

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

**PART 938—PENNSYLVANIA**

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.15 is amended in the table by adding a new entry in chronological order by “*Date of final publication*” to read as follows:

**§ 938.15 Approval of Pennsylvania regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
December 20, 2001 .....	October 2, 2003 .....	25 Pa. Code 88.281, 88.310, 88.332, 89.59, 90.1, 90.5, 90.12, 90.13, 90.34, 90.45, 90.49, 90.50, 90.101, 90.116a, 90.122, 90.167, 90.201–207, 90.301–309, and 90.401.

**§ 938.16 [Amended]**

■ 3. Section 938.16 is amended by removing and reserving paragraphs (hh), (kk), (vvv), (www), (xxx), (yyy), (zzz), (aaa), and (bbb).

[FR Doc. 03–24945 Filed 10–1–03; 8:45 am]

**BILLING CODE 4310–05–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[FRL–7566–3]**

**Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Method Update**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking action to make certain fuel testing requirements more consistent and up-to-date by having refiners and laboratories use the most current version of an American Society of Testing and Materials (ASTM) analytical test method.

Specifically, we are updating an ASTM designated analytical test method, ASTM D 1319 to the most recent 2002a version which when adopted will supersede earlier versions of this method in EPA’s motor vehicle

fuel regulations. This method is designated in EPA regulations for measuring chemical compositions in reformulated gasoline (RFG), conventional gasoline (CG), and diesel fuel, specifically aromatics and olefins in CG and RFG and aromatics in diesel fuel. These updates allow for more consistent use of the same methodology across EPA motor vehicle fuel regulations and incorporate improvements in the test method procedures that will ensure better operation.

**DATES:** This direct final rule is effective December 1, 2003, unless we receive adverse comments or a request for public hearing by November 3, 2003. If the Agency receives adverse comment or a request for public hearing, we will withdraw this direct final rule by publishing a timely withdrawal notice in the **Federal Register**.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of December 1, 2003.

**ADDRESSES:** If you wish to submit comments or request a public hearing, you should send any written materials to the docket address listed and to Joe Sopata, Chemist, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406]],

Washington, DC 20460 or by e-mail to [sopata.joe@epa.gov](mailto:sopata.joe@epa.gov). Materials relevant to this direct final rule have been placed in docket A-2002-15 and docket A-2001-21 located at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You may reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2. Comments and data may be submitted by email to: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). All comments and data submitted in electronic form must note the docket number, A-2002-15. No confidential business information (CBI) should be submitted by e-mail.

**FOR FURTHER INFORMATION CONTACT:** If you would like further information about this rule or to request a hearing, contact Joe Sopata, Chemist, Transportation & Regional Programs Division, (202) 564-9034.

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

- I. Regulated Entities
- II. Rule Changes

- A. Updating ASTM D 1319 Test Method to 2002a Year Version
- III. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: 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 that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Congressional Review Act
- VI. Statutory Provisions and Legal Authority

**I. Regulated Entities**

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

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICSs codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated parties
Industry .....	32411	2911	Petroleum refiners.
Industry .....	54138	8734	Testing Laboratories.

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

**II. Rule Changes**

*A. Updating ASTM D 1319 Test Method to 2002a Year 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 olefins, and aromatics. ASTM test method D1319 is currently a designated test method for measuring olefins<sup>1</sup> in gasoline and aromatics<sup>2</sup> in diesel fuel and is also allowed as an alternative test method for measuring aromatics<sup>3</sup> in gasoline. Because rules were adopted at different points in time, the regulations currently cite three

different versions of D 1319 (published in three different years) for these applications.

On February 26, 2002, the Agency published a final rule entitled "Regulation of Fuel and Fuel Additives: Reformulated Gasoline Transition".<sup>4</sup> Among other things, this final rule updated certain ASTM test methods for RFG and CG, designated in EPA regulations, to their most recent ASTM version. Several designated test methods were updated to their most recent version including methods covering oxygen content, distillation properties, RVP, and aromatics. The designated test method for olefins, ASTM D 1319, was updated by EPA only to its 1998 version and not to the most recent version. This was because the 1999 version of ASTM D 1319 (the most recent version at that

time) had mistakenly left out an important reference to use of another ASTM method. ASTM D 5599-00, the missing test method, measures oxygenate concentration when present in the gasoline sample. Measurement of oxygenate content when oxygenates are present is a required procedure when determining olefin content. Therefore, since ASTM D 5599-00 is EPA's designated method for oxygenate determination, omission of this procedure in the 1999 version of ASTM 1319 meant that it would not be appropriate for EPA to adopt that version of ASTM 1319. We explained in our response to comments that "unless a determination is made that ASTM D 5599-00 can be appropriately included as a method for measuring oxygen and oxygen content with ASTM D 1319-99, EPA will retain the 1998 version of D

<sup>1</sup> 40 CFR 80.46(b).  
<sup>2</sup> 40 CFR 80.2(z).  
<sup>3</sup> 40 CFR 80.46(f)(3).

