

(49 FR 41019), December 24, 1996 (61 FR 67710), December 27, 1996 (61 FR 68145), December 23, 1998 (63 FR 71015), November 20, 2000 (65 FR 69666), and December 31, 2002 (67 FR 79851), and December 21, 2006 (71 FR 76599)). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. This policy serves consumers' interests as well because the cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher prices.

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The establishment of a uniform compliance date does not in itself lead to costs or benefits. We will assess the costs and benefits of the uniform compliance date in the regulatory impact analyses of the labeling rules that take effect at that date.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Because the final rule does not impose compliance costs on small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires

that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

This action is not intended to change existing requirements for compliance dates contained in final rules published before January 1, 2009. Therefore, all final FDA regulations published in the **Federal Register** before January 1, 2009, will still go into effect on the date stated in the respective final rule.

The agency generally encourages industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

In rulemaking that began with publication of a proposal on April 15, 1996 (61 FR 16422), and ended with a final rule on December 24, 1996, FDA provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date. Receiving no comments objecting to this practice, FDA finds any further rulemaking unnecessary for establishment of the uniform compliance date. Nonetheless, under 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this uniform compliance date should be modified or revoked.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at <http://www.regulations.gov>.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 2009, and before December 31, 2010. Those regulations will specifically identify January 1, 2012, as their compliance date. All food products subject to the January 1, 2012, compliance date must comply with the appropriate regulations when initially introduced into interstate commerce on or after January 1, 2012. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2012, the agency will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

Dated: December 1, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–28920 Filed 12–5–08; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 80**

[EPA–HQ–OAR–2008–0558; FRL–8742–6]

RIN 2060–AP17

### **Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Methods**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking action to allow

refiners and laboratories to use more current and improved fuel testing procedures with twelve American Society for Testing and Materials (ASTM) analytical test methods. Once these test method changes are adopted, they will supersede the corresponding earlier versions of these test methods in EPA's motor vehicle fuel regulations. EPA is also taking action to allow an alternative test method for olefins in gasoline. As explained further below in the preamble of this document, EPA views these changes as non-controversial and we anticipate no adverse comment.

**DATES:** This rule is effective February 6, 2009 without further notice, unless EPA receives adverse comment by January 7, 2009. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. Comments or a request for a public hearing must be received on or before January 7, 2009. The incorporation by reference of certain publications listed in this rule were approved by the Director of the Federal Register as of February 6, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0558, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).

- *Fax:* (202) 566-9744.

- *Mail:* "EPA-HQ-OAR-2008-0558, Environmental Protection Agency, Mailcode: 2822T, 1301 Constitution Ave., NW., Washington, DC 20460."

- *Hand Delivery:* EPA Headquarters Library, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0558. EPA's policy is that all comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>,

including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit 1.B of the **SUPPLEMENTARY INFORMATION** section of this document: <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA Headquarters Library, Mail Code: 2822T, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566-1742, and the facsimile number for the Air Docket is (202) 566-9744.

**FOR FURTHER INFORMATION CONTACT:** Joe Sopata, Chemist, Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (6406J), Washington, DC 20460; telephone number: (202) 343-9034; fax number: (202) 343-2801; e-mail address: [sopata.joe@epa.gov](mailto:sopata.joe@epa.gov).

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline.

- I. General Information
  - A. Does this Action Apply to Me?
  - B. What Should I Consider as I Prepare My Comments for EPA?
- II. Rule Changes
  - A. Updating ASTM Test Methods to Their Most Recent Version
  - B. Alternative Test Method for Olefins in Gasoline
- III. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act of 1995 (UMRA)
  - E. Executive Order 13123: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice and Minority Populations and Low-Income Populations
  - K. Congressional Review Act
- IV. Statutory Provisions and Legal Authority

## I. General Information

### A. Does this Action Apply to Me?

Regulated categories and entities potentially affected by this proposed action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel and diesel motor fuel.

