(4) The Director and Associate Director, OEDCA, are delegated authority to consider and resolve all claims raised by ORM employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Director and Associate Director, OEDCA, are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints filed by employees, former employees, or applicants for employment where the ORM must recuse itself from a case due to an actual, apparent, or potential conflict of interest.

(j) *Delegation to the Chairman, Board of Contract Appeals.* In cases where OEDCA has recused itself from a case due to an actual, apparent, or potential conflict of interest, the Chairman, Board of Contract Appeals, is delegated authority to make procedural agency decisions to dismiss, in whole or in part, EEO discrimination complaints filed by agency employees, former employees, and applicants for employment; to make substantive final agency decisions where complainants do not request an EEOC hearing; and to take agency action following a decision by an EEOC Administrative Judge.

(k) *Processing complaints involving certain officials.* A complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural acceptability review, investigation, and substantive decisionmaking to another Federal agency (e.g., The Department of Justice) pursuant to a cost reimbursement agreement. Referral will not be made when the action complained of relates merely to ministerial involvement in such matters (e.g., ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Under Secretary for Memorial Affairs, assistant secretaries, or staff office heads).

PART 15—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERANS AFFAIRS

3. The authority citation for part 15 continues to read as follows:

Authority: 29 U.S.C. 794, unless otherwise noted.

§ 15.170 [Amended]

4. In § 15.170, paragraph (c) is amended by removing ''Equal Employment Opportunity'' each time it appears, and adding, in its place, ''Resolution Management''.

[FR Doc. 02–1735 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7130–9]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this direct final action, EPA is approving the State of Colorado's request to relax the federal Reid Vapor Pressure (''RVP'') gasoline standard that applies to gasoline supplied to the Denver/Boulder area (hereafter ''Denver area'') from June 1st to September 15th (the ozone control season) of each year. This action amends our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch (''psi'') to 9.0 psi. EPA has determined that this change to our federal RVP regulations is consistent with criteria EPA has enumerated for making such changes: that the State has demonstrated it has sufficient alternative programs to attain and maintain the National Ambient Air Quality Standards for ozone; and that amendments are appropriate to avoid adverse local economic impacts.

DATES: This direct final rule is effective on March 25, 2002 without further notice, unless EPA receives substantive adverse comments by February 25, 2002. If substantive adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Any person wishing to submit comments should submit a copy to both dockets listed below, and if possible, should also submit a copy to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–26 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–02 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202–2466, and is available for inspection during normal business hours. Interested persons wishing to examine the documents in docket number CO–RVP–02 should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov

SUPPLEMENTARY INFORMATION:

Plain language: Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean the Environmental Protection Agency.

Regulated Entities: Entities potentially affected by this rule are fuel producers and distributors. Regulated categories include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, gasoline retailers and wholesale purchaser-consumers.

To determine whether you are affected by this rule, you should carefully examine the requirements in section 80.27(a)(2) of title 40 of the Code of Federal Regulations (''CFR''). If you have any questions regarding the applicability of this action to a particular entity, you should consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Copies of Rulemaking: A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: *Relaxation of Summer Gasoline Volatility Standard for Denver/Boulder Area.*

I. Background

A. History of Gasoline Volatility Regulation

In 1987, we determined that gasoline nationwide had become 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 for the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Ground-level ozone causes health problems, including damaged lung tissue, reduced lung function, and lung sensitization to other pollutants.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is the Reid Vapor Pressure (''RVP''). Under authority in section 211(c) of the Clean Air Act (CAA), we promulgated regulations on March 22, 1989, that set maximum limits for the RVP of gasoline sold during the summer ozone control season—June 1 to September 15. These regulations were referred to as Phase I of a two-phase nationwide [1] program, which was designed to reduce the volatility of commercial gasoline during the summer high ozone season.[2] On June 11, 1990, we promulgated more stringent volatility controls for Phase II.[3] These requirements established volatility standards of 9.0 psi and 7.8 psi maximum RVP (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 or ''NAAQS'') during the ozone control season.

