

21ST CENTURY TRANSPORTATION FUELS ACT DISCUSSION DRAFT SECTION-BY-SECTION

Section 1. Short Title

This section provides that the Act may be cited as the “21st Century Transportation Fuels Act.”

Title I – High Octane Fuel

Section 101. High Efficiency Vehicles

Section 101(a) amends Part A of Title II of the Clean Air Act (CAA) by adding a new “Section 220. Octane Specification” into it.

CAA section 220(a) specifies that the requirements of new CAA section 220 only apply to light-duty vehicles and light-duty trucks, created for model year 2023 or later, that use gasoline for propulsion.

Proposed CAA section 220(b) requires manufactures to warranty that vehicles created for model years 2023 and later are designed: (1) to operate with gasoline containing up to 20 percent ethanol and (2) to meet other vehicle design requirements under proposed CAA section 220(c).

Proposed CAA section 220(c) requires manufacturers of motor vehicles to design motor vehicles to operate using gasoline that has a research octane number (RON) of 95 or higher and to improve fuel economy connected to the use of the 95 RON or higher RON level gasoline. In addition, motor vehicle manufacturers must incorporate devices or elements of design into model year 2023 and later motor vehicles that prevent the use of gasoline with a RON level lower than 95 in these vehicles. The devises and other elements of design used for these purposes, under proposed CAA section 220(c), are ones that the Environmental Protection Agency (EPA) determines are necessary to prohibit misfuelling, but also technically and economically feasible.

Proposed CAA section 220(d) requires gasoline retailers to incorporate into their gasoline dispensing equipment those devices or elements of design identified by the EPA Administrator as: (1) necessary for compatibility with the motor vehicle design requirements under CAA section 220(c) and (2) to be technically and economically feasible.

Proposed CAA section 220(e) prohibits anyone from removing or otherwise making inoperative any misfuelling prevention device or element of design required pursuant to CAA section 220(c) and CAA section 220(d). This new section also prohibits a person from manufacturing or selling any part or component to bypass, defeat, or render inoperative any misfuelling device or element of design required pursuant to CAA section 220(c) and CAA section 220(d). Under this subsection of the Discussion Draft, a manufacturer of a motor vehicle or a gasoline retailer that is in compliance with the design and misfuelling prevention requirements of CAA section 220 and the Petroleum Marketing Practices Act, is not liable for damages to or caused by a motor vehicle that result from the unlawful introduction of gasoline with a RON of lower than 95 into a model year 2023 or later light duty motor vehicle or truck.

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Proposed CAA section 220(f) pre-empts state and local laws and regulations related to (1) the design of motor vehicles that operate using gasoline with a certain octane content and (2) the corresponding design of equipment for dispensing such gasoline into such motor vehicles. A State or government, though, may adopt or enforce a law or regulations addressing these matters if it is similar to the Federal law. Proposed CAA Section 220(f) also permits a State or local government to investigate or enforce, remedy, or penalize persons under laws or regulations permitted by proposed CAA Section 220(f).

Proposed CAA section 220(g) establishes civil penalty amounts for violations of requirements contained in CAA sections 220(b), 220(c), 220(d), and 220(e).

Proposed CAA section 220(h) requires that the EPA Administrator shall consult with persons to be regulated under this section and with the Secretary of Transportation when promulgating regulations to carry out CAA section 220.

Proposed CAA section 220(i) specifies that nothing in CAA Section 220 shall be construed to relieve a person regulated under this section of any obligation to comply with requirements imposed by provisions of Federal law other than this section, except to the extent that such requirements conflict with this section.

Section 101(b) provides a conforming amendment that establishes, as the definition for the term ‘research octane number’ in CAA section 216, the same definition used for that term in section 201(2) of the Petroleum Marketing Practices Act.

Section 101(c) requires the EPA Administrator to propose regulations to carry out section 101 within 18 months after the date of enactment of this Act, and to finalize such regulations not later than 36 months after the date of enactment of this Act. If the EPA Administrator fails to finalize regulations by this deadline – and until the Administrator finalizes such regulations, the Administrator is required to have (1) each model year 2023 or later motor vehicle incorporate a restrictor assembly into the vehicle’s fuel filler tube that only accepts a filling nozzle with a diameter not exceeding 0.77 inches and (2) filling nozzles for 95 RON or higher gasoline used by gasoline retailers shall not exceed 0.77 inches.

