



September 25, 2009

VIA ELECTRONIC MAIL

Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
EPA West, Room 3334
1301 Constitution Ave. NW
Washington, DC 20460

**RE: Docket ID No. EPA-HQ-OAR-2005-0161- National Marine Manufacturers Association
Comments to the Environmental Protection Agency Regarding the Proposed “Regulation of Fuels
and Fuel Additives: Changes to Renewable Fuel Standard Program.”**

The National Marine Manufacturers Association (“NMMA”), the nation’s leading recreational marine industry trade association, is pleased to provide the U.S. Environmental Protection Agency (EPA) with comments regarding the proposed “Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program.” (74 Federal Register 24, 904, Tuesday, May 26, 2009).

NMMA is the nation’s leading recreational marine industry association, representing over 1,600 boat builders, engine manufacturers and marine accessory manufacturers. NMMA collectively produces more than 80 percent of all recreational marine products made in the United States. With nearly 13 million registered boats (and nearly 17 million boats in the field) and 70 million boaters nationwide, the recreational marine industry is a major consumer goods and services industry that contributed \$33.6 billion in new retail sales and services to the U.S. economy in 2008.

I. Introduction & Overview

NMMA supports EPA efforts to require fuels that will improve the environment and reduce our nation’s dependence on foreign oil. Although the recreational marine industry does not produce, distribute or sell transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel, boaters and marine manufacturers depend on a reliable U.S. fuel supply to insure the safety, durability and performance of their products.

On July 20, 2009, NMMA provided comment to EPA strongly urging the Agency to deny a petition submitted by Growth Energy and 54 ethanol manufacturers (“Petitioners”) pursuant to Clean Air Section 211(f)(4). This petition, which was submitted to EPA on March 6, 2009, requested a waiver for ethanol-gasoline blends of up to 15 percent ethanol by volume (“E15”). NMMA in its comments also strongly opposed the granting of any “partial” or “conditional” waiver (or any other intermediate ethanol blend) for a subset of vehicles or engines. NMMA incorporates these previous comments to Docket ID No. EPA-HQ-OAR-2009-0211 herein by

Executive Committee

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President
Thomas J. Dammrich
NMMA

444 North Capitol Street, NW, Suite 645
Washington, D.C. 20001
202.737.9750 Fax 202.628.4716
nmma.org

reference. Additionally, NMMA is a member of the Alliance for a Safe Alternative Fuels Environment (“AllSAFE”), and we herein incorporate in total the comments submitted to EPA by AllSAFE regarding Docket ID No. EPA-HQ-OAR-2005-0161.

With respect to the current rulemaking, NMMA’s primary issue of concern is EPA’s theoretical contemplation of the various mechanisms and desirability of introducing intermediate, or mid-level, ethanol blends into the fuels marketplace as a general purpose fuel. As noted, NMMA does not believe it is desirable to move to mid-level ethanol blends. To the extent that NMMA fully addressed intermediate ethanol blends in its comments on the Growth Energy waiver petition, NMMA will limit its comments here to various proposals outlined within the RFS2 proposal that explore options to introduce mid-level blends beyond the Sec. 211(f)(4) waiver petition itself.

II. Marine Legacy Fleet & E15

NMMA does not oppose the use of ethanol at 10 percent (“E10”) or less in gasoline. There are cases where E10 has negatively and significantly impacted recreational marine engines and fuel systems, but through education regarding the proper storage of his type of fuel, boaters are slowly adjusting to managing this fuel in their marine applications. Marine engine manufacturers currently warranty their products up to E10, but they specifically advise consumers that their warranty may be voided if any fuel containing more than 10 percent ethanol is used. For E10, other than legacy boats built before the mid-1980s, these ethanol problems are more associated with the winter storage and long term storage of fuel in the boat. NMMA members have been designing their engines and fuel systems to be compatible with E10 since the 1980s subsequent to EPA’s default approval of E10 at that time.

Increasing the ethanol content in gasoline will be an entirely different story. EPA has recognized in its determination that E15 is not “substantially similar” to E10 and that there are serious design and certification distinctions between these totally separate fuels for engine manufacturers, regulators and consumers. For the marine sector as with all other engine manufacturing sectors, one of the most substantial concerns with any fuel change is the enormous and diverse array of nearly 17 million legacy marine products currently operating in the United States—and those boats, engines, and fuel systems currently being manufactured—none of which has been designed, calibrated or certified to be compatible with any gasoline containing more than 10 percent ethanol by volume.

