

CENTER FOR AUTO SAFETY

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Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue NW
Washington DC 20580

Re: Automotive Fuel Ratings, Certification & Posting NPRM, 75 FR 12470 (Mar. 16, 2010).

The Center for Auto Safety (CAS) submits this comment on the above noted rulemaking. The Center is a non-profit consumer group founded by Consumers Union and Ralph Nader in 1970 and has approximately 20,000 members. CAS has a long standing interest in ensuring that consumers receive quality fuels that match the needs of their vehicles. This comment addresses two aspects of the rule - (1) mid-level ethanol blends and (2) use of infrared analyzers to determine octane.

(1) Mid-level Ethanol Blends: The NPRM correctly raises the issue that automotive warranties through 2010 do not approve the use of fuels containing more than 10% ethanol (E10) except for flex fuel vehicles (FFV's). However, the NPRM does not address the issue of whether such blends are permitted under the Clean Air Act. In fact they are not permitted under the Clean Air Act unless and until the Environmental Protection approves their use. Even then sale of mid-level ethanol blends will not be legal in the summer because they would violate the RVP limit for summertime gasoline under Section 211(h) of the Clean Air Act unless they meet the 9.0 RVP limit as they are not entitled to the 1.0 RVP "waiver" provided for E-10 and only E-10.

The Clean Air Act prohibits any fuel manufacturer from introducing into commerce any fuel for use in motor vehicles which is not substantially similar to any fuel utilized in the certification of model year 1975, or subsequent model year vehicles or engines.¹ The use of gasoline containing ethanol amounts greater than E10 (10% ethanol by volume) in a gasoline-only vehicle may violate section 203(a) of the Clean Air Act (42 USC Section 7522(a) (3) (A)).² A retailer who has variable ethanol percentage fuel pumps may be liable for causing a violation of section 203(a) of the Act.³

The ethanol industry claims that more than 100 gas stations use fuel blender pumps that dispense gasoline blended with varying amounts of ethanol from E10 up to E85 from the same fuel pump.⁴ The ethanol industry has launched a campaign to place 5,000 fuel blender pumps in gas stations through out the nation over the next three years.⁵

¹ Clean Air Act, Section 211(a) (42 USC Section 7545(a)).

² Letter from Margo Tsigotis Oge, Director, Office of Transportation and Air Quality, U.S Environmental Protection Agency to Dawn Leitzke, Executive Director, South Dakota Petroleum and Propane Marketers Association, November 28, 2006.

³ Id.

⁴ See www.byoethanol.com.

⁵ Associated Press, *Groups Unite to Push Blend Pumps*, August 12, 2009. Available at: <http://www.ksfy.com/news/local/53040142.html>.

Depending upon the percentage of ethanol in the fuel blend and the number of misfueling events, misfueling a non-FFV with mid-level or higher ethanol and gasoline blends can cause: an increase in HC and NOx emissions,⁶ malfunction of the engine,⁷ degradation of the catalyst or engine,⁸ and invalidation of the manufacturer warranty on the vehicle emissions control systems

The FTC is requested to include the following requirements for mid-level ethanol blends:

A requirement that each fuel pumps that dispense blends higher than E10 display conspicuous signs indicating that such fuels are for FFVs only. Such signs must be required to be readable from each entrance of the gasoline station facility.

A requirement that each fuel pump dispensing ethanol blends higher than E10 have conspicuous labels affixed to them which state 1) federal law prohibits the used of gasoline blends higher than E10 in vehicles or non-road engines that are not a FFV vehicle or engine, and 2) use of ethanol blends higher than E10 in a non-FFV vehicle or non-road engine may damage the vehicle or engine and void the manufacturer warranty.

A requirement that each fuel pump nozzle dispensing ethanol blends higher than E10 have affixed to it a label stating "For FFV use only."

(2) Use of Infrared Analyzers to Determine Octane: Many states now use infrared analyzers to determine octane because they are cheaper, more accurate and permit greater number of dispensing pump inspections per day than using octane engines. A major problem in ensuring that the octane on the dispensing pump matches the octane of the gasoline dispensed is the level of enforcement effort as well as the quality control procedures used by refiners and gasoline marketers. Approving infrared analyzers calibrated to measure octane would allow greater levels of enforcement and increased quality control by refiners at lower cost. The FTC should amend the proposed rule to permit their use in certifying gasoline octane provided that should a violation be determined using an octane engine, the octane engine prevails.

If the FTC determines that the request for mid-level ethanol blend labeling can only be accomplished through a new rulemaking, then the Center requests the Commission move forward with a final rule approving infrared analyzers and issue a supplemental notice of proposed rulemaking for mid-level ethanol blend labeling.

Respectfully submitted,

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Executive Director

⁶ U.S. Department of Energy, Oak Ridge National Laboratory. *Effects of Intermediate Blends on Legacy Vehicles and Small Non-Road Engines, Report 1*, Updated. NREL/TP-540-43543, February, 2009, figure 3.1, p.3-4.

⁷ New York Times, Green, Inc., Ethanol Hobbles Baltimore Police Fleet, September 24, 2009.
Available on line at: <http://greeninc.com>, blogs,
[nytimes.com/2009/09/24/ethanol-hobbles-baltimore-police-fleet/](http://www.nytimes.com/2009/09/24/ethanol-hobbles-baltimore-police-fleet/)

⁸ Orbital Engine Company., *Market Barriers to the Uptake of Biofuels Study Testing Gasoline Containing 20% Ethanol(E20), Phase 2B Final Report to the Department of the Environment and Heritage.*, May 2004, p. 3. Available online at
<http://www.environment.gov.au/atmosphere/fuelquality/publications/biofuels-2004/index.html>.