



April 18, 2014

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex N)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



Re: Fuel Rating Rule Review, 16 CFR Part 306, Project No. R811005

To Whom It May Concern:

The American Motorcyclist Association has concerns with the Federal Trade Commission's rule proposal to provide requirements for rating and certifying ethanol blends and requirements for labeling blends of more than 10 percent ethanol, with an exemption for EPA-approved E15. This proposal could cause even more confusion given the events surrounding the rollout of E15 into the marketplace.

The AMA opposes E15 and any fuel containing more than 10 percent ethanol, because misfueling can cause engine and fuel system failure to motorcycles and all-terrain vehicles, and can void manufacturers' warranties.

Founded in 1924, the AMA is the premier advocate of the motorcycling community, representing the interests of millions of on- and off-highway motorcyclists. Our mission is to promote the motorcycle lifestyle and protect the future of motorcycling.

In October 2010, the U.S. Environmental Protection Agency approved the use of E15 in model year 2007 and newer light-duty vehicles (cars, light-duty trucks and medium-duty passenger vehicles). Then, in January 2011, the EPA added model year 2001-2006 light-duty vehicles to the approved list.

None of the estimated 22 million motorcycles and ATVs currently in operation is on the list. In fact, federal law prohibits motorcyclists from using this fuel. The punishment for violating this law is a fine of up to \$25,000 a day.

The AMA repeatedly has expressed concerns to federal legislators and the EPA about E15 being mistakenly used and possibly causing engine and fuel system failures in motorcycles and ATVs. We also voiced concerns about the dwindling availability of gasoline that has no ethanol and the continued availability of gasoline with only a 10 percent blend (E10), for use in these 22 million motorcycles and ATVs.

Now, the FTC is proposing a rule for a new label “in response to the emergence of ethanol blends as a retail fuel and the likely increased availability of such blends.”¹

The emergence of higher ethanol blended fuels is a serious concern to AMA and the millions of motorcyclists sharing the roads and highways all across the United States. Even with E15 in the marketplace, inadvertent misfueling may readily occur.

According to *Federal Register* notice, “the record, however, shows a risk that misfueling may harm conventional vehicles and non-road engines.” As EPA explained, “[e]thanol impacts motor vehicles in two primary ways. First . . . ethanol enleans the [air/fuel] ratio (increases the proportion of oxygen relative to hydrocarbons) which can lead to increased exhaust gas temperatures and potentially increase incremental deterioration of emission control hardware and performance over time, possibly causing catalyst failure. Second, ethanol can cause materials compatibility issues, which may lead to other component failures.”²

“In motorcycles and nonroad products [using E15 and higher ethanol blends], EPA raised engine-failure concerns from overheating.”³

Studies show that the majority of motorists do not know the difference between E10 and regular gasoline. The problem is potentially worse with E15 or blends with higher ethanol content. Additionally, a National Marine Manufacturers Association study has shown that mislabeling is already occurring where E15 is sold. Mislabeling may lead to inadvertent misfueling.

Furthermore, the AMA told the EPA that, with E15 now coming into the market, our members who make a concerted effort to fuel their motorcycles or ATVs with E10 or lower ethanol fuel may unknowingly refuel with residual E15 left in a blender-pump hose. A blender pump dispenses different fuel blends, such as E10 and E15, through the same hose. When a customer buys E15, as much as a third of a gallon of E15 is left in the hose and can get into the next customer's vehicle, even if E10 is selected.

The EPA said: “In an effort to address this potential misfueling issue, EPA approved an industry-submitted [approach] that requires a minimum purchase of four gallons from blender pumps that dispense both E10 and E15 from the same hose and nozzle. Such an approach would prevent misfueling by diluting any residual E15 left in the hose from the previous sale of E15.”

¹ <https://www.federalregister.gov/articles/2014/04/04/2014-07423/automotive-fuel-ratings-certification-and-posting>, accessed April 17, 2014.

² *Ibid.*

³ *Ibid.*

However, the AMA objected to this misfueling mitigation plan, because our members' street bike fuel tanks are small, holding roughly three to six gallons. Off-highway motorcycles typically have even smaller gas tanks.

