



National Conference on Weights and Measures
"That Equity May Prevail"

May 20, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Fuel Rating Rule Review, R811005

Dear Sir/Madam:

The National Conference on Weights and Measures, Inc. (NCWM) is a professional nonprofit association of state and local weights and measures officials, federal agencies, manufacturers, retailers and consumers. NCWM has developed the U.S. standards for weights and measures standards since 1905.

With this letter, NCWM requests clarification of certain requirements in the Automotive Fuel Rating, Certification, and Posting Rule (the Rule).

It is becoming common practice across the United States for fuel refiners and suppliers to ship gasoline blending stock to distribution terminals without an associated Automotive Fuel Rating, i.e., octane number. This fuel is generally identified with a statement such as "87 Octane after 10% ethanol", or "93 Octane after 10% ethanol".

Under § 306.0 Definitions, the Rule defines gasoline as "(i) Automotive fuel means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to: (1) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90% unleaded gasoline and 10% denatured ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 et seq., such as reformulated gasoline and oxygenated gasoline;...

Please provide NCWM with clarification as to the applicability of the Automotive Fuel Rating requirements for these automotive fuels by answering the following questions: In order to be compliant with the Rule, must these sub-octane automotive fuels be certified by an actual octane rating rather than a forecast of the minimum octane after the addition of ten percent ethanol, or potentially some other percentage and/or component in the future? If an octane rating is not required for these automotive fuels, what is the applicable automotive fuel rating?

Additionally, NCWM would like FTC to be aware that many of our member states use Infrared (IR) technology to predict the octane rating of fuel samples collected within their jurisdictions. An NCWM member recently polled state weights and measures directors and

compiled an updated summary of how IR is used. The enclosed table summarizes the responses received to that survey. This is provided to further FTC's understanding of how states enforce octane requirements within their jurisdictions.

Thank you for the opportunity to submit these issues for your consideration and response.

Sincerely,


Randy Jennings
Chairman, National Conference on Weights and Measures

State Use of IR for Octane Testing
Preliminary Responses to May 2010 Survey of State Weights and Measures Directors

| State | Utilize IR | Used in Laboratory Testing | Used for Field Testing | Verified Failures with Engine Testing | Comments |
|---------------|------------|----------------------------|------------------------|---------------------------------------|--|
| Arizona | Yes | Yes | Yes | Yes | Used as screening tool. Enforcement taken on lab test results. Instrument correlated to ASTM 2699 and 2700. |
| Arkansas | Yes | Yes | Yes | Yes | |
| Connecticut | Yes | No | Yes | Yes | Used for enforcement. Engine tests performed if retailer does not agree to address problems with fuel. |
| Delaware | No | No | No | No | |
| Florida | Yes | Yes | No | Yes | Used as screening tool. Enforcement taken on lab test results. Run a percentage of samples that pass on the IR on the engines, to check for potential positive biases with the IR. |
| Georgia | Yes | Yes | No | No | |
| Hawaii | No | No | No | No | |
| Illinois | No | No | No | No | |
| Iowa | Yes | Yes | Yes | No | Used for screening and enforcement. |
| Kansas | No | No | No | No | |
| Maryland | Yes | Yes | Yes | Yes | Used as screening tool. Enforcement taken on lab test results. All samples are lab tested. |
| Massachusetts | Yes | No | Yes | Yes | Used for enforcement. Lab tests available for confirmation at request of retailer. |
| Michigan | Yes | Yes | Yes | Yes | |
| Minnesota | Yes | Yes | Yes | No | Used as screening tool. Enforcement taken on lab test results. |
| Missouri | Yes | Yes | No | Yes | Used as screening tool. Enforcement taken on lab test results. 20% of all samples are randomly selected for engine tests. FT IR used for biodiesel enforcement according |

| | | | | | |
|----------------|-----|-----|-----|-----|--|
| | | | | | to ASTM D7371. |
| Nevada | Yes | Yes | Yes | Yes | Used as screening tool. Enforcement taken on lab test results. |
| New Mexico | Yes | Yes | Yes | Yes | Used as screening tool. Enforcement taken on lab test results. |
| New York | No | No | No | No | |
| North Carolina | Yes | Yes | Yes | No | Used as screening tool. Enforcement taken on lab test results. |
| Ohio | No | No | No | No | |
| Oregon | Yes | Yes | Yes | Yes | Used as screening tool. Enforcement taken on lab test results. |
| South Dakota | No | No | No | No | |
| Virginia | Yes | Yes | Yes | No | |
| Washington | Yes | No | Yes | Yes | Used as screening tool. Enforcement taken on lab test results. |