aggregate, to be less protective of public health and welfare than applicable Federal standards.

CARB also demonstrated continuing existence of compelling and extraordinary conditions, justifying the state's need for its own motor vehicle pollution control program. Because EPA has not received adverse public comment challenging the need for CARB's own motor vehicle pollution control program, I cannot deny the waiver based on a lack of a compelling and extraordinary conditions.

CARB stated in its request letters that the amendments do not raise any concerns of inadequate leadtime or impose any inconsistent certification requirements. EPA received information during this proceeding that questioned: whether the advance-technology partial-zero-emission vehicles (ATPZEVs) provisions of the ZEV requirements were of a type not consistent with § 202(a), and whether the partial-zero-emission vehicle (PZEV) and fuel-cell vehicle (FCV) provisions of the ZEV requirements were not consistent with § 202(a) due to considerations of technological feasibility, lead time, and cost. EPA finds that the party opposing the within-the-scope confirmation and the waiver of federal preemption has not met its burden of proof that the ZEV amendments are inconsistent with § 202(a). I cannot find that CARB's ZEV regulations, as noted, would cause the California motor vehicle emission standards to be inconsistent with § 202(a).

As explained further in the Decision Document, EPA also received comment that CARB's ZEV regulations raise ''new issues'' which require EPA to consider CARB's within-the-scope request under the criteria for a full waiver of federal preemption. EPA finds that the party opposing the within-the-scope confirmation has not met its burden of proof that the ZEV amendments raise new issues and therefore I cannot find that the within-the-scope confirmation should be denied on this basis.

Therefore I confirm that CARB's ZEV amendments as they affect the 2006 and earlier MYs, as noted above, are within-the-scope of existing waivers of federal preemption. I also find that the ZEV amendments as they affect the 2006 and earlier MYs meet the criteria for a full waiver and thus I alternatively grant a waiver of federal preemption for these MYs. I also grant a waiver of federal preemption of CARB's ZEV amendments as they affect the 2007 through 2011 MYs. As explained further in the Decision Document, EPA is not making any determinations regarding a waiver of federal preemption applicable to 2012 and later MYs.

CARB did not seek a within-the-scope confirmation of the 2007 MY as part of its initial request to EPA. However, CARB later requested EPA to consider the 2007 MY provisions (with the exception of the LDT2 requirement) as within-the-scope. While EPA did request comment regarding CARB's within-the-scope request for the 2003–2006 MYs, EPA has not done so for the 2007 MY. As explained in the Decision Document, EPA does not believe that a further official request for comment is needed at this time. Because the 2007 MY provisions are very similar to the 2005–2006 MY provisions, I confirm that the 2007 MY requirements (with the exception of the LDT2 requirement) are within-the-scope of previous waivers of federal preemption. However, any party that wishes to object to this determination may file such objection as indicated in the DATES and **ADDRESSES** section above. Upon receipt of a timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** Notice.

A full explanation of EPA's decision, including our review of comments received in opposition to CARB's request, is contained in a Decision Document which may be obtained as explained above.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: December 21, 2006.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. E6–22314 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0340; FRL–8262–6]

Boutique Fuels List under Section 1541(b) of the Energy Policy Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Energy Policy Act of 2005 (EPAct) includes a number of provisions addressing state boutique fuel programs. Section 1541(b) of this Act requires EPA, in consultation with the Department of Energy, to determine the total number of fuels approved into all state implementation plans (SIPs) as of September 1, 2004, under section 211(c)(4)(C) of the Clean Air Act (CAA). The EPAct also requires us to publish a list of such fuels, including the states and Petroleum Administration for Defense District (PADD) in which they are used, for public review and comment. On June 6, 2006, we published a draft list based upon a ''fuel type approach'' along with an explanation of our rationale in developing it. We also published an alternative list based upon a ''state specific approach.'' In this notice we are finalizing the list of total number of fuels approved into all SIPs as of September 1, 2004, based upon the fuel type approach. This notice also addresses comments that we received on the proposed draft notice and list.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, Environmental Protection Agency, MC 6406J, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–343–9623; fax number: 202–343–2801; email address: *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act (CAA), state fuel programs respecting a fuel characteristic or component that we have regulated under section 211(c) (1) are preempted.[1] EPA may waive preemption through approval of the fuel program into a State Implementation Plan (SIP). Approval into the SIP

[1] See CAA section 211(c)(4)(A), 42 U.S.C. 7545(c)(4)(A).

requires a demonstration that the state fuel program is necessary to achieve the National Ambient Air Quality Standards (NAAQS) that the plan implements.[2] ''Necessary'' means that no other measures exist that would bring about timely attainment or that other measures exist and are technically possible to implement, but are unreasonable or impracticable.[3] These state fuels programs, which are often referred to as ''boutique'' fuel programs because they differ from the federal fuel required in the area, have been adopted by the state to address a specific local air quality issue. One issue presented by boutique fuels is that when events (such as hurricanes or pipeline and refinery breakdowns) lead to fuel supply shortages, varying fuel standards can complicate the process of quickly solving the supply interruption.

The Energy Policy Act of 2005 (EPAct) amends the CAA by placing additional restrictions on our authority to waive preemption by approving a state fuel into the SIP. These restrictions are:

- We cannot approve a state fuel if it would cause the total number of fuels approved into SIPs to increase above the number approved as of September 1, 2004.
- In cases where our approval would not increase the total number of such fuels, because the total number of fuels in SIPs at that point is below the number of fuels as of September 1, 2004, then our approval requires a finding, after consultation with the Department of Energy (DOE), that the new fuel will not cause supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected or contiguous areas.[4]
- We cannot approve a state fuel into a SIP unless the fuel is already in an existing SIP within that PADD, with the exception of a 7.0 psi RVP fuel.[5] EPA's approval of a 7.0 psi RVP fuel would, however, be subject to the other EPAct restrictions.

