

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 entitlements, 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.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that will raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: June 29, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

### PART 3—ADJUDICATION

#### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.304 as follows.

a. Revise the introductory text of paragraph (f).

b. Redesignate paragraphs (f)(3) and (4) as paragraphs (f)(4) and (5) respectively.

c. Add new paragraph (f)(3).

The revision and addition read as follows:

#### § 3.304 Direct service connection; wartime and peacetime.

\* \* \* \* \*

(f) *Posttraumatic stress disorder.* Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. The following provisions apply to claims for service connection of posttraumatic stress disorder diagnosed during service or based on the specified type of claimed stressor:

\* \* \* \* \*

(3) If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of posttraumatic stress disorder and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. For purposes of this paragraph, "fear of hostile military or terrorist activity" means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire,

including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

\* \* \* \* \*

[FR Doc. E9-20339 Filed 8-21-09; 8:45 am]

BILLING CODE 8320-01-P

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 80

[EPA-HQ-OAR-2008-0924; FRL-8948-1]

RIN 2060-AP40

#### Regulation of Fuels and Fuel Additives: Federal Volatility Control Program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 1997 8-Hour Ozone Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to establish an applicable standard of 7.8 pounds per square inch (psi) Reid vapor pressure (RVP) under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area during the high ozone season—June 1st to September 15th of each year—beginning in 2010. This action would require the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer, and Weld counties.

**DATES:** *Comments.* Comments must be received on or before September 23, 2009, unless a public hearing is requested by September 14, 2009.

*Public Hearing.* To request a public hearing, contact Sean Hillson at (734) 214-4789 or [hillson.sean@epa.gov](mailto:hillson.sean@epa.gov). If a hearing is requested no later than September 14, 2009, a hearing will be held at a time and place to be published in the **Federal Register**. Persons wishing to testify at a public hearing must contact Sean Hillson at (734) 214-4789, and submit copies of their testimony to the docket and to Sean Hillson at the addresses below, no later than 10 days prior to the hearing. After any such hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments. If a hearing is held, EPA will publish a notice in the **Federal Register** extending the comment period for 30 days after the hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0924, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-OAR-2008-0924. Please include a duplicate copy, if possible. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Hand Delivery:* Air and Radiation Docket, EPA, Room B-102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0924. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The Docket ID No. for this action is EPA-HQ-OAR-2008-0924. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Public Reading Room, EPA/DC, EPA West, Room B-102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Sean Hillson, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mailcode AASMCG, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4789; fax number: (734) 214-4052; e-mail address: [Hillson.Sean@epa.gov](mailto:Hillson.Sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we", "us", or "our" is used, we mean EPA. This document concerns the amendment to EPA's regulations governing gasoline supplied to the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area.

*Regulated Entities.* Entities potentially affected by this rule are fuel producers and distributors who do business in Colorado. Regulated entities include:

Examples of potentially regulated entities	NAICS codes <sup>a</sup>
Petroleum Refineries .....	324110
Gasoline Marketers and Distributors .....	424710 424720
Gasoline Retail Stations .....	447110
Gasoline Transporters .....	484220 484230

<sup>a</sup>North American Industry Classification System (NAICS).

This table provides only a guide for readers regarding entities likely to be regulated by this action. You should carefully examine the regulations in 40 CFR 80.27 to determine whether your facility is impacted. If you have further questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

**Outline**

- I. Introduction
- II. What Is the History of Gasoline Volatility Regulation?
- III. What Are the EPA Rulemaking Actions Addressing the Transition From the 1-Hour to the 8-Hour Ozone NAAQS?
- IV. What Information Supports More Stringent Federal RVP Requirements in Colorado's 8-Hour Ozone Nonattainment Areas?
  - A. History
  - B. Cost/Benefit Analysis
- V. Proposed Action
- VI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- VII. Legal Authority and Statutory Provisions

**I. Introduction**

Section 211(h) of the Clean Air Act (CAA) requires that EPA promulgate regulations establishing a maximum RVP of 9.0 psi for gasoline introduced into commerce during the high ozone season. It also provides that EPA shall "establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds 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." In today's action, EPA is proposing to establish an applicable standard for gasoline at 7.8 pounds per square inch (psi) under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 8-hour ozone nonattainment area (as codified in volume 40 of the Code of Federal Regulations (CFR) Part 81) during the high ozone season. This action would require the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer and Weld counties.

