



This document is scheduled to be published in the Federal Register on 09/20/2019 and available online at <https://federalregister.gov/d/2019-19986>, and on govinfo.gov

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2018-0836; FRL-9999-87-OAR]

RIN 2060-AU43

Relaxation of the Federal Reid Vapor Pressure (RVP) Gasoline Volatility Standard for the Atlanta RVP Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a request from Georgia 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 following Georgia counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (the Atlanta RVP Area). Specifically, EPA is approving amendments to the regulations to allow the gasoline RVP standard for the Atlanta RVP 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 [insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0836. 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; e-mail address: 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; e-mail address: 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. Georgia's Request to Relax the Federal Gasoline Requirement for the Atlanta RVP 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 Atlanta RVP Area.

Examples of Potentially Regulated Entities	NAICS ¹ Codes
Petroleum Refineries	324110

¹ North American Industry Classification System.

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 Georgia to change the federal RVP gasoline standard during the summer ozone season that runs from June 1 to September 15 of each year for the Atlanta RVP Area. Specifically, this final rule amends EPA's regulations at 40 CFR 80.27(a)(2) to relax the federal summertime RVP standard from 7.8 psi to 9.0 psi for the Georgia counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (the Atlanta RVP Area). This action finalizes EPA's May 14, 2019 proposal which was subject to public notice and comment (84 FR 21305). As a result of this final rule the gasoline in the Atlanta RVP Area will no longer be subject to the

federal RVP summertime fuel standard of 7.8 psi and instead be subject to a federal standard of 9.0 psi, starting on June 1, 2020, and thereafter.

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 Georgia's request for the 13 counties addressed by this action; Section VI provides a response to the comments EPA received; and Section VII presents the final action in response to Georgia'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 (VOCs), 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, 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 (as defined by EPA in 40 CFR 80.27(a)(2)(ii)). 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 section 211(h). The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, effective January 13, 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, EPA will rely on states to initiate changes to their respective volatility programs. EPA's policy for approving such changes is described below in Section IV of this preamble.

The state of Georgia initiated the change being finalized in this action by requesting that EPA relax the 7.8 psi RVP standard to 9.0 psi for the counties of Cherokee, Clayton, Cobb,

Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale.

See Section V of this preamble for information specific to Georgia's request.

IV. EPA's Policy Regarding Relaxation of Gasoline Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas

As stated in the preamble for EPA's amended Phase II volatility standards (56 FR 64706, December 12, 1991), any change in the gasoline volatility standard for a nonattainment area that was subsequently redesignated as an attainment area must be accomplished through a separate rulemaking that revises the applicable standard for that area. Thus, for former 1-hour ozone nonattainment areas where EPA mandated a Phase II volatility standard of 7.8 psi RVP in the December 12, 1991 rulemaking, the federal 7.8 psi gasoline RVP requirement remains in effect, even after such an area is redesignated to attainment, until a separate rulemaking is completed that relaxes the federal summertime RVP standard in that area from 7.8 psi to 9.0 psi.

As explained in the December 12, 1991 rulemaking, EPA believes that relaxation of an applicable gasoline RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, CAA section 107(d)(3) requires the state to make a showing, pursuant to CAA section 175A, that the area is capable of maintaining attainment for the ozone NAAQS for ten years. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not relax the gasoline volatility standard unless the state requests a relaxation and the maintenance plan demonstrates that the area will maintain attainment for ten years without the need for the more stringent volatility standard. Similarly, a maintenance plan may be revised to relax the gasoline

volatility standard if the state requests a relaxation and the maintenance plan demonstrates that the area will maintain attainment for its duration.

At proposal, EPA considered the applicability of its longstanding policy and practice of approving RVP relaxations in areas that are either designated attainment or have been redesignated to attainment for all relevant ozone NAAQS. Given that a portion of the Atlanta RVP Area is a designated nonattainment area for the 2015 ozone NAAQS, EPA proposed to approve relaxation of the federal 7.8 psi RVP standard in areas that are designated as nonattainment.² In doing so, and as explained in the NPRM, EPA considered Agency practices and policy for the approval of requests from states to opt out of reformulated gasoline (RFG) and removal of state fuel regulations from approved SIPs. In these kinds of approvals, EPA typically considers whether a subject state has demonstrated that the relevant area will be able to attain the ozone NAAQS by the attainment date without relying on emissions reductions from either RFG or the state fuel regulation. EPA received no comments on extending this demonstration of non-interference with the timely attainment of the applicable NAAQS to approving requests for federal RVP relaxation in nonattainment areas. Therefore, while EPA continues to believe that relaxation of an applicable gasoline RVP standard is best accomplished in conjunction with the redesignation process or in the context of a maintenance plan for an area, EPA will now also evaluate whether the relaxation of the federal RVP standard in a nonattainment area is appropriate by applying similar considerations for the approval of state requests to opt out of RFG and remove state fuel regulations from approved SIPs.