Recreational marine fuel systems are not unique in this regard. The overwhelming majority of non-road engines from chain saws to weed trimmers operate similarly to recreational marine engines with open loop systems where the carburetor is set at the factory and designed to be tamper proof.

It is for these reasons that NMMA offers the following comments in an effort to caution the EPA that, based on what is known about non-road and marine engines today, there could be serious detrimental implications if the U.S. gasoline supply were to have blends greater than 10 percent ethanol. We strongly encourage EPA to avoid utilizing mid-level ethanol fuel blends as a pathway to achieve RFS targets.

III. Waiver of Mid-Level Ethanol Blends (E15/E20)

NMMA concurs with the EPA primary ethanol usage analysis, which considered that there would only be two fuels in the future, E10 and E85. And as EPA cited in Section V.D.2, NMMA agrees with EPA that it is feasible to consume 36 billion gallons of ethanol by 2022 given growth in FFV production and E85 availability and projected improvements in the current E10/E85 price relationship, although we recognize that there are

challenges with E85. However, the various pressure groups and ethanol advocates currently pushing to increase the concentration of ethanol beyond the current 10 percent blend wall are not doing this to increase fuel economy, expand consumer choice, produce environmental gains, or mitigate America's dependence on foreign oil. To the extent that these issues have been asserted, there are highly questionable outcomes for intermediate ethanol blends. Given known environmental, public health, and technical problems with intermediate ethanol fuels, and in light of EPA's primary obligation to protect public health and improve air quality, NMMA would hope these issues are fully vetted and that they register as EPA moves to implement the RFS, even if this examination takes time.

Before EPA can grant a 211(f)(4) waiver for a new fuel or fuel additive, an applicant must prove that the new fuel or fuel additive will meet the waiver requirements outlined in the statute. EPA requires that applicants provide vehicle/engine testing for tailpipe emissions, evaporative emissions, materials compatibility, and drivability. Testing needs to include emissions over the full useful life of vehicle and equipment. NMMA recognizes that several interested parties have been investigating the impact that mid-level ethanol blends (e.g., E15 or E20) may have on these areas among others (i.e. catalyst, engine, and fuel system durability, and onboard diagnostics). The problem is that none of this testing has been performed on marine engines. NMMA has worked with the Department of Energy ("DOE") and has submitted a test plan whereby marine engines and fuel systems can be properly evaluated with E15. NMMA and its members welcome such testing. NMMA members have gone as far as to offer their test facilities and staff to conduct the testing under the supervision and oversight of a third party consultant, such as the National Renewable Energy Laboratory ("NREL"). To date, no testing has been completed—or initiated—and the impact that E15 would have on marine engine emissions, evaporative emissions, materials compatibility and drivability has not been evaluated as is required under the law.

NMMA strongly urges the EPA to deny the Growth Energy waiver until a comprehensive evaluation of marine engines and fuel systems is conducted and the waiver requirements in the statute have been satisfied. Beyond the waiver petition currently under petition, EPA has solicited comment on additional pathways for introducing E15.

IV. "Substantially Similar" Redefinition

NMMA supports the most recent "substantially similar" interpretive rule for unleaded gasoline which presently allows oxygen content up to 2.7 percent by weight for certain ethers and alcohols. E10 contains approximately 3.5 percent oxygen by weight, which makes a gasoline-ethanol blend with 10 percent ethanol not "substantially similar" to certification fuel under the current interpretation. Since any mid-level blend would have a greater than allowed oxygen content, any mid-level blend would need to have a waiver under Section 211(f)(4) of the CAA in order to be sold commercially. NMMA, as has been mentioned, has submitted detailed comment on such a waiver petition and reiterates those views here.

NMMA therefore opposes any redefinition of "substantially similar," as is contemplated in the proposal. EPA solicits comment on whether it would be appropriate to redefine the regulatory definition in order to capture mid-level blends such as E12. NMMA does not believe such an action is appropriate, and would suggest that any internal agency action not subject to full public rulemaking with respect to mid-level ethanol blends would circumvent provisions in the Energy Independence and Security Act of 2007 (EISA), in which Congress clearly expressed its intention that mid-level fuels be fully studied. As a "substantially similar" definition would obviate the need for ethanol fuel manufacturers to obtain a Clean Air Act waiver under Sec. 211(f)(4), we believe EPA should resist this approach. Additionally, given that, as EPA has stated, E15 would only delay the

blend wall by 2 years, the introduction of E12 would have a negligible impact on the RFS targets but potentially very serious impacts for consumers and the environment.