The table below is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could be potentially regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this proposed action, one should carefully examine the existing regulations in 40 CFR part 80. If you have questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated parties
Industry .....	324110	2911	Petroleum Refiners.
Industry .....	54138	8734	Testing Laboratories.
Industry .....	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	

<sup>a</sup>North American Industry Classification System (NAICS).  
<sup>b</sup>Standard Industrial Classification (SIC) System code.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part of all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions—The agency may ask you to respond to specific questions or organize comments referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

**II. Rule Changes**

*A. Updating ASTM Test Methods to Their Most Recent Version*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test reformulated gasoline (RFG), conventional gasoline (CG) and diesel fuel for various fuel parameters including aromatics, benzene, distillation, olefins, Reid Vapor Pressure, oxygenate content and sulfur. American Society for Testing and Materials (ASTM) test method D2622 is currently the designated test method for measuring sulfur<sup>1,2</sup> in gasoline and diesel fuel at the 500 ppm sulfur standard. ASTM test methods D5453, D6920, D3120 and D7039 are currently alternative test methods for measuring sulfur<sup>3,4,5,6</sup> in gasoline. ASTM test methods D5453 and D6920 are also alternative test method for measuring sulfur<sup>7</sup> in diesel fuel at the 500 ppm sulfur standard. ASTM D1319 is currently the designated test method for measuring olefins<sup>8</sup> in gasoline and aromatics<sup>9</sup> in diesel fuel and is also allowed as an alternative test method for measuring aromatics<sup>10</sup> in gasoline. ASTM test method D5599 is currently the designated test method for measuring oxygenates<sup>11</sup> in gasoline. ASTM test method D4815 is currently an alternative test method for measuring oxygenates<sup>12</sup> in gasoline. ASTM test method D5769 is currently the designated test method for measuring aromatics<sup>13</sup> in gasoline. ASTM test method D3606 is currently the designated test method for measuring benzene<sup>14</sup> in gasoline. ASTM test method D86 is currently the designated test method for measuring the

<sup>1</sup> 40 CFR 80.46(a)(1).  
<sup>2</sup> 40 CFR 80.580(b)(2).  
<sup>3</sup> 40 CFR 80.46(a)(3)(i).  
<sup>4</sup> 40 CFR 80.46(a)(3)(ii).  
<sup>5</sup> 40 CFR 80.46(a)(3)(iii).  
<sup>6</sup> 40 CFR 80.46(a)(3)(iv).  
<sup>7</sup> 40 CFR 80.580(c)(2).  
<sup>8</sup> 40 CFR 80.46(b).  
<sup>9</sup> 40 CFR 80.2(z).  
<sup>10</sup> 40 CFR 80.46(f)(3).  
<sup>11</sup> 40 CFR 80.46(g)(1).  
<sup>12</sup> 40 CFR 80.46(g)(2).  
<sup>13</sup> 40 CFR 80.46(f)(1).  
<sup>14</sup> 40 CFR 80.46(e).

distillation<sup>15</sup> of gasoline. ASTM test method D5191 is currently the designated test method for measuring the Reid Vapor Pressure<sup>16</sup> of gasoline.

Table 1 lists the designated analytical test methods and alternative analytical test methods which are being updated for parameters measured under RFG, CG, and diesel fuels program in today's action. The Agency has reviewed these updated ASTM test methods and we are in agreement with the revisions contained in them which will result in improvements in the utilization of these test methods for the regulated industry. We believe that the revisions in the test method changes in today's action are not significant changes that would cause a user of an older version of the same method to incur significant costs. All of the revisions were deemed necessary by ASTM so that improvements in the test method's procedures would ensure better operation for the user of the test method. Thus, EPA is updating the regulations for the following ASTM test methods: (1) ASTM D2622-05, the designated test method for measuring sulfur in RFG, CG, and alternative test method for diesel fuel at the 500 ppm sulfur standard, (2) ASTM D3120-06<sup>e1</sup>, alternative test method for sulfur in gasoline, (3) ASTM D5453-08a, alternative test method for sulfur in gasoline and diesel fuel at the 500 ppm sulfur standard, (4) ASTM D6920-07, alternative test method for sulfur in gasoline and diesel fuel at the 500 ppm sulfur standard, (5) ASTM D7039-07, alternative test method for sulfur in gasoline, (6) ASTM D1319-03<sup>e1</sup>, designated test method for measuring olefins in gasoline and aromatics in diesel fuel, as well as the alternative test method for measuring aromatics in gasoline, (7) ASTM D4815-04, alternative test method for measuring oxygenate content in gasoline, (8) ASTM D5599-00(2005), the designated test method for measuring oxygen content in gasoline, (9) ASTM D5769-04, the designated test method for measuring aromatics in gasoline, (10) ASTM D3606-07, the designated test method for measuring benzene in gasoline, (11)

<sup>15</sup> 40 CFR 80.46(d).  
<sup>16</sup> 40 CFR 80.46(c).