V. Georgia's Request to Relax the Federal Gasoline RVP Requirement for the Atlanta RVP Area

On August 15, 2018, the Georgia Department of Natural Resources submitted a request

² 84 FR 21305 (May 14, 2019).

to relax the federal gasoline RVP requirement in the Atlanta RVP Area. Georgia did not request relaxation of the federal RVP standard from 7.8 psi to 9.0 psi when it originally submitted the CAA section 175A maintenance plan for the 15-county 2008 ozone NAAQS, which EPA approved on June 2, 2017 (82. FR 25523).³ Since then, EPA also designated a portion of the Atlanta RVP Area as nonattainment for the 2015 ozone NAAQS.⁴ Therefore, Georgia was required to demonstrate that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi would not interfere with the maintenance of any NAAQS, including a revised maintenance plan for the 15-county 2008 ozone NAAQS area and with the timely attainment of the seven county 2015 ozone NAAQS area, and to submit a CAA section 110(*l*) non-interference demonstration for the Atlanta RVP Area to support the request to relax the federal summertime RVP standard.

The State's August 15, 2018 submittal included a request to relax the federal RVP requirement in the Atlanta RVP Area, the CAA section 175A maintenance plan revision, and section 110(*l*) non-interference demonstration. The non-interference demonstration shows that the relaxation would not interfere with the maintenance of the 2008 ozone NAAQS for the 15-county 2008 ozone NAAQS maintenance area or any other applicable CAA requirement, including timely attainment of the 2015 ozone NAAQS. EPA finalized its approval of the maintenance plan revision and demonstration on April 23, 2019 (84 FR 16786). As part of the rulemaking, EPA included an evaluation of Georgia's CAA section 110(*l*) demonstration for the 15-county 2008 ozone NAAQS maintenance area and the seven-county 2015 ozone NAAQS nonattainment area (including the additional control measures incorporated into the SIP to ensure

³ The 15-county 2008 ozone NAAQS maintenance area includes the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. The 13-county Atlanta RVP Area covered by the federal RVP requirement includes the same counties with the exception of Bartow and Newton Counties.

⁴ EPA designated seven counties in the Atlanta RVP Area as nonattainment for the 2015 ozone NAAQS, the seven counties are: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. (See 83 FR 25776, June 4, 2018).

timely attainment of the 2015 ozone NAAQS).⁵ EPA received no adverse comments on our proposed approval of Georgia's CAA section 110(l) demonstration. In addition, our proposed relaxation of the federal summertime RVP standard in the Atlanta RVP Area did not reopen that rulemaking.

VI. Response to Comments

EPA received the following three comments on its May 14, 2019 proposal to relax the federal summertime RVP standard from 7.8 psi to 9.0 psi for the Atlanta RVP Area. Two of these comments were related to the proposal, and EPA has responded to them below. EPA also received one comment that was not related to any of the issues addressed in the proposal and EPA's response is provided below.

Comment: EPA received two comments that expressed a general concern over whether EPA should establish the effective date (compliance date) for this final rule as the publication date of the final rule in the *Federal Register*. The compliance date is the date that 9.0 psi RVP gasoline may be introduced into commerce in the Atlanta RVP Area. Both commenters noted that a relaxation during the middle of the summer fuel season without adequate notice would subject fuel retailers and marketers to suffer significant financial losses due to the nature of the fuel supply distribution system and in some instances a longer period of time to switch over to the less expensive federal 9.0 psi RVP gasoline. The commenters opined that EPA should provide for market stability by either making the RVP relaxation effective after the end of the federal summertime RVP control period (i.e., September 15th) or 90 days after the final rule is published.

Response: EPA acknowledges that a change in a fuel specification may typically take a

⁵ For further details, see 84 FR 16786 (April 23, 2019).

number of weeks or months to be fully realized or implemented throughout an entire area such as the Atlanta RVP area. EPA also did not receive any public comments that supported an immediate effective or compliance date of the final rule (*e.g.*, the federal RVP relaxation to occur during the 2019 summer high ozone season, which began on June 1, 2019). Although this action provides regulatory flexibility and relief from a more stringent and expensive requirement, EPA believes that regulated parties will not necessarily experience such relief equally, or within the same time period and as a matter of normal business practices as described in the submitted comments. As a result, EPA is setting a compliance date of June 1, 2020, which is when the next federal summertime RVP standard period commences.

Comment: EPA received another comment concerning the impact of the 1.0 psi RVP waiver that is provided to gasoline containing 10 percent ethanol and 15 percent ethanol (E10 and E15, respectively). The commenter expressed several concerns with the 1.0 psi waiver, such as an increase in ozone precursor emissions. The commenter states that a uniform RVP cap of 9.0 psi for summer gasoline would simplify fuel markets, result in protective level of emissions over wide geographic areas and avoid competitive issues where different fuels are required.