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. Section 211(h) requires us 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. It further requires us to establish more stringent RVP standards in non-attainment areas if we find such standards ''necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.'' Section 211(h) prohibits us from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that we may impose a lower (more stringent) standard in any former ozone non-attainment area redesignated to attainment.

On December 12, 1991, we modified our Phase II volatility regulations to be consistent with section 211(h) of the CAA.[4] The modified regulations prohibit the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as non-attainment, the regulations retained the original Phase II standards published in 1990.[5]

As stated in the preamble for the Phase II volatility controls,[6] and reiterated in the proposed change to the volatility standards published in 1991,[7] we will rely on States to initiate changes to our volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the statutory limits.[8] In those rulemakings, we explained that the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi for some month or months in a non-attainment area. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. We have approved such petitions to amend the federal RVP regulations for South Carolina [9] and Tennessee.[10]

B. History of Federal RVP Requirements for the Denver Area

On November 6, 1991, we issued ozone nonattainment designations for the 1-hour ozone NAAQS (hereafter ''ozone NAAQS'' or ''ozone standard'') pursuant to section 107(d)(4)(A) of the CAA (56 FR 56694). In that action, we designated the Denver area as a nonattainment area [11] and classified it as a ''transitional area'' as determined under section 185A of the CAA.[12]

Because we designated the Denver area as a transitional ozone nonattainment area, the applicable volatility standard for the Denver area, under the Federal RVP rule promulgated on December 12, 1991, was 9.0 psi RVP in May and 7.8 psi from June 1 to September 15, beginning in 1992.[13] Since 1992, and in response to waiver petitions from the Governor of Colorado, we have waived the 7.8 psi RVP requirement for the Denver area and have required the less stringent 9.0 psi RVP. In-depth discussions of these past actions can be found in the applicable **Federal Register** notices.[14] Our decisions to grant these petitions were based on evidence that demonstrated the 7.8 psi standard was not necessary given the area's record of continued attainment of the 1-hour ozone standard using 9.0 psi RVP gasoline and evidence presented by Colorado that showed economic hardship to consumers and industry if the 7.8 psi standard were retained.

On August 8, 1996, the Governor of Colorado submitted a maintenance plan and requested that we redesignate the Denver area to attainment for the ozone NAAQS.[15] We did not act on the Governor's request as the maintenance plan had both legal and technical problems that precluded our full approval.

In July, 1997, we established a new 8-hour ozone NAAQS of 0.08 parts per million (ppm).[16] At that time, we also promulgated regulations governing when the 1-hour ozone standard would no longer apply to areas. On June 5, 1998, we published a final rule (*see* 63 FR 31014) that revoked the 1-hour ozone standard for areas that were attaining the 1-hour standard; this

[1] Hawaii, Alaska and U.S. territories were excepted.

[2] 54 FR 11868 (Mar. 22, 1989).

[3] 55 FR 23658 (June 11, 1990).

[4] 56 FR 64704 (Dec. 12, 1991).

[5] See 55 FR 23658 (June 11, 1990).

[6] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[7] See 56 FR 24242 (May 29, 1991).

[8] See CAA section 211(h)(1) (allowing EPA to set a standard more stringent than 9.0 psi as necessary to achieve comparative emissions in nonattainment areas considering enforceability, the need of an area for emissions control and economic factors).

[9] 58 FR 46508 (Sept. 1, 1993).

[10] 59 FR 15625 (Apr. 4, 1994).

[11] The nonattainment area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National Park in Boulder County and the eastern portions of Adams and Arapahoe Counties.

[12] Section 185A defines a transitional area as ''an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 [that] has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989.'' In fact, according to monitoring data, the Denver-Boulder area attained and has continued to maintain the 0.12 parts per million (ppm) 1-hour standard since 1987.

[13] The standard applicable in other areas of Colorado is 9.0 psi from May 1 to September 15.

