



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0781; FRL-9960-96-Region 5]

**Air Plan Approval; Ohio; Removal of Gasoline Volatility
Requirements in the Cincinnati and Dayton Areas; Update on the
Boutique Fuel List for Illinois and Ohio.**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Ohio Environmental Protection Agency (Ohio EPA) on December 19, 2016, concerning the state's gasoline volatility standards in the Cincinnati and Dayton areas. The revision removes the 7.8 pounds per square inch (psi) low Reid Vapor Pressure (RVP) fuel requirements for the two areas as a component of the Ohio ozone SIP. The submittal also includes a section 110(l) demonstration as required by the Clean Air Act (CAA) that addresses emissions impacts associated with the removal of the program. EPA proposed to approve the state's submittal on February 15, 2017.

DATES: This final rule is effective on **[insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0781. All documents in the

docket are listed in the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 either through <http://www.regulations.gov>, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061, acevedo.francisco@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What is being addressed by this document?

On February 15, 2017, at 82 FR 10727, EPA proposed to approve the removal of the 7.8 psi RVP fuel requirements under OAC 3745-72-1 to 8 from the Ohio ozone SIP before the beginning of the 2017 ozone control period. The 7.8 psi RVP fuel requirements specifically apply to gasoline distributed in the Cincinnati and Dayton areas in Ohio.

To support the removal of the 7.8 psi RVP fuel program requirements from the SIP, the revision included amendments of OAC 3745-72-01 (Applicability), as effective on August 1, 2016; a summary of the Ohio-specific analyses using EPA's Motor Vehicle Emissions Simulator (MOVES) model to quantify the emissions impact associated with removing the 7.8 psi RVP fuel program in Cincinnati and Dayton; and a section 110(l) demonstration that includes offset emissions documentation.

II. What comments did we receive on the proposed SIP revision?

Our February 15, 2017, proposed rule provided a 30-day review and comment period. The comment period closed on March 17, 2017. EPA received comments from three parties during the public comment period. One comment was fully supportive of this action. A second comment received was completely outside of the scope of this action and therefore is not being addressed as part of this final action. We are responding to the remaining comments received.

Comment: The commenter asks how the proposed standards compare to the standards of other states. The commenter further asks whether there are other states who have undergone similar changes, and if so what was the long-term effect of such changes.

Response: Information on areas where EPA has approved requests to remove the requirement to use low RVP gasoline from a state

SIP, such as the states of Georgia and Illinois, can be found on EPA's website at the following location:

(<https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>). It also contains a state-by-state RVP table that lists and compares all current federally required volatility programs, as well as all EPA-approved SIP fuel programs.

Regarding the long-term effect of such changes, any SIP revision submitted to EPA for consideration needs to include a demonstration of non-interference with the National Ambient Air Quality Standards (NAAQS) under section 110(1) of the CAA to ensure that impacts on the NAAQS are considered. Individual rulemakings on each action are published in the Federal Register and would contain specific emissions impacts for each of the situations.

Comment: The commenter is seeking EPA's concurrence that the unused emission reduction credits outlined in our action and generated in the greater Cincinnati, Ohio area can be used to satisfy the emission reductions that must be shown to demonstrate noninterference as part of a future SIP revision removing Reformulated Gasoline requirements in northern Kentucky.

Response: EPA is not taking a position on the use of credits in a future action since such issue is outside the scope of this action. Any subsequent use of emission reduction credits

outlined in our action should be coordinated between Ohio and Kentucky when a request to adjust requirements is made.

III. What action is EPA taking?

EPA is approving a SIP revision submitted by Ohio EPA on December 19, 2016, removing the state's 7.8 psi RVP fuel requirement for gasoline distributed in the Cincinnati and Dayton areas. The SIP revision also includes a section 110(l) demonstration that uses emissions credits from industrial facilities that have shut down or permanently reduced emissions in Dayton and Cincinnati to offset potential increases in emissions resulting from removing the state's 7.8 psi RVP fuel requirements. Upon approval of this SIP revision, 3.51 tons per year (tpy) of volatile organic compound (VOC) emissions credits from the Miami Valley Publishing Company facility, 4.86 tpy of VOC from the National Oilwell Varco facility, 40.50 tpy of oxides of nitrogen (NO_x) from the MillerCoors LLC facility and 21.72 tpy of NO_x from the Wright-Patterson Air Force Base facility will be permanently retired. This action is effective on **[insert date of publication in the Federal Register]**. EPA is approving Ohio's removal of the 7.8 psi RVP fuel requirement as a component of the Ohio ozone SIP because EPA has found that that removal of the 7.8 psi RVP fuel requirements would not interfere with attainment or maintenance of any of the National Ambient Air Quality Standards in the Cincinnati and Dayton areas