As these restrictions make clear, how we determine the total number of fuels on the list may greatly affect states' ability to have future boutique fuels programs approved into SIPs.

Section 1541(b) of the EPAct also requires us, in consultation with the Department of Energy (DOE), to determine the total number of fuels approved into all state implementation plans (SIPs) as of September 1, 2004, under section 211(c)(4)(C), and publish a list of such fuels, including the state and PADD in which they are used for public review and comment. On June 6, 2006, we published a draft list of state fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004 for public review and comment.[6] The notice included our draft interpretation of the various EPAct boutique fuels provisions described above. As we discussed in the notice, the EPAct is ambiguous as to the meaning of ''total number of fuels.'' We provided two proposed interpretations for developing the list. The first proposed approach was the ''fuel type approach.'' As explained in the notice, this approach would treat each type or kind of fuel as a separate fuel, without respect to the number of different state implementation plans that include this fuel type. For example, all state fuels with a Reid Vapor Pressure of 7.8 pounds per square inch (psi) would be considered as one fuel in determining the total number of fuels approved as of September 1, 2004.[7] While several states had a 7.8 psi RVP program on that date, they would not be treated as different fuels in determining the ''total number of fuels,'' but as different states using a single fuel type. This approach resulted in a draft list with seven different fuel types. 71 FR 32533.

We also provided an alternative interpretation, called the ''state specific approach.'' Under this approach, each individual state using a type or kind of fuel in a SIP would be considered a separate fuel. For example, each state having a 7.8 psi RVP fuel in its SIP could be treated as having a separate fuel for purposes of determining the ''total number of fuels.'' The state specific interpretation would lead to as many fuels as there are state fuel programs in the various PADDs and, as proposed, would have resulted in 15 different fuels.[8] 71 FR 32533–34.

A. Our Final Interpretation of the EPAct Boutique Fuel Provisions

In today's notice, we are adopting the fuel type interpretation. We are determining the total number of state fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004 based on the fuel type interpretation. We will use both the fuel type interpretation and the final list of fuels in implementing the three EPAct criteria for future decisions on approval of a state fuel into a SIP. Specifically, these criteria present the following restrictions on our ability to approve future state fuels into SIPs:

- We cannot approve a state fuel into a SIP under section 211(c)(4)(C) if it would cause the total number of fuel types on the list to increase above the number approved on September 1, 2004.[9] Under the fuel type interpretation, our approval of a state 7.8 psi RVP program, for example, would not cause an increase in the number of fuel types on the list because that type of RVP program is already on the list.
- In cases where our approval of a fuel would increase the total number of fuels types on the list but not above the number approved as of September 1, 2004, because the total number of fuel types in SIPs is below the number of fuels types as of September 1, 2004, we are required to make a finding after consultation with the DOE that the fuel does not cause supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected or contiguous areas. Under the fuel type interpretation, where there is ''room'' on the list, we may approve a state fuel program, after consultation with the DOE, and a finding that the state fuel will not cause either supply or distribution interruptions or have a significant adverse impact on fuel producibility in either the affected or contiguous areas.
- We cannot approve a state fuel into a SIP unless that fuel type is already in a SIP in the applicable PADD, with the exception of the 7.0 psi RVP fuel type.[10] Under the fuel type interpretation that we are adopting today, the PADD restriction would not extend to our approval of a 7.0 psi RVP fuel, although our approval of a 7.0 psi RVP fuel would remain subject to the other EPAct restrictions, discussed above. See also Section I.C. below for a further discussion of our interpretation and

[2] NAAQS are standards for ambient levels of certain air pollutants (e.g. ground-level ozone) and are designed to protect public health and welfare.

[3] *See* CAA section 211(c)(4)(C)(i), 42 U.S.C. 7545(c)(4)(C)(i).

[4] *See* CAA section 211(v)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(IV).

[5] *See* CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V). For a pictorial depiction of the PADD map, please refer to ''Petroleum Administration for Defense Districts'' at *http://www.eia.doe.gov/pub/oil_gas/petroleum/analysis_publications/oil_market_basics/paddmap.htm.*

[6] *See* ''Draft Boutique Fuels List Under Section 1541(b) of the Energy Policy Act and Request for Public Comment—Notice.'' 71 FR 32532, 32533 (June 6, 2006).

[7] Reid Vapor Pressure is the common measure of fuel volatility. Volatility is the tendency of fuel to evaporate.

[8] For a more detailed description of the ''fuel type approach'' and the ''state specific approach,'' see 71 FR 32532, 32533–34. Also see the tables corresponding to these approaches on pages 32535–36 of that notice.

[9] *See* CAA section 211(c)(4)(C)(v)(I), 42 U.S.C. 7545(c)(4)(C)(v)(I).

[10] *See* CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V).

implementation of the PADD restriction provision in PADD 5.

B. List of Fuel Types

We have also modified the draft list in response to comments that we received on the proposed notice, and it now contains a total of 8 different fuel types. See Section III, below, for the final List of State Fuels approved under section 211(c)(4)(C) as of September 1, 2004.