This notice describes our proposed action to set the RVP limit for gasoline

at 7.8 psi RVP gasoline in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 8-hour nonattainment area during the high ozone season.

This preamble is organized into six parts. Section I is this introduction. Section II provides the history of federal gasoline volatility regulation. Section III describes EPA's rulemaking actions to transition from the 1-hour to the 8-hour ozone standard. Section IV provides information to support the Agency's proposed action regarding tightening of the volatility standards in the prior Denver Ozone Early Action Compact (EAC) area that is now effectively designated nonattainment under the 1997 8-hour ozone standard.<sup>1</sup> Section V summarizes the Agency's proposed action. Finally, Section VI is a review of applicable statutory and Executive Orders.

## II. What Is the History of Gasoline Volatility Regulation?

In 1987, EPA determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment.<sup>2</sup> Evaporative emissions from gasoline, referred to as volatile organic compounds (VOCs), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

Under section 211(c) of the Clean Air Act (CAA or "the Act"), we promulgated regulations on March 22, 1989, that set maximum limits for the RVP of gasoline sold during the summer ozone control season—June 1st to September 15th. These regulations were referred to as Phase I of a two-phase nationwide<sup>3</sup> program, which was designed to reduce the volatility of commercial gasoline during the summer ozone control season.<sup>4</sup> On June 11, 1990, EPA promulgated more stringent volatility controls under Phase II of the volatility control program.<sup>5</sup> These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour

ozone National Ambient Air Quality Standard 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 EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the ozone control season. It further requires EPA to establish more stringent RVP standards in nonattainment 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 EPA 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 nonattainment area redesignated to attainment.

On December 12, 1991, EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA.<sup>6</sup> The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for the 1-hour ozone standard, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published in 1990.<sup>7</sup>

## III. What Are the EPA Rulemaking Actions Addressing the Transition From the 1-Hour to the 8-Hour Ozone NAAQS?

In July 1997, EPA promulgated a revised ozone standard which would be measured over an 8-hour period, *i.e.*, the 8-hour ozone NAAQS or standard.<sup>8</sup> The 8-hr Ozone NAAQS rule was challenged by numerous litigants and in May 1999, the U.S. Court of Appeals for the D.C. Circuit issued a decision remanding, but not vacating, the 8-hour ozone standard. In February 2001, the Supreme Court upheld our authority to set the ozone NAAQS and remanded the case to the D.C. Circuit Court for disposition of issues the Court did not address in its initial decision.<sup>9</sup> The Court of Appeals addressed these remaining issues and

upheld the 8-hour ozone NAAQS.<sup>10</sup> In April 2004, EPA designated and classified areas for the 1997 8-hr ozone standard.<sup>11</sup>

Additionally, in April 2004, we promulgated the Phase 1 Ozone Implementation rule that addressed the revocation of the 1-hour ozone NAAQS and identified the 1-hour requirements that would remain applicable after revocation (*i.e.*, the "anti-backsliding provisions").<sup>12</sup> These requirements varied based on areas' designation for the 1-hour standard and such areas' designation for the 1997 8-hour ozone NAAQS. Although the Phase 1 Ozone implementation rule was challenged in court and portions of the rule were vacated, the vacated portions of the rule are not relevant to today's proposed action.<sup>13</sup>

In November 2005, EPA promulgated the Phase 2 Ozone Implementation rule that addressed various control and planning obligations that are applicable to areas designated nonattainment for the 1997 8-hour ozone NAAQS.<sup>14</sup> No part of the Phase 2 Ozone implementation rule is relevant for today's proposed rulemaking.

## IV. What Information Supports More Stringent Federal RVP Requirements in Colorado's 8-Hour Nonattainment Areas?

### A. History

On November 6, 1991, we published ozone nonattainment designations for the 1-hour ozone NAAQS pursuant to sections 107(d)(1)(C), 107(d)(2)(A), and 107(d)(4)(A) of the CAA.<sup>15</sup> In that action, we noted that the Denver-Boulder area was designated nonattainment by operation of law under CAA Section 107(d)(1)(C) and we classified it as a "transitional area" as determined under section 185A of the CAA. The Denver-Boulder nonattainment area included the following counties: all of Denver, Douglas, and Jefferson Counties, Boulder County, excluding the Rocky Mountain National Park, and the portions of Adams and Arapahoe Counties west of Kiowa Creek. Because the Denver-Boulder area was designated as a transitional ozone nonattainment area, the applicable volatility standard for the Denver-Boulder area, under the

<sup>10</sup> *American Trucking Assoc. v. EPA*, 195 F.3d 4 (D.C. Cir., 1999).

