

# **ATTACHMENT D**

## Public Notice Requirements:

The AQD posted the following public notice on the EGLE Calendar and the AQD website throughout the comment period:



MICHIGAN DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY

### **Public Comment Period for Redesignation to Attainment and Revisions to the Michigan State Implementation Plan for Southeast Michigan**

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) opened a public comment period for a redesignation to attainment and revisions to the Michigan State Implementation Plan (SIP) for southeast Michigan on November 8, 2021, which will remain open until 5:00 pm December 9, 2021. The purpose of the public comment period and virtual public hearing, if requested, are to allow all interested parties an opportunity to comment on the proposed SIP revisions.

#### **Proposed SIP Revisions:**

- Based on three years of ambient air monitoring data showing attainment of the 2015 ozone National Ambient Air Quality Standard (NAAQS), EGLE is requesting the United States Environmental Protection Agency (USEPA) redesignate the southeast Michigan area to attainment of the 2015 ozone NAAQS.
- EGLE is also requesting approval into the SIP of the included Maintenance Plan for the southeast Michigan area to provide continued attainment of the 2015 ozone NAAQS.
- The southeast Michigan area is the seven counties of Livingston, Monroe, Macomb, Oakland, St. Clair, Washtenaw, and Wayne.

In the proposed redesignation request and SIP revision, EGLE is demonstrating compliance with Section 107 of the Clean Air Act and Part 51 of the Code of Federal Regulations.

The public is encouraged to [review the proposed SIP revisions](#) and present comments through the end of the public comment period. All statements received during the public comment period will be considered by the Air Quality Division (AQD) prior to submitting the redesignation request and SIP revision to the USEPA. Once all comments are considered, EGLE may submit the redesignation request and SIP revision as written, submit it with minor changes, or make major changes that require an additional public comment period.

### Submitting Comments:

There are several ways to submit comments on the proposed redesignation and SIP revisions.



Email your comment to [WolfE1@Michigan.gov](mailto:WolfE1@Michigan.gov). Please include “Comments on Redesignation Request and SIP Revision” in the subject line.



Mail your comment to Erica Wolf, Michigan Department of the Environment, Great Lakes, and Energy (EGLE), AQD, SIP Development Unit, P.O. Box 30260, Lansing, Michigan 48909-7760.



At a public hearing, if held.

If requested in writing by November 30, 2021, two virtual public hearings will be held on December 7, 2021, starting at 1:00 p.m. and 6:00 p.m., with information on how to attend posted on the AQD’s webpage at [Michigan.gov/EGLEAirPublicNotice](https://Michigan.gov/EGLEAirPublicNotice). If requested, the virtual public hearings will be preceded by an informational session.

Individuals without internet access and who are interested in receiving printed copies of the documents related to the proposed redesignation request and SIP revision or who need accommodations or other assistance to effectively participate in the hearings should contact Lorraine Hickman at 517-582-3494 or [HickmanL@Michigan.gov](mailto:HickmanL@Michigan.gov).

This public notice is given in accordance with federal regulations for the SIP.

**NOTE:** The Department of Environment, Great Lakes, and Energy (EGLE) has closed its offices and other facilities to visits from the public to help mitigate the spread of COVID-19. Necessary public meetings/hearings will be postponed to the extent possible or held virtually. When held virtually, every attempt will be made to accommodate and include individuals from diverse groups, including, but not limited to translation for those with limited English proficiency and provide call in numbers for those without internet access. Other options will also be considered on a case-by-case basis.

Following are the six public comments received on this submittal:

December 8, 2021

Ms. Erica Wolf  
Air Quality Division, SIP Unit  
Michigan Department of Environment, Great Lakes, and Energy (EGLE)  
P.O. Box 30260  
Lansing, MI 48909-7760

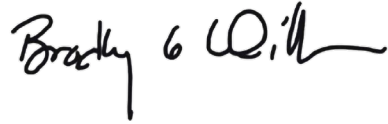
Dear Ms. Wolf,

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) recently published a notice seeking public comment on its plan to request redesignation to attainment for ozone and revisions to the Michigan State Implementation Plan (SIP) for Southeast Michigan. The Detroit Regional Chamber is submitting these comments in support of EGLE's planned request to the EPA to decide that the Southeast Michigan counties are now in attainment with the 2015 Ozone National Ambient Air Quality Standard (NAAQS) and in turn, redesignate the counties from their current marginal non-attainment classification to attainment. The Chamber also supports the corresponding Section 178A maintenance plan and emission inventories as a revision to the Michigan SIP.

Consistent with the Clean Air Act Section 107(d)(3)(E) requirements for demonstrating attainment with the 2015 Ozone NAAQS, EGLE AQD collected three consecutive calendar years of quality-assured air quality monitoring data (2019-2021) from the Southeast Michigan area currently designated as marginal non-attainment. The data was collected and quality assured from the same seven ozone monitors representing areas of the highest concentration of ozone used to determine the non-attainment area. The completeness values meet federal requirements, and the design value is below the 2015 ozone NAAQS set at 70 ppb, successfully demonstrating attainment. Furthermore, EGLE provided in its request a demonstration that the air quality improvements are not due to temporary adverse economic conditions or unusually favorable meteorology, but rather due to permanent and enforceable measures resulting in a reduction in emissions of ozone precursors (e.g. VOCs and NO<sub>x</sub>). EGLE listed several measures including, among others, vehicle emission standards, marine/locomotive/aircraft fuel and engine emission standards, power plants' current and planned shutdowns, and CAIR/CSAPR Revised Update. All such measures contributed to the improved air quality as they impacted significant sources of emissions in Southeast Michigan.

For the reasons stated above, the Chamber supports EGLE's proposed plan and urges the Department to submit their request to redesignate to attainment the Southeast Michigan ozone nonattainment area and submit the corresponding maintenance SIP to EPA.

Sincerely,

A handwritten signature in black ink, reading "Brad Williams". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Brad Williams  
Vice President, Government Relations

Ms. Erica Wolf  
Michigan Department of Environment, Great Lakes, and  
Energy (EGLE) Air Quality Division, SIP Unit  
P.O. Box 30260  
Lansing, MI 48909-7760

Subject: Comments on EGLE Request for Redesignation to Attainment for Ozone and  
Revisions to the Michigan State Implementation Plan for Southeast  
Michigan

Dear Ms. Wolf:

Recently EGLE opened a public comment period for a request for redesignation attainment for ozone and revisions to the Michigan State Implementation Plan (SIP) for southeast Michigan. DTE Energy (DTE) is submitting these comments in support of EGLE's plan to submit this request to EPA to make a determination that the southeast Michigan counties currently designated as marginal nonattainment with the 2015 ozone National Ambient Air Quality Standard (NAAQS) are now in attainment. DTE also supports the corresponding Section 178A maintenance plan and emission inventories as a revision to the Michigan SIP.

DTE is a Detroit-based diversified energy company involved in the development and management of energy-related businesses and services in the United States and Canada. Its operating units include an electric utility serving 2.2 million customers and a natural gas utility serving 1.3 million customers in Michigan. DTE operates several facilities in Michigan within and outside of the southeast Michigan ozone nonattainment area.

To demonstrate attainment with the current ozone NAAQS for the southeast Michigan area currently designated as marginal nonattainment, EGLE AQD collected three consecutive calendar years of quality-assured air quality monitoring data (2019-2021). The data was collected from the same seven ozone monitors representing areas of the highest concentration of ozone used to determine the nonattainment area. The completeness values meet federal requirements, and the design value is below the 2015 ozone NAAQS set at 70 ppb, successfully demonstrating attainment.

EGLE indicated in its request that it has performed an analysis demonstrating that the air quality improvements are due to permanent and enforceable measures. These reductions are, not due to temporary adverse economic conditions or unusually favorable meteorology. While the number of hot days increased in southeast Michigan, the maximum eight-hour ozone concentrations trended downward. In addition, EGLE AQD compared ozone data against vehicle

miles traveled (VMT) and employment data for the region. A direct correlation between VMT and employment was observed without a direct correlation between these economic indicators and high ozone values. The 2020 COVID-19 pandemic resulted in a reduction of less than 5 percent of VMT and less than 10 percent reduction in total unemployment and did not result in corresponding reduction in ozone. As such, even temporary adverse economic conditions had no impact on ozone production during this time. Permanent and enforceable reductions of volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions have contributed to attainment of the 2015 ozone NAAQS for southeast Michigan.

DTE retired one power plant in 2021 (River Rouge Power Plant) within the southeast Michigan ozone nonattainment area. DTE will also be retiring two more power plants in 2022 (St. Clair Power Plant and Trenton Channel Power Plant) within the region. DTE is planning to begin operation of a natural gas-fired, combined-cycle power plant in the region in 2022. DTE has also installed a significant amount of renewable energy generation resources (wind and solar) in the region. The net effect of these retirements and new construction is a significant decrease in emission of many pollutants, including VOC and NOx.

For the reasons stated above, DTE urges EGLE to submit a request to redesignate the southeast Michigan ozone nonattainment area and submit the corresponding maintenance SIP to EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Marietta", with a long horizontal flourish extending to the right.

Barry Marietta  
Manager — Environmental Strategy  
Environmental Management & Safety  
DTE Energy Corporate Services, LLC

December 8, 2021

Erica Wolf  
Michigan Department of Environment, Great Lakes and Energy  
Air Quality Division, State Implementation Plan Unit  
P. O. Box 30260  
Lansing, MI 48909-7760

Sent via email: [WolfE1@Michigan.gov](mailto:WolfE1@Michigan.gov)

Subject: Comments on Redesignation Request and SIP Revision  
2015 Ozone NAAQS

Ms. Wolf:

Consumers Energy Company (“Consumers Energy”) is the principal subsidiary of CMS Energy Corporation and Michigan’s largest combined gas and electric utilities, serving over six million of Michigan’s ten million residents throughout the Lower Peninsula of the state. Consumers Energy operates five coal-fired electric generating units, eleven natural gas-fired electric generating units, and seven natural gas compressor stations, among other smaller emission sources. While our electric generating units are outside the seven-county southeast Michigan nonattainment area for the 2015 ozone National Ambient Air Quality Standards (NAAQS), Consumers Energy operates four compressor stations in that area: Freedom, Northville, Ray and St. Clair. Additionally, another CMS Energy subsidiary, CMS Enterprises, operates electric generating units at the Dearborn Industrial Generation Plant which is within this nonattainment area.

Consumers Energy appreciates the opportunity to comment on the [proposed request](#) (Request) dated November 2021 from the Michigan Department of Environment, Great Lakes and Energy (EGLE) to the United States Environmental Protection Agency (EPA), and the associated State Implementation Plan (SIP) revision to accompany such a redesignation. The Request proposes that EPA make a determination that the southeast Michigan counties currently designated as marginal nonattainment with the 2015 ozone NAAQS are now in attainment based on 2019 to 2021 ambient air monitoring data.

Consumers Energy supports this action and encourages EGLE to submit the Request expeditiously.

Based on our review, we believe this document to be comprehensive and the contents meet all the necessary requirements for EPA to redesignate the nonattainment area to be in attainment with the 2015 ozone NAAQS.

A minor issue that Consumers Energy notes is that this Request states that not all of the data has been validated, but that the October 2021 will be validated in mid-November. We believe this language to be an outcome based on when this draft document was written.

Prior to submittal to EPA, we would recommend updating this language to state that all of the 2019-2021, specifically the 2021 ozone season ambient air monitoring data used to support this Request has been validated.

Consumers Energy commends EGLE for evaluating the most recent air monitoring data (2021) in relation to achieving ozone attainment based on the NAAQS criteria utilizing the most relevant 3year design values, as well as undertaking the necessary steps to support the attainment demonstration via preparation of a SIP revision. Consumers Energy appreciates EGLE's recognition of the widespread benefits of requesting redesignation for the southeast Michigan area, for industry and individuals alike.