(i) 9.0 psi RVP Fuel Type

In proposing the draft list of boutique fuels, we recognized that there were a few states that had 9.0 psi RVP fuel programs approved into their SIPs as of September 1, 2004. We explained, however, that we do not believe that we should include a 9.0 psi RVP fuel type on the boutique fuels list required by EPAct. We explained that we were obligated to publish a list based on the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, and also required to remove a fuel that is ''identical to a Federal fuel formulation implemented by the Administrator,'' from the list.[11] Because the current federal RVP requirement in all of these northeastern states is 9.0 psi RVP, and was as of September 1, 2004, reading the EPAct provisions literally would require EPA to include a 9.0 psi RVP fuel type on the list but to remove it from the list at the same time. We proposed to exclude the 9.0 psi RVP fuel type from the list in order to avoid this illogical outcome. As we further explained in the notice, we do not believe that the 9.0 psi RVP fuel type would be viewed as contributing to the proliferation of ''fuel islands'' that Congress was concerned about.[12] We continue to believe that the appropriate way to reconcile these apparently conflicting provisions is to exclude the 9.0 psi RVP fuel type from the list. We do not believe that adoption of the fuel type interpretation affects our decision not to list the 9.0 psi RVP fuel type.

We received two comments concerning our treatment of the 9.0 psi RVP fuel type. Our response to these comments can be found in ''Section II. Comment Summary and Response,'' below.

(ii) Arizona Clean Burning Gasoline (CBG)

Under our proposed fuel type interpretation, we listed the total number of fuels based on the kind or type of fuel approved into a SIP as of September 1, 2004. 71 FR 32533. We also determined the fuel type or kind based on the required specific fuel components, specifications, or limits of each fuel type (for example, 7.8 psi RVP, 7.2 psi RVP or 7.0 psi RVP). At proposal therefore, we listed 7.0 psi RVP as a fuel type with Arizona as one of the 5 states that uses this fuel type. We also listed Arizona Clean Burning Gasoline (CBG) as a separate fuel type. We received two comments on our proposal. Both commenters recommended that we list Arizona CBG as two types of fuels, namely summertime and wintertime CBG. Both commenters said that specifications for CBG were different in winter, which was described as the period beginning November 2–March 31, and summer, which was described as the remaining portions of the calendar year. Also one commenter stated that both summer and winter CBG have different specifications for RVP, sulfur, aromatics, olefins, E200 and E300.

In today's notice, we are listing Arizona CBG as two fuel types—summer CBG and non-summer CBG. (See section III below for our final list of the fuel types). We agree with the commenters that Arizona's CBG program has several components, specifications or limits for summer CBG, such as the 7.0 psi RVP requirement, that are different from non-summer CBG. We also believe summer CBG requirements, which have been adopted by Arizona to address ozone nonattainment, include the 7.0 psi RVP requirement. We are therefore listing summer CBG as one fuel type, because it has specifications that are different from non-summer CBG. We have removed Arizona from the list as one of the states that uses the 7.0 psi fuel type. We believe that our decision to list CBG as two fuel types is similar to our listing of the Atlanta 7.0 psi RVP with sulfur provisions as a separate fuel type. At proposal we also specified the control period for Arizona's 7.0 psi RVP program as June 1-September 30. In today's notice, we are specifying May 1–September 30 as the time period for the CBG summer control period, in order to correspond with the start date of Arizona's summer CBG control period (May 1) and the end date of Arizona's 7.0 psi RVP control period (September 30).

One consequence of our decision to list Arizona CBG as two fuel types is that states in PADD 5 seeking to adopt state fuel programs would now have a wider choice of fuel types for purposes of addressing local air quality problems.

(iii) RVP Fuel Types that Do Not Provide a 1.0 psi Waiver for Ethanol-Blended Gasoline

In our draft list published June 6, 2006, we did not list any of the RVP programs that do not provide a 1.0 psi waiver for ethanol-blended gasoline as separate fuel types. More specifically, we proposed listing the 7.8 psi RVP program for western Pennsylvania, and the 7.0 psi RVP program for El Paso, Texas as part of the 7.8 psi and 7.0 psi fuel types respectively. Both programs explicitly do not provide a 1.0 psi waiver for ethanol blends, and we have approved this requirement into the respective SIPs.[13] We received two comments supporting our proposed decision not to list these fuel programs as separate fuel types, and one comment inquiring as to why EPA made no mention of RVP waivers for 10% ethanol-gasoline blends. Our response to these comments can be found in ''Section II. Comment Summary and Response,'' below.

Listing fuel programs as separate fuel types depending on whether they allow or do not allow a 1.0 psi waiver for ethanol-blended gasoline would have several consequences. First, states in the same PADD as either Pennsylvania and Maine (PADD 1), or Texas (PADD 3), that want to adopt 7.8 psi RVP programs, would not be able to adopt a 7.8 psi RVP program in their SIP that allows a 1.0 psi waiver for ethanol-blended gasoline, because there is no 7.8 psi RVP program approved in any SIP in either PADD 1 or 3 that allows a 1.0 psi waiver for ethanol blends. Conversely, states in PADD 2 that want to adopt a 7.8 psi RVP program would only be able to adopt a 7.8 psi RVP program that allows a 1.0 psi waiver for ethanol-blended gasoline, because there is no RVP program approved in a SIP in PADD 2 that does not allow a 1.0 psi waiver for ethanol blends.

Another consequence of listing separate fuel types for areas that do not allow a 1.0 psi ethanol waiver is that we would have to decide how to treat the 7.0 psi RVP fuel type under EPAct. The EPAct treats the 7.0 psi RVP fuel type differently from other fuel types by allowing EPA to approve a state 7.0 psi RVP fuel even if no other states in the same PADD already have a 7.0 psi RVP fuel approved in their SIP (see Section I.C. below). The EPAct does not specify whether future approvals of 7.0 psi RVP SIP fuels should be allowed with a 1.0

[11] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III).

[12] See 71 FR 32532, 32534.

