reports which include the information specified in paragraph (b)(5) of this section.

(viii) Maintain all records relating to the surveys conducted under this paragraph (b) for a period of at least five (5) years.

(ix) Permit any representative of EPA to monitor at any time the conducting of the surveys, including sample collection, transportation, storage, and analysis.

(4) *Survey Plan Design Requirements.* The proposed survey program plan required under paragraph (b)(3)(i) of this section shall, at a minimum, include the following:

(i) *Number of Surveys.* The survey program plan shall include four quarterly surveys each calendar year. The four quarterly surveys collectively are called the survey series as defined in §80.1500.

(ii) *Sampling Areas.* The survey program plan shall include sampling in all sampling strata, as defined in §80.1500, during each survey. These sampling strata shall be further divided into discrete sampling areas or clusters. Each survey shall include sampling in at least 40 sampling areas in each stratum which are randomly selected.

(iii) *No advance notice of surveys.* The survey plan shall include procedures to keep the identification of the sampling areas that are included in any survey plan confidential from any regulated party prior to the beginning of a survey in an area. However, this information shall not be kept confidential from EPA.

(iv) *Retail outlet selection.*

(A) The retail outlets to be sampled in a sampling area shall be selected from among all retail outlets in the sampling area that sell gasoline, with the probability of selection proportionate to the volume of gasoline sold at the retail outlets; the sample should also include retail outlets with different brand names as well as those retail outlets that are unbranded.

(B) In the case of any retail outlet from which a sample of gasoline was collected during a survey and determined to have an ethanol content that does not match the fuel dispenser label (e.g. a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as “E15” or a sample with greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as “E15”) or determined to have a dispenser containing fuel whose RVP does not comply with §80.27(a)(2), that retail outlet shall be included in the subsequent survey.

(C) One sample of each product dispensed as gasoline shall be collected at each retail outlet, and separate samples shall be taken that represent the gasoline contained in each gasoline storage tank unless collection of separate samples is not practicable.

(v) *Number of samples.*

(A) The minimum number of samples to be included in the survey plan for each calendar year shall be calculated as follows:

$$n = \left\lceil \frac{(Z_\alpha + Z_\beta)^2}{(4 * [\arcsin(\sqrt{\phi_1}) - \arcsin(\sqrt{\phi_0})]^2)} \right\rceil * S_{t_n} * F_a * F_b * S_{U_n}$$

Where:

n = minimum number of samples in a year-long survey series. However, in no case shall n be smaller than 7,500.

Z_{α} = upper percentile point from the normal distribution to achieve a one-tailed 95% confidence level (5% α -level). Thus, Z_{α} equals 1.645.

Z_{β} = upper percentile point to achieve 95% power. Thus, Z_{β} equals 1.645.

p = the maximum proportion of non-compliant stations for a region to be deemed compliant. In this test, the parameter needs to be 5% or greater, *i.e.*, 5% or more of the stations, within a stratum such that the region is considered non-compliant. For this survey, p will be 5%.

o = the underlying proportion of non-compliant stations in a sample. For the first survey plan, o will be 2.3%. For subsequent survey plans, o will be the average of the proportion of stations found to be non-compliant over the previous four surveys.

St_n = number of sampling strata. For purposes of this survey program, St_n equals 3.

F_a = adjustment factor for the number of extra samples required to compensate for collected samples that cannot be included in the survey, based on the number of additional samples required during the previous four surveys. However, in no case shall the value of F_a be smaller than 1.1.

F_b = adjustment factor for the number of samples required to resample each retail outlet with test results exceeding the labeled amount (e.g., a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as "E15", a sample with greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as "E15"), or a sample dispensed from a fuel dispenser labeled as "E15" with greater than the applicable seasonal and geographic RVP pursuant to §80.27, based on the rate of resampling required during the previous four surveys. However, in no case shall the value of F_b be smaller than 1.1.