Section 102. Octane Disclosure

Section 102(a) amends Title II of the Petroleum Marketing Practices Act (PMPA) by adding a new section: “Section 206. High Efficiency Fuel and Vehicle Marketing Requirements.”

Proposed PMPA section 206(a) directs the Federal Trade Commission (FTC), as necessary to carry out this section, to prescribe or revise requirements under PMPA Title II relating to the certification, display, and representation of the automotive fuel rating of an automotive fuel.

Proposed PMPA section 206(b) directs the FTC to require, beginning on January 1, 2023, the automotive fuel rating of an automotive fuel with a RON of 95 or higher to be determined only by the research octane number of such automotive fuel.

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Proposed PMPA section 206(c) requires the FTC to determine whether, beginning on January 1, 2023, the automotive fuel rating of an automotive fuel with a RON that is lower than 95 should be determined by the research octane number of such automotive fuel.

Proposed PMPA section 206(d) directs the FTC to prescribe requirements it determines to be necessary with respect to warning consumers, both through on-vehicle labels and retail point-of-sale displays for automotive fuel, that model year 2023 or later motor vehicles are only warranted to use automotive fuel with a RON of 95 or higher and using automotive fuel with a RON that is lower than 95 in a model year 2023 or later motor vehicle will result in reduced fuel economy, increased exhaust emissions, and possible engine damage. This proposed subsection requires the FTC rules be designed to be understandable to automotive fuel purchasers and understandable to owners and users of model year 2023 or later motor vehicles. The FTC rules must also be cost-effective for automotive fuel retailers.

Proposed PMPA section 206(e) directs the FTC to, not later than June 1, 2020, issue a proposed rule under PMPA section 206(a) and to, not later than January 1, 2022, issue a final rule under PMPA Section 206(a).

Section 103. 98 RON Certification Test Fuel

Section 103 requires the EPA Administrator to, not later than January 1, 2025, take such action as necessary to allow the use of a certification test fuel with a RON of 98 for purposes of testing and certification under section 206(a) of the CAA and for purposes of testing and calculation procedures under section 32904(c) of title 49, United States Code.

Section 104. Octane Sensitivity Study

Section 104 directs the EPA Administrator to enter into an arrangement with the National Academy of Sciences to conduct a comprehensive study of the octane sensitivity of automotive fuel with a research octane number of 95 or higher and lists certain issue areas and topics to be examined by the study.

Section 105. Advertisement of Price of 95 RON Automotive Fuel

Section 105 specifies that it shall be unlawful for any person to sell or offer for sale, at retail, automotive fuel with a research octane number of 95 unless such person displays the total price per gallon of such fuel on any sign on which such person displays the price of the most-sold grade of fuel.

Title II – Renewable Fuels

Subtitle A – Renewable Fuel Program

Section 201. Updates and Revisions to Regulations

Under CAA section 211(o)(2)(B), the amount of conventional biofuel – corn-starch-based ethanol – is implicit in the statutory tables. Section 201(a) and section 201(b) make explicit that production of 15 billion gallons of conventional biofuel is required in each calendar

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year through the end of calendar year 2022, but that this mandate ceases to apply on January 1, 2023.

Section 201(c) requires the EPA Administrator, not later than March 1 of each calendar year, to establish applicable volumes of advanced biofuel, cellulosic biofuel, and biomass-based diesel for calendar years 2023 through 2032 that are equal to the actual volume of advanced biofuel, cellulosic biofuel, or biomass-based diesel produced during the preceding calendar year. The proposed subsection requires the actual volumes be based on information from the EPA's Moderated Transaction System and that these volumes may be subject to adjustment pursuant to a mid-year review to reflect any increase in production during that calendar year. Additionally, the proposed subsection establishes the applicable volume of biomass-based diesel for each of calendar years 2020 through 2022 using this same process.

Section 201(d) amends the definition of 'renewable biomass' in section 211(o)(1) of the CAA to include trees, tree residue, slash, and pre-commercial thinnings located on federal lands.