[13] Most SIPs explicitly allow the 1.0 psi waiver for ethanol-blended gasoline. However, some SIPs are silent regarding the 1.0 psi waiver for ethanol-blended gasoline, and our understanding is that these SIPs do not allow for such a waiver.

psi ethanol waiver, without a 1.0 psi ethanol waiver, or whether states should be able to choose whether or not they want to allow a 1.0 psi ethanol waiver.[14]

We are not listing RVP programs as separate fuel types according to whether or not they allow the 1.0 psi ethanol waiver. We believe that listing SIP fuels in this manner would reduce fuel fungibility and reduce states' flexibility, which are contrary to Congressional intent. As explained above, one consequence of such a listing is that a state in PADD 1 that wants to adopt a 7.8 psi RVP program into their SIP could not allow the 1.0 psi ethanol waiver because there is no RVP program in a SIP in PADD 1 that allows a 1.0 psi waiver for ethanol-blended gasoline. We believe that if a state in PADD 1 adopts a 7.8 psi fuel program that does not allow a 1.0 psi waiver for ethanol-blended gasoline, refiners would be required to either not blend ethanol into gasoline in the area covered by the new SIP, or supply a special sub-RVP blendstock which, when blended with ethanol, would meet the 7.8 psi RVP standard. If refiners choose to supply a special blendstock, which meets the 7.8 psi RVP standard when blended with ethanol, the blendstock would have to be produced and transported separately from all other fuels. We believe this would run counter to EPAct's intention of promoting fuel fungibility.

Additionally, because the exception allowed for 7.0 psi RVP fuel programs makes no mention as to whether new 7.0 psi RVP fuel programs should be permitted with or without the 1.0 psi ethanol waiver, we believe that Congress was primarily concerned with classifying fuel types according to RVP limits, instead of whether or not they allowed the 1.0 psi ethanol waiver. We therefore, believe that listing fuel types solely according to RVP limits is most consistent with Congress's intent to improve fuel fungibility.

C. Removal of Fuel Types from the List

We are required to remove a fuel from the published list of fuels if the fuel is either identical to a federal fuel or is removed from the SIP into which it is approved.[15] At proposal we explained that under the fuel type interpretation, a fuel type would be removed from the list only if that fuel type was either identical to a federal fuel or removed from all SIPs with that type of fuel program. 71 FR 32534. We also proposed how we would implement the provision relating to removal of a fuel from the published list.[16] 71 FR 32535. We received two comments on our proposed implementation of this provision to remove a fuel from the published list. Our response to these comments can be found in ''Section II. Comment Summary and Response,'' below.

In today's notice we are adopting the fuel type interpretation, and as proposed we will be removing a fuel from the list if it is either identical to a federal fuel or if it is removed from all SIPs into which it is approved. Our removal of a fuel type that either ceases to exist in any SIP or that is identical to a federal fuel formulation may create ''room'' on the list, and subsequently, subject to the three restrictions discussed above, we can approve a ''new fuel'' type into a SIP.

D. Approval of a ''New Fuel''

The EPAct provides that before approving a ''new fuel'' into a SIP, where there is room on the list for additional fuels, we must make a finding, after consultation with the DOE, on the impact of the ''new fuel'' on fuel supply, distribution, and producibility. We also addressed the EPAct use of the term ''new fuel'', under the fuel type interpretation.[17] We explained that the term ''new fuel'' may be somewhat problematic under the fuel type interpretation. A new fuel type would be a fuel type that is not already on the list, however, the PADD restriction would preclude the approval of a new fuel type if that fuel type is not already approved into a SIP in the applicable PADD.[18] At proposal, we explained that because there is an exception to the PADD restriction for a 7.0 psi RVP program, we could under limited circumstances give meaning to the term ''new fuel'' under the proposed fuel type interpretation.[19] We received one comment on our proposed implementation of this provision for the addition of a ''new fuel'' to the published list. Our response to this comment can be found in ''Section II. Comment Summary and Response,'' below.

In today's notice, we are adopting the fuel type interpretation, and as proposed, we will give meaning to the term ''new fuel'' under the limited circumstances where a state seeks to adopt a 7.0 psi RVP program. At such a time, we also expect to make a finding on the impact of the ''new fuel'' on fuel supply, distribution, and producibility, after consultation with the DOE.

We also believe that we could give meaning to the term ''new fuel'' where states within PADD 5 seek our approval to adopt a fuel program that has been approved into California's SIP. See our discussion of the PADD restriction, California Air Resources Board (CARB) fuels, and states in PADD 5 in Section I.D. below. We believe that under this additional limited circumstance, where states in PADD 5 are seeking to adopt CARB fuels approved into California's SIP, and there is room on the list for a new fuel type, we could give meaning to the term ''new fuel'' to include a CARB fuel program, under the fuel type interpretation that we are adopting today. At such a time, we will also make a finding on the impact of the ''new fuel'' on fuel supply, distribution, and producibility, after consultation with the DOE.

E. The PADD Restriction

The EPAct constrains our approval of ''any fuel unless that fuel'' was already approved into at least one SIP in the applicable PADD as of the date of our consideration of a state's request.[20] At proposal we explained that for a state fuel program to be approved into a SIP in the future, the effect of the PADD restriction is that the fuel type must have been approved into a SIP in that PADD as of the date of our consideration of a state's request (with the exception of 7.0 psi RVP programs).[21] We explained in the notice that the PADD restriction places a strong constraint on our future approval of ''boutique fuels'' because it effectively limits state fuels to both the types of fuels currently in existence, and to the PADDs in which they are currently found.[22] We also received several comments on our treatment of CARB fuels. Our response to these comments can be found below in section II.B.