[14] See 53 FR 26067 (Apr. 30, 1993); 59 FR 15629 (Apr. 4, 1994); 61 FR 16391 (Apr. 15, 1996); 63 FR 31627 (June 10, 1998); and 66 FR 28808 (May 24, 2001).

[15] In order for EPA to redesignate an area to attainment under section 107(d)(3)(D) of the CAA, the Governor must submit a redesignation request and a maintenance plan that meets the requirements of section 107(d)(3)(E) and section 175A of the CAA, the redesignation requirement of the General Preamble for the Implementation of Title I of CAA Amendments of 1990 (57 FR 13498 (Apr. 16, 1991), and 57 FR 18070 (April 28, 1992)), and addresses the provisions of EPA redesignation policies and guidance documents. In general, the ozone maintenance plan must demonstrate long-term (i.e., 10 years) maintenance of the ozone NAAQS.

[16] 62 FR 38856 (July 18, 1997).

included the Denver area.[17] As a result of our finding that the 1-hour ozone standard was revoked and no longer applied to the Denver area, the State's August 8, 1996, 1-hour ozone redesignation request and maintenance plan became moot and neither the State nor EPA contemplated further action.

In 1998, the Governor of Colorado again requested that we waive the federal 7.8 psi RVP requirement for the Denver area. We found that while a 9.0 psi RVP standard was in place, the Denver area had shown continuous attainment of the 1-hour ozone standard since 1987 and had monitored attainment of the 8-hour standard since 1994. We concluded that retaining the 9.0 psi RVP standard would not cause the area's air quality to significantly deteriorate. *See* 63 FR 31627, (June 10, 1998). Moreover, we concluded that imposing a 7.8 psi standard would result in significant costs for consumers and refiners. We therefore extended the waiver relaxing the federal RVP standard for the area to 9.0 psi for the ozone control seasons of 1998 through 2000. We explained that designations under the new 8-hour ozone standard would be made by July 2000, and that our consideration of a permanent revision to the federal RVP standard for the area would be appropriate at that time.

On May 14, 1999, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded, but did not vacate, the revised 8-hour ozone standard.[18] On February 27, 2001, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and remanded the decision to the Court of Appeals for further proceedings.[19] In the interim period, while the Supreme Court was considering the case, we reinstated the l-hour ozone standard in all areas of the nation to ensure the availability of a fully enforceable Federal ozone standard to protect public health.[20] With the reinstatement of the 1-hour ozone standard, the 1-hour standard designations and classifications that applied at the time the standard was revoked were also reinstated. We reinstated the 1-hour standard for the Denver area effective January 16, 2001, and returned the area to nonattainment for the 1-hour ozone standard with its prior ''transitional'' classification.

As a result of the reinstatement of the nonattainment designation, the Denver Regional Air Quality Council (RAQC) and the State developed a revised maintenance plan that updated the August 8, 1996, Governor's submittal and addressed our technical and legal concerns with the 1996 submittal. The Governor submitted a redesignation request and a proposed revised maintenance plan on November 30, 2000, in conjunction with a request for parallel processing. The Governor subsequently submitted the final redesignation request and maintenance plan on May 7, 2001.

The Governor's final submittal of the revised maintenance plan incorporated a gasoline RVP limit of 9.0 psi. Since maintenance of the 1-hour ozone NAAQS is shown for the entire maintenance plan's time period of 1993 through 2013 with the 9.0 psi limit, Colorado requested that the 9.0 psi summertime RVP standard (10.0 psi for ethanol blends) be made permanent for the Denver area upon our approval of the redesignation request and maintenance plan.

EPA's Region VIII approved the State's redesignation request and maintenance plan on September 11, 2001 (66 FR 47086) and it became effective October 11, 2001.[21] In that decision, Region VIII indicated that the change to assign a permanent RVP standard of 9.0 psi for the Denver area would be appropriate, but a separate rulemaking would be necessary to revise the federal RVP requirements for Colorado as specified in 40 CFR § 80.27(a)(2). That is the purpose of this direct final rule.

