

**Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 27, 2007.

**Steve Rothblatt**,

*Acting Regional Administrator, Region 5.*

[FR Doc. E7-5654 Filed 3-28-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2006-0976; FRL-8292-9]

### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Control of Gasoline Volatility

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Ohio on February 14, 2006 and October 6, 2006, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in the Cincinnati and Dayton 8-hour ozone nonattainment areas. Ohio has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Ohio's fuel requirements into the Ohio SIP because EPA has found that the requirements are necessary for the Cincinnati and Dayton areas to achieve the 8-hour ozone national

ambient air quality standard (NAAQS). This action is being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before April 30, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0976, by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.
- *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
- *Fax*: (312) 886-5824.
- *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 a.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2006-0976. 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

**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 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886-6061 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061, [acevedo.francisco@epa.gov](mailto:acevedo.francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. Description of the SIP Revision and EPA's Action.
  - A. What Is the Background for This Action?
  - B. What Is Reid Vapor Pressure?
  - C. What Are the Relevant Clean Air Act Requirements?
  - D. How Has the State Met the Test Under Section 211(c)(4)(C)?
  - E. What Are the Relevant Energy Policy Act Requirements?
  - F. How Has the State Met the Relevant Energy Policy Act Requirements?
  - G. Why Is EPA Taking This Action?
  - H. What Other Relevant Materials Has the State Submitted?
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

### I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

## II. Description of the SIP Revision and EPA's Action

### A. What Is the Background for This Action?

On April 15, 2004, the EPA designated 5 counties in Cincinnati, Ohio (Hamilton, Butler, Clinton, Warren and Clermont counties—Cincinnati-Hamilton, OH-KY-IN) and 4 counties in Dayton, Ohio (Clark, Greene, Miami, and Montgomery counties—Dayton-Springfield, OH) as nonattainment for the 8-hour ozone standard. Both areas have been designated Basic nonattainment with respect to the 8-hour ozone standard and they are required to attain the standard as expeditiously as practicable, but no later than June 2009.

As part of the State of Ohio's (Ohio) efforts to bring these areas into attainment, the State is adopting and implementing a broad range of ozone control measures including control of emissions from auto refinishing operations, the reduction of VOC emission from portable fuel containers, the adoption of industrial solvent degreasing rules, and the implementation of a 7.8 pound per square inch (psi) RVP fuel program.

Ohio originally proposed to replace the State's vehicle inspection and maintenance (I/M) program in Cincinnati and Dayton, which was discontinued by the State on December 31, 2005, with the requirement to supply 7.8 psi RVP gasoline to these areas starting in 2006. However, the State has since modified its original request and has asked that EPA act on the state's fuel waiver request to allow the use of 7.8 psi RVP gasoline in both areas. On February 14, 2006, Ohio submitted the fuel waiver request as a SIP revision and the submittal included adopted amended rules under Ohio Administrative Code Chapter 3745-72 "Low Reid Vapor Pressure Fuel Requirements" to require the use of 7.8 psi RVP gasoline in the Cincinnati and Dayton areas beginning on June 1, 2006.

Soon after the State's February 14, 2006 submittal, the American Petroleum Institute (API) appealed the State's 7.8 psi RVP rule on the basis that there was insufficient time to implement the rule and that EPA had not yet issued a waiver under section 211(c)(4)(C) of the CAA, as amended. EPA conducted an informal survey of gasoline suppliers and determined that there was not enough 7.8 psi RVP gasoline to supply the Cincinnati and Dayton nonattainment areas during the 2006 ozone season. As part of the State's settlement with API on its appeal, Ohio agreed to revise the rule to delay the effectiveness of the rule until twelve months following the approval of a fuel waiver by EPA in order to ensure that there is sufficient time for the regulated community to prepare for the change.

On July 10, 2006, the Ohio Environmental Protection Agency (OEPA) adopted amended rules under the Ohio Administrative Code Chapter 3745-72 "Low Reid Vapor Pressure Fuel Requirements" to modify the implementation date for the required use of 7.8 psi RVP gasoline in the Cincinnati and Dayton areas to be one year after the approval of a fuel waiver under CAA amendments section 211(c)(4)(C). Public hearings on the amended rules were held on June 2, 2006, in Columbus, Ohio and the rules became effective on July 17, 2006.