ASTM D86–07b, the designated test method for measuring distillation

properties of gasoline, and (12) ASTM D5191–07, the designated test method

for measuring the Reid Vapor Pressure of gasoline.

TABLE 1—DESIGNATED & ALTERNATIVE ASTM ANALYTICAL TEST METHODS UNDER RFG, CG & DIESEL MOTOR VEHICLE FUEL PROGRAMS

Fuel parameter	ASTM analytical test method
Sulfur (gasoline) .....	ASTM D2622–05, entitled “Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry”
Sulfur (500 ppm diesel) .....	ASTM D2622–05, entitled “Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry”
Sulfur (gasoline) .....	ASTM D5453–08a, entitled, “Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence”
Sulfur (500 ppm sulfur diesel) .....	ASTM D5453–08a, entitled, “Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence”
Sulfur (gasoline) .....	ASTM D6920–07, entitled, “Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection”
Sulfur (500 ppm sulfur diesel) .....	ASTM D6920–07, entitled, “Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection”
Sulfur (gasoline) .....	ASTM D3120–06 <sup>e1</sup> , entitled, “Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry”
Sulfur (gasoline) .....	ASTM D7039–07, entitled, “Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry”
Oxygen content (gasoline) .....	ASTM D5599–00(2005), entitled, “Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection”
Oxygen content (gasoline) .....	ASTM D4815–04, entitled “Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C <sub>1</sub> to C <sub>4</sub> Alcohols in Gasoline by Gas Chromatography”
Olefins (gasoline) .....	ASTM D1319–03 <sup>e1</sup> , entitled “Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption”
Aromatics (gasoline and diesel) .....	ASTM D1319–03 <sup>e1</sup> , entitled, “Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption”, for diesel fuel, this method is the designated test method, for gasoline, this method is an alternative test method and if used as an alternative method, its results must be correlated to ASTM D5769–04.
Aromatics (gasoline) .....	ASTM D5769–04, entitled, “Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry”
Benzene (gasoline) .....	ASTM D3606–07, entitled, “Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography”
Distillation (gasoline) .....	ASTM D86–07b, entitled, “Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure”
Reid Vapor Pressure (gasoline) .....	ASTM D5191–07, entitled, “Standard Test Method for Vapor Pressure of Petroleum Products (Mini-Method)”

### B. Alternative Test Method for Olefins in Gasoline

Refiners, importers and oxygenate blenders producing gasoline are required to test RFG and CG for various fuel parameters including olefins. The test method for determining olefin content is specified in the regulation.

Recently, the American Petroleum Institute (API) requested in a letter to EPA that ASTM D6550–05 be designated by EPA as an alternative test method in the regulations for olefins<sup>15</sup> in gasoline. EPA has evaluated API's request on this test method issue and agrees. Thus, EPA is taking action today to allow ASTM D6550–05 as an alternative test method in the regulations for olefins in gasoline, provided that its results are correlated to ASTM D1319. The allowance of this

additional alternative test method for olefins in gasoline will provide the regulated community additional flexibility in meeting their testing requirements.

In the “Proposed Rules” section of today's **Federal Register**, we are publishing a proposed rule that matches the substance of this direct final rule. If the Agency receives adverse comment or a request for public hearing by January 7, 2009, we will withdraw the direct final rule by publishing a timely withdrawal notice in the **Federal Register**. If the Agency receives no adverse comment or a request for public hearing by January 7, 2009, these test method changes will be effective sixty (60) days after publication of the final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for industry to become familiar and implement these

ASTM test methods for the applications mentioned above.

### III. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### B. Paperwork Reduction Act

This direct final rule does not impose any new information collection burden. However, the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking and gasoline sulfur control rulemaking, and has

<sup>15</sup> See Air Docket #EPA-HQ-OAR-2008-0558-0001.

assigned OMB control number 2060–0277. OMB, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, has also approved the information collection requirements contained in the final Tax Exempt (Dyed) Highway Diesel Fuel rulemaking, and has assigned OMB control number 2060–0308. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The impact of concern is any significant *adverse* economic impact on small entities since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604.