II. Justification for Granting Colorado's Request To Permanently Change the RVP Standard for the Denver Area

As previously mentioned, according to the preamble for the Phase II volatility controls,[22] the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. The June 23, 2000, petition by the Governor of Colorado to extend the temporary exemption from the 7.8 psi RVP standard for the Denver area to the 2001 ozone control season (see 66 FR 28808, May 24, 2001) and available evidence indicate that imposing the 7.8 psi standard would result in costs to consumers and industry, and that these costs are not reasonable given that the 7.8 psi RVP standard is not necessary to ensure continued attainment of the 1-hour ozone standard.

Six refiners supply the Denver market and these refiners vary in size, refining capacity and complexity. The Colorado Petroleum Association (CPA) estimated that all of the refiners would have to spend capital dollars to upgrade and reconfigure their facilities to provide gasoline blended at the 7.8 psi RVP level for the Denver market. The CPA[23] estimated that upgrading equipment and reconfiguring facilities to provide 7.8 psi RVP gasoline to the Denver market would cost refiners approximately $15–25 million. Documentation submitted in support of Colorado's petition for relaxation of the 7.8 psi RVP standard for the 2001 ozone control season indicate that implementation of that standard would cost the consumer about 1.5 cents more per gallon of gasoline with an overall seasonal cost of $4,500,000.[24]

The record also supports the conclusion that retention of the 9.0 psi standard will not cause deterioration of air quality in the Denver area. As stated above, the area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. Further, the State has demonstrated that it has sufficient additional contingency measures, including a control on gasoline RVP, that can be implemented to bring the area back into attainment should the area exceed the 1-hour ozone NAAQS in the future. These State contingency measures are identified in Chapter 3, section F of the revised maintenance plan.

[17] Similar rulemakings for other areas were promulgated on July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911).

[18] *American Trucking Ass'n* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999).

[19] *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001).

[20] 65 FR 45182 (July 20, 2000).

[21] Documents related to EPA's approval of the Colorado redesignation request and maintenance plan are available for public inspection during normal business hours at: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Copies of the State documents relevant to that action are available for public inspection at: Colorado Department of Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

[22] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[23] Memorandum from Stan Dempsey, Colorado Petroleum Association, Denver, CO, to Kerri Fiedler, EPA Region VIII, dated 2/07/2001.

[24] Memorandum from K.B. Livo, Colorado Department of Public Health and Environment, to Kerri Fiedler, Region VIII, dated 12/07/2000.

Based on the foregoing, we have decided to grant Colorado's's request to permanently change the federal volatility standard from 7.8 psi to 9.0 psi RVP for gasoline in the Denver/Boulder area during the ozone control season. The State has met the criteria outlined in our December 12, 1991 RVP rulemaking for relaxing the federal RVP regulations. The State has demonstrated that it has sufficient alternative programs to achieve attainment and maintenance of the ozone NAAQS and that the less stringent federal RVP standard is appropriate given the local economic impact that the more stringent 7.8 psi RVP requirement would cause.

III. Final Action

We are taking direct final action to approve Colorado's request to permanently relax the federal RVP standard applicable to summertime gasoline supplied to the Denver area. This action will change the applicable standard from 7.8 psi to 9.0 psi in 40 CFR 80.27(a)(2).[25] We view this as a noncontroversial action. Our final rule of September 11, 2001, fully approved the maintenance plan for the Denver area. It shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. This maintenance plan went through public notice and comment during the approval process (see 66 FR 24075, May 11, 2001), and no adverse comments were received. Further, EPA has granted Colorado exemptions allowing the Denver area to receive gasoline containing up to 9.0 psi RVP since 1992, and this rule merely makes this currently applicable RVP limit permanent.

Because we view this as a noncontroversial amendment and anticipate no adverse comment, we are publishing this action without prior proposal. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the rule amendment should adverse comments be filed. This rule will be effective March 25, 2002 without further notice unless the Agency receives adverse comments by February 25, 2002.