<sup>11</sup> 69 FR 23857 (Apr. 30, 2004).

<sup>12</sup> 69 FR 23951 (Apr. 30, 2004).

<sup>13</sup> *S. Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006 rehearing denied *S. Coast Air Quality Mgmt. Dist. v. EPA*, 2007 U.S. App. Lexis 13751 (D.C. Cir. June 8, 2007).

<sup>14</sup> 70 FR 71612 (Nov. 29, 2005).

<sup>15</sup> 56 FR 56694 (Nov. 6, 1991).

<sup>1</sup> 72 FR 53952 (Sept. 21, 2007).

<sup>2</sup> 52 FR 31274 (Aug. 19, 1987).

<sup>3</sup> Hawaii, Alaska and U.S. territories were exempted.

<sup>4</sup> 54 FR 11868 (Mar. 22, 1989).

<sup>5</sup> 55 FR 23658 (June 11, 1990).

<sup>6</sup> 56 FR 64704 (Dec. 12, 1991).

<sup>7</sup> 55 FR 23658 (June 11, 1990).

<sup>8</sup> 62 FR 38856 (July 18, 1997).

<sup>9</sup> *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457 (2001).

Federal RVP rule promulgated on December 12, 1991, was 7.8 psi from June 1 to September 15 beginning in 1992. From 1992 through 2003, and in response to waiver petitions from the Governor of Colorado, however, we waived the 7.8 psi RVP standard for the Denver area and required the 9.0 psi standard instead. In depth discussions of these past actions can be found in the applicable **Federal Register** notices.<sup>16</sup> In 2004, based on monitored violations, we decided it was appropriate to require compliance with the 7.8 psi RVP standard in the Denver-Boulder area. As a result, the 7.8 psi RVP standard currently applies in the area that comprised the original Denver-Boulder 1-hour ozone nonattainment area as described in our November 6, 1991 **Federal Register** notice.<sup>17</sup>

As mentioned above, in 1997, EPA adopted a new, more stringent ozone NAAQS based on the latest ozone health effects information. The standard was set at a level of 0.08 ppm averaged over an 8-hour period. Attainment of the standard is based on the 4th maximum 8-hour ozone concentration recorded at each monitoring location each year, averaged over a three-year period.

State and regional agencies in the Denver metropolitan area entered into a voluntary agreement with EPA in December 2002 that laid out a process for achieving attainment with EPA's 1997 8-hour ozone standard in an expeditious manner, but no later than December 31, 2007. Called the Early Action Compact for Ozone (EAC), the agreement sets forth a schedule for the development of technical information and the adoption of control measures into the State Implementation Plan (SIP) needed to comply with the 8-hour standard by December 31, 2007 and maintain the standard beyond that date. The EAC Ozone Action Plan (OAP) was adopted by the Colorado Air Quality Control Commission (AQCC) in March 2004 and submitted to EPA in the summer of 2004. EPA promulgated approval of the OAP in the **Federal Register**.<sup>18</sup> A revision to the OAP to preserve the reductions estimated in the original plan was approved by the AQCC on December 17, 2006. EPA approved the revision in February 2008.

In April 2004, EPA designated and classified areas of the country that violated the 1997 8-hour ozone standard. Based on 2001–2003 design values, the Denver area violated the 8-

hour ozone standard at three monitors and was included on EPA's 2004 list of nonattainment areas. In addition, the geographic boundaries of the earlier 1-hour nonattainment area were expanded. However, based on terms in the Early Action Compact, EPA deferred the effective date of the area's nonattainment designation. The deferral was conditioned on the area continuing to meet the deadlines in the EAC and achieving the 8-hour standard by December 31, 2007 (based on air quality data from the 2005–2007 ozone seasons).

Despite measures in the OAP that reduced ozone-causing emissions in the Denver area, the area failed to achieve the standard by December 31, 2007. A three-year (2005–2007) design value of 0.085 ppm at one monitor (Rocky Flats North), violated the 8-hour ozone NAAQS.

Consequently, EPA did not continue the deferral of the effective date of the Denver 8-hour ozone nonattainment designation. The nonattainment designation became effective on November 20, 2007.<sup>19</sup> The 8-hour ozone nonattainment area is referred to as the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, ozone nonattainment area and includes the following counties: All of Adams, Arapahoe, Boulder (now including part of the Rocky Mountain National Park), Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. The Denver-Boulder-Greeley-Ft. Collins-Loveland 8-hour ozone nonattainment area is required to attain the standard as expeditiously as practicable, but no later than November 2010.