After considering the economic impacts of today's direct final rule on small entities, I certify 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 rule on small entities." 5 U.S.C. 603 and 604. Thus an Agency may certify 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.

All of the test method updates in this proposed rule will improve the performance and/or utilization by industry of ASTM standard test methods. This direct final rule does not impose a regulatory burden on anyone, including small businesses. Instead, this direct final rule will have a positive impact by improving performance of the industry, including small businesses, by enabling them to use more current voluntary consensus-based standard test methods. In addition, the allowance of ASTM D 6550–05 will provide additional flexibility to the regulated community, including small businesses, in meeting olefins in gasoline testing requirements. We have therefore concluded that today's direct final rule will relieve regulatory burden for all effected small entities.

### D. Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

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 the private sector in any one year. All of the test method updates in today's action will improve the performance and/or utilization by industry of the test methods already allowed by our regulations. The allowance of ASTM D 6550–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 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 direct final 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. All of the test method updates in today's action will improve the performance and/or utilization by industry of ASTM standard test methods. The allowance of ASTM D 6550–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, Executive Order 13132 does not apply to this direct final rule.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). This action applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel. All of the test method updates in today's action will improve the performance and/or utilization by industry of the test methods. The allowance of ASTM D6500–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, Executive Order 13175 does not apply to this action.

### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risk

EPA interprets EO 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 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 direct final rule involves technical standards. EPA will adopt ASTM standards as described in Units II.A, and II.B of the **SUPPLEMENTARY INFORMATION** section of this document. All technical standards included in today’s rule are standards developed by ASTM, a voluntary consensus standards body, and thus raises no issues under the NTTAA. The ASTM standards in today’s action may be obtained from ASTM International at 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, 610–832–9585 (phone), 610–832–9555 (fax), or [service@astm.org](mailto:service@astm.org) (e-mail); or through the ASTM Web site (<http://www.astm.org>).

*J. Executive Order 12898: Federal Actions To Address Environmental Justice and Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. All of the test method updates in this direct final rule will improve the performance and/or utilization by industry of the test methods. The allowance of ASTM D6500–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. This final rule amendment does not relax control measures on sources regulated by the rule and therefore will not cause emission increases from these sources.

*K. Congressional Review Act*

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 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(2). This rule will be effective February 6, 2009.

**IV. Statutory Provisions and Legal Authority**

Statutory authority for today’s rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and CG and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today’s rule comes from sections 114(a) and 301(a) of the CAA.

**List of Subjects in 40 CFR Part 80**

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 13, 2008.

**Stephen L. Johnson,**  
*Administrator.*

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

**PART 80—REGULATION OF FUELS AND FUEL ADDITIVES**

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

**Authority:** 42 U.S.C. 7414, 7521(l), 7545 and 7601(a).

■ 2. Section 80.2 is amended by revising paragraph (z) to read as follows:

**§ 80.2 Definitions.**

\* \* \* \* \*

(z) *Aromatic content* is the aromatic hydrocarbon content in volume percent as determined by ASTM standard test method D1319–03<sup>e1</sup>, entitled, “Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption”. ASTM standard test method D1319–03<sup>e1</sup>, approved November 1, 2003, is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959, or by contacting ASTM customer service at 610–832–9585, or by contacting the e-mail address of [service@astm.org](mailto:service@astm.org) from the ASTM Web site of <http://www.astm.org>. For further information on this test method, please contact the Environmental Protection Agency at 734–214–4582. Copies may be inspected at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, or at the National Archives and Records Administration (NARA). The telephone number for the Air Docket Public Reading Room is (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030 or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

\* \* \* \* \*

**Subpart D—[Amended]**

■ 3. Section 80.46 is amended as follows:

■ a. By revising paragraphs (a)(1), (a)(3)(i), (a)(3)(ii), (a)(3)(iii) and (a)(3)(iv).

■ b. Revising paragraph (b).

- c. Revising paragraph (c).
- d. Revising paragraph (d).
- e. Revising paragraph (e)(1).
- f. Revising paragraphs (f)(1) and (f)(3)(i).
- g. Revising paragraphs (g)(1) and (g)(2)(i).
- h. Revising paragraph (h).