If EPA receives such comments, we will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. 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.

C. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule merely permanently continues the current temporary relaxation of the Federal RVP standard for gasoline in the Denver/Boulder area, and thus avoids imposing the costs that the existing Federal regulations would otherwise impose. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997) applies to any rule that:

[25] Consistent with Colorado's request, this direct final action also automatically changes the effective federal RVP standard for summertime ethanol blends of gasoline supplied to the Denver area. Under 40 CFR 80.27(d), gasoline having a denatured anhydrous ethanol concentration of at least 9.0 percent but no more than 10.0 percent (by volume) is allowed to have an RVP that exceeds the applicable standard in 40 CFR 80.27(a) by one psi. Since this direct final action relaxes the RVP standard in 40 CFR 80.27(a) for Denver's summertime gasoline from 7.8 to 9.0 psi, the effective RVP standard for Denver's ethnol blends of summertime gasoline is relaxed from 8.8 to 10.0 psi.

(1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As previously discussed, the Denver/Boulder area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Today's rule merely affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(a).

H. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities affected by this rule.

Today's rule relaxes an existing standard and affects only the gasoline industry. It relaxes the level of the Federal RVP standard with which businesses supplying gasoline to the Denver area must comply. We have therefore concluded that today's rule will relieve regulatory burden for any small entity.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's rule does not have tribal implications. It affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is

not a significant regulatory action under Executive Order 12866.

Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 80

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

Dated: January 15, 2002.

Christine Todd Whitman,

Administrator.

Title 40, chapter I, part 80 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

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

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * * * * * *					
Colorado [2]	9.0	9.0	9.0	9.0	9.0
* * * * * * *					

[1] Standards are expressed in pounds per square inch (psi).
[2] From 1992 through 2001, the RVP standard for the former Denver-Boulder nonattainment area was 7.8 psi, but waived to 9.0 psi.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7132–3]

RIN 2060–AJ69

Amendments to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: With this action, due to the receipt of adverse comments, EPA is withdrawing two of the amendments to the requirements on variability in the composition of additives certified under the gasoline deposit control program that were included in the direct final rule published on November 5, 2001 (66 FR 55885). We will address these comments in a subsequent final action based on the parallel proposal published on November 5, 2001 (66 FR 55905).

DATES: The following provisions of the direct final rule published at 66 FR 55885 (November 5, 2001) are withdrawn as of January 24, 2002.

(1) The revision to 40 CFR 80.162(a)(3)(i)(B), and

(2) The revision to 40 CFR 80.162(a)(3)(ii).

ADDRESSES: Comments and other materials supporting this rulemaking are contained in Public Docket No. A–2001–15, at: Air Docket Section, U.S. Environmental Protection Agency, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4227; Fax (734) 214–4816; e-mail *herzog.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2001, EPA published a direct final rule entitled ''Revisions to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program'' (66 FR 55885) and a parallel proposed rule (66 FR 55905). This rule was intended to make four revisions to EPA's gasoline deposit control program that were published on July 5, 1996, and became effective August 1, 1997 (61 FR 35309). These notices were published by EPA as a result of a settlement agreement to resolve the Chemical Manufacturer Association's (now the American Chemistry Council) petition for judicial review of specific provisions of the gasoline deposit control program. Because EPA received adverse comment on two specific amendments contained in the direct final rule, we are withdrawing the two amendments on which we received adverse comments. We stated in the direct final rule that if we received adverse comments on one or more distinct amendments, paragraphs, or sections of the direct final rule by January 4, 2001, we would publish a timely withdrawal in the **Federal Register** indicating which amendments, paragraphs, and sections would become effective and which amendments, paragraphs, or sections would be withdrawn. We received adverse comments on the following two amendments in that direct final rule: the revision to 40 CFR 80.162(a)(3)(i)(B), and the revision to 40 CFR 80.162(a)(3)(ii). We will address these comments in a subsequent final action based on the parallel proposal