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Part V

Environmental Protection Agency

40 CFR Part 80

**Prohibition on Gasoline Containing Lead
or Lead Additives for Highway Use: Fuel
Inlet Restrictor Exemption for
Motorcycles; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-7215-3]

RIN 2060-AJ76

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rule exempts motorcycles with emission control devices that could be affected by the use of leaded gasoline from having to be equipped with gasoline tank filler inlet restrictors. As before, motorcycles and other motor vehicles without such emission control devices are not required to be equipped with gasoline tank filler inlet restrictors.

The Clean Air Act and corresponding EPA regulations prohibit gasoline containing lead or lead additives (leaded gasoline) as a motor vehicle fuel after December 31, 1995. As a deterrent to misfueling prior to that date, the EPA regulations required filler inlet restrictors on motor vehicles equipped with an emission control device that could be affected by the use of leaded gasoline, such as a catalytic converter. EPA retained that provision after 1995 because the filler inlet restrictor, besides being a deterrent to misfueling, has also been incorporated into the design of some vapor recovery gasoline nozzle spouts. Gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. A gasoline tank filler inlet restrictor may cause gasoline spitback or spillage when a motorcycle is refueled, which increases evaporative emissions. Today there is relatively little risk of misfueling a motorcycle. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled.

DATES: This action will be effective June 24, 2002.

ADDRESSES: *Comments:* All comments and materials relevant to today's action have been placed in public docket A-2001-17 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500, 401 M Street, SW., Washington, DC 20460 (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on

government holidays. You can reach the Air Docket by telephone at (202) 260-7548 and by facsimile at (202) 260-4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564-9473, facsimile: (202) 565-2085, e-mail address: *babst.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this rule are manufacturers of motorcycles. Regulated categories include:

Category	Examples of regulated entities
Industry	Manufacturers of motorcycles

To determine whether you are affected by this rule, you should carefully examine the requirements in § 80.24(b) of title 40 of the Code of Federal Regulations ("CFR"). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. History of Fuel Tank Filler Restrictor

Prior to 1996, 40 CFR 80.24(b) contained size specifications for the gasoline tank filler inlet of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. The purpose of the tank filler inlet restriction was to allow the insertion of an unleaded gasoline pump nozzle, but not a leaded gasoline pump nozzle. Specifically, § 80.24(b) required that a manufacturer of motor vehicles "equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline" shall "[m]anufacture such vehicle with each gasoline tank filler inlet having a restriction which prevents the insertion of a nozzle with a spout as described in § 80.22(f)(1) and allows the insertion of a nozzle with a spout as described in § 80.22(f)(2)." Section 80.22(f)(1) specified that "[e]ach pump from which leaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 0.930 inch (2.363 centimeters)." Section 80.22(f)(2) specified that "[e]ach pump from which unleaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout which meets the following specifications: (i)

The outside diameter of the terminal end shall not be greater than 0.840 inch (2.134 centimeters); (ii) * * *

Section 80.24(b) contained additional specifications to prevent misfueling of motor vehicles with leaded gasoline. Section 80.24(b)(1) required that the filler inlet restrictor "pool" gasoline at the restrictor's opening, if fueling is attempted when the spout of a pump nozzle is not inserted into the restrictor opening. Historically, this had been accomplished by a spring-loaded door on the inside of the restrictor opening, which would be pushed open by inserting the spout of an unleaded gasoline nozzle. Since leaded gasoline nozzle spouts were larger than the inlet restrictor opening, they did not fit into the restrictor opening or push open the spring loaded door. Fueling with leaded gasoline would require the nozzle spout to be positioned in front of the restrictor opening and spring-loaded door. If fueling were attempted in this manner, the gasoline would pool at the restrictor opening and cause the nozzle's automatic shut-off device to activate. The related § 80.24(b)(2) exempted motorcycle manufacturers from meeting the "pooling" requirements of § 80.24(b)(1).