Su_n = number of surveys per year. For purposes of this survey program, Su_n equals 4.

(B) The number of samples determined pursuant to paragraph (b)(4)(v)(A) of this section, after being incremented as necessary to allocate whole

numbers of samples to each cluster, shall be distributed approximately equally for the quarterly surveys conducted during the calendar year.

(5) *Summary survey reports.* The quarterly and annual summary survey reports required under paragraph (b)(3)(vii) of this section shall include the following information:

- (i) An identification of the parties that are participating in the survey.
- (ii) The identification of each sampling area included in a survey and the dates that the samples were collected in that area.
- (iii) For each retail outlet sampled:
 - (A) The identification of the retail outlet;
 - (B) The gasoline refiner or gasoline importer brand name displayed, if any;
 - (C) The fuel dispenser labeling (e.g., “E15”);
 - (D) The sample test result for oxygenate content, and RVP result, if any;
 - (E) The test method used to determine oxygenate content under §80.46(g); and
 - (F) The test method used to determine RVP under §80.46(b).
- (iv) Ethanol level summary statistics by brand and unbranded for each sampling area, strata, and survey series. These summary statistics shall:
 - (A) Include the number of samples, the average, median and range of ethanol content, expressed in volume percent.
 - (B) [Reserved]
- (v) The quarterly reports required under this paragraph (b)(5) are due 60 days following the end of the quarter. The annual reports required under this paragraph (b)(5) are due 60 days following the end of the calendar year.
- (vi) The reports required under this paragraph (b)(5) shall be submitted to EPA in an electronic spreadsheet.

(c) *Procedures for obtaining approval of survey plan and providing required notices.* The first year in which a survey program is conducted may consist of only a portion of a calendar year ending on December 31 (i.e., in the initial year, a survey program may begin on a date after January 1, but would still end on December 31). Subsequent survey programs shall be conducted on a calendar year basis. The procedure for obtaining EPA approval of a survey program plan under paragraph (b) or paragraph (c) of this section is as follows:

- (1) For the first year in which a survey will be conducted, a survey program plan that complies with the requirements of paragraph (a) or paragraph (b) of this section must be submitted to EPA no later than 60 days prior to the date on which the survey program is to begin.
- (2) For subsequent years in which a survey will be conducted, a survey program plan that complies with the requirements of paragraph (a) or paragraph (b) of this section must be submitted to EPA no later than November 1 of the year preceding the calendar year in which the survey will be conducted.

(3) The survey program plan must be signed by a responsible officer of the consortium which arranges to have an independent surveyor conduct the survey program.

(4) The survey program plan must be sent to the following address: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 6506J, Washington, DC 20460.

(5) EPA will send a letter to the party submitting the survey program plan that indicates whether EPA approves or disapproves the survey plan.

(6) The approving official for a survey plan under this section is the Director of the Compliance and Innovative Strategies Division, Office of Transportation and Air Quality.

(7) Any notifications or reports required to be submitted to EPA under this section must be directed to the official designated in paragraph (b)(6)(iv) of this section.

(d) Independent surveyor contract.

(1) For the first year in which a survey program will be conducted, no later than 30 days preceding the start of the survey, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(2) For subsequent years in which a survey program will be conducted, no later than December 1 of the year preceding the year in which the survey will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(3) For the first year in which a survey program will be conducted, no later than 15 days preceding the start of the survey EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if the money has been placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (b)(6)(iv) of this section.

(4) For subsequent years in which a survey program will be conducted, no later than December 15 of the year preceding the year in which the survey will be conducted, EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (b)(6)(iv) of this section.

(e) *Consequences of failure to fulfill requirements.* A failure to fulfill or cause to be fulfilled any of the requirements of this section is a prohibited act under Clean Air Act section 211(c) and §80.1504.

(1) EPA may revoke its approval of a survey plan under this section for cause, including, but not limited to, an EPA determination that the approved survey plan has proved to be inadequate in practice.