V. Measurement Tolerance

EPA has solicited comment on the question of whether it is appropriate to institute a “measurement tolerance” and allow for the sale of E11. This is neither appropriate nor helpful in meeting RFS targets, and therefore EPA should not pursue this. Allowing for E11, which is not testing, constitutes the first step toward an incremental creep of intermediate ethanol blends in the absence of a full and meaningful dataset for the fuel on marine equipment and other on-road and non-road engines and vehicles. For more than 30 years, E10 has been the legal ceiling. Manufacturers have recognized this certainty and have designed their products in light of it. Allowing for a “measurement tolerance” for E11 would do virtually nothing to extend the blend wall, introduce confusion into the marketplace, start a worrisome process of gradual movement toward intermediate ethanol blends, and does not constitute a meaningful approach to the blend wall or to expanding renewable fuels. Manufacturers of engines and equipment cannot—and cannot be expected to—design and manufacture their products in a world where fuels are introduced into the marketplace on a sliding scale. We strongly recommend EPA resist this approach.

III. “Partial” or “Conditional” Waiver of Mid-Level Blends

NMMA strongly opposes the granting of a so-called “partial” or “conditional” waiver that would allow the entry of mid-level ethanol blends in the market for general sale. In a perfect world, fuel distributors and gas stations could theoretically offer three different types of fuel: E85, E15, and E10 (or E0) in regular, mid-grade and high-test gasoline, and the price of fuel would be commensurate to the value and no one would make a mistake and put the wrong fuel in their tank. Unfortunately, we do not live in a perfect world.

NMMA opposes a “partial” waiver approach for the following reasons:

- **RFS2 Proposal Inappropriate Vehicle to Address Fuel Bifurcation.** There is insufficient basis for meaningful comment within RFS2 to fully examine the potential implications of a bifurcated fuel system. NMMA believes that, in order to properly evaluate such implications, EPA would need to address fuel bifurcation and controls to mitigate inevitable misfueling through a separate rulemaking process under Section 211(c) of the CAA, as we argued in our comments on the Growth Energy waiver petition. In order to ensure that issues surrounding misfueling were properly addressed, EPA would first need to solicit comment on a federal regulatory program designed specifically for this purpose, and after sufficient study had been completed on practical and legal issues. Only then could stakeholders meaningfully respond.
- **Consumer Misfueling is Guaranteed.** The potential of misfueling is especially large in the recreational marine sector. The overwhelming majority of recreational boats are trailerable and refueled at regular automotive gas stations—95 percent of recreational boats are under 26 feet in length. The premium paid for fueling at a marina can run between seventy five cents and one dollar and fifty cents, so only those boaters who have no other option but to purchase fuel at a marina do so. As with lawn and garden equipment, most recreational boat owners and operators obtain fuel at automotive gas stations, not filling stations on the water. Any effort to “bifurcate” the fuel supply would raise serious liability issues and raise questions with respect to who would be responsible were incompatible fuel, inadvertent or otherwise, to be put into an expensive recreational boat or other small or non-road engine. Most recreational boating consumers are specifically advised to use only

regular grade gasoline, which will deter them from using premium fuel even if it contains only up to E10. EPA's empirical data, commented on at length in the AllSAFE comments, clearly indicate that misfueling was widespread and persistent subsequent to the introduction of unleaded gasoline, and this occurred despite physical barriers designed to prevent misfueling.