Section 211(n) of the Clean Air Act, 42 U.S.C. 7545(n), prohibits the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. For consistency with this Clean Air Act prohibition, we published in the **Federal Register** on February 2, 1996 a direct final rule and associated notice of proposed rulemaking revising our regulations (61 FR 3832 and 61 FR 3894, respectively). The direct final rule became effective on March 4, 1996 except for language associated with § 80.24(b). We withdrew language for that paragraph from the direct final rule on March 4, 1996 (61 FR 8221) due to adverse comment, and subsequently published revised language in the **Federal Register** on June 6, 1996 (61 FR 28763).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we removed various portions of § 80.24, including the introductory text, and modified § 80.24(b) to make the size requirements of the tank filler inlet applicable to all new motor vehicles, and not just to those equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. We reasoned that retaining the requirement for the tank filler inlet restrictor would conform with the statutory ban prohibiting the use of gasoline containing lead or lead

additives as a motor vehicle fuel. The restrictor requirements for motor vehicles would match the nozzle size requirement for dispensing unleaded gasoline, which we had retained in § 80.22(f)(2). Further, General Motors and several gasoline pump nozzle manufacturers had requested that the specification for the tank filler inlet size be retained so that automobile equipment would continue to be compatible with Stage II vapor recovery pump nozzles. We simplified the applicability language of § 80.24(b) to refer to all motor vehicles, instead of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline, because we thought that all motor vehicles were manufactured with tank filler inlet restrictors at that time. We did not intend to broaden the applicability of § 80.24(b).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we also removed §§ 80.24(b)(1) and 80.24(b)(2). We believed misfueling would be unlikely, making the § 80.24(b)(1) "pooling" safeguard against misfueling unnecessary. Once we removed § 80.24(b)(1), it was appropriate for us to remove § 80.24(b)(2) as well, since § 80.24(b)(2) exempted motorcycle manufacturers from the requirements of 80.24(b)(1).

We received an adverse comment from Harley Davidson, Inc. (Harley) on the revised language of 40 CFR 80.24(b) in the February 2, 1996 direct final rule and proposed rule.¹ In its comment, Harley stated that motorcycles generally do not use emission control devices that would be significantly impaired by the use of leaded gasoline (e.g., catalytic converters) and are therefore not manufactured with tank filler inlet restrictors matching the requirements of the existing § 80.24(b). The February 2, 1996 direct final rule and associated notice of proposed rulemaking would have required these motorcycles to meet the fuel inlet size requirements of 40 CFR 80.24(b), thereby causing additional economic burden and manufacturing complexity for Harley. We did not intend or foresee that we would be expanding the applicability of § 80.24(b) by the revised applicability language. Because of this adverse comment, we withdrew paragraph 40 CFR 80.24(b) from the direct final rule,

and published it in the June 6, 1996 final rule with its previous applicability.

On October 31, 2001, we published a Direct Final Rule (66 FR 54955) and concurrent Notice of Proposed Rule (66 FR 54965) to 40 CFR 80.24(b) to exempt motorcycles equipped with an emission control device that will be affected by the use of leaded gasoline, such as a catalytic converter, from having to be equipped with a fuel tank inlet restrictor. We received an adverse comment, and on December 27, 2001 withdrew the Direct Final Rule (66 FR 66867) in order to address the comment in today's action based on the concurrent Notice of Proposed Rule. The December 27, 2001 withdrawal of the direct final rule was inadvertently published in the Proposed Rule section of the **Federal Register**. The Office of the Federal Register is publishing elsewhere in this issue of the **Federal Register** a correction reclassifying the withdrawal as a Rule.

II. Why Are We Exempting Motorcycles?

There are few, if any, offsetting environmental benefits to support the continued use of gasoline tank filler inlet restrictors in motorcycles equipped with emission control devices that would be significantly impaired by the use of leaded gasoline. Today there is relatively little risk of misfueling a motorcycle. Gasoline tank filler inlet restrictors were originally required to prevent motor vehicles with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage catalytic converters and certain other emission control devices. Significantly, leaded gasoline has now been banned from use in all motor vehicles for over six years and is generally no longer available for sale at gasoline filling stations. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled. Although a vapor recovery gasoline nozzle, in conjunction with the gasoline tank filler inlet restrictor, helps to control gasoline vapors and emissions when used to refuel most motor vehicles, they are relatively ineffective when used to refuel motorcycles.