#### *B. Cost Benefit Analysis*

Gasoline with 7.8 psi RVP is already required in the former 1-hour ozone nonattainment area, which represents a significant portion of the fuel used in the newly expanded area. The change proposed in this action extends the low RVP fuel requirement to portions of Larimer and Weld counties and into the remaining portions of Arapahoe, Adams, Boulder and Broomfield counties. Denver is located in Petroleum Administration for Defense Districts (PADD) IV, which is the most isolated area within the 48 lower states of the U.S. in terms of supply. PADD IV includes the Rocky Mountain states (Montana, Idaho, Wyoming, Utah, and Colorado). Gasoline supply to the Denver market originates from 6 main refiners. These refiners vary in size, refining capacity and complexity. These

refineries are: Suncor (Commerce City, CO), Valero Corp. (Commerce City, CO), Conoco-Phillips (Borger, TX), Valero Corp. (Sunray, TX), Sinclair Oil Corp. (Caper and Rawlings, WY), and Frontier Oil Corp. (Cheyenne, WY and El Dorado, KS).

The State estimates (see docket submittal) a total of 3.4 million gallons of gasoline per day (1.2 billion gallons per year) are consumed in the entire 1997 8-hour ozone nonattainment area; of that, approximately 665,616 gallons of gasoline per day (242.9 million gallons per year) are utilized in the 9.0 psi RVP areas of the 8-hour ozone nonattainment area. To further bound the incremental volume of low RVP gasoline that would need to be supplied to the expanded 8-hour ozone nonattainment area, the State sampled gas stations in the proposed expanded area and found that approximately 80% of gasoline in the expanded 8-hour ozone nonattainment area met Denver's more stringent 7.8 psi RVP base gasoline volatility requirement. This means that only 20% or 133,000 gallons per day, or 18.4 million gallons per summer (May 1st through Sept. 15th) will be affected if the area's volatility limit is set at 7.8 psi from the current 9.0 psi RVP. RVP compliance at the retail level runs from June 1st to September 15th. The May 1st date was used in the economic analysis to recognize that low RVP fuel must be produced at the refinery level prior to the retail compliance date such that terminals and retailers have sufficient time to turn tanks over prior to their required compliance.

There are two cost estimates applied for the proposed volatility control. The State estimates that reducing gasoline volatility to 7.8 psi RVP in the expanded 8-hour ozone nonattainment area could impact the cost of producing gasoline from 0 to 3.4 cents per gallon. We modeled the cost of reducing RVP when we evaluated the cost of benzene control for the Mobile Source Air Toxics (MSAT2) rulemaking.<sup>20</sup> That analysis used the linear program (LP) refinery model to estimate the costs. Because that analysis did not estimate RVP control costs for PADD IV, which includes Colorado, we rely on PADD II costs to be reflective. The per gallon cost estimate for 7.8 psi RVP control from that analysis was 0.45 cents per gallon. Using 133,000 gallons of gasoline per day to represent the share of the expanded 8-hour ozone nonattainment area gasoline market that would be required to meet the 7.8 psi RVP standard from June 1st through September 15th, at a cost of 0.45 to 3.4

<sup>16</sup> See 53 FR 26067 (April 30, 1993); 59 FR 15629 (April 4, 1994); 61 FR 16391 (April 15, 1996); 63 FR 31627 (June 10, 1998); and 66 FR 28808 (May 24, 2001).

<sup>17</sup> 56 FR 56735 (Nov. 6, 1991).

<sup>18</sup> 70 FR 44052 (Aug. 1, 2005).

<sup>19</sup> 72 FR 53952 (Sept. 21, 2007).

<sup>20</sup> 72 FR 8427 (Feb. 2, 2007).

cents per gallon, we estimate that reducing the gasoline volatility limit to 7.8 psi RVP for non-blended gasoline in this area, would result in a cost of less than \$700,000 per summer (\$600 to \$4500 per day). Therefore, the marginal costs for the expanded nonattainment area do not exceed the threshold that would classify this action as significant.