(2) EPA may void *ab initio* its approval of a survey plan if EPA's approval was based on false information, misleading information, or incomplete information, or if there was a failure to fulfill, or cause to be fulfilled, any of the requirements of the survey plan.

B. Plan Provisions

The E15 partial waivers require participation in a survey of compliance at fuel retail dispensing facilities, which involves submittal of a statistically sound survey plan to EPA for its approval and begin implementing the survey plan prior to the introduction of E15 into the marketplace. The Misfueling Mitigation Rule requires that various parties, including manufacturers of E15, participate in a survey of compliance at fuel retail dispensing facilities. The waiver condition related to a compliance survey will effectively be met by the plan submitter's compliance with the Misfueling Mitigation Rule's fuel survey provisions. The plan submitter recognizes that EPA's separate approval of a survey plan covering the manufacturer's distribution of E15 or ethanol for E15 blending, as well as the implementation of the survey plan itself, are prerequisites to the lawful introduction into commerce of E15.

As required by the partial waivers and the Misfueling Mitigation Rule, the plan submitter will participate in a survey of retailer compliance to provide a reasonable assurance that labeling requirements are being met, that the appropriate level of ethanol content is being properly blended and documented in fuel shipments, and that the Reid Vapor Pressure limitations are being met. The manufacturer may develop an appropriate survey program or may contract with an organization such as the Reformulated Gasoline Survey Associates (individually or through a coalition, trade group, or association), an independent contractor who has developed a model survey plan to meet the regulatory requirements of the partial waivers and the Misfueling Mitigation Rule and may choose survey option 1 or 2. Additional efforts in support of the survey plan may include financial support to help develop the survey program and educational outreach by non-profit organizations to educate affected parties of the survey program made available by Reformulated Gasoline Survey Associates (RFGSA). The RFGSA is a not-for-profit organization, which since 1995 has provided independent, high quality, efficient programs and services to satisfy the fuel compliance requirements of industry and government.

It is not the purpose of this MMP to describe how the required survey will be designed and conducted, and the plan submitter recognizes that EPA's approval of this MMP does not signify that the plan submitter has met the survey plan provisions of the partial waivers or the Misfueling Mitigation Rule. The plan submitter will submit a survey plan separately for EPA approval and will not introduce E15 into commerce until EPA has approved the plan (or a revised plan as appropriate in response to EPA action) and the plan has been implemented.

The plan submitter will also take reasonable additional measures to provide support for survey efforts through educational outreach. Planned educational outreach efforts include webinars, information and survey program promotion on the internet, as well as inclusion of the survey specifics in the “retailer handbook.”

V. Public and Stakeholder Outreach Efforts

While not required to meet a specific condition of the partial waivers and accordingly not a part of this plan, voluntary outreach efforts are being conducted. A coalition known as the E15 Educational Outreach Coalition (E15EOC) has been created to promote educating consumers and stakeholders and help ensure that E15 is appropriately used. The efforts of the group are intended to include, but not be limited to, public outreach and consumer education, coordinated communications, and the provision of resources for inquiries from retailers and consumers. Communication from the E15EOC may be through both printed materials and electronic means. The E15EOC also plans to develop a website in conjunction with other stakeholders to provide E15 fuel facts, links to EPA’s website, and fact sheets and answers to frequently asked questions, including questions related to appropriate fueling with E15.

The E15EOC is open to all stakeholders including members of the public and currently includes renewable fuel manufacturers, blenders, government agencies, marketers, engine or vehicle manufacturers, and affiliated industries.

Additional efforts are planned by the RFA which include distribution of an “E15 Retailer Handbook” and other technical information that will help ensure that E15 is appropriately marketed. The RFA may contact retailers directly to communicate issues related to E15 deployment.

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NOTE: The plan submitter understands that implementation of the requirements of an approved MMP is a condition of the E15 partial waivers allowing E15 to be introduced into commerce for use in model year 2001 and newer light duty motor vehicles.