In response to the AMA's concerns, the EPA revised its Misfueling Mitigation Plan. Under the new option, retailers who use a blender pump to sell E15 and E10 fuel through the same hose must also have a separate E10/E0 fuel pump. Those retailers would be required to have a label on the blender pump that reads: "Passenger Vehicles Only. Use in Other Vehicles, Engines and Equipment May Violate Federal Law." Retailers would also be required to have signs indicating the location of the dedicated E10-or-lower fuel pump. There would be no minimum-fuel-purchase requirement at that pump. (The AMA can only imagine how many motorcyclists and other motorists will be lining up at that single pump to get E10-or-lower fuel.)

Furthermore, retailers who want to sell E15 also have the option of having a dedicated E15 pump or hose, or a pump that dispenses E15 and higher ethanol blends through a single hose. If a blender pump dispenses multiple fuels that include E15 and higher ethanol blends, the EPA may require a minimum purchase requirement.

With the emergence of higher ethanol blends coming into the marketplace and, thus, adding to the existing confusion caused by E15, the AMA urges the FTC to work with the EPA on its Misfueling Mitigation Plan and ways to enforce it.

As for the proposed label, the AMA does not believe it will do what it is intended to do – keep users from misfueling with higher ethanol blended fuels. It simply does not provide clear direction. Another label on a blender pump that already has many labels will not be sufficient to avoid misfueling and could easily be overlooked. The proposed rule provides no direction on where on the pump the label should be located.

Moreover, the FTC is proposing that the label be rounded to the nearest 10. How will this accurately inform the consumer of the type of fuel called for by the vehicle owner's manual? Will a fuel containing 11 percent to 14 percent ethanol be labeled as 10 percent ethanol? Is the FTC aware that manufacturers' warranties are valid only for the use of fuel containing 10 percent ethanol by volume or less?

Most importantly, the proposed rule calls for, yet, another label when it should call for physical barriers in the fueling nozzle/receptacle, as was provided when the nation went from leaded to unleaded fuel. The record tells us that, even with these physical barriers in place, misfueling still occurred.

Besides the EPA-approved E15 label and now the proposed FTC higher ethanol blended fuels label, there is another label for consumers to be aware of that is not approved for use by any federal agency.

The non-federal label is used at retailers located in a “volatility attainment area” that prohibits the sale of gasoline with a Reid Vapor Pressure that exceeds 9 psi. These standards apply from June 1 to Sept. 15 and May 1 through Sept. 15 for all refiners, importers, distributors, resellers and carriers.⁴

The vapor pressure limit -- known as Reid Vapor Pressure or RVP -- is intended to reduce the amount of fuel vapors escaping into the air during refueling. During the warmer months, the pressure inside underground fuel storage tanks increases, resulting in more vapors being forced out when the refueling nozzle is open.

Because of the RVP issue, retailers have used a label stating, “Stop! Not Gasoline! This fuel is designed to operate in Flex-Fuel Vehicles (FFVs) only. Please consult your owner’s manual before fueling if you are unsure if you are operating an FFV.”⁵ Moreover, the Code of Federal Regulations states the ethanol blend must be at least 9 percent and no more than 10 percent, by volume, of the gasoline during the RVP season.⁶

Recently, the EPA granted a waiver of 1 pound per square inch for E10 fuels, but declined to extend that waiver to E15. That decision means that fewer service stations will be able to sell E15 fuels between June 1 and Sept. 15 each year.

How will the FTC’s proposed label adapt to the RVP standards? Will a modified version of a RVP label emerge to replace the FTC-approved label during the warmer months for retailers in a “volatility attainment area”?

If a retailer does not accurately and clearly label the E15 fuel hose, a motorcyclist – or other motorist -- may inadvertently use it, believing it is an E10 or E0 blend. How will introducing a new ethanol blend label lessen the confusion and help prevent inadvertent misfueling?

Please understand that the AMA wants access to safe fuels for motorcycles and ATVs. Given marketplace realities, wherever E15 and higher ethanol blended fuels are sold there will very likely be inadvertent misfueling issues. Motorcycles and ATVs are not approved for any fuel with more than 10 percent ethanol.

⁴ See § 211(h) of the Clean Air Act.

⁵ *Ibid* at 4.

⁶ 40 C.F.R. § 80.27(d)(2).

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The loser in any inadvertent misfueling event is the motorcyclist or ATV rider. The AMA stands behind its members, and all riders, in calling for more thorough misfueling safeguards.

Thank you for your time and consideration of our comments.

Sincerely,

Wayne Allard
Vice President, Government Relations