In today's notice we are adopting the fuel type interpretation and finalizing a

[14] It is important to note that this discussion of approval of state fuel programs with or without a 1.0 psi waiver for ethanol blends has no impact on EPA's federal RVP program. In the federal RVP program there is a 1.0 psi waiver for ethanol blends, subject to the provisions for exclusion of the 1.0 psi waiver adopted in EPAct. Section 211(h)(4), (5). EPA's interpretation of the section 211(c)(4)(C) boutique fuels provisions above has no impact on the federal RVP program adopted under the provisions of section 211(h).

[15] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III).

[16] See 71 FR 32532, 32534.

[17] See CAA section 211(c)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(IV).

[18] See CAA section 211(c)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(V) and 71 FR 32532, 32534.

[19] Congress exempted 7.0 psi RVP programs from the PADD restriction. While the other EPAct provisions on boutique fuels do apply to 7.0 psi RVP programs, the specific limitation on PADD usage in section 211(c)(4)(C)(v)(V) does not apply. Also see 71 FR 32532, 32534.

[20] See CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V).

[21] See 71 FR 32532, 32534.

[22] See 71 FR 32532, 32534–32535.

list of fuel types under this interpretation. Moreover, as proposed, we can approve a state fuel program if the fuel type (except for 7.0 psi RVP programs) has been approved into a SIP in the applicable PADD as of the date of our consideration of a state's request. Additionally, because we are allowed to approve a fuel if it is ''approved in at least one [SIP] in the applicable [PADD],'' we believe that there is a limited circumstance in PADD 5 where we could approve a fuel type that is in a SIP in that PADD although such a fuel type is not on the list that we have published today.[23] Our approval would however, be subject to the three restrictions we have listed and discussed earlier. If our approval will not cause an increase in the number of fuel types above those approved as of September 1, 2004, i.e., if there is ''room on the list,'' we could approve for states within PADD 5 a fuel program that is in California's SIP, without violating the PADD restriction. CARB fuels are approved into California's SIP, but because the approval is not under CAA section 211(c)(4)(C) we have not placed CARB fuels on the list of fuels we are publishing today. Under the PADD restriction provision, however, we are only required to approve a fuel if it is ''approved in at least one [SIP] in the applicable [PADD].'' We would, therefore, not be prohibited from approving CARB fuels for states within PADD 5, because CARB fuels are approved into a SIP in the applicable PADD. As earlier explained, adoption and approval of CARB fuels, however, remains subject to our meeting the three restrictions we have listed and discussed, above.

We continue to believe that under the fuel type interpretation, states would generally adopt fuels programs but only in those limited cases where that fuel type is already found in their PADD. We also continue to believe that this interpretation addresses the ''fuel islands'' concerns, while continuing to preserve an important degree of flexibility and choice of states in developing air pollution control programs.

II. Comment Summary and Response

We received thirteen sets of comments on the boutique fuels notice. These comments were submitted to the public docket. Our responses to comments are as follows:

A. Comments on the Fuel Type Approach versus the State Specific Approach.

Comment: The Fuel Type Approach is Preferred. All commenters supported the fuel type approach except one who expressed no opinion. No commenter supported a state-specific approach.

Response: We agree that the fuel type approach is preferable for several reasons. The fuel type approach will implement the intent of the EPAct, while preserving some choice for states in meeting the NAAQS.

B. Comments Regarding State Fuel Programs Not Included on the Draft State Boutique Fuels List

Comment: Arizona Clean Burning Gasoline (CBG) should be listed as two separate fuel types. Two commenters suggested that we list Arizona CBG as two fuel types on the list—summer CBG and winter CBG. According to one commenter, this is because the Arizona CBG has specifications for RVP, sulfur, aromatics, olefins, E200 and E300 during summer that are different from the specifications for winter. The commenter also stated that the summer specifications address the ozone NAAQS, while the winter specifications address the CO NAAQS, and that the differing fuel specifications results in ''unique supply and distribution issues.'' Another commenter stated that we had failed to ''adequately characterize Arizona CBG which is actually two different fuels depending on the time of year involved.''

Response: We agree that Arizona CBG should be listed as two separate fuel types. Arizona requires winter CBG to meet a set of specific standards for RVP, sulfur, aromatics, olefins, T50, T90 and oxygen. Arizona, however, allows summer CBG to either meet the same set of specific standards (for sulfur, aromatics, olefins, T50, T90 and oxygen), or alternatively meet performance standards for emissions reductions in VOC and NO_X. As explained in Section 1.A, above, summer CBG includes specification for 7.0 psi RVP. Thus, because CBG has components, specifications or limits for summertime that are different from non-summertime specifications, we are listing CBG as two fuel types. In today's notice, therefore, we are listing summertime CBG, which includes the 7.0 psi RVP requirement and non-summertime CBG. (See Section III, below, for our list of the fuels approved into all SIPs as of September 1, 2004). We have also changed the dates in the table to reflect compliance dates for these two fuel types. We believe that the practical effect of adding a second fuel type for Arizona CBG is small, although we note that for states in PADD 5 this changes one fuel type (CBG) into two fuel types (summer and non-summer CBG) for consideration of approval to their SIPs for purposes of addressing local air quality issues.

Comment: State RVP programs that do not provide a 1.0 psi RVP waiver for ethanol-blended gasoline should be listed as separate programs. Two state fuels programs (western Pennsylvania and El Paso, Texas) do not provide a 1.0 psi RVP waiver for ethanol-blended gasoline in their RVP fuel programs. Two commenters stated that these fuel programs should not be listed as separate fuel types. Also, one commenter stated that EPA made no mention of RVP waivers for 10% ethanol-gasoline blends and the impact these may have on the list of fuel types.