<sup>4</sup> February 26, 2002, (67 FR 8729).

1319 as the designated test method for olefins".<sup>5</sup>

Recently, David Bradley, the ASTM Director of Committee D02 for Petroleum Products and Lubricants, said in a letter to EPA that ASTM has updated test method D1319 to a 2002 year version.<sup>6</sup> Mr. Bradley also pointed out that this most recent version of ASTM D 1319 now includes the reference to ASTM D 5599 thus resolving the problem associated with omission of EPA's designated test method for oxygen and oxygen content. The American Petroleum Institute (API) also submitted comments to EPA in support of this test method update of ASTM D 1319 to the 2002 year version.<sup>7</sup> Thus, both ASTM and API support revising our motor vehicle fuels

regulations to allow the use of D1319-02a for testing of olefins.

In addition to updating our regulations to allow for the use of ASTM D 1319-02a for determining olefins in gasoline (discussed above), we are also today taking action to allow use of the newest version of D1319 for determination of aromatics content in RFG and CG (as an alternative method) and in determining aromatics content in diesel motor fuel. Previous versions of ASTM D1319 were allowed for determining aromatic content under previous rulemakings.

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. We have reviewed the 2002a version of ASTM test method D 1319 and we are in agreement with its revisions. We believe that the revisions in ASTM D 1319-02a 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. By updating ASTM D 1319 to the 2002a version for all three of these applications, the required analytical methodologies will be more consistent, making it easier for manufacturers of gasoline and diesel fuel to utilize the ASTM technique for all fuels and properties being tested.

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

Fuel parameter	Analytical test method
Olefins .....	ASTM D 1319-02a, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption."
Aromatics (gasoline and diesel) .....	ASTM D 1319-02a, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption", 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 D 5769-98.

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 November 3, 2003, 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 November 3, 2003, these test method changes will be effective sixty (60) days after publication of this direct final rule in the **Federal Register**. We are confident that sixty(60) days is sufficient lead time for industry to become familiar and implement this most recent ASTM test method for the applications mentioned above.

**III. Statutory and Executive Order Reviews**

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

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action 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 or 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 the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this direct final rule is not a significant regulatory action.

*B. Paperwork Reduction Act*

This action does not add any new requirements involving the collection of

information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060-0277 (EPA ICR No. 1591.14). The OMB has approved the information collection requirements contained in the final Tax Exempt (Dyed) Highway Diesel Fuel rulemaking (See 66 FR 64817, December 14, 2001) and has assigned OMB control number 2060-0308 (EPA ICR No. 1718.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

<sup>5</sup> See Air Docket # A-2001-21, Document # V-C-01.

<sup>6</sup> See Air Docket # A-2002-15, Document # II-D-01.

<sup>7</sup> See Air Docket # A-2002-15, Document # II-D-02.

previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

### 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 that has not more than 1,500 employees (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.

After considering the economic impacts of today's direct final rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. We have determined that no small entities will experience an impact from this direct final rule. ASTM test method D 1319 is currently a designated test method for measuring olefins in gasoline and aromatics in diesel fuel and is also allowed as an alternative test method for measuring aromatics in gasoline (see citations above in Section II.A). Because rules were adopted at different points in time, the regulations currently cite three different versions of ASTM D 1319 (published in three different years) for these applications. Currently, if a small entity produces both gasoline and diesel fuel, and it relies on ASTM D 1319 for determining compliance with the fuel parameters mentioned above, it must maintain three different versions of ASTM D 1319. These updates allow for more consistent use of the same

methodology across EPA motor vehicle fuel regulations, thus increasing flexibility for small entities who manufacture gasoline or diesel fuel. Thus this direct final rule is expected to reduce operating costs for all parties, including small entities.

Although this direct final rule will not have a significant impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. If the Agency receives no adverse comment or request for public hearing on the corresponding proposed rule to this direct final rule, these test method changes will be effective sixty (60) days after publication of this direct final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for small entities to become familiar and implement this ASTM test method for its applications.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal

intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel.

### 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. This direct final rule updates an ASTM test method to its most recent version. Thus, Executive Order 13132 does not apply to this direct final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this direct final rule's corresponding proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on

one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This direct final rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel. Today's action updates an ASTM test method to its most recent version, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this direct final rule.