During refueling of a car or truck, the fuel nozzle spout is inserted into the fill tube and through the filler neck restrictor plate. The fuel nozzle automatically stops the flow of gasoline when it senses a sufficiently high level of gasoline vapors below the restrictor plate, which indicates the fuel tank is full. We understand that, beginning with the introduction of Stage I vapor

recovery fueling systems in the early 1990s and continuing with current Stage II vapor recovery systems, the fuel tank inlet restrictor of a car or truck has been used as a guide, a seat and a pressure contact point for some vapor recovery gasoline nozzle spouts.

For some vapor recovery fueling systems, the restrictor plate lines up the nozzle and helps concentrate the fugitive emissions for collection. Without the restrictor plate, more fugitive emissions would be released. The "balance" type of vapor recovery system uses a boot to seal around the outside of the tank filler inlet tube. While this system does not require the restrictor plate to help capture fugitive emissions, it requires the restrictor plate to push against in order to activate an interlock. An "emission" or "efficiency" control vapor recovery device does not need the restrictor plate to control fugitive emissions. This device consists of a cup, which has an outside diameter the same as the inside diameter of the fill hole, that is clipped to the spout. A similar type of vapor recovery system, the Marconi system, does not need the restrictor plate or the plastic cup.²

Most on-board vapor recovery systems, which are required for light-duty vehicles and light-duty trucks but not for motorcycles, are also designed around the restrictor plate. A seal is needed between the pump nozzle and the tank filler inlet tube to prevent fugitive emissions from escaping. This seal is normally located below the restrictor plate, and uses the restrictor plate to line-up the nozzle with the seal. Fugitive emissions below the seal are then diverted to a canister in the vehicle.³

We understand that gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. The use of gasoline tank inlet restrictors in motorcycles may in fact contribute to unnecessary releases of gasoline vapors and emissions. Unlike a car or truck, motorcycles are typically fueled while the operator observes the tank fuel level, similar to filling a small gasoline container typically used to refuel lawnmowers and other small gasoline powered equipment. However, the restrictor plate obstructs the view of the fuel level, and could contribute to inadvertent fuel overfill and spillage. If fueling with the "balance" type of vapor recovery nozzle, motorcycle operators generally pull back and hold the rubber boot to activate the interlock and allow

¹ This comment can be found in docket no. A-95-13 for the February 2, 1996 direct final rule and proposed rule, and for the June 6, 1996 final rule.

² Conversation with Catlow on April 3, 2001.

³ *IBID.*

for better visibility, but that defeats the vapor recovery system.⁴ Further, the filler inlet restrictor may cause the nozzle spout to be inserted deeper into the motorcycle tank than otherwise would be necessary, potentially causing increased splash back from the shallow tank. Besides causing excess gasoline vapors and spitback through the restrictor plate openings, this splashback could cause the pump nozzle to prematurely stop the flow of gasoline. The operator may have to reactivate the pump nozzle, possible several times, before the tank is full.

These problems were not much of an issue in the 1995 and earlier time frame, because only relatively few motorcycles were equipped with catalytic converters, and thus, only relatively few required tank inlet restrictors. However, a significant number of 2001 model year motorcycles have been equipped with catalytic converters.

III. Response to Comment

An adverse comment was submitted jointly from representatives of the multifamily rental industry: National Apartment Association, National Leased Housing Association, and National Multi Housing Council (herein referred to collectively as "NAA"). NAA expressed concern about environmental exposure to lead caused by potential increased usage of leaded gasoline, and raised four issues, which we will address separately.

Issue 1: NAA objects to EPA's proposed decision that would have the practical effect of making it easier for motorcycles to use leaded fuel, increase their usage of leaded gasoline and consequently increase lead emissions into the environment.

Fuel inlet restrictors together with pooling specifications were required to prevent damage to emission control devices, such as catalytic converters, installed on many motor vehicles to reduce smog. Today's action does not allow a motorcycle to use leaded gasoline, nor does it make it more likely that a motorcycle will misfuel with leaded gasoline. The fact that there is no suggestion or evidence that the large number of motorcycles in the U.S. not equipped with a fuel inlet restrictor are being misfueled supports this conclusion.