and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(1). EPA also finds that there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. RVP control requirements are summer control programs that are generally implemented during the summer ozone season beginning on June 1 at retail gasoline stations. In order to meet the June 1st requirement at retail gasoline stations, upstream fuel distributors need to be able to have compliant RVP fuel available starting on May 1st. Making this rule effective before the beginning of the summer ozone season, will allow the regulated industry to avoid having to address multiple RVP requirements during the 2017 ozone season. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Impacts on the Boutique Fuels List¹

A. Removal of Gasoline Volatility Requirements in the Cincinnati and Dayton Ozone Areas

As explained at proposal, EPA is required to remove a fuel type from the Boutique Fuels List if it ceases to be included in a SIP. (CAA section 211(c)(4)(C)(v)(III)). Ohio's 7.8 psi RVP fuel program that is the subject of this final rule is one of the fuel types on the Boutique Fuels List. EPA has also approved the 7.8 psi RVP fuel type into several states SIPs. On the effective date of this rule, Ohio's 7.8 psi RVP fuel rule will be removed from the approved SIP and we will also remove the entry for Ohio's RVP rule from the boutique fuel list which is available at: <https://www.epa.gov/gasoline-standards/state-fuels>. However, the 7.8 psi RVP fuel type will remain on the boutique fuel list because it continues to be included in several other states SIPs. We will also update the Gasoline Reid Vapor Pressure web page (<https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>) on the effective date of this final rule to remove the counties in the Cincinnati and Dayton ozone areas from the list of areas where lower RVP gasoline is required.

¹ On December 28, 2006 EPA published an FR notice establishing the Boutique Fuels List. (See 71 FR 78195.)

B. Removal of Gasoline Volatility Standards Applicable in the Illinois Portion the St. Louis, MO-IL Ozone Area

As previously explained, EPA is required to remove a fuel type from the Boutique Fuels List when it ceases to be included in a SIP. The 7.2 psi RVP fuel type is included on the Boutique Fuels List. (See 71 FR 78199). On October 6, 2014, EPA published a direct final rule to remove Illinois' 7.2 psi low RVP regulation from the State's SIP for its portion of the St. Louis, MO-IL ozone area. (See 79 FR 60065.) The removal became effective on December 5, 2014.

Illinois was the only state with such a fuel type in its approved SIP. EPA intends to publish a separate notice to remove the 7.2 psi RVP fuel type from the list of boutique fuels.² Removal of this fuel type from the list creates room that could allow for a new fuel type to be approved and added to the list. Approval of a new fuel type into a SIP would be subject to certain restrictions as described in the December 28, 2006, Federal Register notice that established the list of boutique fuels. (See 71 FR 78193).

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that

² EPA has previously updated its State Fuels and Gasoline Reid Vapor Pressure web pages to reflect the removal of the 7.2 psi RVP requirement from the Illinois SIP.

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the proposed amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.³ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

VI. Statutory and Executive Order Reviews.

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 that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

³ 62 FR 27968 (May 22, 1997).

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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Public Law 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, the SIP is not approved to apply on any Indian reservation land or in any other area where 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. 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 **[insert date 60 days after date of publication in the Federal Register]**. 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,
Incorporation by reference, Intergovernmental relations,
Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: March 23, 2017.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

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.*

2. In § 52.1870 the table in paragraph (c) is amended under “Chapter 3745-72 Low Reid Vapor Pressure Fuel Requirements” by revising the entry for 3745-72-01 “Applicability” to read as follows:

§ 52.1870 Identification of plan.

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(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/Subject	Ohio effective date	EPA Approval date	Notes
* * * * *	Chapter 3745-72 Low Reid Vapor Pressure Fuel Requirements			
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3745-72-01	Applicability	8/1/2016	[insert date of publication in the Federal Register], [Insert Federal Register citation]	Only (A) to (C).
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