Consumers Energy is pleased that the combined actions of EGLE, industry and the public have resulted in improved air quality in this region, which benefits all Michigan residents and businesses. We believe that achieving ozone attainment in the seven-county southeast Michigan region is a positive milestone in the journey for cleaner air. We will continue to work with EGLE in stakeholder groups to further improve air quality throughout the State of Michigan.

Consumers Energy supports the submittal of the Request to EPA with the minor modifications suggested. We encourage EGLE to make this submittal expeditiously to ensure a timely response from EPA.

Consumers Energy thanks you for your time and consideration of our comments. Should you have any questions or concerns, please do not hesitate to contact Kate Ross at [kate.ross@cmsenergy.com](mailto:kate.ross@cmsenergy.com) or myself at [james.walker@cmsenergy.com](mailto:james.walker@cmsenergy.com).

Sincerely,



James M. Walker, P.E.  
Air Quality Supervisor  
1945 W. Parnall Road  
Jackson, MI 49201  
(517) 416-8008

[www.ConsumersEnergy.com](http://www.ConsumersEnergy.com)

CC. (electronic only): Jim Roush, Consumers Energy  
Scott Sinkwitts, Consumers Energy  
Kate Ross, Consumers Energy



SOUTHEAST MICHIGAN COUNCIL OF GOVERNMENTS

December 6, 2021

Erica Wolf  
Michigan Department of Environment, Great Lakes, and Energy  
Air Quality Division, SIP Unit  
P.O. Box 30260  
Lansing, MI 48909-7760

RE: Comments on Redesignation Request and SIP Revision

Dear Ms. Wolf:

This letter confirms SEMCOG's support to submit the ozone redesignation request to EPA for review and to agree that the southeast Michigan counties (Livingston, Macomb, Monroe, Oakland St. Clair, Washtenaw and Wayne Counties) currently designated as marginal nonattainment with the 2015 ozone National Ambient Air quality Standard (NAAQS) are now in attainment.

As you know, SEMCOG is a regional planning partnership that supports coordinated local planning with technical data and intergovernmental resources to over 170 units of local government across seven counties in Southeast Michigan (Washtenaw, Livingston, Oakland, Wayne, Macomb, St. Clair, and Monroe Counties). The SEMCOG region comprises approximately half of the state's population. As the Council of Governments, Metropolitan Planning Organization, and Designated Air and Water Quality Management Agency for the region, SEMCOG's plans make the transportation system safer and more efficient, revitalize communities, improve the quality of the region's environmental resources, and encourage economic development.

For more than 25 years, SEMCOG has played an important role in developing a Southeast Michigan ozone strategy. SEMCOG has supported various air quality studies and emission control efforts, including the voluntary Ozone Action Days program. Additionally, SEMCOG manages the region's Congestion Mitigation Air Quality program and continues to facilitate the Commuter Connect Program.

The redesignation request is validated by a combination of air quality monitoring data and permanent reductions in VOC and NOx emissions including:

- air quality monitoring data collected between 2019 – 2021 demonstrate that the design value has consistently been maintained below 2015 ozone NAAQS;
- fuel standards, vehicle emissions and older vehicle retirements have contributed to permanent emission reductions;

**Brenda Jones**  
Chairperson  
President,  
Detroit City Council

**Chris Barnett**  
First Vice Chair  
Supervisor,  
Orion Township

**Mandy Grewal**  
Vice Chairperson  
Supervisor,  
Pittsfield Township

**Jason Morgan**  
Vice Chairperson  
Commissioner,  
Washtenaw County

**Pauline Repp**  
Vice Chairperson  
Mayor,  
City of Port Huron

**Eric Sabree**  
Vice Chairperson  
Treasurer,  
Wayne County

**Donald Hubler**  
Immediate Past Chair  
Secretary,  
Macomb ISD

**Amy O'Leary**  
Executive Director

- controls for marine diesel engines, locomotives, and marine compression-ignition engines have also supported permanent emission reductions;
- DTE Energy retired one power plant in 2021, has reduced emissions from all plants and plans to retire two more plants in 2022; and
- Michigan emission inventories reflect significant investments to reduce emissions through energy efficiency programs.

Furthermore, a redesignation to attainment will also avert the economic impacts from the required future Vehicle Inspection & Maintenance (I&M) program. Without redesignation, the costs of the I&M program will affect those in the region who can least afford the required testing. Historically, Michigan's I&M program was eliminated because it did not provide the intended environmental benefits. Now, with further improvements in vehicle emission reductions and onboard diagnostic systems and with increasing availability of electric vehicles, there is no data suggesting that an I&M program is necessary nor that it would even provide any measurable reductions. In fact, [peer reviewed studies](#) verify that the costs for administering I&M programs can be more than 2/3 of total program costs. SEMCOG will continue to support other initiatives, programs and advances in technology to reduce vehicle emissions, but not programs that impact our most vulnerable populations in the region.

Thank you for the opportunity to support this redesignation request. We encourage EGLE to submit the ozone redesignation request as expeditiously as possible and look forward to continuing our collaborative partnerships in improving air quality in southeast Michigan.

Sincerely,



Amy O'Leary  
Executive Director



December 1, 2021

Erica Wolf

Michigan Department of Environment, Great Lakes, and Energy

Air Quality Division, SIP Unit

P.O. Box 30260

Lansing, MI 48909-7760

**\*\*Transmitted via e-mail\*\***

Dear Ms. Wolf,

I am writing to express the Michigan Manufacturers Association (MMA)'s support for the Department of Environment, Great Lakes, and Energy – Air Quality Division (EGLE AQD)'s plan to submit a request to the United States Environmental Protection Agency (EPA) to make a determination that the southeast Michigan counties currently designated as marginal nonattainment with the 2015 ozone National Ambient Air Quality Standard (NAAQS) are now in attainment. MMA further supports the corresponding Section 175A maintenance plan and emissions inventories as a revision to the Michigan State Implementation Plan (SIP) and Motor Vehicle Emissions Budgets (MVEBs).

MMA has served manufacturers and related industries for nearly 120 years. Our membership represents approximately 1,700 manufacturers located in every corner of the state including small, medium, and large manufacturers. Manufacturing represents Michigan's largest economic sector generating nearly 20 percent of the state gross domestic product. It drives Michigan's economy and provides livelihoods for more than 635,000 Michigan citizens and their families. Through our work, MMA and its members share a common goal to be good neighbors to the communities we support and where we work. Indeed, MMA has regularly collaborated with EGLE AQD to fully understand ozone contributions within and outside of the state.

To demonstrate attainment for the southeast Michigan counties currently designated as marginal nonattainment, EGLE AQD collected three complete, consecutive calendar years of quality assured air quality monitoring data between 2019-2021. The data was collected from the same seven ozone monitors representing areas of highest concentration of ozone. The completeness values meet federal requirements, and the design value is below the 2015 ozone NAAQS set at 70 ppb, successfully demonstrating attainment.

EGLE AQD further established that the improvement in air quality is due to permanent and enforceable reductions in emissions, not to temporary adverse economic conditions or unusually favorable meteorology. While the number of hot days increased in southeast Michigan, the maximum eight-hour ozone concentrations trended downward. EGLE AQD also compared ozone data against vehicle miles traveled (VMT) and employment data for the region.

A direct correlation between VMT and employment was observed without a direct correlation between these economic indicators and high ozone values. The 2020 COVID-19 pandemic resulted in a reduction of less than 5 percent of VMT and less than 10 percent reduction in total unemployment and did not result in corresponding reduction in ozone. As such, even temporary adverse economic conditions had no impact on ozone production during this time.

Rather, permanent and enforceable reductions of VOC and NOx emissions have contributed to attainment of the 2015 ozone NAAQS for southeast Michigan. Vehicle emission and fuel standards as well as older vehicle retirements have contributed to significant emission reductions. Controls for marine diesel engines, locomotives, and marine compression-ignition engines have also contributed to improvements given the region's proximity to several bodies of water and heavily used rail lines and yards. Similarly, the Detroit Metro Airport is located within the region and was subject to new emission standards for certain commercial passenger and freighter aircraft engines. Further, DTE Energy retired one power plant in 2021, has reduced emissions from all of its plants, and plans to retire two more plants in 2022 within the region. One plant will be replaced with a new natural gas-powered energy center with a net effect of a significant reduction in a variety of pollutants. Other industrial sources in southeast Michigan have been shut down (e.g., the Greater Detroit Resource and Recovery facility) and similar sources have not replaced them in the inventory. Significant efforts to reduce emissions through energy efficiency programs are also reflected in Michigan inventories.

For the reasons stated above, MMA urges EGLE AQD to submit a request for southeast Michigan ozone redesignation and the corresponding Maintenance State Implementation Plan to the EPA. MMA is pleased that measures taken to achieve emissions reduction resulted in air quality improvements, ensuring a healthy business climate and vibrant communities within our state. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Caroline Liethen". The signature is fluid and cursive, with the first name "Caroline" written in a larger, more prominent script than the last name "Liethen".

Caroline Liethen  
Director of Environmental and Regulatory Policy

December 8, 2021

Michigan Department of Environment,  
Great Lakes, and Energy ("EGLE")  
Air Quality Division  
P.O. Box 30260  
Lansing, MI 48906-7760

Re: *EGLE's Request for Redesignation to Attainment for the 2015 Ozone National Ambient Air Quality Standard and Revision to Michigan's State Implementation Plan and Ozone Maintenance Plan for Southeast Michigan Ozone Nonattainment Area* (the "Report")

Dear Sir/Madame:

Please take this as public comment on the above-referenced Report.

This comment urges EGLE to include in the Report a request that the Environmental Protection Agency ("EPA") remove MCL 290.650d and related regulatory rules (the "Summer Fuel Requirement") from Michigan's State Implementation Plan ("SIP").

EGLE's Report demonstrates that Southeastern Michigan has attained the National Ambient Air Quality Standard ("NAAQS") for ozone (the "2015 Ozone NAAQS"). Numerous other states have requested the EPA to remove federal or state fuel regulation upon achieving attainment including North Carolina, Florida, Alabama, Georgia, Ohio, Tennessee, Louisiana, Pennsylvania, Kansas, and Missouri. We have attached the EPA's final rules granting each of those states' requests as Ex. A. We are not aware of a single state that has achieved attainment and not requested the EPA to remove fuel regulation from the state's SIP. Nor are we aware of a single instance where the EPA did not grant such a request.

Now is the time to request that the EPA remove the Summer Fuel Requirement from Michigan's SIP. The *"EPA believes that relaxation of an applicable gasoline RVP standard is best accomplished in conjunction with the redesignation process."* (See Ex. A, 83 Federal Register 53586) (emphasis added). EGLE is engaging in the redesignation process. Therefore, this is the appropriate time to make the request.

In order to make the request, EGLE must make a showing pursuant to the Clean Air Act ("CAA") 175A, that the area is capable of maintaining attainment for the 2015 Ozone NAAQS for ten years. EGLE should do the work now to demonstrate that Southeastern Michigan is capable of maintaining attainment without the Summer Fuel Requirement. Every one of the states listed above was able to demonstrate that relaxing the RVP standard in its SIP would not interfere with maintaining attainment. We have attached as Exhibit B reports from various state environmental regulatory agencies that show how other states have demonstrated non-interference.

Other states that have requested the EPA to remove state fuel regulation upon attainment have noted the benefits of doing so. For example, Georgia and Louisiana submitted evidence

demonstrating substantial cost savings to consumers, distributors and refiners. (Ex. B, Cost Savings Analyses). In addition, there would be benefits from reduced record keeping and reporting requirements as well as increased economic competitiveness. Those benefits would inure to Michigan's citizens as well if the Summer Fuel Requirement was removed from Michigan's SIP.