The OEPA submitted these amended low-RVP rules to EPA as a revision to the SIP on October 6, 2006. As part of the October 6, 2006 submittal, OEPA included additional technical support for the SIP revision, including documentation supporting the State's request to waive the CAA preemption of State fuel controls pursuant to section 211(c)(4) of the CAA. The documentation demonstrates that a low-RVP fuel is critical to the Cincinnati and Dayton ozone nonattainment areas attainment of the 8-hour ozone standard.

### B. What Is Reid Vapor Pressure?

Reid Vapor Pressure, or RVP, is a measure of a gasoline's volatility at a certain temperature and is a measurement of the rate at which gasoline evaporates and emits VOCs; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its more volatile components, such as butane. Lowering RVP in the summer months can offset the effect of high summer temperatures upon the volatility of gasoline, which, in turn, lowers emissions of VOC. Because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will help areas achieve the NAAQS for ozone and thereby produce benefits for human health and the environment.

The primary emission reduction benefit from low-RVP gasoline used in motor vehicles comes from reductions in VOC evaporative emissions; exhaust emission reductions are much smaller. Because oxides of nitrogen (NO<sub>x</sub>) are a product of combustion from motor vehicles, they will not be found in evaporative emissions, and low-RVP gasoline will have little or no effect on NO<sub>x</sub>.

### C. What Are the Relevant Clean Air Act Requirements?

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions approving certain state fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulations respecting a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to

the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve an otherwise preempted state fuel standard in a SIP:

Only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.

EPA's August, 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs" gives further guidance on what EPA is likely to consider in making a finding of necessity. Specifically, the guidance recommends breaking down the necessity demonstration into four steps: (1) Identifying the quantity of reductions needed to reach attainment; (2) identifying other possible control measures and the quantity of reductions each measure would achieve; (3) explaining in detail which of those identified control measures are considered unreasonable or impracticable; and, (4) showing that, even with the implementation of all reasonable and practicable measures, the state would need additional emission reductions for timely attainment, and that the state fuel measure would supply some or all of such additional reductions.

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the requirements of the CAA, EPA regulations, and conforms to EPA's completeness criteria in 40 CFR part 51, Appendix V. Further, EPA has looked at Ohio's demonstration that the low-RVP fuel control is necessary in accordance with Section 211(c)(4)(C) of the CAA and agrees with the State's conclusion that a fuel measure is needed to achieve the 8-hour ozone NAAQS.

*The SIP submittal contains:* (1) 7.8 low vapor pressure gasoline waiver request for Cincinnati and Dayton; (2) Amendments to Ohio Administrative Code, Chapter 3745-72 "Low Reid Vapor Pressure Fuel Requirements", effective January 16, 2006 and July 17, 2006; (3) Additional support for 7.8 Reid Vapor Pressure fuel waiver dated October 6, 2006; and, (4) the public hearing records dated December 7, 2005 and June 2, 2006.

#### *D. How Has the State Met the Test Under Section 211(c)(4)(C)?*

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a State from prescribing or attempting to enforce any control or prohibition respecting any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA has adopted federal RVP controls under CAA sections 211(c) and 211(h). See 56 FR 64704 (December 12, 1991). These regulations are found in 40 CFR 80.27. The State of Ohio is currently required under the federal rule to meet a 9.0 psi RVP standard. See 40 CFR 80.27(a)(2).

As stated previously, a State may prescribe and enforce an otherwise preempted low-RVP requirement only if the EPA approves the control into the State's SIP. In order to approve a preempted state fuel control into a SIP, EPA must find that the state control is necessary to achieve a NAAQS because no other measures that would bring about timely attainment exist or that such measures exist but are either not reasonable or practicable. Thus, to determine whether Ohio's low-RVP rule is necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the emission reductions needed to achieve the 8-hour ozone NAAQS.

To estimate the emission reductions needed in the Cincinnati and Dayton areas to achieve attainment of the ozone NAAQS, EPA used modeling information developed by the Lake Michigan Air Directors Consortium (LADCO). This analysis used the CAMx (Comprehensive Air Quality Model with Extensions) photochemical dispersion model to simulate expected concentrations throughout much of the Eastern United States. Using procedures recommended by EPA, LADCO used modeling results for 2002 and 2009 to estimate the reduction in ozone concentrations expected to occur by 2009. These results project that the emission reductions expected to occur by 2009 in the Cincinnati and Dayton areas will bring the areas into attainment of the 8-hour ozone standard. This modeling reflects emission reductions as if the vehicle inspection and maintenance program

were still operating but with no reductions from low RVP gasoline. LADCO also modeled conditions for 2008 and then projected concentrations to continue to exceed the standard. Therefore, EPA finds the level of emission reductions achieved by 2009 to represent the reductions necessary to attain the standard.

