

amount is otherwise permanently lost. The deduction to which the service provider is entitled equals the deferred amount included in income under section 409A in a previous year, less any portion of such deferred amount previously included in income under section 409A that was allocated under paragraph (f) of this section to amounts paid under the plan, including any deferred amount paid in the year the right to any remaining deferred compensation is permanently forfeited or otherwise lost. For this purpose, a mere diminution in the deferred amount under the plan due to deemed investment loss, actuarial reduction, or other decrease in the amount deferred is not treated as a permanent forfeiture or loss of the right if the service provider retains the right to an amount deferred under the plan (whether or not such right is subject to a substantial risk of forfeiture as defined in § 1.409A-1(d)). In addition, a deferred amount is not treated as permanently forfeited or otherwise lost if the obligation to make the payment of such deferred amount is substituted for another deferred amount or obligation to make a payment in a future year. However, a deferred amount is treated as permanently lost if the service provider's right to receive the payment of the deferred amount becomes wholly worthless during the taxable year. Whether the right to the payment of a deferred amount has become wholly worthless is determined based on all the facts and circumstances existing as of the last day of the relevant service provider taxable year.

(2) *Application of the plan aggregation rules.* For purposes of determining whether the right to a deferred amount is permanently forfeited or otherwise lost, the plan aggregation rules of § 1.409A-1(c) apply. Accordingly, if the right to an identified deferred amount under a plan is permanently forfeited or otherwise lost, but an additional amount remains deferred under the plan, the service provider is not entitled to a deduction.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (g). In each example, the service provider is an individual taxpayer who has a calendar year taxable year and the service recipient does not experience bankruptcy at any time or otherwise discharge any obligation to make a payment of a deferred amount, except as expressly provided in the example. The examples read as follows:

*Example 1.* For 2010, Employee S has a total amount deferred under an elective account balance plan of \$1,000,000. The plan fails to meet the requirements of section

409A(a) during 2010 and Employee S includes \$1,000,000 in income under section 409A(a) for the year 2010. In 2011, Employee S experiences investment losses but no payments before July 1, 2011, such that Employee S's account balance under the plan is \$500,000. On July 1, 2011, Employee S separates from service and receives a \$500,000 payment equal to the entire amount deferred under the plan, and retains no other right to deferred compensation under the plan (including all arrangements aggregated with the arrangement under which the payment was made). For 2011, Employee S is entitled to deduct \$500,000 (which is the amount Employee S previously included in income under section 409A(a) (\$1,000,000) less the amount actually received by Employee S (\$500,000)).

*Example 2.* For 2010, Employee T has a total amount deferred under an elective account balance plan of \$1,000,000. The plan fails to meet the requirements of section 409A(a) for 2010 and Employee T includes \$1,000,000 in income under section 409A(a) for 2010. For 2011, Employee T has a total amount deferred under the plan of \$500,000, due solely to the deemed investment losses attributable to Employee T's account balance (with no payments being made during 2011). Because Employee T retains the right to an amount deferred under the plan, Employee T is not entitled to a deduction for 2011 as a result of the deemed investment losses.

*Example 3.* For 2010, Employee U has a total amount deferred under an elective account balance plan of \$1,000,000. The elective account balance plan consists of one arrangement providing for salary deferrals with an amount deferred for 2010 of \$600,000, and another arrangement providing for bonus deferrals with an amount deferred for 2010 of \$400,000. The plan fails to meet the requirements of section 409A(a) during 2010 and Employee U includes \$1,000,000 in income under section 409A(a) for 2010. On July 1, 2011, Employee U's account balance attributable to the salary deferral arrangement is \$500,000, the reduction of which is due solely to deemed investment losses in 2011 and not any payments. On July 1, 2011, Employee U is paid the \$500,000 equaling the entire account balance attributable to the salary deferral arrangement. On December 31, 2011, Employee U has an account balance attributable to the bonus deferral arrangement equal to \$300,000. Because Employee U retains an amount deferred under the elective account balance plan, Employee U is not entitled to a deduction for 2011 as a result of the deemed investment losses.

(h) *Effective/applicability date.* The rules of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-28894 Filed 12-5-08; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[EPA-HQ-OAR-2008-0558; FRL-8742-7]

RIN 2060-AP17

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing 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 proposing to take action to allow an alternative test method for olefins in gasoline.