#### § 80.46 Measurement of reformulated gasoline fuel parameters.

(a) \* \* \*

(1) The sulfur content of gasoline must be determined by use of American Society for Testing and Materials (ASTM) standard method D2622 (incorporated by reference, see paragraph (h) of this section) or by one of the alternative methods specified in paragraph (a)(3) of this section.

(3) \* \* \*

(i) ASTM standard method D5453 (incorporated by reference, see paragraph (h) of this section) or

(ii) ASTM standard method D6920 (incorporated by reference, see paragraph (h) of this section) or

(iii) ASTM standard method D3120 (incorporated by reference, see paragraph (h) of this section) or

(iv) ASTM standard method D7039 (incorporated by reference, see paragraph (h) of this section).

\* \* \* \* \*

(b) *Olefins*. Olefin content must be determined by use of the following methods:

(1) Olefin content must be determined by use of ASTM standard method D1319 (incorporated by reference, see paragraph (h) of this section).

(2)(i) Any refiner or importer may determine olefin content using ASTM standard method ASTM D6550 (incorporated by reference, see paragraph (h) of this section) for purposes of meeting any testing requirement involving olefin content; provided that the refiner or importer test result is correlated with the method specified in paragraph (b)(1) of this section using a formula to convert the result in mass percent to volume percent as follows:  $\text{Volume \%} = 0.857 \times \text{Mass \%}$ .

(ii) [Reserved]

(c) *Reid vapor pressure (RVP)*. Reid vapor pressure must be determined using ASTM standard test method ASTM D5191 (incorporated by reference, see paragraph (h) of this section), except that the following correlation equation must be used:

$$\text{RVP psi} = (0.956 * X) - 0.347$$

$$\text{RVP kPa} = (0.956 * X) - 2.39$$

(d) *Distillation*. Distillation parameters must be determined using ASTM standard test method D86 (incorporated by reference, see paragraph (h) of this section).

(e) *Benzene*. (1) Benzene content must be determined using ASTM standard test method ASTM D3606–07 (incorporated by reference, see paragraph (h) of this section), except that.

\* \* \* \* \*

(f)(1) Aromatic content must be determined using ASTM D5769 (incorporated by reference, see paragraph (h) of this section), except that the sample chilling requirements in section 8 of this standard method are optional.

\* \* \* \* \*

(3)(i) Any refiner or importer may determine aromatics content using ASTM standard method D1319 (incorporated by reference, see paragraph (h) of this section) for purposes of meeting any testing requirement involving aromatics content; provided that

\* \* \* \* \*

(g) *Oxygen and oxygenate content analysis*. (1) Oxygen and oxygenate content must be determined using ASTM standard method D5599 (incorporated by reference, see paragraph (h) of this section).

(2)(i) When oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol and C<sub>1</sub> to C<sub>4</sub> alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygen content using ASTM standard method D4815 (incorporated by reference, see paragraph (h) of this section) for purposes of meeting any testing requirement; provided that:

\* \* \* \* \*

(h) *Materials Incorporated by reference*. The Director of the Federal Register approved the incorporation by reference of the documents listed in this section as prescribed in 5 U.S.C. 552(a) and 1 CFR 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC, 20460, under EPA docket ID Number EPA–HQ–OAR–2008–0558, or at the National Archives and Records Administration (NARA). The telephone number for the Air Docket Public Reading Room is (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030 or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). For further information on these test methods, please contact the Environmental Protection Agency at 734–214–4582.

(1) *ASTM material*. Anyone may purchase copies of these materials from

the American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959, or by contacting ASTM customer service at 610–832–9585, or by contacting the email address of [service@astm.org](mailto:service@astm.org) from the ASTM Web site of <http://www.astm.org>.

(i) ASTM standard method D3606–07 (“ASTM D3606”), Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography, approved November 1, 2007.

(ii) ASTM standard method D1319–03 <sup>ε1</sup> (“ASTM D1319”), Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption, approved November 1, 2003.

(iii) ASTM standard method D6550–05 (“ASTM D6550”), Standard Test Method for Determination of Olefin Content of Gasolines by Supercritical-Fluid Chromatography, approved November 1, 2005.

(iv) ASTM standard method D4815–04 (“ASTM D4815”), Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C<sub>1</sub> to C<sub>4</sub> Alcohols in Gasoline by Gas Chromatography, approved November 1, 2004.

