STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

Date: May 06, 2024

To: Office of the Code Reviser

From: _____
Gloriann Robinson, Agency Rules Coordinator

Subject: Interpretive Statement PP-24-0001– WSDA Law and Rules and the Sale of E15 Motor Fuel in Washington State.

On April 29, 2024, an interpretive statement was issued regarding the sale of E15 motor fuel in Washington State.

The department provides this statement to clarify that when compliant with federal law and otherwise labelled and marketed properly, the sale of E15 motor fuel is not prohibited by current law administered by statute (chapter 19.112 RCW) and rules adopted by the department (chapter 16-662 WAC).

A copy of the interpretive statement may be obtained by accessing the Washington State Department of Agriculture website (www.agr.wa.gov) or by contacting:

Gloriann Robinson, Agency Rules Coordinator
1111 Washington Street SE
PO Box 42560
Olympia, WA 98504-2560
Phone: 360-902-1802
Email: wsdarulescomments@agr.wa.gov

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INTERPRETIVE STATEMENT
Number: PP-24-0001

Subject:	WSDA Law and Rules and the Sale of E15 Motor Fuel in Washington State
Supersedes:	Not applicable
Contact:	Alison Halpern Email: alison.halpern@agr.wa.gov Phone: 360-742-7175
Approved By:	Derek I. Sandison, Director
Date Approved:	April 29, 2024

The Washington State Department of Agriculture (WSDA) issues this interpretive statement pursuant to RCW 34.05.230.

The WSDA provides this statement to clarify that when compliant with federal law and otherwise labelled and marketed properly, the sale of E15 motor fuel is not prohibited by current law administered by statute (chapter 19.112 RCW) and rules adopted by the WSDA (chapter 16-662 WAC).

*Please note that there may be other state or local laws that impact the legality of use or sale of gasoline ethanol blends.

Background information

E15 (also called "Unleaded 88" or "UNL88") fuel is a blend of gasoline and ethanol containing more than 10% and up to or exactly 15% ethanol by volume.

Since 2011, EPA has issued partial waivers under the Clean Air Act to allow E15 fuel to be sold for use in flexible-fuel vehicles, model year 2001 and newer cars, light-duty trucks, and medium-

duty passenger vehicles (SUVs). Under federal law, E15 fuel cannot be used in model year 2000 and older cars, light-duty trucks, SUVs. It also cannot be used in motorcycles, vehicles with heavy-duty engines, non-road vehicles, or in non-road equipment engines, such as gas-powered lawnmowers and chainsaws.

According to EPA and the 2016 Handbook for Handling, Storing, and Dispensing E85 and Other Ethanol-Gasoline Blends, companies planning on selling E15 fuel must first meet the following requirements:

- Ethanol used in E15 fuel must meet ASTM D4806 standards.
- Fuel and fuel additive manufacturers must register E15 fuel under 40 CFR Part 79.
- All E15 fuel dispensers are required to display an EPA-approved label on the upper two-thirds of the dispenser to help prevent misfueling of 2001 or older vehicles, heavy-duty trucks, etc.
    - When a fuel dispenser uses a common hose to dispense different ethanol blends, a "four-gallon minimum" label must also be displayed on the dispenser.
- Submission of a Misfueling Mitigation Plan (MMP) to EPA and adoption (once approved by EPA).
- Submission and implementation of a Compliance Survey Plan (CSP)
- Fueling stations must use EPA-approved fuel dispensers and hose configurations.
- Product transfer documents accompanying all E15 fuel deliveries.

E15 fuel can already be sold year-round in states that are required by EPA to have a Reformulated Gasoline (RFG) program to reduce smog in areas of poor air quality. Washington state is not one of the 17 states with an RFG. There is a 1-pound (psi) waiver from Reid Vapor Pressure (RVP) standards for E10 fuel but not for E15 fuel, and this restricts the sale of E15 fuel in many states or specific counties during summer months to reduce emissions that contribute to smog. For states without an RFG, including Washington**, E15 fuel cannot be sold from terminals starting on May 1 and at retail stations starting on June 1 until September 15**, unless the federal government issues a waiver allowing such sale.

In 2022 and 2023, EPA issued emergency waivers between May 1 and September 15 to allow E15 fuel to be sold during the summer months. In March, 2024, several agricultural and biofuel organizations submitted a letter to EPA requesting that a similar emergency waiver be granted this year. On April 19, 2024, EPA granted that request by issuing an emergency waiver that will go into effect on May 1 through May 20.

Interpretation of WSDA law and rules

Chapter 19.112 RCW, the Motor Fuel Quality Act, establishes quality specifications for liquid motor fuels and provides the Director of WSDA the authority to adopt rules concerning labeling and posting of prices and the standards for, and identity of, motor fuels. Chapter 16.662 WAC contains the regulations that WSDA promulgated to administer chapter 19.112 RCW.

RCW 19.112.020(1) states that when there is conflicting guidance between EPA standards, ASTM standards, or state standards, the EPA standards take precedence over the ASTM

standards. It also requires that state standards be consistent with EPA standards and any ASTM standards that are not in conflict with EPA standards.

The WSDA Weights and Measures Program, which implements the inspections and testing under the Motor Fuel Quality Act, has adopted national standards under WAC 16-662-105.

Under WAC 16-662-105(3)(d), the national standards for "definitions; standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits" contained in the *Uniform Engine Fuels and Automotive Lubricants Regulation* published in the NIST Handbook 130, 2016 edition are adopted, except as otherwise modified by chapter 16.662 WAC.

WAC 16-662-115(2) adopts modifications to sections of the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in NIST Handbook 130, identified in WAC 16-662-105 (3)(d), including a modification to Section 2.1.2 (Gasoline-Ethanol Blends) addressing minimum temperature requirements for the Vapor-Liquid Ratio, Maximum Vapor Pressure, and to Section 3.2.6 (Method of Retail Sale) addressing labeling for gasoline-ethanol blends. These modifications refer to gasoline-ethanol blends up to 10 volume percent of ethanol but do not explicitly limit gasoline-ethanol blends to 10 volume percent.

WAC 16-662-115(2) does not provide any modification to Section 3.2.8 of *Uniform Engine Fuels and Automotive Lubricants Regulation* published in the 2016 edition of NIST Handbook 130. Section 3.2.8 is contained within the "Classification and Method of Sale of Petroleum Products" section of the *Uniform Engine Fuels and Automotive Lubricants Regulation* published in the NIST Handbook 130, 2016 edition and is thus, adopted by WAC 16-662-105(3)(d).Section 3.2.8 requires that retailers and wholesale purchaser-consumers of gasoline comply with the EPA pump labeling requirements for gasoline containing greater than 10 volume percent (v%) up to 15 volume percent (v%) ethanol (E15 fuel) under 40 CFR § 80.1501. 40 CFR § 80.1501, in part, requires retailers and wholesale purchaser-consumers who sell, dispenses, or offer for sale or dispenses E15 fuel to affix a specific conspicuous and legible label to the fuel dispenser. See 40 CFR § 80.1501 and 40 CFR § 1090.1510 for additional requirements.