Fuel inlet restrictors have never prevented the use of leaded gasoline in motorcycles. Fuel inlet restrictors with

size and "pooling" specifications were required from the mid-1970s until 1996 for motor vehicles with emission control devices, such as catalytic converters, that could be damaged by the use of leaded gasoline. At that time, both leaded and unleaded gasoline were generally available at gasoline filling stations.⁵ The size and "pooling" specifications were intended to prevent the fueling of those vehicles with leaded gasoline. Significantly, motorcycles have always been exempt from the "pooling" specification.

The size specification prevented leaded gasoline nozzles, which had a larger diameter than unleaded gasoline nozzles, from being inserted into the fuel inlet restrictor opening. The "pooling" specification was typically met by a spring loaded door covering the fuel inlet opening, which could be pushed open with an unleaded gasoline nozzle for normal fueling. But, if fueling were attempted with a leaded gasoline nozzle, the spring loaded door would remain closed and gasoline would pool in the filler tube above the restrictor. The pooled gasoline would activate the gas pump's automatic cut-off device or overflow onto the vehicle and ground. Not only were motorcycles exempt from the "pooling" specification, but also very few motorcycles were required to be equipped with the filler neck restrictor because most did not have catalytic converters.

The specifications of the fuel inlet restrictor were changed in 1996 because leaded gasoline was no longer permitted as a fuel for any motor vehicle and we no longer considered fueling with leaded gasoline to be a significant possibility.⁶ We retained the specification for the "shell" of the restrictor so that vapor recovery refueling nozzles and fuel inlets on the motor vehicles would remain compatible. However, we eliminated the critical "pooling" specification. A filler inlet restrictor meeting today's specification allows fueling with large diameter gasoline nozzles, such as the former leaded gasoline nozzles, although it would be a minor

⁵ While both leaded and unleaded gasoline were available at gasoline filling stations since the mid-1970s, the availability of leaded gasoline gradually diminished and became small by the early 1990s. This was likely due to the increasing dominance of highway vehicles requiring unleaded gasoline, the increasing cost of producing and distributing the smaller volume of leaded gasoline, and our lead phase-down program of the 1980s.

⁶ 61 FR 3832, February 2, 1996 (Direct Final Rule); 61 FR 389461, February 2, 1996 (Notice of Proposed Rule); 61 FR 8221, March 4, 1996 (partial withdrawal of the Direct Final Rule of February 2, 1996); 61 FR 28763, June 6, 1996 (Final Rule to complete February 2, 1996 rulemaking).

inconvenience. Refueling is possible by holding the nozzle over the restrictor opening and letting the gasoline pour through the opening. This process might take somewhat longer because the fueling rate may need to be slowed to prevent splashing of the fuel off of the restrictor surface. Since motorcycles were already exempt from the "pooling" specification prior to 1996, the 1996 regulatory change had no practical effect on motorcycles.

Even if a motorcycle owner wanted to use leaded fuel, it is relatively hard to find today. It is no longer generally available at retail gasoline stations because the use of leaded fuel is banned in motor vehicles. We estimate that only 0.3 percent of the gasoline used in the United States today is leaded gasoline.⁷ It is used primarily in some aircraft engines and some race cars.⁸ Although non-highway engines can use leaded gasoline, most do not. The non-highway engines that can use both leaded or unleaded gasoline use only unleaded gasoline, and the other non-highway engines that were designed to use leaded gasoline (other than certain racing or aircraft engines), such as some old farm equipment, currently use unleaded gasoline mixed with a commercially available lead substitute additive.⁹

⁷ Based on the National Transportation Statistics 2000, Table 4-7, BTS01-01, Bureau of Transportation Statistics, for 1998, the aviation component of non-highway gasoline was 351 million gallons, which is 10.7 percent of the total 3,284 million gallons non-highway gasoline. The racing component is considered negligible according to a conversation with the American Petroleum Institute, and a racing component was not broken out into a separate category in the BTS table. The BTS table also does not break marine engines into a separate category. Our contacts in the fuel industry doubt that leaded gasoline is used by marine engines, and we have no evidence of such use. If we assume 351 million gallons is the aviation and racing component combined (the racing component being negligible), and that aviation and racing are the only applications using leaded gasoline, then leaded gasoline represents only 0.3 percent of the total 128 billion gallons of highway and non-highway gasoline combined.