Response: As explained above, we are not listing the 7.8 psi RVP western Pennsylvania program and 7.0 psi RVP El Paso, Texas programs that do not allow the 1.0 psi waiver for ethanol blended gasoline as two separate fuel types. As also explained in the preamble, we believe that listing fuel types according to whether they do or do not allow a 1.0 psi ethanol waiver would run contrary to Congress's intention to improve fuel fungibility through the boutique fuel list. As further explained in the preamble, because the PADD restriction exception allowed for 7.0 psi RVP fuel programs makes no mention as to whether new 7.0 psi RVP fuel programs should be permitted with or without the 1.0 psi ethanol waiver, we do not believe that Congress intended use of this criteria for listing fuel types.

Comment: ''Historical'' 9.0 psi RVP programs should be on the list. In 1989 we set nationwide RVP standards for gasoline sold during the summer, in two phases. Phase I applied to 1990 and 1991, and Phase II applied to 1992 and later years. Generally, we set the RVP level at 10.5 psi and 9.0 psi in the northern states, under Phase I and II, respectively.[24] Between 1989 and 1992, some northeastern states also adopted 9.0 psi RVP programs, which we approved into their SIPs under section 211(c)(4)(C). These 9.0 psi RVP programs remain in the SIPs of several northeastern states. Two commenters supported our decision to not include these 9.0 psi RVP fuel programs on the list. However, one commenter suggested that we should include these programs on the boutique fuels list and that failure to include them would not fulfill

[23] CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V)

[24] See 40 CFR 80.27(a)(1) and (2).

Congressional intent. This commenter also stated that listing the 9.0 psi RVP fuel type and then subsequently removing the 9.0 psi RVP fuel type would provide ''room'' on the list for the adoption of another state fuel program for the northeastern states, or more specifically states in PADD 1.

Response: We do not believe that the 9.0 psi RVP fuel type should be included on the list. We proposed not to list the 9.0 psi RVP programs as a way of reconciling the somewhat conflicting provisions requiring us to list fuels and to remove fuels that were identical to federal fuel programs. At proposal, we explained that we were obligated to publish a list based on the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, and also required to remove a fuel that is ''identical to a Federal fuel formulation implemented by the Administrator'' from the list. We further explained that reading these provisions literally would require us to simultaneously include 9.0 psi RVP on the list we are publishing today and at the same time to remove it from the list. We concluded that although several of these 9.0 psi RVP programs remain in the SIPs of some northeastern states, Congress would not have intended such an illogical approach, primarily because the 9.0 psi RVP program could not be viewed as contributing to the proliferation of 'fuel islands.''[25] We continue to believe that we should not list 9.0 psi RVP as a fuel type on the list, and in today's notice we are not including 9.0 psi RVP as a fuel type on the list.

We also do not believe that listing and then removing the 9.0 psi RVP fuel type would provide for the adoption of a new state fuel type for states in PADD 1. As mentioned previously, the PADD restriction strongly constrains our future approval of ''boutique fuels'' because states are limited to the types of fuels already approved into SIPs in their PADDs, with the exception of the 7.0 psi RVP fuel type. Adding a 9.0 psi RVP fuel type to the list and then removing it would not change this. States in PADD 1 would still be limited to adopting a fuel already in a SIP in their PADD or a 7.0 psi RVP fuel. Therefore, we have not included 9.0 psi RVP programs in the boutique fuels list published today.

Comment: CARB fuels should be included on the Boutique Fuels list. Some commenters indicated that the CARB reformulated gasoline (RFG), and diesel programs should be included on the list. One commenter believed that the list should include CARB RFG and diesel programs, and questioned our decision not to list these programs. Other commenters stated that although CARB RFG and diesel programs have not been approved into a SIP under section 211(c)(4)(C), they should be included on the list because they present the same logistical issues as boutique fuel programs. Another commenter urged us to inform Congress of our lack of authority to address CARB RFG and diesel programs under section 211(c)(4)(C) if we believed we lacked such authority.

Response: CAA section 211(c)(4)(C)(v)(II) requires us to determine and publish the ''total number of fuels'' approved into all SIPs, under section 211(c)(4) as of September 1, 2004. We believe this provision specifically refers to state fuels programs ''approved'' into SIPs under section 211(c)(4)(C). With such specific language, we do not believe that Congress intended us to include CARB fuel programs that are approved into a SIP under section110, based upon the ''allowance'' from preemption provided under section 211(c)(4)(B), instead of ''approved'' under section 211(c)(4)(C). We also note that under limited circumstances, such as when there is room on the list, adoption by a state in PADD 5 of CARB RFG or diesel fuels programs would not violate the PADD restriction. See our discussion in Section 1.D, above. Such adoption and approval, however, would remain subject to the other restrictions on our authority to approve state fuels.

Comment: State Oxygenated fuels should be included on the Boutique Fuels list Some commenters indicated that Congress intended that EPA should include state oxygenated fuels programs on the boutique fuels list, even though they acknowledged that these programs are not approved into SIPs under section 211(c)(4)(C). Similarly, a commenter noted that Nevada's oxygenated fuels program contains an ethanol mandate that should be included on the list. This commenter also noted that the Nevada program includes a 9.0 psi RVP cap in winter.

Response: Section 211(c)(4)(C)(v)(II) requires us to determine the total number of fuels we have approved into all SIPs, under section 211(c)(4)(C), as of September 1, 2004 and publish a list of such fuels. We believe this provision specifically refers to state fuels programs ''approved'' into SIPs under section 211(c)(4)(C). With such specific language, we do not believe that Congress intended us to include oxygenated fuels programs that were not approved into SIPs under section 211(c)(4)(C), but, rather, were approved under sections 110 and 211(m). Since the Nevada ethanol requirement is part of an oxygenated fuels program that we approved under sections 110 and 211(m), we do not believe it should be included on the boutique fuels list we are adopting today. Also, since there are no federal wintertime RVP controls, the Nevada wintertime RVP cap is not preempted and is not approved into the SIP under section 211(c)(4)(C), and we do not believe it should be included on the boutique fuels list we are adopting today.