I look forward to EGLE's response to the foregoing public comment.

Sincerely,



Kevin Kalczynski

Encls.

Writer's contact information:

12225 Stephens Road  
Warren, MI 48089  
586-939-7000 ext. 2270  
[kkalczynski@centraltransport.com](mailto:kkalczynski@centraltransport.com)

## EXHIBIT A

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2020-0695; FRL-10021-11-Region 7]

### Air Plan Approval; Missouri; Missouri Reid Vapor Pressure Requirement

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to remove the Kansas City, Missouri low Reid Vapor Pressure (RVP) fuel requirement which required gasoline sold in the Kansas City, Missouri area to have a seven pounds per square inch Reid Vapor Pressure from June 1 to September 15. The majority of the state is subject to the Clean Air Act (CAA) nine pounds per square inch Reid Vapor Pressure fuel requirement from June 1 to September 15. In addition, the EPA has issued a separate proposal for the Kansas side of the Kansas City metropolitan area.

**DATES:** This final rule is effective on April 12, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2020-0695. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7588; email address: [wolkins.jed@epa.gov](mailto:wolkins.jed@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to the EPA.

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- II. Background

III. Have the requirements for approval of a SIP revision been met?

IV. What action is the EPA taking?

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VII. Statutory and Executive Order Reviews

#### I. What is being addressed in this document?

The EPA is approving a revision to the Missouri SIP, submitted by the Missouri Department of Natural Resources (MoDNR) on September 15, 2020. The revision removes the seven pounds per square inch (psi) Reid Vapor Pressure (RVP) fuel requirement for the Kansas City, Missouri, area; consisting of Clay, Jackson, and Platte Counties. The former SIP-approved rule, 10 CSR 10-2.330, required gasoline sold in the three counties to have a RVP of seven psi or less from June 1 through September 15. After the effective date of this final action, the Kansas City, Missouri area will only be subject to the CAA RVP fuel requirement of nine psi or less from June 1 through September 15.

#### II. Background

The EPA established a 1-hour ozone national ambient air quality standard (NAAQS) in 1971.<sup>1</sup> See 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Clay, Platte and Jackson Counties (hereinafter referred to in this document as the “Kansas City area”) in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. See 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. See 44 FR 8202 (February 8, 1979).

The EPA redesignated the Kansas City area to attainment of the 1979 1-hour ozone standard and approved Missouri’s ozone maintenance plan for the Kansas City area on July 23, 1992. See 57 FR 27939 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

In 1995, the Kansas City area violated the 1979 1-hour ozone standard. Missouri revised the control strategy and contingency measures in the

maintenance plan, which was approved on June 24, 2002. See 67 FR 20036 (April 24, 2002). The revised control strategy included 10 CSR 10-2.330, *Control of Gasoline Reid Vapor Pressure*.

On January 1, 1997, Missouri adopted the seven and two tenths (7.2) psi RVP limit from June 1 to September 15.<sup>2</sup> The EPA approved this rule into the SIP on April 24, 1998.<sup>3</sup> On April 3, 2001, Missouri revised the rule to seven (7.0) psi RVP limit from June 1 to September 15.<sup>4</sup> The EPA approved this rule into the SIP on February 13, 2002.<sup>5</sup>

On July 18, 1997, the EPA established a new 8-hour ozone NAAQS (hereafter the 1997 8-hour ozone NAAQS). See 62 FR 38856 (July 18, 1997). This newly established 8-hour ozone NAAQS replaced the prior 1-hour ozone NAAQS.

On April 30, 2004, the EPA published a final rule in the *Federal Register* stating the 1979 1-hour ozone NAAQS would no longer apply (*i.e.*, would be revoked) for an area one year after the effective date of the area’s designation for the 1997 8-hour ozone NAAQS. See 69 FR 23951 (April 30, 2004). The Kansas City Area was designated as an unclassifiable area for the 1997 8-hour ozone NAAQS, effective June 15, 2004. *See id.* However, on May 3, 2005, the EPA published a final rule designating the Kansas City area as an attainment area for the 1997 8-hour ozone NAAQS based on new monitoring data. See 70 FR 22801 (May 3, 2005). The effective date of the revocation of the 1979 1-hour ozone standard for the Kansas City area was June 15, 2005. See 70 FR 44470 (August 3, 2005). Missouri achieved the required maintenance of the 1979 1-hour ozone standard in 2014.

On September 15, 2020, Missouri requested that the EPA remove 10 CSR 10-2.330 from the SIP. Section 110(l) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. As detailed in the proposal, Missouri adequately demonstrated that removal of this rule will not affect the area’s ability to attain or maintain any air quality standards.

<sup>2</sup> The Missouri rule allowed an additional one psi for gasoline containing 9 to 10% ethanol.

<sup>3</sup> See 63 FR 20318.

<sup>4</sup> The Missouri rule allows an additional one psi for gasoline containing 9 to 10% ethanol.

<sup>5</sup> See 67 FR 6658.

<sup>1</sup> The 1-hour ozone NAAQS was originally promulgated as a photochemical oxidant standard. See 36 FR 8186 (April 30, 1971). In 1979, the EPA substituted the word “ozone” for “photochemical oxidant.” See 44 FR 8202 (February 8, 1979). In doing so, the EPA stated that “(t)he intent of the standard (total-oxidant reduction), the control strategies, and the index of Progress toward attainment (measured ozone levels) remain unchanged.” *Id.* at 8203.

### III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from February 18, 2020 to April 2, 2020 and held a public hearing on March 26, 2020. Missouri received three comments. Missouri adequately responded to the comments but did not change the removal request based on the comments. In addition, as explained in the proposal, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.<sup>6</sup>

### IV. What action is the EPA taking?

The EPA is taking final action to approve Missouri's removal of the state RVP requirement from the SIP for the Kansas City, Missouri area. As discussed in the proposal the removal of the RVP requirement will not affect the area's ability to attain or maintain any air quality standard.

The EPA published the proposed approval of Missouri's removal of the state RVP requirement from the SIP for the Kansas City, Missouri area on December 23, 2020. The thirty-day public comment period closed on January 22, 2021. The EPA received no public comments on the proposal. However, the proposal contained an error concerning 40 CFR 52.1323, paragraph (n), as it included a rescinded date, February 22, 2021. The date should have contained a placeholder that indicated that the effective date of the rescission was 30 days following publication of the final rule in the **Federal Register**. We are noting the error here and are correcting 40 CFR 52.1323 paragraph (n) to reflect the correct effective date of the rescission.

### V. Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required the EPA, in consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006, the EPA published the original list of boutique fuels. See 71 FR 78192 (December 28, 2006). On December 4, 2020 the EPA updated the list of boutique fuels to remove boutique fuels that were no longer in approved SIPs. See 85 FR 78412 (December 4, 2020). The EPA maintains the current list of

boutique fuels on its website at: <https://www.epa.gov/gasoline-standards/state-fuels>. The boutique fuels list is based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that the EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, the EPA interpreted this requirement to mean that a fuel would have to be removed from all states' SIPs in which it was approved in order to remove the fuel type from the list. See 71 FR 78195 (December 28, 2006). The 7.0 psi RVP fuel program as approved into Missouri's SIP, is a fuel type that is included in the EPA's boutique fuel list. See 85 FR 78412 (December 4, 2020). Subsequent to the effective date of today's action, the EPA will update the State Fuels web page to remove Missouri's 7.0 psi RVP program from the list of boutique fuels.

### VI. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

### VII. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

<sup>6</sup> See 85 FR 63877 (December 23, 2020).

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 2, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

#### Subpart AA—Missouri

- 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry “10–2.330” under the heading “Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area”.

- 3. In § 52.1323, add paragraph (n) to read as follows:

#### § 52.1323 Approval status.

\* \* \* \* \*

(n) Missouri rule 10 CSR 10–2.330 was rescinded on April 12, 2021.

\* \* \* \* \*

[FR Doc. 2021–04764 Filed 3–11–21; 8:45 am]

BILLING CODE 6560–50–P

#### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

#### 43 CFR Part 8365

[212.LLAZP00000.L12200000.PM0000.LXSSA3610000]

#### Final Supplementary Rules for Selected Public Lands in Gila, Maricopa, Pima, Pinal and Yavapai Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

**SUMMARY:** The Bureau of Land Management (BLM) is finalizing supplementary rules on selected public lands administered by the Hassayampa and Lower Sonoran Field Offices. These rules are being established by the Arizona State Director of the BLM to provide for public health and safety and to reduce user conflicts within developed recreation areas (or sites), including recreational shooting sports sites.

**DATES:** These supplementary rules are effective April 12, 2021.

**ADDRESSES:** You may submit inquiries by any of the following methods:

- **Mail:** BLM, Phoenix District, Attention: Braden Yardley, 21605 North 7th Avenue, Phoenix, AZ 85027.
- **Email:** [BLM\\_AZ\\_PDO@blm.gov](mailto:BLM_AZ_PDO@blm.gov).

**FOR FURTHER INFORMATION CONTACT:** John (Jake) Szympruch, District Chief Law Enforcement Ranger at email: [jszympru@blm.gov](mailto:jszympru@blm.gov); Lane Cowger, Hassayampa Field Office Manager at email: [lcowger@blm.gov](mailto:lcowger@blm.gov); or Edward J. Kender, Lower Sonoran Field Office Manager at email: [ekender@blm.gov](mailto:ekender@blm.gov); or at 623–580–5500. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact one of the above individuals. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

These final supplementary rules are necessary for the protection of public lands and resources and for the protection, well-being, and health and safety of those using public lands. In January 2020, the BLM Phoenix District approved the construction of five recreational shooting sports sites (Baldy Mountain, Box Canyon, Church Camp Road, Narramore Road, and Saddleback Mountain) in the Recreational Shooting Sports Project Final Environmental Assessment (EA). The EA supports the establishment of the final supplementary rules and is in conformance with the two applicable land use plans: The Bradshaw-Harquahala Approved Resource Management Plan and Record of Decision (Bradshaw-Harquahala RMP (BLM 2010)) and the Lower Sonoran Approved Resource Management Plan and Record of Decision (Lower Sonoran RMP (BLM 2012)). As a result of improvements, each site would meet the “developed recreation site and area” definition found in 43 Code of Federal Regulations (CFR) 8360.0–5. Existing

rules associated with developed recreation sites and areas (43 CFR part 8365) apply in addition to these final supplementary rules.

To promote safe use and operation of each site, these supplementary rules are necessary to manage behavior. Within developed recreation areas established for recreational shooting sports, the discharge of firearms is allowed where authorized (see 43 CFR 8365.2–5). Each recreation area will be posted with appropriate signage at access points.

#### II. Discussion of Public Comments and Final Supplementary Rules

The BLM Arizona State Director proposed these supplementary rules in the **Federal Register** on August 17, 2020 (85 FR 49995). Final supplementary rules 1 through 4 apply to existing developed recreation areas throughout the Phoenix District, and to future developed recreation areas. The rest of the final supplementary rules apply only to the recreational shooting sports sites and any future recreational shooting sports sites within the district.

The notice announced a 60-day public comment period on the proposed supplementary rules including the long-term closure of the Hazardous Exclusion Areas to public entry for public safety. The Hazardous Exclusion Area is the area within a recreational shooting sports site where errant/ricochet projectiles could potentially land. The BLM notified by email approximately 215 individuals, organizations, and agencies of the comment period. This notification included Arizona Game and Fish Department and the Federal Lands Hunting, Fishing and Shooting Sports Roundtable. The BLM also published a news release and legal notice advertising the comment period. The news release was published in the *Wickenburg Sun* and *Daily Independent* on August 17, 2020. The legal notice was published in the *Arizona Business Gazette* on August 20, 2020.