Section 202. Waivers

Section 202 maintains the EPA Administrator's general waiver authority to reduce the national quantity of advanced biofuel, cellulosic, biofuel, or biomass-based diesel under section 211(o)(7)(A) of the CAA. Section 202 strikes paragraphs '(D) Cellulosic biofuel', '(E) Biomass-based diesel', and '(F) Modification of Applicable Volumes' of section 211(o)(7) of the CAA. These amendments take effect on January 1, 2023, as specified by section 203(c) of this Act.

Section 203. Applicability

Section 203(a) specifies that the amendments made by Subtitle A, except as provided in subsections 203(b) through 203(e), apply with respect to calendar year 2020 and subsequent calendar years. Section 211(o) of the CAA, as in effect on the day before the date of enactment of this Act, shall continue to apply with respect to calendar years before calendar year 2020.

Section 203(b) directs the EPA Administrator to, not later than 180 days after the date of enactment of this Act, to issue the regulations respecting the changes made to the conventional biofuel requirements applicable for calendar years 2020, 2021, and 2022. This section also directs the EPA Administrator to, not later than January 1, 2021, promulgate the regulations respecting the new requirements for advanced biofuel, cellulosic, biofuel, or biomass-based diesel that are applicable for calendar year 2023 and subsequent calendar years.

Section 203(c) specifies that the amendments made by section 202 of this Act shall take effect on January 1, 2023.

Section 203(d) specifies that the amendment made by section 201(d) of this Act, related to the definition of 'renewable biomass', shall take effect on the date of enactment of this Act.

Section 203(e) repeals sections (o), (q), and (v) of section 211 of the CAA effective January 1, 2033.

Section 204. State Ethanol Laws

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Section 204 specifies that no state or local government may prohibit or require any particular blend, concentration, or percentage of ethanol in gasoline after date of enactment of this Act. This section does not restrict the authority of a State or local government to continue to enforce any such prohibition or requirement in effect prior to the date of enactment of this Act.

Subtitle B – Ethanol Waivers

Section 211. Reid Vapor Pressure

Section 211 expands the one-pound psi ethanol waiver to apply to all gasoline containing 10 percent or more ethanol, permitting E-15 to receive a statutory waiver

Section 212. E20

Section 212 amends section 211(f)(4) of the CAA to direct the EPA Administrator to grant a waiver with respect to fuels containing an ethanol concentration that is between 15 and 20 percent. This section is not intended to relieve EPA of making any of the findings required under CAA section 211(f)(4) for the waiver. Rather, it removes regulatory uncertainty that the EPA Administrator could avoid granting a waiver even though the statutory conditions have been met.

Subtitle C – Fueling Infrastructure

Section 221. Performance Standards for New E20 Infrastructure

Section 221 amends Subtitle I of the Solid Waste Disposal Act to require newly installed retail gasoline dispenser systems to be compatible with E-20 fuels beginning on January 1, 2023. This requirement does not require pro-active replacement of existing dispenser or underground storage tank systems.

Title III – Vehicle Fuel Efficiency

Section 301. Credits for Exceeding Average Fuel Economy Standards

Section 301 amends section 32903 of title 49, United States Code, to allow any unapplied credits earned after model year 2009 to be applied to motor vehicle model years 2016 through 2021. Section 301 also expands the maximum allowable increase in any compliance category attributable to transferred credits.

Section 302. Calculation of Average Fuel Economy

Section 302 amends section 32904(a) of title 49, United States Code, to allow, if requested by a manufacturer, the average fuel economy calculated by the EPA Administrator to include off-cycle technology fuel economy credits equivalent to the credits calculated by the EPA Administrator for the off-cycle technology under the EPA Administrator’s vehicle emissions standards for the same or closest model year.

Section 303. Rule of Construction

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Section 303 specifies that nothing in title III or the amendments made by title III may be construed to direct or grant new authority to the Secretary of Transportation to modify a maximum feasible average fuel economy standard established under section 32902 of title 40, United States Code. Additionally, the Secretary's authority to establish and amend a maximum feasible average fuel economy standard is unaffected by this title and the amendments made by this title.