Comment: State biofuel mandates should be included on the Boutique Fuels list. Some commenters stated that the list should include fuels required by state biofuel mandates.

Response: Section 211(c)(4)(C)(v)(II) requires us to determine the total number of fuels we have approved into all SIPs, under section 211(c)(4)(C), as of September 1, 2004. We believe this provision is very specific in referring to state fuels programs ''approved'' into SIPs under section 211(c)(4)(C). Since the ethanol and biofuel mandates (including biodiesel) that the commenters reference were not approved into a SIP under section 211(c)(4)(C) as of September 1, 2004, they should not be placed on the list.

C. Addition and Removal of a Fuel Type From the List

Comment: Two commenters noted that beginning in 2007 there should be an opportunity to consolidate the boutique fuel list by eliminating the unique gasoline sulfur requirements for Atlanta, Georgia. According to the commenters, beginning in 2007 early sulfur credits under the Tier 2 gasoline sulfur program will have been exhausted and Atlanta and other parts of the country would be receiving the same gasoline with regard to sulfur content. The Atlanta program would simply be listed as one of the states using the 7.0 psi RVP fuel type.

Response: As discussed above, we must remove a fuel from the list when the fuel type is ''identical to a Federal fuel formulation implemented by the Administrator.''[26] Considering removal of the Atlanta program from the list, at this stage, however, would be premature.

Comment: One commenter recommended that EPA clarify the procedure for adding a fuel to the list. The commenter inquired as to whether EPA would approve either a new fuel

[25] See 71 FR 32534 for a more detailed discussion of our treatment of 9.0 RVP fuel programs.

[26] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III)

only for use in PADD 1 or one that could be used in any other PADD subsequent to removal of a fuel type such as the ''summer 7.0 psi RVP gasoline with sulfur provisions,'' which the commenter noted is currently in use only in PADD 1. The commenter also inquired as to whether a state in PADD 3 could substitute ''summer 7.0 psi RVP gasoline with sulfur provisions'' fuel type with another new fuel type. The commenter further inquired as to whether such a substitution would violate the PADD restriction in section 211(c)(4)(C)(v)(V).

Response: In sections I.B. and C. of the preamble, we discussed how we may remove a fuel type from the list, and approve a ''new fuel'' into a SIP under EPAct. In section I.D. of the preamble we also discussed how the PADD restriction in section 211(c)(4)(C)(v)(V) places a strong constraint on our future approval of ''boutique fuels'' by effectively limiting state fuels to both the types of fuels currently in existence, and to the PADDs in which they are currently found, with the exception of 7.0 psi RVP fuel type. We expect that if the ''summer 7.0 psi RVP gasoline with sulfur provisions'' fuel type in PADD 1 is removed from the list, the only fuels types we may approve into a SIP in PADD 3 would be fuel types that are approved into SIPs in PADD 3 as of the date of our consideration of a state's request to approve a fuel type.

D. Consultation with DOE

Comment: One commenter stated that EPA's consultations with DOE should be part of the public record.

Response: We agree with this comment. We did consult with DOE Staff as part of the development of the June 6, 2006 notice and the draft boutique fuels list it announced. We have docketed DOE's concurrence with the approach proposed. We have also consulted with DOE staff on developing today's notice and the list it adopts and we have docketed DOE's concurrence with this final notice.

E. General Comments

Comment: EPA should explain how the list will be affected by a request from a state governor not to allow the 1.0 psi ethanol waiver as permitted by section 211(h)(5) of EPAct.

Response: As mentioned earlier in the preamble, our approval of state fuel programs with or without a 1.0 psi waiver for ethanol blended gasoline does not have any impact on federal RVP programs, which are authorized by section 211(h). For areas covered by federal RVP programs, section 211(h)(4) of the Clean Air Act allows a 1.0 psi RVP waiver for gasoline blends containing 10% ethanol. Section 211(h)(5) also permits the governor of a state to petition EPA to remove the 1.0 psi RVP waiver if the state provides documentation that the 1.0 psi ethanol waiver increases emissions. The EPA's interpretation of section 211(c)(4)(C) above, has no impact on such federal RVP programs.

Comment: EPA should provide a more nuanced analysis of fuel categories that considers how fuel properties fall into a hierarchy of substitutability that affects supply flexibility, both from a perspective of vehicle impacts as well as legal constraints. For example, a state requiring gasoline with a 7.8 RVP limit also can legally allow gasoline with a 7.2 or 7.0 RVP limit.

Response: Fuels that meet more stringent standards than those required by a SIP may be supplied as compliant fuel in any SIP covered area. Evaluating SIP fuels from a perspective of vehicle impacts is outside the scope of today's Notice.

Comment: EPA approval of state fuels should include supply impacts of all unique fuels, such as California fuels, state winter oxygenate fuels, state-mandated biofuels, federal RFG, and federal RVP-controlled fuels. Several commenters recommended that, when reviewing the supply impacts of a proposed SIP fuel, EPA consider all unique fuels, such as California fuels, state winter oxygenate fuels, state-mandated biofuels, federal RFG, and federal RVP-controlled fuels, even if these fuels are not on the boutique fuel list that we are publishing in today's notice. Commenters also urged EPA to include these unique fuel requirements in the § 1509 Fuel Harmonization Study that EPA and DOE are currently preparing for Congress.