## V. Proposed Action and Rationale

EPA is proposing to establish an applicable standard of 7.8 psi RVP under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area (as codified in volume 40 of the Code of Federal Regulations (CFR) Part 81) during the high ozone season—June 1st to September 15th of each year—beginning in 2010. This action would require the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer, and Weld counties.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” This action raises novel legal or policy issues arising out of legal mandates. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, the Colorado Department of Public Health and Environment prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in “Analysis of Expansion of Low RVP Area by the State of Colorado”. A copy of the analysis is available in the docket for this action and the analysis is summarized in Section IV.B.

### B. Paperwork Reduction Act

The information collection requirements contained in the phase I and phase 2 volatility rules (55 FR 11868, March 22, 1989 and 55 FR 23658, June 11, 1990) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0178. 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. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the expanded portion of the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area not already covered by low RVP requirements, and gasoline distributors and retail stations in those areas. We have determined that only one small refiner would be affected by the low RVP requirements. Other small entities, such as gasoline distributors and retail stations located in the area that will become a covered area as a result of today’s action, will be subject to the same requirements as those small entities which are located in the current covered area. EPA believes the impacts these small entities (*e.g.* small blenders, importers, retailers, *etc.*) would occur primarily in the form of a slightly higher wholesale gasoline price which would then be passed along in product price increases. In the preamble of this notice, we have estimated low RVP costs to be 0.45 to 3.4 cents/gallon during the summer volatility season. There would be no fuel or price difference outside the

summer control season (*i.e.*, during September 15 to May 1). Since all wholesale suppliers would increase prices by about the same amount, the competitive environment for small entities purchasing that gasoline should not be affected significantly. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

### D. 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 affects portions of the

Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area that were not previously part of the 1-Hour ozone nonattainment area. EPA estimates that a 133,000 gallons a day of gasoline would be affected by this rule; resulting in an economic impact of less than \$700,000 per summer. 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.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255 August 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 final 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. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 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." This rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule impacts portions of the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area not previously part of the 1-Hour nonattainment area. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health 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: (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.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As described in section IV.B., the requirement to use low RVP gasoline in the expanded nonattainment area will result in an increase of roughly 3,200 barrels per day of low RVP gasoline that has to be supplied to the area. This increase in the volume of low RVP gasoline does not meet the threshold of being considered a "significant energy action".

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 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.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the applicable 8-hour ozone NAAQS which establish the level of protection provided to human health or the environment. This rule will tighten the applicable volatility standard of gasoline during the summer possibly resulting in slightly lower mobile source emissions. Therefore disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result.

## **VII. Legal Authority and Statutory Provisions**

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

### **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: August 17, 2009.

**Lisa P. Jackson,**  
Administrator.

Title 40, chapter I, part 80 of the Code of Federal Regulations is proposed to be 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)(ii), 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) \* \* \*
- (ii) \* \* \*

**APPLICABLE STANDARDS<sup>1</sup> 1992 AND SUBSEQUENT YEARS**

State	May	June	July	August	September
Colorado <sup>2</sup>	9.0	7.8	7.8	7.8	7.8

<sup>1</sup> Standards are expressed in pounds per square inch (psi).

<sup>2</sup> The Colorado Covered Area encompasses the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area (see 40 CFR part 81).

\* \* \* \* \*

[FR Doc. E9-20290 Filed 8-21-09; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

[EPA-HQ-TRI-2009-0602; FRL-8948-3]

**RIN 2025-AA24**

**Toxics Release Inventory Articles Exemption Clarification Proposed Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to take two actions relating to the articles exemption under the Toxics Release Inventory (TRI) program. First, EPA proposes to formally remove a paragraph of guidance dealing with releases due to natural weathering of products that appeared in the Reporting Forms and Instructions (RF&I) from 1988 to 2001. This guidance was absent from the Reporting Forms and Instructions after 2001, but formal notice of its removal was never issued. EPA here provides notice that this language has been removed and may not be relied on by reporting facilities. Second, EPA is proposing an interpretation of how the articles exemption applies to the Wood Treating Industry, specifically to treated wood that has completed the treatment process. We are requesting comment on both of these actions.

**DATES:** Comments, identified by Docket ID No. EPA-HQ-TRI-2009-0602, must be received by EPA on or before October 23, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-

TRI-2009-0602, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

- *E-mail: oei.docket@epa.gov*
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-TRI-2009-0602. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters or any form of encryption and must be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or (703) 412-9810, TDD (800) 553-7672, *http://www.epa.gov/epaoswer/hotline/*. For specific information on this rulemaking contact: Steven DeBord, Toxics Release Inventory Program Division, Mailcode 2844T, OEI,