**DATES:** Comments or a request for a public hearing must be received on or before January 7, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-HQ-OAR-2008-0558, by one of the following methods:

- *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 Number 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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](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 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. (6406J), NW., 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:** In the Rules and Regulations section of this **Federal Register**, we are taking direct final rule action on the proposed amendments because we view these amendments as non-controversial and anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule.

The contents of today’s preamble are listed in the following outline.

#### Outline

- I. General Information
  - A. Does This Action Apply to Me?
  - B. What Should I Consider as I Prepare My Comments for EPA?
- II. Proposed 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 & 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
- 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, [www.regulations.gov](http://www.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. Proposed 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 methods 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 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 proposed to be 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 proposed 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 proposing today to update 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>ε1</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>ε1</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) 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 AND 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”.

<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).

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

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

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

Fuel parameter	ASTM analytical test method
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 D 6550–05 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 proposing 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 “Final Rules” section of today's **Federal Register**, we are publishing a direct final rule that matches the substance of this proposed 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 standard 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 proposed 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 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 proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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

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

impact of the rule on small entities.” 5 U.S.C. 603 and 604.

After considering the economic impacts of today’s proposed 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 proposed rule does not impose a regulatory burden on anyone, including small businesses. Instead, this proposed 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 D6550–05 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 proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *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 proposed 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 D6550–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, this proposed 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 proposed 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 D6550–05 will provide additional flexibility to the regulated community in meeting olefins in gasoline testing requirements. Thus, Executive Order 13132 does not apply to this proposed 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 & Safety Risk*

EPA interprets EO 13045 (62 FR 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 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 proposed 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, P.O. 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 proposed 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 proposed rule amendment does not relax control measures on sources regulated by the rule and therefore will not cause emission increases from these sources.

#### IV. Statutory Provisions and Legal Authority

Statutory authority for today's proposed 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) allow 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 proposed 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.

[FR Doc. E8-28372 Filed 12-5-08; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Parts 301, 302, 303, 305, and 308

RIN 0970-AC-37

#### Child Support Enforcement Program; Intergovernmental Child Support

**AGENCY:** Administration for Children and Families, Office of Child Support Enforcement (OCSE).

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** These proposed regulations would revise Federal requirements for establishing and enforcing intergovernmental support obligations in Child Support Enforcement (IV-D) program cases receiving services under title IV-D of the Social Security Act (the Act). The proposed changes would: Revise current interstate requirements to apply to case processing in all intergovernmental cases; require the responding State IV-D agency to pay the cost of genetic testing; clarify responsibility for determining in which State tribunal a controlling order determination is made where multiple support orders exist; recognize and incorporate electronic communication advancements; and make conforming changes to the Federal substantial-compliance audit and State self-assessment requirements.

**DATES:** Consideration will be given to written comments received by February 6, 2009.

**ADDRESSES:** Send comments to: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director, Division of Policy, Mail Stop: OCSE/DP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address. You may also transmit written comments electronically via the

Internet at: <http://www.regulations.gov>. To download an electronic version of the rule, you may access <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Yvette Hilderson Riddick, OCSE Division of Policy, 202-401-4885, e-mail: [Yvette.Riddick@acf.hhs.gov](mailto:Yvette.Riddick@acf.hhs.gov). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. eastern time.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Authority

Section 454(9) of the Act addresses interstate cooperation. This notice of proposed rulemaking is published under the authority granted to the Secretary of the U.S. Department of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the functions for which he is responsible under the Act. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amended the Act by adding section 466(f), which mandated that all States have in effect by January 1, 1998, the Uniform Interstate Family Support Act (UIFSA) as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws (NCCUSL). PRWORA also added sections 454(32) and 459A of the Act, requiring State IV-D agencies to provide services in international cases and authorizing the Secretary of the Department of State (DOS) with the concurrence of the Secretary, to enter into bilateral arrangements with foreign countries for child support enforcement, respectively. Further, section 455(f) of the Act, which authorized direct funding of Tribal Child Support Enforcement (IV-D) programs, was added by PRWORA and amended by the Balanced Budget Act of 1997 (Pub. L. 105-33).

##### II. Background

###### A. Nature of the Problem

The Child Support Enforcement program was created over 30 years ago in response to the rise in welfare costs resulting from increasing nonmarital birth rates and parental desertion of families, and to the growing demand to relieve taxpayers of the financial burden of supporting these families. Child support is no longer primarily a welfare