- **Price Point Further Ensures Potential Willful Misfueling.** In this RFS2 proposal, EPA states it expects that mid-level ethanol blends would be marketed as the less expensive regular-grade fuels, while E10 will be available in premium grade gasoline. This guarantees that the mid-level blend will be the less expensive alternative. As EPA has acknowledged, consumers make their fuel decisions primarily based on the price of the fuel, which ensures widespread misfueling should EPA adopt this partial approach. Additionally, as mentioned above, many boat manufacturers advise their consumers to use only regular grade fuel, which will exacerbate misfueling further.
- **No Reliable Mechanism to Prevent Misfueling.** Like its AllSAFE partners, NMMA cannot envision any mechanism that will prevent misfueling by boating consumers. Labeling alone is insufficient (discussed further below), and even a physical barrier, such as a larger nozzle, would be ineffective for marine craft since fill neck on marine craft tend to be larger than those in automobiles. But even a physical safeguard is probably an unlikely option for EPA, since this would be incompatible with Tier 2 cars. Other marine applications, such as generators, are fueled up using portable gas tanks, which is one of the reasons misfueling was so common during the transition from leaded to unleaded gasoline. Although we would welcome a thorough and separate regulatory discussion of such controls and safeguards, a truly practical and effective approach is difficult to discern, which in our view is a very strong reason to avoid a "partial" waiver altogether.
- **Labeling Alone is Insufficient.** EPA is considering potential labeling requirements for ethanol fuel blends. NMMA strongly believes, and empirical data clearly demonstrate (see AllSAFE discussion), that labeling is not a sufficient or viable safeguard against misfueling. However, any labeling initiative should include very strong language to inform consumers adequately. As currently written in the proposal, EPA's language does not include any reference to compatibility with non-road engines and vehicles, even though nearly all such applications are fueled at regular automotive gas pumps. This should be remedied and any label should reference both on-road and non-road vehicles, note that mid-level ethanol is not a compatible fuel, and specifically reference boats and other similar equipment.
- **Introduction of E15 Would Likely Eliminate, Not Expand, Consumer Choice.** Ethanol advocates have continued to insist publicly that they only seek additional choice for fuel consumers. That many fuel consumers (and nearly all boating consumers) do not want the additional "choice" of mid-level blends does not seem to factor into the discussion. In any event, additional "choice" is not a material issue under EPA's regulatory decision-making process on whether it is appropriate or desirable to introduce mid-level fuels, and it certainly does not override the need to fully examine emissions and durability data for on-road and non-road equipment. In any event, the introduction of mid-level ethanol will not expand consumer choice, it will reduce it. Non-road or off-highway fuel use is a relatively small percentage of overall gasoline consumption in the United States. EPA approval of E15, even partially, would remove the incentive for fuel stations to maintain a separate tank and pump for non-road vehicles and equipment, since doing so would result in higher fuel costs for the fuel station and reduce its operating margin. In any event, fuel for non-road engines and equipment would become a specialty fuel at best, raising its cost, discouraging consumers from buying it, and therefore exacerbating the risk of misfueling.

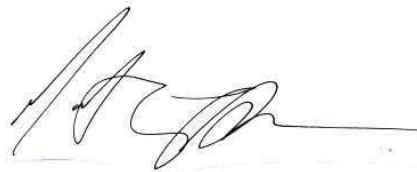
- **Widespread Product Failures Could Result in Rejection of Biofuels.** Public support for ethanol continues to wane and come under scrutiny as more people personally experience trouble with their cars, boats, lawnmowers and other equipment. On the highly technical issue of E15 alone, more than 30,000 individual boaters submitted comments to EPA opposing the waiver. NMMA strongly believes that the hasty adoption of provisions that promote or allow the sale of mid-level ethanol will result in substantial and widespread negative impacts for our nation's air quality and the performance, reliability, and fuel economy of more than 400 million pieces of legacy equipment. This outcome, particularly if it occurs in the absence of a full consideration of all the science, will very likely aggravate consumers and result in widespread rejection of biofuels. NMMA believes many advanced biofuels are highly promising and are potentially compatible with the existing legacy fleet and the nation's fuel infrastructure. EPA should allow these products to reach their potential rather than move forward with a fuel that has questionable or potentially net-negative implications for the environment and which is not compatible with legacy equipment.
- **Breaching the Blend Wall is Not a Long-Term Strategy.** EPA acknowledges in its Preamble that allowing the sale of intermediate ethanol blends, such as E15, will only delay the blend wall for, at a maximum, two years, from 2013 to 2015. Given the limited benefit that mid-level ethanol would have in helping EPA to achieve EISA mandates, it is clearly shortsighted and undesirable for EPA to risk damaging vehicles and equipment that were not designed, calibrated, certified or warranted to run on anything over E10.

At this time there is no economic and environmental case to support increasing the ethanol content in gasoline. The net effect will be that it will increase fuel cost for the owners of millions of legacy vehicles and non road and marine products and risk damage to millions of engines due to misfueling. NMMA does not believe that it is reasonable or practical for EPA to approve a partial waiver that would fundamentally alter the nation's fuel supply, or to allow the entry of any mid-level ethanol blend. NMMA appreciates the opportunity to provide comment on this important proposal. If you have any questions or comments, please do not hesitate contact John McKnight at 202-737-9757.

Sincerely,



John McKnight, Director
Environmental & Safety Compliance



Mathew P. Dunn, Director
Legislative Affairs