⁸ According to the Department of Energy, jet fuel, which is a kerosene derivative of petroleum, comprises 98.8 percent of aviation energy (BTU) demand in the United States. Aviation gasoline, which is consumed by aircraft equipped with reciprocating engines and which may contain lead, comprises the remaining 1.2 percent of aviation energy demand. (see Internet at http://www.eia.doe.gov/oiaf/aeo/supplement/sup_tran.pdf, Table 54) Also, not all race cars use gasoline—some use nitromethane or methanol.

⁹ Some non-highway applications need to use leaded gasoline or its equivalent. Non-highway engines built prior to the mid-1970s were designed to run on leaded gasoline. The use of unleaded gasoline in many of those old engines could cause valve seat recession. However, the equivalent of leaded gasoline can be obtained from unleaded gasoline by mixing it with a commercially available lead substitute additive, such as Millers VSP, Red

⁴ Also, for those motorcycles where the filler cap is attached to the gas tank by a hinge, the rubber boot of a "balance" type of vapor recovery nozzle would not seat correctly anyway, and the insertion pressure required to compress the boot may damage the gas cap, hinge, and tank finish.

One reason why the non-highway market (other than certain aviation and racing engines) has switched to unleaded gasoline and, thereby, made leaded gas harder to find is the cost of maintaining separate fuel distribution systems for highway and non-highway applications. Maintaining an additional tank and fuel pump for a small volume of leaded gasoline at a retail gasoline station is generally not cost effective. This is particularly true if the local non-highway consumer market can use unleaded highway gasoline instead. Also leaded gasoline must be segregated in dedicated storage and shipping tanks and must use dedicated transfer lines to prevent lead contamination of the unleaded highway gasoline supply.

Another reason why the non-highway market (other than certain aviation and racing engines) has switched to unleaded gasoline is that leaded gasoline causes corrosive lead compound deposits in the engines and lubricating oil. Consequently, using leaded gasoline requires more frequent oil changes and reduces engine and exhaust system life. Even those engines designed to run on leaded gasoline can use unleaded highway gasoline and reap the benefits of unleaded gasoline if it is mixed with a commercially available lead substitute additive. Thus all non-road engines (except for certain racing and aircraft engines) can use unleaded highway gasoline, although some may need to also use a lead substitute additive.

A motorcycle owner, therefore, that wanted to use leaded gasoline would either have to go to an airport, a race track or a racing supply center. Even if such an owner obtained leaded gasoline at one of these locations, the fuel would be specially formulated as aviation gasoline or racing gasoline that may not be suitable for use in a highway motorcycle.

Finally, even if a motorcycle owner could find a leaded gasoline, it is unlikely that he or she would want to pay more for leaded gasoline than for cheaper unleaded gasoline that is conveniently available at retail gasoline stations. In January 2002, for example, the price of aviation fuel at an airport in the Washington D.C. area was \$2.65 per gallon.¹⁰ By comparison, the price of unleaded gasoline at retail gasoline stations in the same community during that same time period was less than \$1.10. Racing gasolines are even more

expensive than aviation fuels. In January 2002, racing gasolines in the Washington D.C. area cost an average of about \$3 to \$5 per gallon depending on the blend (especially depending on the desired octane), and could be as high as \$7 per gallon.¹¹

Issue 2: NAA claims that EPA's proposal is inconsistent with findings of the President's Task Force on Environmental Health Risks and Safety to Children, report titled "Eliminating Childhood Lead Poisoning: a Federal Strategy Targeting Lead Paint Hazards." NAA also claims the proposal is inconsistent with EPA's regulatory mandate under other statutes to limit exposure to lead. Although leaded gasoline has been prohibited for use in motor vehicles since 1995, NAA indicates that leaded gasoline remains available for military, construction and agricultural use.