The comment period ended on October 16, 2020. The BLM received 11 comment emails and letters to consider. Most of the commenters supported the supplementary rules without further substantive comments. A coalition of 18 recreation and conservation organizations endorsed the proposed long-term closures as needed for public safety. One commenter stated the long-term closure areas should be expanded. According to the John D. Dingell, Jr. Conservation, Management, and Recreation Act, closures should be the smallest area required for public safety. The Hazardous Exclusion Areas were based on Department of Energy guidance for calculating areas that could

# **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

- 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

- 2. Add § 100.T11–049 to read as follows:

### **§ 100.T11–049 Special Local Regulation; Bay Guardian Exercise, Treasure Island, San Francisco, CA.**

(a) *Regulated area.* The regulations in this section apply to the following area: The navigable waters of San Francisco Bay, near Treasure Island, CA, bounded by a line beginning at position 37°50′48.9″ N, 122°23′45.4″ W; thence to position 37°50′51.1″ N, 122°22′14.1″ W; thence to position 37°49′14.0″ N, 122°21′18.1″ W; thence to position 37°49′8.4″ N, 122°21′28.7″ W; thence to position 37°49′13.3″ N, 122°21′48.4″ W; thence along Treasure island shoreline to position 37°49′22.3″ N, 122°21′44.4″ W, thence along Treasure island shoreline to position 37°50′1.1″ N, 122°22′12.1″ W; thence to position 37°50′1.1″ N, 122°23′46″ W; and thence to the point of beginning.

(b) *Definitions.* As used in this section—

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the regulations in this section.

*Participant* means all persons and vessels registered with the event sponsor as a participant in the exercise.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port (COTP) San Francisco or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Command Center at 415–399–3547. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 6 p.m. on March 17, 2021.

Dated: March 9, 2021.

H.H. Wright,

Captain, U.S. Coast Guard, Alternate Captain of the Port.

[FR Doc. 2021–05258 Filed 3–11–21; 8:45 am]

BILLING CODE 9110–04–P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA–R07–OAR–2020–0711; FRL–10021–10–Region 7]**

### **Air Plan Approval; Kansas; Removal of Kansas City, Kansas Reid Vapor Pressure Fuel Requirement**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Kansas. This final action will amend the SIP to remove the Kansas City, Kansas low Reid Vapor Pressure (RVP) fuel requirement which required gasoline sold in the Kansas City, Kansas area to have a seven pounds per square inch (psi) Reid Vapor Pressure from June 1 to September 15. The majority of the state is subject to the Clean Air Act (CAA) nine pounds per square inch Reid Vapor Pressure fuel requirement from June 1 to September 15. In addition, the EPA has issued a separate proposal for the Missouri side of the Kansas City metropolitan area.

**DATES:** This final rule is effective on April 12, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0711. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: [wolkins.jed@epa.gov](mailto:wolkins.jed@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” refer to the EPA.

#### **Table of Contents**

- I. What is being addressed in this document?
- II. Background
- III. The EPA's Response to Comments
- IV. Have the requirements for approval of a SIP revision been met?
- V. What action is the EPA taking?
- VI. Impacts on the Boutique Fuels List
- VII. Incorporation by Reference
- VIII. Statutory and Executive Order Reviews

#### **I. What is being addressed in this document?**

The EPA is approving a revision to the Kansas SIP, submitted by the Kansas Department of Health and Environment (KDHE) on December 9, 2020. The revision removes the seven psi RVP fuel requirement for the Kansas City, Kansas, area: Consisting of Johnson and Wyandotte Counties. The former SIP-approved rule, K.A.R. 28–19–719, required gasoline sold in the two counties to have a RVP of seven psi or less from June 1 through September 15. After the effective date of this final action, the Kansas City, Kansas area will only be subject to the CAA RVP fuel requirement of nine psi or less from June 1 through September 15.

#### **II. Background**

The EPA established a 1-hour ozone national ambient air quality standard (NAAQS) in 1971.<sup>1</sup> See 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Johnson and Wyandotte Counties (hereinafter referred to in this document as the “Kansas City area”) in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. See 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone

<sup>1</sup> The 1-hour ozone NAAQS was originally promulgated as a photochemical oxidant standard. See 36 FR 8186 (April 30, 1971). In 1979, the EPA substituted the word “ozone” for “photochemical oxidant.” See 44 FR 8202 (February 8, 1979). In doing so, the EPA stated that “(t)he intent of the standard (total-oxidant reduction), the control strategies, and the index of Progress toward attainment (measured ozone levels) remain unchanged.” *Id.* at 8203.

NAAQS. See 44 FR 8202 (February 8, 1979).

The EPA redesignated the Kansas City area to attainment of the 1979 1-hour ozone standard and approved Kansas's ozone maintenance plan for the Kansas City area on July 23, 1992. See 57 FR 27936 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

In 1995, the Kansas City area violated the 1979 1-hour ozone standard. Kansas revised the control strategy and contingency measures in the maintenance plan, which was approved on December 30, 2002. See 67 FR 66058 (October 30, 2002). The revised control strategy included K.A.R. 28-19-719, *Fuel Volatility*.

On May 2, 1997, Kansas adopted the seven and two tenths (7.2) psi RVP limit from June 1 to September 15.<sup>2</sup> The EPA approved this rule into the SIP on July 7, 1997.<sup>3</sup> Following a violation of the ozone standard for the three-year period of 1995-1997, on April 3, 2001, Kansas revised the rule to seven (7.0) psi RVP limit from June 1 to September 15.<sup>4</sup> The EPA approved this rule into the SIP on February 13, 2002.<sup>5</sup>

On July 18, 1997, the EPA established a new 8-hour ozone NAAQS (hereafter the 1997 8-hour ozone NAAQS). See 62 FR 38856 (July 18, 1997). This newly established 8-hour ozone NAAQS replaced the prior 1-hour ozone NAAQS.

On April 30, 2004, the EPA published a final rule in the *Federal Register* stating the 1979 1-hour ozone NAAQS would no longer apply (i.e., would be revoked) for an area one year after the effective date of the area's designation for the 1997 8-hour ozone NAAQS. See 69 FR 23951 (April 30, 2004). The Kansas City Area was designated as an unclassifiable area for the 1997 8-hour ozone NAAQS, effective June 15, 2004. See *id.* However, on May 3, 2005, the EPA published a final rule designating the Kansas City area as an attainment area for the 1997 8-hour ozone NAAQS based on new monitoring data. See 70 FR 22801 (May 3, 2005). The effective date of the revocation of the 1979 1-hour ozone standard for the Kansas City area was June 15, 2005. See 70 FR 44470 (August 3, 2005). Kansas achieved the required maintenance of the 1979 1-hour ozone standard in 2014.

On December 9, 2020, Kansas requested that the EPA remove K.A.R. 28-19-719 from the SIP. Section 110(l) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. As detailed in the proposal, Kansas adequately demonstrated that removal of this rule will not affect the area's ability to attain or maintain any air quality standards.

### III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened January 19, 2021 the date of its publication in the *Federal Register* and closed on February 18, 2021. During this period, EPA received three supportive comments and one adverse comment. The adverse comment is discussed below.

*Comment:* Jeopardizing the health of Kansas City residents is not worth the proposed change because cities are hotspots for air pollution, air pollution leads to respiratory issues and low income populations suffer more from air pollution.

*Response:* As discussed in our proposal, the increases in emissions from this change will be offset by emissions decreases from fleet turnover and the Tier 3 motor vehicle and fuel standards. In addition, the NAAQS are set at a level protective of public health allowing an adequate margin of safety,<sup>6</sup> and the Kansas City Area is currently monitoring air quality that is attaining all NAAQS.

To determine if the removal of the RVP requirement would interfere with attainment of the NAAQS, KDHE conducted emission calculations for a baseline year of 2017 (with the state RVP requirement) and an implementation year of 2020 (without the state RVP requirement). KDHE found that emissions from motor vehicles decreased from the baseline year to the implementation year. We find this analysis an acceptable showing that the removal of the RVP requirement will not interfere with the attainment of the NAAQS. See our proposal of this action and the KDHE submittal in the docket for more information.

In addition to comparing emissions between 2017 and 2020, KDHE also compared emissions in the same year with and without the state RVP requirement. While there is an increase in emissions from removing the state RVP requirement, the state has

demonstrated that the removal of the RVP requirement will not interfere with attainment and maintenance of the NAAQS because emissions will be reduced by continued fleet turnover and Tier 3 motor vehicle and fuel standards. As such, the EPA finds that removal of the RVP requirement will not impair air quality in the Kansas City area and therefore will not result in the public health concerns expressed by the commenter.

### IV. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from August 27, 2020 to November 4, 2020 and held a public hearing on November 4, 2020. Kansas received eight comments. Kansas adequately responded to the comments but did not change the removal request based on the comments. In addition, as explained in the proposal, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.<sup>7</sup>

### V. What action is the EPA taking?

The EPA is taking final action to approve Kansas's removal of the state RVP requirement from the SIP for the Kansas City, Kansas area. As discussed in the proposal the removal of the RVP requirement will not affect the area's ability to attain or maintain any air quality standard.

The EPA published the proposed approval of Kansas's removal of the state RVP requirement from the SIP for the Kansas City, Kansas area on January 19, 2021. The thirty-day public comment period closed on February 18, 2021. The EPA received four public comments on the proposal, discussed above. Also, the proposal contained an error concerning 40 CFR 52.873, paragraph (a), as it included a rescinded date, February 18, 2021. The date should have contained a placeholder that indicated that the effective date of the rescission was 30 days following publication of the final rule in the *Federal Register*. We are noting the error here and are correcting 40 CFR 52.873 paragraph (a) to reflect the correct effective date of the rescission.

### VI. Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required the EPA, in

<sup>2</sup> The Kansas rule allowed an additional one psi for gasoline containing 9 to 10% ethanol.

<sup>3</sup> See 62 FR 36212.

<sup>4</sup> The Kansas rule allows an additional one psi for gasoline containing 9 to 10% ethanol.

<sup>5</sup> See 67 FR 6655.

<sup>6</sup> See <https://www.epa.gov/naaqs> for more information on the NAAQS.

<sup>7</sup> See 85 FR 83877 (December 23, 2020).

consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006, the EPA published the original list of boutique fuels. See 71 FR 78192 (December 28, 2006). On December 4, 2020 the EPA updated the list of boutique fuels to remove boutique fuels that were no longer in approved SIPs. See 85 FR 78412 (December 4, 2020). The EPA maintains the current list of boutique fuels on its website at: <https://www.epa.gov/gasoline-standards/state-fuels>. The boutique fuels list is based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that the EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, the EPA interpreted this requirement to mean that a fuel would have to be removed from all states' SIPs in which it was approved in order to remove the fuel type from the list. See 71 FR 78195 (December 28, 2006). The 7.0 psi RVP fuel program as approved into Kansas's SIP, is a fuel type that is included in the EPA's boutique fuel list. See 85 FR 78412 (December 4, 2020). Subsequent to the effective date of today's action, the EPA will update the State Fuels web page to remove Kansas's 7.0 psi RVP program from the list of boutique fuels.

## VII. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Kansas Regulations from the Kansas State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## VIII. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of

Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect

until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 2, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### Subpart R—Kansas

- 2. In § 52.870, the table in paragraph (c) is amended by removing the entry "K.A.R. 28-19-719" under the heading "Volatile Organic Compound Emissions".

- 3. In § 52.873, paragraph (a) is revised to read as follows:

#### § 52.873 Approval status.

(a) Kansas rule K.A.R. 28-19-719 was rescinded on April 12, 2021.

\* \* \* \* \*

[FR Doc. 2021-04763 Filed 3-11-21; 8:45 am]

BILLING CODE 6560-50-P

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the District's NNSR program and the 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 21, 2019.