*G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule 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 That Significantly Affect Energy Supply, Distribution, or Use*

This direct final rule is not an economically “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it does not have a

significant adverse effect on the supply, distribution, or use of energy. EPA is allowing additional flexibility and streamlining the regulations by updating an ASTM test method to its most current version for three applications under its motor vehicle programs.

*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 rule will update an ASTM test method which is a designated analytical test method for two applications and an alternative test method for one application to its most recent ASTM version. Today's action does not establish new technical standards or analytical test methods, although it does update an ASTM test method to its most current version. To the extent that this action would allow the use of standards developed by voluntary consensus bodies (such as ASTM) this action would further the objectives of the NTTAA.

*J. 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 the 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(a).

**VI. Statutory Provisions and Legal Authority**

Statutory authority for today's direct final 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 conventional gasoline 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: September 24, 2003.

**Marianne Lamont Horinko,**  
*Acting 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, 7545 and 7601(a).

■ 2. Section 80.2 is amended by revising paragraphs (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 D 1319–02a, entitled, “Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption”. ASTM test method D 1319–02a 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. Copies may be inspected at the Air Docket Center, room B–108, U.S. Environmental Protection Agency, Docket No. A–2202–15, 1200 Pennsylvania Avenue, NW.,

Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

\* \* \* \* \*

■ 3. Section 80.46 is amended by revising paragraphs (b), (f)(3)(i), and (h) to read as follows:

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

\* \* \* \* \*

(b) *Olefins*. Olefin content shall be determined using ASTM standard method D 1319-02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption."

\* \* \* \* \*

(f) \* \* \*

(3) (i) Prior to September 1, 2004, any refiner or importer may determine aromatics content using ASTM standard method D 1319-02a, 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

\* \* \* \* \*

(h) *Incorporations by reference*. ASTM standard methods D 3606-99, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;" D 1319-02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;" D 4815-99, 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;" D 2622-98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;" D 3246-96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry;" D 5191-01, entitled, "Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);" D 5599-00, entitled, "Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;" D 5769-98, entitled, "Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry," and D 86-01, entitled, "Standard Test Method for Distillation

of Petroleum Products at Atmospheric Pressure;" are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 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. Copies may be inspected at the Air Docket Center, room B-108, U.S.

Environmental Protection Agency, Docket No. A-2202-15, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[FR Doc. 03-24907 Filed 10-1-03; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

[CC Docket 99-200; FCC 03-140]

### Numbering Resource Optimization

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission denied the petition for forbearance filed by the Cellular Telecommunications and Internet Association (CTIA) and found that forbearance was not warranted.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 99-200, FCC 03-140 released on June 26, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street SW., Washington, DC 20554.

### I. Introduction

In this Order, the Commission denied the petition for forbearance filed by the Cellular Telecommunications and Internet Association (CTIA) on June 28, 2002. CTIA sought forbearance from further scheduled increases to the numbering resources utilization threshold. CTIA argued that forbearance should be granted because the projected

life of the North American Numbering Plan (NANP) has been extended, and increases to the current utilization threshold will raise the cost of providing service and increase the risk that numbering resources will not be available to carriers when needed. All commenters opposed CTIA's forbearance request. The Commission denied CTIA's Petition and found that forbearance was not warranted.

### II. Discussion

1. We find that CTIA's forbearance petition does not satisfy the forbearance criteria set forth in section 10(a) of the Act. Specifically, we find that the numbering resources utilization threshold, and the scheduled increases up to the 75% cap, are necessary to ensure that carriers will obtain numbering resources in a just and reasonable manner, *i.e.*, only when and where they are needed to provide services. We further find that requiring carriers to manage their numbering inventories at increasing thresholds is a preventative measure that is necessary to protect consumers from premature area code changes and exhaust of the NANP. We also find that it is consistent with the public interest to increase the threshold because it will continue to require carriers to use numbering resources more efficiently, which will benefit carriers and consumers.

### *Charges, Practices, Classifications and Regulations*

2. The scheduled increases to the threshold ensure that carriers will obtain additional numbering resources only when they are needed and utilize their numbering inventories on an increasingly efficient basis. Such efficiency is necessary to avoid the waste of finite numbering resources that are essential to providing telecommunications service. Conversely, freezing the threshold at its current level could accelerate NANP exhaust and burden customers with premature area code changes, contrary to the public interest.

3. As the Commission first concluded in the *Numbering Resource Optimization First Report and Order*, 65 FR 43251, July 13, 2000, the utilization threshold requirement, coupled with the MTE requirement, deters carriers from stockpiling excessive inventories and helps ensure that carriers optimize the use of existing numbering resources. Due in part to these measures, the projected life of the NANP has been significantly extended. Even CTIA lauds the success of these measures. Furthermore, the Pennsylvania Commission submits that forbearance