Response: As explained above, before approving a ''new fuel'' into a SIP, where there is ''room'' on the list, EPA is required to make a finding, after consultation with the DOE, on the impact of the ''new fuel'' on fuel supply, distribution, and producibility. In reviewing the supply implications of a ''new fuel,'' EPA agrees that it is reasonable to consider all fuels in the area although such fuels are not on the boutique fuels list. The supply implications of a ''new fuel'' can best be understood by evaluating them in the context of the other fuel requirements applicable to fuel distributed in that area. Therefore, we believe it is appropriate to consider ''unlisted'' fuels such as biofuels or oxygenated gasoline when determining whether or not a ''new fuel'' will present supply or distribution interruptions or will have a significant adverse impact on fuel producibility in the affected or contiguous areas. We also recognize that including these ''unlisted'' fuels in the EPAct section1509 fuel harmonization study is appropriate.

Comment: One commenter said that EPA should allow more time for states to demonstrate attainment with the 8 hour ozone NAAQS and the PM2.5 NAAQS. Allowing states more time will enable them to realize the benefits of federal fuels programs that have not yet been fully implemented (low sulfur gasoline and ultra-low sulfur diesel), and lessen the pressure on individual states to add motor fuel controls to their SIPs to demonstrate attainment.

Response: Determining timelines for states to demonstrate attainment with the various NAAQS is outside the scope of today's Notice.

III. Publication of the Boutique Fuel List

A list of the eight (8) fuel types approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, the states, and the PADD they are used in is set forth in the following Table. Please note that this table varies from the draft table for the fuel type interpretation published in the June 6, 2006 notice, which contained seven fuel types. Specifically, we have divided the Arizona CBG program into summer and non-summer. The Arizona summer CBG program includes the 7.0 psi RVP requirement that appeared on the draft table, but covers all the CBG requirements applicable between May 1 and September 30.

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPS) UNDER CAA SECTION 211(C)(4)(C) AS OF SEPTEMBER 1, 2004

Type of fuel control	PADD	Region–state
RVP of 7.8 psi 1	1	1–ME (May 1-Sept.15)*
	1	3–PA

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPS) UNDER CAA SECTION 211(C)(4)(C) AS OF SEPTEMBER 1, 2004—Continued

Type of fuel control	PADD	Region–state
	2	5–IN
	2	5–MI
	3	6–TX (May 1-Oct. 1)*
RVP of 7.2 psi	2	5–IL
RVP of 7.0 psi	2	7–KS
	2	7–MO
	3	4–AL
	3	6–TX
RVP of 7.0 with gasoline sulfur provisions	1	4–GA
Low Emission Diesel	3	6–TX
Cleaner Burning Gasoline (Summer)	5	9–AZ (May 1–Sept 30)
Cleaner Burning Gasoline (non-Summer)	5	9–AZ (Oct 1–Apr 30)
Winter Gasoline (aromatics & sulfur)	5	9–NV

* Dates listed in parentheses refer to summer gasoline programs with different RVP control periods from the federal RVP control period, which runs from June 1 through September 15.

Dated: December 21, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–22313 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8263–7]

Request for Member Nominees to the Proposed Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for nominations to the proposed Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC).

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, we are giving notice that EPA is inviting nominations for membership on the proposed Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC). The purpose of this proposed Committee is to provide advice on the conduct of a study titled, ''Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources,'' to be conducted as part of the U.S. Climate Change Science Program (CCSP). This assessment is part of a comprehensive set of assessments identified by the CCSP's Strategic Plan for the Climate Change Science Program. The proposed ACSERAC will advise on the specific issues that should be addressed in the assessment, appropriate technical approaches, the type and usefulness of information to decision makers, the content of the final assessment report, compliance with the Information Quality Act, and other matters important to the successful achievement of the objectives of the study. EPA has determined that this proposed federal advisory committee is in the public interest and will assist the Agency in performing its duties under the Clean Water Act, Clean Air Act, and the Global Climate Protection Act. The draft prospectus for the study is on the CCSP Web site at *http://www.climatescience.gov/Library/sap/sap4-4/sap4-4prospectus-final.htm.*

Proposed committee membership will total approximately ten (10) persons, who will serve as Special Government Employees or Regular Government Employees. The membership of the proposed committee will include a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the proposed committee. In selecting members EPA will consider individuals from the Federal Government, State and/or local governments, Tribes, the scientific community, non-governmental organizations and the private sector with expertise, experience, knowledge and interests essential to, or affected by, the successful completion of the study. Any interested person or organization may submit a nomination. Nominations should be identified by name, occupation, organization, position, address, and telephone number, and must include a complete resume of the nominee's background, experience and expertise, and any other information considered relevant. Additional avenues and resources will be utilized by EPA in the solicitation of nominees. Copies of the Committee Charter will be filed with the appropriate congressional committees and the Library of Congress.

DATES: Nominations should be received by January 18, 2007.

ADDRESSES: Submit nominations to Joanna Foellmer (8601D), National Center for Environmental Assessment, Immediate Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Telephone: (202) 564–3208; e-mail address: *Foellmer.joanna@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Joanna Foellmer (8601D), National Center for Environmental Assessment, Immediate Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Telephone:

(202) 564–3208; e-mail address: *Foellmer.joanna@epa.gov.* The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: The purpose of the proposed committee is to provide advice on the conduct of the study titled, ''Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources,'' to be conducted as part of the U.S. Climate Change Science Program (CCSP). This study will focus on adaptation to anticipated impacts of climate change on federally owned and managed lands and waters. Within the context of the assessment's prospectus, the proposed ACSERAC will advise on the specific issues to be addressed, appropriate technical approaches, the type and usefulness of information to decision makers, the content of the final assessment report, compliance with the Information Quality Act, and other matters important to the successful achievement of the objectives of the study. Individuals and organizations interested in submitting nominations for membership should familiarize themselves with the final prospectus for