**Cosmo Servidio,**  
*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart J—District of Columbia**

■ 2. In § 52.470, the table in paragraph (c) is amended by adding the entry "2008 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)" at the end of the table to read as follows:

**§ 52.470 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2008 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR).	The District of Columbia ...	05/23/2018	07/05/2019, Insert <b>Federal Register</b> citation].	

[FR Doc. 2019-14144 Filed 7-3-19; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2019-0144; FRL-9996-04-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Allegheny County Requirements Applicable to Gasoline Volatility in the Allegheny County Portion of the Pittsburgh-Beaver Valley Area**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania, on behalf of the Allegheny County Health Department (ACHD). The Pennsylvania

Department of Environmental Protection (PADEP) submitted a SIP revision on March 19, 2019 seeking to remove from the Pennsylvania SIP an Allegheny County requirement limiting summertime gasoline volatility in Allegheny County to 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP). The original purpose of that gasoline requirement was to address nonattainment under the 1-hour ozone national ambient air quality standard (NAAQS) in the Pittsburgh-Beaver Valley ozone nonattainment area (hereafter Pittsburgh-Beaver Valley Area). EPA acted in December 2018 to remove similar 7.8 psi RVP requirements that applied to the entire Pittsburgh-Beaver Valley Area, as the requirements are no longer needed to address nonattainment in the area and have been supplanted by other emissions control measures. This action serves to remove the separate comparable requirement in the Pennsylvania SIP that applies only to Allegheny County. The approval of this SIP revision is supported by the demonstration prepared by

Pennsylvania in support of the earlier SIP revision. That demonstration shows that, pursuant to the Clean Air Act (CAA), removal of the 7.8 psi RVP requirements from the SIP will not interfere with the area's ability to attain or maintain any NAAQS, nor will it be inconsistent with any other CAA requirements. EPA is approving this revision to remove the ACHD requirements for use of 7.8 psi RVP gasoline in summer months from the Pennsylvania SIP, in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on July 5, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0144. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly

available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 26, 2019 (84 FR 17762), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania proposing to approve its revision to remove from the Pennsylvania SIP the ACHD requirements for use of 7.8 psi RVP gasoline during summer months in Allegheny County, Pennsylvania. The formal SIP revision requesting this removal of the ACHD summertime low RVP program for the Pittsburgh-Beaver Valley Area was submitted by PADEP, on Allegheny County's behalf, on March 19, 2019. In the NPRM, EPA proposed to approve Pennsylvania's request to remove the 7.8 psi RVP summertime gasoline requirement in Allegheny County from the Pennsylvania SIP.

EPA received several adverse comments on the April 26, 2019 proposed rulemaking. EPA has addressed the public comments received on this action below, in Section IV of this preamble. EPA is finalizing approval of Pennsylvania's request to remove the ACHD 7.8 psi RVP summer gasoline requirements applicable to Allegheny County from the SIP and has concluded that doing so does not interfere with the Pittsburgh-Beaver Valley Area's ability to attain or maintain any NAAQS under section 110(l) of the CAA.

**II. Summary of the Pennsylvania SIP Revision**

**A. Pennsylvania's Gasoline Volatility Requirements for the Pittsburgh-Beaver Valley Area**

On November 6, 1991, EPA designated and classified the Pittsburgh-Beaver Valley Area as moderate nonattainment for the 1979 1-hour ozone NAAQS. As part of Pennsylvania's efforts to bring the Pittsburgh-Beaver Valley Area into attainment of the then applicable ozone NAAQS, the PADEP and ACHD

responded by adopting a range of ozone precursor emission control measures for the area—including adoption of separate state and Allegheny County rules to limit summertime gasoline volatility to 7.8 psi RVP. While Pennsylvania's RVP control rule applied to the entire Pittsburgh-Beaver Valley Area—Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties—ACHD adopted a substantially similar rule applicable only in Allegheny County.

Each of these overlapping RVP control rules was separately submitted to EPA for inclusion in the Pennsylvania SIP. PADEP promulgated its rule applicable to the entire Pittsburgh-Beaver Valley Area in the November 1, 1997 *Pennsylvania Bulletin* (27 Pa.B. 5601, effective November 1, 1997), codifying its rule at Subchapter C of Chapter 126 of the Pennsylvania Code of Regulations (25 Pa. Code Chapter 126, Subchapter C). Pennsylvania first submitted that rule for inclusion in the Pennsylvania SIP on April 17, 1998, which EPA approved on June 8, 1998 (63 FR 31116). The ACHD initially adopted its own substantially similar summertime gasoline 7.8 psi RVP rule (applicable only to Allegheny County) via Allegheny County Order No. 16782, Article XXI, sections 2102.40, 2105.90, and 2107.15 (effective May 15, 1998, amended August 12, 1999). On March 23, 2000, PADEP submitted this ACHD rule to EPA for incorporation into the Pennsylvania SIP, which EPA approved on April 17, 2001 (66 FR 19724), effective June 18, 2001.

**B. PADEP and ACHD Actions To Suspend Low RVP Gasoline Requirements**

In the 2013 through 2014 session, the Pennsylvania General Assembly passed, and Governor Corbett signed into law, Act 50 (Pub. L. 674, No. 50 of May 14, 2014). Act 50 amended the Pennsylvania Air Pollution Control Act, directing PADEP to initiate a process to obtain approval from EPA of a SIP revision that demonstrates continued compliance with the NAAQS, through utilization of substitute, commensurate emissions reductions to offset the emissions reduction impact associated with repeal of the Pittsburgh-Beaver Valley Area 7.8 RVP gasoline requirement. Act 50 directs PADEP to repeal, upon EPA approval of its NAAQS noninterference demonstration, the summertime gasoline RVP limit provisions of 25 Pa. Code Chapter 126, Subchapter C.

On May 2, 2018, PADEP submitted a SIP revision to EPA requesting removal from the Pennsylvania SIP of the state

requirements of Chapter 126, Subchapter C of the Pennsylvania Code, based upon a demonstration that the repeal of the RVP requirements rule (coupled with other ozone precursor emission reduction measures) would not interfere with the Pittsburgh-Beaver Valley Area's attainment of any NAAQS, per the requirements for noninterference set forth in section 110(l) of the CAA. Section 110(l) prohibits EPA from approving a SIP revision if the revision "would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Act.]"

On December 20, 2018 (83 FR 65301), EPA approved Pennsylvania's May 2018 request to remove from the SIP PADEP's rules under 25 Pa. Code Chapter 126 requiring 7.8 psi RVP gasoline during summer months in the greater Pittsburgh-Beaver Valley Area. EPA's action also approved Pennsylvania's CAA 110(l) NAAQS noninterference demonstration showing that the emissions impact from repeal of the 7.8 psi gasoline volatility requirements in the entire Pittsburgh-Beaver Valley Area (including Allegheny County) is offset by means of substitution of commensurate emissions reductions from other measures enacted by Pennsylvania. Upon the effective date of EPA's December 2018 action, Allegheny County remained subject to ACHD's 7.8 psi RVP summer gasoline limits, while the remainder of the Pittsburgh-Beaver Valley Area became subject to Federal 9.0 RVP summer gasoline limits.

ACHD subsequently revised its own 7.8 psi RVP rule (codified at Article XXI, §§ 2105.90 and 2107.15 of the Rules and Regulations of the Allegheny County Health Department; amended February 21, 2019, effective March 3, 2019) to suspend applicability of ACHD's 7.8 psi RVP summer gasoline requirements. This ACHD Article XXI rule revision established its effective date as the date of EPA's removal of the revised Article XXI sections from the Allegheny County portion of the Pennsylvania SIP. On March 19, 2019, PADEP submitted this SIP revision (on behalf of ACHD) to EPA to request removal of the ACHD's RVP rule requirements from the Pennsylvania SIP. It is this March 2019 request to remove the ACHD RVP program requirements from the SIP that is the subject of EPA's current rulemaking action.

### III. EPA's Analysis of Pennsylvania's SIP Revision

#### *A. Pennsylvania's Estimate of the Impacts of Removing the 7.8 psi RVP Requirement*

EPA's primary consideration for determining the approvability of Pennsylvania's request (on behalf of ACHD) to remove the County requirements for a gasoline volatility control program from its SIP is whether this requested action complies with section 110 of the CAA, and specifically with section 110(I), governing removal of an EPA-approved SIP requirement.<sup>1</sup> Section 110(I) of the CAA prohibits EPA from approving any SIP revision if such revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. An earlier Pennsylvania SIP revision submitted to EPA on May 2, 2018 included a "noninterference demonstration" explaining how the removal of the 7.8 psi RVP requirement would not interfere with attaining or maintaining any NAAQS in the entire Pittsburgh-Beaver Valley Area, including Allegheny County.

EPA evaluates each section 110(I) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets CAA section 110(I) as applying to all NAAQS that are in effect, including those that have been promulgated, but for which EPA has not yet made designations. In evaluating whether a given SIP revision would interfere with attainment or maintenance, as required by CAA section 110(I), EPA generally considers whether the SIP revision will allow for an increase in actual emissions into the air over what is allowed under the existing EPA-approved SIP. In the absence of an attainment demonstration or maintenance plan that demonstrates removal of an emissions control measure will not interfere with any applicable NAAQS or requirement of the CAA under section 110(I), states may substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, with the purpose of providing that the status quo air quality is preserved.

As discussed in the NPRM for this action, for removal of the Allegheny

County low-RVP requirement from the SIP, PADEP and ACHD relied upon the existing CAA 110(I) noninterference demonstration that was prepared in support of PADEP's May 2, 2018 SIP revision approved by EPA in December 2018. Because EPA had already acted on that demonstration applicable to removal of 7.8 psi RVP gasoline in the entire Pittsburgh-Beaver Valley Area, EPA did not completely reconsider the content and findings of that demonstration with respect to removal in this action of ACHD's similar rule applicable only to Allegheny County. EPA's review of the Commonwealth's analysis is contained in the docket for EPA's prior action (published December 20, 2018 (83 FR 65301)) to remove the PADEP 7.8 psi RVP program from the Pittsburgh-Beaver Valley Area. Based on our review of the information provided, EPA found that PADEP used reasonable methods and the appropriate tools (e.g., emissions estimation models, emissions factors, and other methodologies) in estimating the effect on emissions from removing the 7.8 psi RVP summertime gasoline program for the purpose of demonstrating noninterference with any NAAQS under CAA 110(I).

The result of the analysis was that with the substituted measures, the entire Pittsburgh-Beaver Valley Area will experience lower levels of ozone pollution precursors of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>), and of fine particulate matter smaller than 2.5 microns (PM<sub>2.5</sub>), with the substitute measures in place than it would with continued operation of the 7.8 psi RVP program in the area. In reviewing ACHD's March 2019 submittal, EPA considered whether there was any new circumstances or information since the May 2018 demonstration submitted by PADEP that would cause EPA to reconsider whether the prior analysis was still valid. Neither EPA nor the commenters identified any such changes in circumstances which would invalidate the May 2018 demonstration analysis.

EPA concludes that the Commonwealth's May 2018 demonstration supporting removal of the PADEP low-RVP rule (which covered the entire Pittsburgh-Beaver Valley Area from the SIP, including Allegheny County) continues to show that removal of state and local 7.8 RVP gasoline requirements will not interfere with the attainment or maintenance of any NAAQS in the area. Thus, the removal of the 7.8 psi low RVP fuel program requirements in the Allegheny County portion of the Pittsburgh-Beaver Valley Area does not interfere with Pennsylvania's ability to demonstrate

compliance with any NAAQS. Based on the May 2018 PADEP CAA 110(I) noninterference analysis approved by EPA and reevaluated by EPA in this action (which is included as a supporting element of the March 2019 SIP revision), EPA concludes that the current action to remove the 7.8 psi RVP fuel requirement in Allegheny County will not negatively impact the Pittsburgh-Beaver Valley Area's ability to attain or maintain any NAAQS or interfere with reasonable further progress or with any other CAA applicable requirement.