Eliminating the fuel inlet requirement for motorcycles equipped with catalytic converters is not inconsistent with longstanding efforts to reduce lead in the environment. As discussed above, fuel inlet restrictors together with pooling specifications were required to prevent damage to emission control devices, such as catalytic converters, installed on many motor vehicles to reduce smog. Today's action does not allow a motorcycle to use leaded gasoline, nor does it make it more likely that a motorcycle will misfuel with leaded gasoline.

Issue 3: NAA asked for copies of the risk assessments and the cost benefit analysis conducted by EPA in support of the proposed rule.

EPA does not believe that today's action will result in an increased risk of greater lead emissions into the environment. EPA, therefore, did not conduct a risk assessment or a cost benefit-analysis for today's rule. Based on the facts discussed above and in the direct final rule, EPA has concluded that fuel inlet restrictors are not needed in motorcycles with emission control devices and that the absence of a fuel inlet restrictor does not make it more likely that a motorcycle will be misfueled with leaded gasoline. The fact that there is no suggestion or evidence that the large number of motorcycles in the U.S. not equipped with a fuel inlet restrictor are being misfueled supports this conclusion.

Issue 4: NAA suggested that the proposed rule go through a formal rulemaking process in order to allow for public notice and comment period.

Today's action is an "informal" or notice-and-comment rulemaking. We published a notice of proposed rulemaking on October 31, 2001 soliciting public comment on the proposed rule. We also published a companion direct final rule which would have gone into effect on December 31, 2001 had we not received any adverse comment on the proposed rule. Upon receiving adverse comment to the proposed rule we withdrew the direct final rule. Today's action responds the adverse comment and promulgates the Agency's final rule.

Formal rulemaking under sections 556 and 557 of the Administrative Procedure Act is a trial-type procedure before an agency that is used very infrequently. The Clean Air Act does not require formal or "on-the-record" rulemaking for today's action.

IV. Final EPA Action

Today's final rule revises 40 CFR 80.24(b) to exempt motorcycles equipped with an emission control device that will be affected by the use of leaded gasoline, such as a catalytic converter, from having to be equipped with a fuel tank inlet restrictor.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Line Lead Substitute, Superblend 12/Zero Lead 2000, and Valvemaster.

¹⁰From conversation with aviation firm at Frederick Airport in Frederick Maryland on January 7, 2002.

¹¹From conversation with racing firm in Gaithersburg, Maryland on January 7, 2002.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. Today's rule exempts motorcycles from a current provision that requires them, under certain circumstances, to be equipped with fuel inlet restrictors, and thus avoids the costs imposed by the

existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule is a deregulatory action and affects only motorcycle manufacturers.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA reduced the content of lead in leaded gasoline, because EPA found that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially children (38 FR 33734, Dec. 6, 1973). Congress ultimately banned the use of leaded gasoline in motor vehicles after 1995. 42 U.S.C. 7545(n). Gasoline tank filler inlet restrictors were related to the phase-out of leaded gasoline to prevent a motor vehicle with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage such emission control devices. Today there is relatively little risk of misfueling a motorcycle with an emission control device that could be damaged by the use of leaded gasoline, because leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, Aug. 10,

1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This rule does not have federalism implications. It 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 as specified in Executive Order 13132. Today's rule eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U. S. Senate, the U. S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A “major rule” cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(a).

H. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

After considering the economic impacts of today’s final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today’s final rule will relieve regulatory burden for all small entities affected by this rule.

Today’s rule is a deregulatory action and affects all motorcycle manufacturers. It eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. We have therefore concluded

that today’s rule will relieve regulatory burden for any small entity.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule affects the applicability of the fuel tank filler inlet restrictor to motorcycles. It therefore affects only manufacturers of motorcycles. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

K. Electronic Copies of Rulemaking

A copy of this action is available on the Internet at <http://www.epa.gov/otaq> under the title: “Final Rule—Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption For Motorcycles.”

L. Statutory Authority

Authority for this action is in sections 211, and 301(a) of the Clean Air Act, 42 U.S.C. 7545, 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

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

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

2. Section 80.24 is amended by adding paragraph (c) to read as follows:

§ 80.24 Controls applicable to motor vehicle manufacturers.

* * * * *

(c) A motorcycle, as defined at 40 CFR 86.402 for the applicable model year, is exempt from the requirements of paragraph (b) of this section.

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