

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5650-5]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program. Currently, the time period for the use of these alternative test methods expires on January 1, 1997. This amendment extends the time period for the use of alternative test methods in the reformulated gasoline program to September 1, 1998.

EPA is considering expanding the ability of industry to use various alternative analytical test methods in the federal RFG program. Extension of this deadline will allow refiners and others to continue using the currently approved alternative analytical test methods pending a final decision by EPA on additional alternatives. This extension provides greater flexibility for the regulated industry and reduce costs to all interested parties.

The Federal RFG program reduces motor vehicle emissions of volatile organic compounds (VOC), oxides of nitrogen (NO_x) and certain toxic pollutants. This change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will have no change in the emission benefits that result from the RFG program.

EFFECTIVE DATE: This amendment is effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233-9034.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action are those that use analytical test methods to comply with the Reformulated Gasoline Program. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Introduction

A. RFG Standards

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in

specified ozone nonattainment areas (covered areas), as well as standards for non-reformulated, or conventional, gasoline used in the rest of the country, beginning in January 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NO_x emissions, and meet certain content standards for oxygen, benzene and heavy metals. EPA promulgated the final RFG regulations on December 15, 1993.¹ See 40 CFR part 80 subparts D, E and F.

B. Test Methods Utilized at § 80.46

Refiners, importers and oxygenate blenders are required, among other things, to test RFG and conventional gasoline for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on.² During the Federal RFG rulemaking, and in response to comments by the regulated industry, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. See 40 CFR 80.46. EPA adopted this provision because the designated analytical test methods for each of these parameters were costly and relatively new, leaving the industry little time to fully implement the designated analytical test methods. EPA therefore provided flexibility to the regulated industry by allowing the use of alternative analytical test methods for the two above mentioned parameters until January 1, 1997. After that date, use of the designated analytical test methods was required. Table 1 lists the designated analytical test method for each parameter measured under the RFG program.

¹ 59 FR 7812, February 16, 1994.

² 40 CFR 80.65(e), 80.10(i).

TABLE 1.—DESIGNATED ANALYTICAL TEST METHOD UNDER THE RFG PROGRAM

RFG Gasoline parameter	Designated analytical test method
Sulfur	ASTM D-2622-92, entitled "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry."
Olefins	ASTM D-1319-93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption."
Reid Vapor Pressure	Method 3, as described in 40 CFR part 80, appendix E.
Distillation	ASTM D-86-90, entitled "Standard Test Method for Distillation of Petroleum Products." ¹
Benzene	ASTM D-3606-92, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography." ²
Aromatics	Gas Chromatography as described in 40 CFR 80.46(f). ³
Oxygen and Oxygenate content analysis.	Gas Chromatography as described in 40 CFR 80.46(g). ⁴

¹ Except that the figures for repeatability and reproducibility given in degrees Fahrenheit in Table 9 in the ASTM method are incorrect, and shall not be used.

² Except that Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D-3606-92 when present.

³ Prior to January 1, 1997, any refiner or importer may determine aromatics content using ASTM standard test method D-1319-93 entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption" for the purpose of meeting any testing requirement involving aromatics content. *Note:* The January 1, 1997 deadline is the subject of today's document.

⁴ Prior to January 1, 1997, and when oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C₁ and C₄ alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenated content using ASTM standard method D-4815-93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C₁ and C₄ Alcohols in Gasoline by Gas Chromatography." *Note:* The January 1, 1997 deadline is the subject of today's document.

C. Public Comment

EPA proposed the revisions in this rule on July 3, 1996.³ As stated in the preamble in the NPRM, Mobil Oil Corporation, the American Petroleum Institute (API) and the National Petroleum Refiners Association (NPRA) have requested that EPA extend the deadline for the use of alternative analytical test methods for the measurement of aromatics and oxygenates as specified in § 80.46. Currently, the ability to use alternative analytical test methods under § 80.46 expires on January 1, 1997. In a September 25, 1995 letter to EPA, API and NPRA jointly urged extension of the deadline for the use of alternative analytical test methods at § 80.46 beyond January 1, 1997. In addition to these parties, ASTM, WSPA, Phillips Petroleum Company, Fying J. Inc., and Chevron submitted comments in favor of this extension. There were no adverse public comments following publication of the NPRM.

EPA intends to undertake a rulemaking to consider establishing a performance based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. One approach under consideration involves developing quality assurance specifications under which the performance of alternate analytical test methods would be deemed acceptable for compliance. The Agency envisions that a performance based approach could provide additional flexibility to the regulated industry in their choice of analytical test methods to be utilized for

compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. EPA expects to finalize action on such a rulemaking by September 1, 1998.

In the meantime, EPA is today amending the deadline for the use of the alternative analytical test procedures for aromatics and oxygenates under § 80.46(f)(3) and § 80.46(g)(9) until September 1, 1998. The Agency believes that it is appropriate to allow parties to continue using these alternative analytical test methods until a final decision is made on the performance based analytical test method approach. This would allow parties to make long-term purchasing decisions based on all the testing options that could be made available at the conclusion of the performance-based rulemaking.

II. Environmental Impact

The RFG program, as required by the Act, obtains emission reductions for VOC, NO_x and toxic emissions from motor vehicles. This change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will result in no change in the emission benefits of the RFG program.

III. Economic Impact and Impact on Small Entities

This final rule provides for flexibility in allowing the regulated industry to use certain alternative analytical test methods at § 80.46 for eighteen additional months. This final rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance

cost for regulated parties because it continues to provide a choice for the procurement of test methods for aromatics and oxygenates under the RFG program. This analysis applies to regulated parties that are small entities, as well as other regulated parties. Based on this, the Agency has determined that this final rule will not have a significant impact on a substantial number of small entities.

IV. Executive Order 12866

Under Executive Order 12866⁴, the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.⁵

It has been determined that this final rule is not a "significant regulatory

³ (61 FR 34775).

⁴ 58 FR 51735, October 4, 1993.

⁵ *Id.* at section 3(f)(1)-(4).

action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“UMRA”), P.L. 104-4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this final rule does not include a Federal mandate as defined in UMRA. This final rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of \$100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

VI. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number

2060-0277. The Agency number for the information collection requirements contained in this rule is 1591.03. This final rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance cost for regulated parties because it continues to provide a choice for the procurement of test methods for aromatics and oxygenates under the RFG program. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

VII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today’s Federal Register. This rule in not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental Protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: November 5, 1996.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—[AMENDED]

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

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.46 is amended by revising paragraphs (f)(3)(i) and (g)(9)(i) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) *Alternative test method.* (i) Prior to September 1, 1998, any refiner or importer may determine aromatics content using ASTM standard method D-1319-93, entitled “Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption,” for purposes of meeting any testing requirement involving aromatics content; provided that

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(g) * * *

(9)(i) Prior to September 1, 1998, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-*amyl* alcohol, and C₁ to C₄ alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D-4815-93, entitled “Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-*Amyl* Alcohol and C₁ to C₄ Alcohols in Gasoline by Gas Chromatography,” for purposes of meeting any testing requirement; provided that

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