### IV. Response to Comments Received During the Public Comment Period on the NPRM

EPA received comments from six separate commenters on our April 26, 2019 (84 FR 17762) proposed action. One of these commenters was supportive of EPA's proposed action, while the rest opposed at least some aspects of our proposed rulemaking. EPA's summary of the significant adverse comments received during the public comment period for the proposed rulemaking and our responses to those comments are listed below.

*Comment 1:* (EPA-R03-OAR-2019-0144-0020) The commenter notes that EPA granted a federal "preemption waiver" under section 221 (sic) (Title II) of the CAA but does not explain why that waiver is now being revoked. The commenter contends that EPA is on a march to deregulate and remove CAA protections to make sure areas such as Pittsburgh don't (sic) violate Federal VOC and ozone standards. The commenter recommends that EPA disapprove the Commonwealth's request to remove the Allegheny County 7.8 psi RVP program from the SIP until the preemption waiver is resolved. The commenter suggests that if a preemption waiver is no longer warranted, EPA must formally remove the preemption waiver from the SIP before EPA can remove the County low-RVP gasoline program from the SIP.

*Response 1:* EPA believes the commenter is referring to exclusive federal control over the regulation of fuels and fuel additives granted by section 211 of the CAA. Specifically, CAA section 211(c)(4)(A) preempts state fuel controls that are different from federal fuel controls and provides exceptions to exclusive federal regulation that include a waiver of preemption. Under CAA section 211(c)(4)(A), states (or political subdivisions thereof) are generally prohibited from prescribing, for purposes of motor vehicle emission control, any control of a component of

<sup>1</sup> CAA section 193, with respect to removal of requirements in place prior to enactment of the 1990 CAA Amendments, is not relevant because Pennsylvania's RVP control requirements in Allegheny County (or even the entire Pittsburgh-Beaver Valley Area) were not included in the SIP prior to enactment of the 1990 CAA amendments.

a fuel or fuel additive for use in a motor vehicle engine. However, under CAA section 211(c)(4)(C), a state may regulate fuel or fuel additives if it adopts such a measure as part of a SIP, but EPA may only approve such a program into a SIP after finding that the state or local control is necessary to achieve a primary or secondary NAAQS and if there are no other measures that would bring about timely attainment. Section 211(c)(4)(C)(i). EPA waived preemption and approved the Commonwealth's SIP requiring use of 7.8 psi RVP gasoline during summer months in the Pittsburgh-Beaver Valley Area (including Allegheny County) in two separate SIP revisions in 1998 and 2001.<sup>2</sup> It is the 2001 SIP approval requiring the use of low-RVP fuel in the Allegheny County portion of the Pittsburgh-Beaver Valley Area that the County is now seeking to remove from the SIP. On April 26, 2019 (84 FR 17764), EPA proposed to approve the County request to remove the use of low-RVP fuel in the Allegheny County portion of the Pittsburgh-Beaver Valley Area from the SIP. As explained earlier, EPA approval of a state fuel measure entails the waiver of preemption contained in CAA 211(c)(4)(C)(i). Under this provision, EPA may approve state fuel controls in a SIP if EPA determines that the fuel control is necessary to achieve the NAAQS that the SIP implements.

In sum, the Agency is required to consider CAA section 211(c)(4)(C) requirements when approving a state or local fuel control program that would serve in lieu of the otherwise applicable Federal fuel control program. EPA can only waive preemption if the requirements of CAA section 211(c)(4)(C)(i) and (v) are met. Nothing in these provisions, however, preclude either a state or local government from subsequently removing an approved state fuel measure.<sup>3</sup> Thus, there is no requirement for a "waiver" to remove the 7.8 psi RVP requirement from either the Allegheny County portion or the

Pennsylvania portion of the SIP. Instead, as shown in Section III of this rulemaking action, Allegheny County or Pennsylvania need only comply with CAA section 110(l) given that the removal of 7.8 psi RVP requirement entails a SIP revision. As previously explained, CAA section 110(l) prohibits EPA from approving any SIP revision if such revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA.

The 7.8 psi state and local rules were cited as control measures that contributed to ozone reduction in Pennsylvania's April 9, 2001 maintenance plan supporting the Commonwealth's request for redesignation to attainment of the 1979 1-hour ozone NAAQS, which EPA approved on October 19, 2001 (66 FR 53094). In that same final rule, EPA determined that the Pittsburgh-Beaver Valley Area had attained the 1-hour ozone NAAQS by its legal attainment deadline, based on three years of air quality data. On the basis of that determination, EPA found that an attainment demonstration (and other related requirements under Part D of Title I of the CAA) were not applicable requirements under the CAA for the Pittsburgh-Beaver Valley 1-hour ozone nonattainment area. The Commonwealth's reasonable further progress plan for the Pittsburgh-Beaver Valley Area was prepared prior to adoption of the 7.8 psi RVP rule, and therefore did not include reductions from that measure to demonstrate progress towards achievement of the NAAQS. Therefore, EPA believes the only requirement that must be satisfied prior to removing an EPA approved state or local fuel control measure are the provisions of CAA section 110 related to SIP actions—and specifically the required showing that EPA approval of a revision to the SIP does not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment, or other applicable CAA requirement.

**Comment 2:** (EPA-R03-OAR-0144-0016) The commenter contends that in the proposed action, EPA certifies that the action does not have a significant economic impact on a substantial number of small entities, but that comments submitted by Sunoco LLC during the County's rule adoption asserted that the rule revision will "have economic advantages to both citizens and businesses of the Pittsburgh-Beaver Valley area." The

commenter asks how EPA can certify that the action has no significant economic impact if one of the nation's largest oil producers emphasized the economic savings and asks to see EPA's analysis showing that removal of the program does not significantly impact small entities.

**Response 2:** EPA does not agree that it is required to assess the economic impact of approving Allegheny County's request to remove the low-RVP gas requirement from the Allegheny County portion of the Pennsylvania SIP. As explained in the introductory sentences to the Statutory and Executive Order Reviews section of the NPRM:

*Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:*

*is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);*

84 FR 17762, 17767 (April 26, 2019).

EPA's approval of the State's request to remove from the SIP the requirement to use low-RVP gasoline in Allegheny County merely approves an enacted state law (ACHD's removal of the low-RVP requirement from Allegheny County's regulations) as meeting the Federal CAA requirements and does not impose any additional requirements beyond those already imposed by state law. For this reason, EPA's action in approving this SIP revision does not have a significant impact under the Regulatory Flexibility Act.

**Comment 3:** (EPA-R03-OAR-0144-0016) The commenter contends that EPA failed to require a noninterference demonstration for the revoked 1-hour ozone NAAQS. The commenter argues that PADEP's noninterference demonstration (prepared by PADEP as part of its April 2018 SIP revision, supporting removal of both State and County low-RVP gasoline rules from the SIP) contains photochemical grid modeling that addresses only the 2008 8-hour ozone NAAQS and not the prior, revoked 1-hour ozone NAAQS. The commenter argues that because the 1-hour ozone standard is based on a substantially different averaging time and exceedance framework than the 8-hour NAAQS, EPA must ensure that

<sup>2</sup> On June 8, 1998 (63 FR 31116), EPA approved a SIP revision (submitted December 3, 1997; as revised April 17, 1998) by PADEP to require the use of 7.8 psi RVP gasoline in summer months in the 7-county Pittsburgh-Beaver Valley 1-hour ozone nonattainment area. On April 17, 2001 (66 FR 19724), EPA approved a SIP revision (submitted March 23, 2000) by PADEP, on behalf of ACHD, to require the use of 7.8 psi RVP gasoline in summer months in the Allegheny County portion of the same 1-hour ozone nonattainment area. EPA's rationale for granting a federal preemption waiver under CAA 211(c)(4)(C) is explained in the June 8, 1998 final rule, with the same rationale serving as the basis for the April 17, 2001 final rule.

<sup>3</sup> See for e.g., SIP revision for the removal of 7.0 psi RVP from the state of Alabama SIP. 77 FR 23619 (April 20, 2012).

removal of an area-wide requirement (low-RVP fuel) is protective, as EPA claims.

**Response 3:** The Commonwealth's CAA 110(l) demonstration focused on demonstrating that current air quality can be maintained for all NAAQS without continuation of the existing 7.8 psi RVP gasoline control measure. The basis for the Commonwealth's demonstration is through substitution of equivalent or greater reductions in primarily VOC and NO<sub>x</sub> emissions from other measures to offset the VOC and NO<sub>x</sub> reductions that would no longer be achieved upon removal of the 7.8 psi RVP gasoline control measure.

In evaluating whether a SIP revision would interfere with maintenance or attainment, EPA generally considers whether the SIP revision will allow for an increase in actual emissions into the air over what is allowed under the existing EPA-approved SIP. In assessing compliance with CAA section 110(l), EPA treats each submission as a unique case, reviewing and acting upon each one on a case-by-case basis through regional SIP action. However, EPA did broach the subject of compliance with CAA 110(l) noninterference in guidance prepared specifically for removal of another control measure, entitled "*Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*," August 7, 2012 [EPA-457/B-12-001]. Therein, EPA stated that it could propose to approve a SIP revision that removes or modifies a control measure if there is a basis in the state's submittal for concluding that the SIP revision does not interfere with attainment or maintenance of any NAAQS or requirements related to reasonable further progress towards attainment of a NAAQS. Suggested methods listed in that guidance document for demonstrating noninterference include: (1) Substitution of new control measures that offset the reductions of the pollutants addressed by the prior plan; (2) offset of emissions due to excess emission reductions not accounted for in the current SIP; or (3) emissions increases that are shown not to interfere with attainment. Pennsylvania has demonstrated that the emission reductions achieved by the 7.8 low RVP gasoline program have been offset by emission reduction measures not previously quantified or claimed in the approved SIP, and EPA approved the Commonwealth's noninterference demonstration for the entire Pittsburgh-Beaver Valley Area as part of our December 20, 2018 final rule approving the Commonwealth's removal of the

PADEP 7.8 psi low-RVP control measure from the SIP (a measure that applied to the 7-county Pittsburgh-Beaver Valley Area, including Allegheny County).

As the commenter noted, the 1-hour ozone NAAQS was revoked by EPA under the Agency's requirements for implementation of the 1997 ozone NAAQS. 40 CFR 50.9(b), 62 FR 38894 (July 18, 1997), 69 FR 23951, 23969 (April 30, 2004). The 1-hour ozone NAAQS was no longer applicable in the Pittsburgh-Beaver Valley Area as of June 15, 2005. We need not consider whether this SIP revision interferes with the revoked 1-hour NAAQS. By definition, a revision cannot interfere with something that is no longer in effect, such as a revoked NAAQS. EPA has dealt with the anti-backsliding concerns related to revoked NAAQS by promulgating regulations to address that issue. Thus, so long as the anti-backsliding requirements in the ozone requirements rule are met, further demonstration of noninterference under 110(l) are not necessary.

**Comment 4:** (EPA-R03-OAR-0144-0016) The commenter asks why EPA would remove a measure that achieves VOC reductions for a county that EPA has designated nonattainment for the 2012 PM<sub>2.5</sub> NAAQS, when VOC reductions could help the area attain the PM<sub>2.5</sub> NAAQS, because VOCs can be precursors to PM<sub>2.5</sub> formation. The commenter contends that EPA should not allow Allegheny County to remove the low-RVP gasoline program from the SIP until it has been shown that the area is able to meet the PM<sub>2.5</sub> NAAQS without the additional VOC reductions achieved by this rule.