Response: The commenter's general concerns with the national 1.0 psi waiver for gasoline containing 10 to 15 percent ethanol are beyond the scope of this rulemaking.⁶ In this rulemaking, EPA is merely revising the federal summertime RVP standard for the Atlanta RVP Area pursuant to a request from the State. In addition, the State supported its request with the demonstration that the area will continue to maintain the 2008 ozone NAAQS, and that the RVP change will not interfere with timely attainment of the 2015 ozone NAAQS or any other CAA requirement.

⁶ EPA has revised its interpretation of CAA section 211(h)(4) to apply the 1.0 psi waiver to E15 (*see* 84 FR 26980 (June 10, 2019)).

VII. Final Action

EPA is taking final action to approve Georgia's request for the Agency to relax the federal summertime RVP standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for the Atlanta RVP Area. Specifically, this action revises the applicable federal RVP standard from 7.8 psi to 9.0 psi provided at 40 CFR 80.27(a)(2) for the Georgia counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. This approval is based on Georgia's August 15, 2018 request and EPA's final determination in its April 23, 2019 final rule, that the State, as required by CAA section 110(l), made an adequate demonstration to show that relaxation of this federal requirement would not interfere with maintenance of the 2008 ozone NAAQS in the Atlanta RVP Area, and is consistent with other CAA requirements including timely attainment of the 2015 ozone NAAQS.

VIII. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. *Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

This action is considered an Executive Order 13771 deregulatory action. This rule provides meaningful burden reduction because it relaxes the federal RVP standard for gasoline, and as a result, fuel suppliers will no longer be required to provide the lower, 7.8 psi RVP gasoline in the Atlanta RVP Area during the summer months. Relaxing the federal volatility

requirements is also beneficial because this action can improve the fungibility of gasoline by allowing the gasoline sold in the Atlanta RVP Area to be identical to the fuel sold in the remainder of the state.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are refiners, importers, or blenders of gasoline that choose to produce or import low RVP gasoline for sale in Georgia, and gasoline distributors and retail stations in Georgia. This action relaxes the federal summertime RVP standard for gasoline sold in Georgia's Atlanta RVP Area during the summertime high ozone season to allow the RVP for gasoline sold in these counties to rise from 7.8 psi to 9.0 psi. This rule does not impose any requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA section 211(h) RVP program. Therefore, this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This rule does not contain an unfunded mandate of \$100 million or more as described in the UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action implements mandates that are specifically and explicitly set forth in CAA section 211(h) without the exercise of any policy discretion by EPA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule affects only those refiners, importers, or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the Atlanta RVP Area and gasoline distributors and retail stations in the Atlanta RVP Area. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. EPA has no reason to believe that this action may disproportionately affect children since Georgia has provided evidence that a relaxation of the federal summertime RVP standard will not interfere with its attainment of the ozone NAAQS for the Atlanta RVP Area, or any other applicable CAA requirement. By separate action, EPA has

finalized its approval of Georgia's revised maintenance plan for the 2008 ozone NAAQS, including the state's non-interference demonstration that relaxation of the gasoline RVP standard in the Atlanta RVP Area to 9.0 psi RVP will not interfere with any other NAAQS, including the 2015 ozone NAAQS, or CAA requirement.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the applicable ozone NAAQS (i.e., the 2008 and 2015 ozone NAAQS), which establish the level of protection provided to human health or the environment. Georgia has demonstrated in its non-interference demonstration that this action will not interfere with maintenance of the ozone NAAQS in the Atlanta RVP Area for the 15-county 2008 ozone NAAQS maintenance area, or with any other applicable requirement of the CAA including timely attainment of the 2015 ozone NAAQS.

Therefore, disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result. The results of this evaluation are contained in EPA's rulemaking for Georgia's non-interference demonstration (84 FR 16786,

April 23, 2019). A copy of Georgia’s August 15, 2018 letter requesting that EPA relax the federal summertime RVP standard, including the technical analysis demonstrating that the less stringent gasoline RVP will not interfere with continued maintenance of the 2008 ozone NAAQS in the Atlanta RVP Area, or with any other applicable CAA requirement, including timely attainment of the 2015 ozone NAAQS, have been placed in the public docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: September 9, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

AUTHORITY: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

2. In §80.27, paragraph (a)(2)(ii) is amended in the table by revising the entry for Georgia and adding footnote 13 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

(ii) * * *

APPLICABLE STANDARDS¹ 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September

Georgia ¹³	9.0	9.0	9.0	9.0	9.0

* * * * *

¹Standards are expressed in pounds per square inch (psi).

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¹³The federal standard for the Georgia counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale from June 1 until September 15 in 1992 through 2019 was 7.8 psi.

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[FR Doc. 2019-19986 Filed: 9/19/2019 8:45 am; Publication Date: 9/20/2019]