(v) ASTM standard method D2622–05 (“ASTM D2622”), Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, approved November 1, 2005.

(vi) ASTM standard method D3246–96 (“ASTM D3246”), Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.

(vii) ASTM standard method D5191–07 (“ASTM D5191”), Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method), approved May 1, 2007.

(viii) ASTM standard method D5599–00(2005) (“ASTM D5599”), Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection, approved November 1, 2005.

(ix) ASTM standard method D5769–04 (“ASTM D5769”), Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry, approved May 1, 2004.

(x) ASTM standard method D86–07b (“ASTM D86”), Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, approved November 15, 2007.

(xi) ASTM standard method D5453–08a (“ASTM D5453”), Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence, approved February 1, 2008.

(xii) ASTM standard method D6920–07 (“ASTM D6920”), Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection, approved December 1, 2007.

(xiii) ASTM standard method D3120–06<sup>e1</sup> (“ASTM D3120”), Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry, approved December 1, 2006.

(xiv) ASTM standard method D7039–07 (“ASTM D7039”), Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry, approved May 1, 2007.

(xv) ASTM standard method D6667–01 (“ASTM D6667”), Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence.

(xvi) ASTM standard method D4468–85 (reapproved 2000) (“ASTM D4468”), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry.

(2) [Reserved]

#### Subpart I—[Amended]

■ 4. Section 80.580 is amended as follows:

- a. By revising paragraph (b)(2)
- b. By revising paragraph (c)(2)(i).
- c. By revising paragraphs (e).

#### § 80.580 What are the sampling and testing methods for sulfur?

\* \* \* \* \*

(b) \* \* \*

(2) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a)(1), sulfur content may be determined using ASTM D2622 (incorporated by reference, see paragraph (e) of this section).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and

for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a), sulfur content may be determined using ASTM D4294, ASTM D5453, or ASTM D6920 (all incorporated by reference, see paragraph (e) of this section), provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(2) of this section; or

\* \* \* \* \*

(e) *Materials incorporated by reference.* The Director of the Federal Register approved the incorporation by reference of the document listed in this section as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, under EPA docket ID Number EPA–HQ–OAR–2008–0558, or at the National Archives and Records Administration (NARA). The telephone number for the Air Docket Public Reading Room is (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030 or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). For further information on these test methods, please contact the Environmental Protection Agency at 734–214–4582.

(1) *ASTM material.* Anyone may purchase copies of these materials from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959, or by contacting ASTM customer service at 610–832–9585, or by contacting the e-mail address of [service@astm.org](mailto:service@astm.org) from the ASTM Web site of <http://www.astm.org>.

(i) ASTM standard method D2622–05 (“ASTM D2622”), Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, approved November 1, 2005.

(ii) [Reserved].

(iii) ASTM standard method D4294–03 (“ASTM D4294”), Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry, approved November 1, 2003.

(iv) ASTM standard method D5453–08a (“ASTM D5453”), Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence, approved February 1, 2008.

(v) ASTM standard method D6920–07 (“ASTM D6920”), Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection, approved December 1, 2007.

(2) [Reserved]

[FR Doc. E8–28370 Filed 12–5–08; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS–R2–ES–2008–0031; 92220–1113–0000–C3]

RIN 1018–AU68

#### Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Rio Grande Silvery Minnow in the Big Bend Reach of the Rio Grande in Texas

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), in cooperation with the National Park Service and the United States Section of the International Boundary and Water Commission, will reestablish the Rio Grande silvery minnow (*Hybognathus amarus*), a federally-listed endangered fish, into its historical habitat in the Big Bend reach of the Rio Grande in Presidio, Brewster, and Terrell Counties, Texas.

We are reestablishing the Rio Grande silvery minnow under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and are classifying it as a nonessential experimental population (NEP). On the Rio Grande, the geographic boundaries of the NEP extend from Little Box Canyon downstream of Fort Quitman, Hudspeth County, Texas, through Big Bend National Park and the Rio Grande Wild and Scenic River, to Amistad Dam (Big Bend reach of the Rio Grande), Val Verde County, Texas. On the Pecos River, the geographic boundaries of the NEP extend from the river’s confluence with Independence Creek to its confluence with the Rio Grande.

This action is part of the recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the historic range of the species. This final rule