**Response 4:** Section 110(l) of the CAA prohibits EPA from approving a plan revision "... if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, ... or any other applicable requirement of this chapter." In this SIP revision, EPA believes that the noninterference demonstration submitted by PADEP for the entire Pittsburgh-Beaver Valley Area does show that the small emission increase of VOCs resulting from removal of the low-RVP gasoline requirement are more than offset by reductions in VOC emissions from the shutdown of the Guardian Glass facility and the adoption of new limits on solvents, paints and adhesive adopted by Pennsylvania. In EPA's guidance on removing stage II gasoline vapor recovery controls, EPA lays out several alternative means of assessing noninterference. Therein, EPA specifically states, "In evaluating whether a given SIP would interfere with attainment or maintenance, ...

EPA generally considers whether the SIP revision will allow for an increase in actual emissions into the air over what is allowed under the existing EPA-approved SIP. The EPA has not required that a state produce a new, complete attainment demonstration for every SIP revision, provided that the status quo air quality is preserved. See, e.g., *Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006)."<sup>4</sup>

Pennsylvania has demonstrated noninterference with all NAAQS through primarily an emissions substitution approach, using methods prescribed by EPA guidance under section 110(l) of the CAA. EPA approved Pennsylvania's CAA section 110(l) noninterference demonstration for the entire Pittsburgh-Beaver Valley Area (including Allegheny County) on December 20, 2018 (83 FR 65301).

**Comment 5:** (EPA-R03-OAR-2019-0144-0021) Commenter notes that in Pennsylvania's prior SIP revision requesting removal of the state's low-RVP gasoline rule applicable to the Pittsburgh-Beaver Valley Area, PADEP stated that it wished to retain any remaining balance of creditable emission reductions for the permanent closure of the Guardian Industries glass manufacturing facility located in Allegheny County, Pennsylvania. However, EPA's proposed approval of this prior SIP action states that no remaining balance of credits would be held by the state, and EPA's final action did not address whether the remaining balance of creditable emission reductions were forfeited or retained by Pennsylvania. The commenter requests that EPA clarify whether the remaining balance of emission reductions are retained by Pennsylvania for future use and quantify how many remain and/or are forfeited, so that there is no future double counting of these emissions reductions.

**Response 5:** EPA received a similar comment in response to our proposal to approve removal of PADEP's 7.8 psi RVP gasoline program from the non-Allegheny County portions of the Pittsburgh-Beaver Valley Area.<sup>5</sup> In our final December 2018 rulemaking for the Pittsburgh-Beaver Valley Area 7.8 psi RVP program SIP removal action, EPA clarified that emission reduction from Guardian Glass closure remained available. The Guardian Glass facility permanently ceased operation in August 2015 but did not request that potentially

<sup>4</sup> See p. 4, "*Guidance on Removing Stage II Gasoline Vapor Recovery Control Programs from SIPs and Assessing Comparable Measures*," (April 7, 2012) [EPA-457/B-12-001].

<sup>5</sup> See 83 FR 27901, June 15, 2018.

creditable emission reductions be preserved in the emission inventory within one year of closure, which is a prerequisite for their use as emission reduction credits (ERCs) for nonattainment new source review (NNSR) purposes under Pennsylvania's rules governing that program (25 Pa. Code 127.207(2)). As a result, the reductions are no longer eligible for future use as ERCs for NNSR offset purposes, but they remain available for other uses. As EPA stated in our December 20, 2018 final rule, because these surplus emission reductions no longer qualify as ERCs under Pa. Code Chapter 127, Subchapter E, EPA believes they do not need to be memorialized in either a state plan approval, or a SIP revision or emission inventory. The facility's permits are no longer valid, and reactivation of the facility would be subject to NNSR and re-permitting.

However, that does not mean that these remaining emission reductions from closure of this facility have no use. PADEP reserved the right to request consideration of these reductions for future use for other SIP planning purposes other than NNSR offsets—potentially as part of a future demonstration relating to NAAQS planning requirements. Any such future use would require a SIP revision at that time, with a demonstration of the emission reductions viability for use in any future SIP revision. Although PADEP quantified the remaining reductions that are surplus after offsetting removal of the low-RVP gasoline program, the surplus reduction quantities listed in EPA's December 20, 2018 SIP action are not directly translatable to any future SIP planning use. Any future use of the remaining emission reductions would need to be reevaluated as part of a subsequent SIP action supporting their potential use at that time for SIP planning purposes.

EPA does not agree that it must quantify the remaining surplus or the amount that should be forfeited as part of this action. EPA has clarified its position that these reductions can no longer be used for NNSR offset purposes under the relevant state rule. EPA cannot memorialize the remaining emission reductions potentially available for future SIP purposes as the reductions must be re-evaluated in the context of the specific SIP action for which the Commonwealth wishes to use the reductions.

**Comment 6:** (EPA-R03-OAR-2019-0144-0019) The commenter argues that EPA and Allegheny County have not provided an adequate demonstration that removal of the low-RVP gasoline

program will not interfere with attainment of the PM<sub>2.5</sub> NAAQS, because VOCs are a precursor to formation of ambient PM<sub>2.5</sub>. The commenter contends that PADEP should perform modeling regarding the impacts of the removal of the RVP requirement, rather than simply comparing overall emissions increases and decreases of VOCs. Commenter claims that the submitted noninterference analysis only compares the magnitude of emissions reductions from the 2015 shutdown of the Guardian Industries facility and reductions from a regulation for control of VOCs from adhesives, sealants, primers, and solvents, promulgated by DEP, to the magnitude of the emissions increases from discontinuation of the low-RVP requirement. The commenter notes that Allegheny County has continued to be in nonattainment with the PM<sub>2.5</sub> standards despite the fact that the reductions in emissions relied upon by PADEP's analysis occurred prior to 2016. Commenter believes this continued nonattainment despite the reductions from earlier shutdowns and regulatory changes means the Department should be looking more closely at local impacts from regulatory initiatives rather than offsetting emissions at different locations.

**Response 6:** EPA is not evaluating the adequacy of the state's separate, ongoing efforts to develop an appropriate attainment area plan for the 2012 PM<sub>2.5</sub> NAAQS for the Allegheny County nonattainment area in this action. The commenter's concerns with respect to the modeling and monitoring analyses contained in the state's draft PM<sub>2.5</sub> attainment plan are not relevant to EPA's action to remove the 7.8. psi RVP rule from the SIP, and as such do not warrant consideration in this final rule. As indicated in response to a prior comment, in evaluating whether a SIP revision (e.g., removal of an existing rule from the SIP) would interfere with attainment or maintenance of a NAAQS, per CAA section 110(l), EPA generally considers whether the SIP revision will allow for an increase in actual emissions in the air over what is allowed under the existing approved SIP, in an attempt to ensure that the status quo with regard to air quality is maintained. The EPA has not required that a state produce a new complete attainment demonstration for every SIP revision, provided that the status quo air quality is preserved.<sup>6</sup>

<sup>6</sup> See p. 4, "Guidance on Removing Stage II Gasoline Vapor Recovery Control Program from SIPs and Assessing Comparable Measures," (April 7, 2012) [EPA-457/B-12-001].

EPA has reviewed the Commonwealth's noninterference demonstration for this action to remove the 7.8 psi RVP rule from the Pennsylvania SIP and determined that the provided analysis shows that the emissions from removal of that rule have been fully offset by substitute reductions in VOCs and NO<sub>x</sub> from other measures not already in the approved SIP, and this analysis included consideration of the PM<sub>2.5</sub> NAAQS.<sup>7</sup> EPA believes that it would be inappropriate to evaluate the removal of the ACHD low-RVP rule from the SIP in this action premised upon the potential approvability of the County's proposed Allegheny County PM<sub>2.5</sub> attainment plan, as that plan is currently out for public comment by the County and may change in response to any comments received before it is formally submitted to EPA as a SIP revision. EPA is not evaluating the adequacy of the state's separate ongoing efforts to develop an appropriate attainment plan for the 2012 PM<sub>2.5</sub> NAAQS for the Allegheny County nonattainment area in this action. Further, the commenter's concern with respect to the modeling and monitoring analyses contained in the Commonwealth's draft PM<sub>2.5</sub> attainment plan is not relevant to EPA's action to remove the 7.8. psi RVP rule from the SIP, and as such do not warrant consideration in this final rule.

Therefore, EPA is not directly addressing the merits of these comments in this action and recommends that the commenter submit its comments to the County during the County's current administrative process and also during any future action EPA may take on that plan after the state formally submits the ultimate plan to EPA as a SIP revision. ACHD intends to submit to EPA a PM<sub>2.5</sub> attainment plan which will address the PM<sub>2.5</sub> issue. The proper place to evaluate how to achieve PM<sub>2.5</sub> attainment is in response to that plan.

**Comment 7:** The commenter contends that PADEP's approach of direct substitution of emissions of pollutants with reductions associated with other measures is inadequate to ensure that there is no increase in ambient pollution concentrations from such an approach, and that ambient concentration

<sup>7</sup> See Table 8 (p. 23) of PADEP's "Final State Implementation Plan Revision to Remove Pittsburgh-Beaver Valley Area Summertime Low Reid Vapor Pressure Gasoline Volatility Requirements and Supporting Noninterference Demonstration Under Section 110(l) of the Clean Air Act" dated April 2018, which summarizes direct PM<sub>2.5</sub> (as well as VOC and NO<sub>x</sub>) emission reductions from offsetting measures. The PADEP noninterference demonstration also discusses the Commonwealth's evaluation of PM<sub>2.5</sub> noninterference on pp. 25–26 of that document.

modelling is warranted to ensure NAAQS noninterference or other CAA requirements, such as potential impact on regional haze.

**Response 7:** While ambient concentration modeling is necessary for an attainment plan, it is not necessary to demonstrate attainment for purposes of amending the SIP to remove a rule. As was discussed in response to a prior comment, noninterference is the only CAA required test for removal of a rule that is not mandatory under the CAA, nor an applicable Part D measure mandated by the law. In demonstrating noninterference under CAA 110(I), ambient concentration modeling to show the impact of the removal of a rule is but one possible test of noninterference—albeit not a required one. Direct substitution of other measures that achieve equivalent emissions reductions to offset the removed measure is an allowable method of demonstrating CAA 110(I) noninterference.

**Comment 8:** (EPA–R03–OAR–2019–0144–0149) The commenter contends that removal of the low-RVP requirements may affect the control strategy for the PM<sub>2.5</sub> attainment demonstration. The commenter claims that PADEP should strengthen its control strategy to reduce concentrations of fine particulates presenting harm to individuals rather than finessing attainment by ignoring data at the Liberty monitor through misinterpretation of an EPA guidance document. Among other things, that control strategy could include the continuation of the RVP requirements, depending on the results of a proper factual analysis.

**Response 8:** EPA believes that this comment should be addressed to ACHD's proposed attainment plan for the 2012 PM<sub>2.5</sub> NAAQS for Allegheny County, rather than to this action to remove the ACHD low-RVP measure from the SIP. The PM<sub>2.5</sub> attainment plan is currently undergoing the County's public comment process and has not yet been formally submitted to EPA as a SIP revision. As such, this comment should be submitted during ACHD's public comment period for the PM<sub>2.5</sub> attainment plan. Concerns raised by the commenter with respect to whether the area has actually attained the PM<sub>2.5</sub> standard or done so in a timely manner, or whether ACHD has followed EPA guidance related to the monitoring or modeling analyses that underlie that demonstration, are not relevant to EPA's current action regarding whether to approve the Commonwealth's request for removal the 7.8 psi RVP gasoline rule from the SIP.

