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FOR FURTHER INFORMATION CONTACT: If you would like further information

about this rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564-8987 or by e-mail at pastorkovich.anne-marie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by the action are those that use analytical test methods to comply with the RFG, anti-dumping, and gasoline sulfur control program. Regulated categories and entities include:

Category	NAICS Codes ^a	SIC Codes ^b	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
Industry	422720	5172	

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

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 all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. 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 section of this document.

II. Background and Summary of Today's Action

Section 211(k) of the Clean Air Act (CAA) directs EPA to establish standards requiring the greatest reduction in emissions of ozone forming volatile organic compounds (VOCs) and toxic air emissions achievable through the reformulation of conventional gasoline, considering cost, other health and environmental factors and energy requirements. The Act requires that RFG meet certain content standards for oxygen, benzene, and heavy metals. RFG must be used in certain ozone nonattainment areas, called "covered areas." The CAA also requires EPA to establish anti-dumping standards applicable to conventional gasoline used in the rest of the country. The Administrator signed the final RFG and anti-dumping regulations on December 15, 1993¹ and these regulations became effective in January 1995.

In 2000, EPA issued regulations establishing lower sulfur content

requirements for all gasoline² and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks. The gasoline sulfur control program begins phasing-in in 2004, and, in general, refiners must meet a refinery average sulfur standard of 30 ppm beginning in 2005 and a per gallon cap standard of 80 ppm beginning in 2006 (with the exception of challenged refiners, and gasoline sold in certain western states subject to geographic phase-in).

Under the RFG, anti-dumping and gasoline sulfur program, refiners, importers, and oxygenate blenders are required to test RFG and conventional gasoline for certain parameters, including sulfur levels, aromatic content, benzene content, and oxygen content. Test methods for determining these parameters are specified in the regulation. For the sulfur content of gasoline, 40 CFR 80.46(a)(1) specifies American Society for Testing and Materials (ASTM) standard method D-2622-98, entitled, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry" as the designated test method. In addition, the gasoline sulfur rulemaking required a test method for determining the sulfur content of butane blended into gasoline—ASTM standard method D 3246-96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry."

In the gasoline sulfur control rulemaking, we specifically requested comments on the designated test method. We also requested comments on other ASTM methods. After

considering comments received from the regulated industry during the gasoline sulfur rulemaking process, including comments supportive of ASTM D 2622-98 as the designated method, we decided to require the use of ASTM D 2622-98 for measuring sulfur content. We did not name any alternative analytical test methods because we anticipated that a comprehensive performance-based analytical test method approach rule would be issued in the near future. A comprehensive performance based test methods approach would allow anyone to qualify additional analytical test methods for use in demonstrating compliance with program requirements. We now know that a comprehensive performance based test methods rulemaking will take more time to complete than originally anticipated. We feel that permitting specific ASTM test methods to be used as alternative analytical test methods now provides a bridge to a more comprehensive performance based test methods approach in the future and grants refiners, importers and blenders significant flexibility and potential cost savings in meeting their testing requirements.

As discussed in a May 16, 2003 **Federal Register** notice,³ Antek Instruments, which manufactures testing equipment, filed a petition challenging the final gasoline sulfur control rule. EPA and Antek entered into negotiations and reached a proposed settlement agreement. The proposed settlement agreement outlined a proposed rule which would identify ASTM D 5453-00^{e1} as an alternative test method refiners and importers could use to comply with the requirement to test gasoline for sulfur content, provided

¹ "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule," 59 FR 7812 (February 16, 1994). See 40 CFR part 80 subparts D, E, and F.

² "Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule," 65 FR 6698 (February 10, 2000). See also 40 CFR part 80 subpart H for regulations applicable to gasoline sulfur.

³ See "Notice of Proposed Settlement Agreement; Request for Public Comment," 68 FR 26604 (May 16, 2003).