**Comment 9:** Commenter claims the PM<sub>2.5</sub> Attainment Demonstration is flawed because it relies on unrepresentative meteorological data from the base year 2011 (p.4). Commenter alleges that the 2011 meteorological data contains the second lowest number of inversions (134) in a year, which is lower than the typical number of inversions in the last ten years (157). Also, commenter states that PADEP's claim that the 2011 data is more representative of normal years because the Pittsburgh area has had above normal temperatures and above normal levels of precipitation in "recent years" is not supported by the data.

**Response 9:** As explained above, this comment concerns the PM<sub>2.5</sub> attainment demonstration, rather than this SIP action, and EPA will therefore not address this comment here because it is beyond the scope of this rulemaking action.

**Comment 10:** Commenter claims that future emissions inventories for the proposed attainment demonstration may not be complete and accurate because RVP 7.8 psi compliant fuel was burned in the past but will not be burned in the future and it is not clear how or whether VOC emissions from the higher RVP fuels that will be burned in the future are tracked or accounted for in the future emission inventory. Some stationary sources have stored fuel with varying RVP, ranging from 7 psi to 13 psi. See Appendix D (Emissions Inventories) to Proposed Attainment Demonstration. At a minimum, there is a factual question regarding the degree to which the removal of the RVP requirements will affect the formation of fine particulates.

**Response 10:** Because this comment is questioning how the removal of low-RVP fuel will affect the emissions inventory for the PM<sub>2.5</sub> attainment demonstration, EPA believes it should be submitted as a comment on that plan. EPA believes it would be more appropriate to respond to this comment, if submitted as a comment on any action EPA proposes on ACHD's PM<sub>2.5</sub> attainment plan, in the context of responding to comments on that plan.

#### V. Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required EPA, in consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006 (71 FR 78192), EPA published the list of boutique fuels. EPA maintains the current list of boutique fuel programs on its website at: <https://www.epa.gov/>

*gasoline-standards/state-fuels*. The final list of boutique fuels was based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, EPA interpreted this requirement to mean that a fuel would have to be removed from all states' SIPs in which it was approved in order to remove the fuel type from the list. (71 FR 78195, December 28, 2006).

The 7.8 psi RVP fuel program is a fuel type that is included in EPA's boutique fuel list (published at 71 FR 78198, December 28, 2006, and maintained online at: <https://www.epa.gov/gasoline-standards/state-fuels>). Subsequent to the final effective date of EPA's approval of Pennsylvania's March 19, 2019 SIP revision to remove the ACHD rule under Article XXI, EPA will update the State Fuels and Gasoline Reid Vapor Pressure web pages with the effective date of the SIP removal. At that time, the entry for Pennsylvania will be deleted from the list of boutique fuels, because Allegheny County was the final remaining 7.8 psi RVP program area in the Commonwealth of Pennsylvania. However, the boutique fuels list will retain the 7.8 psi RVP fuel type, as this fuel program type continues to be in other state SIPs.

#### VI. Final Action and Effective Date

##### A. Final Action

EPA is approving Pennsylvania's March 19, 2019 SIP revision requesting the removal of ACHD's 7.8 psi RVP summer gasoline program for Allegheny County (under Article XXI of the Rules and Regulations of the Allegheny County Health Department; amended February 21, 2019, effective March 3, 2019) from the Pennsylvania SIP. Our approval of the March 19, 2019 SIP revision is being taken in accordance with CAA requirements in section 110.

##### B. Notice of Effective Date

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under CAA section 307(d)(1) which states: "The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies

underlying APA section 553(d) in making this rule effective on July 5, 2019. APA section 553(d) allows an effective date less than 30 days after publication for a rule “that grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1). This rule fits within that exception because it lifts a restriction on the introduction into commerce of gasoline with an RVP of greater than 7.8 psi sold in Allegheny County, Pennsylvania between June 1 and September 15 of each year. Because ACHD adopted this rule in February 2019 (just prior to the commencement of the May 1 regulatory compliance deadline requiring use of low-RVP fuel in the Summer 2019 fuel season) and then submitted the rule to EPA in March 2019, EPA’s final action will coincide with the summer low-RVP compliance period, resulting in supply chain uncertainty for affected gasoline refining, distribution, and retail industries. Additionally, the effective date for ACHD’s revocation of the low-RVP gasoline requirement is based upon EPA’s final rulemaking effective date, creating further industry uncertainty with respect to regulatory compliance in the time prior to EPA’s final rule effective date. Therefore, this action can be considered to relieve a restriction that would otherwise prevent the introduction into commerce of gasoline with an RVP of greater than 7.8 psi. By setting the effective date of this action to the date of final rule publication, EPA could alleviate potential supply disruption that might occur due to the timing of this action during the 2019 summer fuel control season. Therefore, EPA is making this action to remove the Allegheny County program from the Pennsylvania SIP effective on July 5, 2019.

## VII. Statutory and Executive Order Reviews

### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### B. Submission to Congress and the Comptroller General

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve Pennsylvania’s request for removal of summer season 7.8 psi RVP gasoline requirements for Allegheny County from the SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 24, 2019.

**Cosmo Servidio**,  
Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### Subpart NN—Pennsylvania

#### § 52.2020 [Amended]

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by removing:

■ a. The subheading entitled “Subpart 9—Transportation Related Sources” and the entry “2105.90”; and

■ b. Under “Part G—Methods” the entry “2107.15”.

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stated that "To the maximum extent permitted by law, the Secretary and the heads of all other executive departments and agencies with authorities and responsibilities under the Act, shall exercise all authority and discretion available to them to provide greater flexibility to states and cooperate with them in implementing healthcare programs." In the spirit of this E.O., the Departments are seeking to reduce burdens that may impede a state's efforts to implement innovative changes and improvements to their health care market while remaining consistent with the statute. We believe that the reduction in these burdens will lead to more affordable health coverage for individuals and families.

Final regulations at 31 CFR part 33 and 45 CFR part 155 Subpart N remain in effect and require a state to provide actuarial analyses and actuarial certifications, economic analyses, data and assumptions, targets, an implementation timeline, and other necessary information to support the state's estimates that the proposed waiver will comply with these requirements.<sup>21</sup> The May 11, 2017, Checklist for Section 1332 State Innovation Waiver Applications, including specific items applicable to High-Risk Pool/State-Operated Reinsurance Program Applications, remains available to assist states in assembling an application for a section 1332 waiver. The Departments will apply the regulations and statutory requirements when reviewing state applications for section 1332 waivers and will work to provide states with the flexibility they need to be innovative and respond to the needs in their state.

## **XII. Collection of Information Requirements**

This document does not impose new information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Dated: October 9, 2018.

**Seema Verma**,  
*Administrator, Centers for Medicare & Medicaid Services.*

Dated: October 12, 2018.

**Alex M. Azar II**,  
*Secretary, Department of Health and Human Services.*

Dated: October 10, 2018.

**David J. Kautter**,  
*Assistant Secretary for Tax Policy, Department of Treasury.*

[FR Doc. 2018-23182 Filed 10-22-18; 11:15 am]

**BILLING CODE P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

**[Docket No. USCG-2018-0965]**

#### **Drawbridge Operation Regulation; Sacramento River, Sacramento, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the I Street Drawbridge across the Sacramento River, mile 59.4, at Sacramento, CA. The deviation is necessary to allow the bridge owner to conduct preventative maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** This deviation is effective from 6 a.m. to 3 p.m. on November 6, 2018.

**ADDRESSES:** The docket for this deviation, USCG-2018-0965, is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, email [Carl.T.Hausner@uscg.mil](mailto:Carl.T.Hausner@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Union Pacific Railroad Company has requested a temporary change to the operation of the I Street Drawbridge, mile 59.4, over the Sacramento River, at Sacramento, CA. The drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 6 a.m. to 3 p.m. on November 6, 2018, to allow the bridge owner to perform necessary preventative maintenance on the center lens of the drawspan. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in the operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 18, 2018.

**Carl T. Hausner**,  
*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2018-23136 Filed 10-23-18; 8:45 am]

**BILLING CODE 9110-04-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 80**

**[EPA-HQ-OAR-2018-0172; FRL 9985-76-OAR]**

**RIN 2060-AT91**

#### **Approval of Louisiana's Request To Relax the Federal Reid Vapor Pressure (RVP) Gasoline Standard for the Baton Rouge Area**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a request from Louisiana for EPA to relax the federal Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for the Louisiana parishes of East Baton Rouge, West Baton Rouge, Livingston, Ascension, and Iberville (the Baton Rouge Area). Specifically, EPA is approving amendments to the regulations to allow the gasoline RVP

<sup>21</sup> "Application, Review, and Reporting Process for Waivers for State Innovation Final Rule." February 27, 2012. Available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-27/pdf/2012-4395.pdf>.

standard for the Baton Rouge Area to change from 7.8 pounds per square inch (psi) to 9.0 psi. EPA has determined that this change to the federal RVP regulation is consistent with the applicable provisions of the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 23, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0172. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

David Dickinson, Office of Transportation and Air Quality, Environmental Protection Agency, 1200 Pennsylvania Avenue Washington, DC 20460; telephone number: (202) 343-9256; email address: [dickinson.david@epa.gov](mailto:dickinson.david@epa.gov), or Rudolph Kapichak, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4574; email address: [kapichak.rudolph@epa.gov](mailto:kapichak.rudolph@epa.gov).

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

- I. General Information
- II. Action Being Taken
- III. History of the Gasoline Volatility Requirement
- IV. EPA's Policy Regarding Relaxation of Gasoline Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas
- V. Louisiana's Request To Relax the Federal Gasoline RVP Requirement for the Baton Rouge Area
- VI. Response to Comments
- VII. Final Action
- VIII. Statutory and Executive Order Reviews

**I. General Information**

**A. Does this action apply to me?**

Entities potentially affected by this rule are fuel producers and distributors involved in supplying gasoline to the Baton Rouge Area.

Examples of potentially regulated entities	NAICS <sup>1</sup> codes
Gasoline Marketers and Distributors .....	424710 424720
Gasoline Retail Stations .....	447110
Gasoline Transporters .....	484220 484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which EPA is aware that potentially could be affected by this rule. Other types of entities not listed on the table could also be affected. To determine whether your organization could be affected by this rule, you should carefully examine the regulations in 40 CFR 80.27. If you have questions regarding the applicability of this action to a particular entity, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

**B. What is EPA's authority for taking this action?**

The statutory authority for this action is granted to EPA by sections 211(h) and 301(a) of the Clean Air Act (CAA), as amended; 42 U.S.C. 7545(h) and 7601(a).

**II. Action Being Taken**

This final rule approves a request from the state of Louisiana to change the federal Reid Vapor Pressure (RVP) summertime fuel standard for the parishes of East Baton Rouge, West Baton Rouge, Livingston, Ascension, and Iberville (the Baton Rouge Area) from 7.8 psi to 9.0 psi by amending EPA's regulations at 40 CFR 80.27(a)(2). This action finalizes EPA's June 14, 2018 proposal (83 FR 27740) which was subject to public notice and comment.

The preamble for this rulemaking is organized as follows: Section III provides the history of the federal gasoline volatility regulation; Section IV describes the policy regarding relaxation of volatility standards in ozone nonattainment areas that are redesignated as attainment areas; Section V provides information specific to Louisiana's request for the five parishes addressed by this action; Section VI provides a response to the comments EPA received; and Section VII presents the final action in response to Louisiana's request.

**III. History of the Gasoline Volatility Requirement**

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma and other respiratory conditions) and increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under CAA section 211(c), EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in that final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone National Ambient Air Quality Standard (NAAQS)).

The 1990 CAA Amendments established a new CAA section 211(h) to address fuel volatility. CAA section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. CAA section 211(h) also prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with CAA

Examples of potentially regulated entities	NAICS <sup>1</sup> codes
Petroleum Refineries .....	324110

<sup>1</sup> North American Industry Classification System.