Interpretation of the quantity of emission reductions needed to attain the ozone standard is complicated by the fact that ozone results from chemical reactions involving both VOC and NO<sub>x</sub>. A given air quality improvement (e.g., attaining the standard) can result from a variety of combinations of reductions of the emissions of these two precursors. That is, the quantity of VOC emission reduction needed to attain the standard is in part a function of the quantity of NO<sub>x</sub> emission reduction expected to occur.

While other combinations of VOC and NO<sub>x</sub> emission reduction would also be expected to provide for attainment, EPA is using the combination of VOC and NO<sub>x</sub> emissions modeled by LADCO to define the emission reductions needed to attain the standard in the Cincinnati and Dayton areas. By this means, EPA determined that the necessary emission reductions for VOC in the Cincinnati area is 47 tons per day and in the Dayton area is 21 tons per day, for a total of 68 tons per day. EPA considers these amounts as the necessary VOC emissions reductions based on an expectation that NO<sub>x</sub> emissions will simultaneously be reduced by 202 tons per day in the Cincinnati area and by 39 tons per day in the Dayton area, for a total of 241 tons per day.

Some of these emission reductions will be achieved by programs that have already been adopted, most notably including the Federal Motor Vehicle Control Program. In order to assess the need for low RVP fuel, EPA sought to estimate the quantity of emission reduction needed for attainment by 2008 beyond the reductions provided by these programs. Because the modeling suggests attainment by 2009, one year after the date by which attainment must begin, the one year's emission reduction (from 2008 to 2009) is an approximation of the additional emission reduction needed for the area to begin attaining by 2008. EPA estimated this one year's emission reduction as 1/3 of the emission reduction expected between 2002 and 2009. Thus, EPA estimated that the additional emission reduction needed will be approximately 7 tons per day in the Cincinnati area and approximately 3 tons per day in the Dayton area, for a total of approximately 10 tons per day in the Cincinnati/Dayton area.

Some features of these estimates warrant note. First, the deadline for Cincinnati and Dayton to meet the air quality standard is 2009, which means that any VOC reductions contributing to attainment would need to occur during the 2008 ozone season. Thus, the emission inventory and modeling information from LADCO do not directly assess whether the set of measures assumed in the analysis will suffice to assure timely attainment. Second, the emission inventory includes emission reductions that would be expected were Ohio to restart a vehicle inspection and maintenance program and does not include the emission reductions that are expected from use of low RVP gasoline. Third, while EPA believes that the modeling is adequate for purposes here, EPA recognizes that Ohio and other states are continuing to refine their emission inventories and modeling analyses, and EPA is not attempting to evaluate here whether the analysis would constitute an adequate attainment demonstration as required under CAA section 172(c)(1). Moreover, under CAA section 211(c)(4)(C)(i), EPA is allowed to make a finding of necessity even if the plan for an area does not contain an approved demonstration of timely attainment. Fourth, EPA recognizes the uncertainties inherent in modeling. For this reason, EPA guidance recommends that states supplement the modeling with additional analyses to be used as weight of evidence in assessing whether the modeling overstates or understates the air quality improvement that is expected. The above estimates of reductions needed to attain the standard in the Cincinnati and Dayton areas are taken directly from LADCO modeling results without considering any additional analyses that Ohio may submit along with its attainment demonstrations.

The State evaluated an extensive list of non-fuel alternative controls to determine if reasonable and practicable controls could be adopted and used to attain the 8-hour ozone NAAQS by the required deadline.

The State evaluated a wide range of control measures, considering the following factors: VOC emission reduction potential; ability to implement the control measure expeditiously; cost; and, ease of implementation. Ohio summarized the results of this evaluation in a document entitled "RVP Rule Waiver Request Addendum."

After evaluating a wide range of other controls for their reasonableness and practicability, four measures did rise to the top: the reduction of VOC emission

from auto refinishing operations, the reduction of VOC emissions from portable fuel containers, the adoption of rules for industrial solvent degreasing, and, the lowering of gasoline vapor pressure to 7.8 psi during the summer months. Ohio determined that the rest of the control measures would not achieve emission reductions early enough to bring about timely attainment, were technically impossible to implement, and, were either unreasonable or impracticable.

In the case of auto refinishing operations, the State has adopted rules that require high volume, low pressure spray equipment and additional work practice requirements. The State's analysis indicates that the application of such controls could yield emission reductions comparable to those from other source categories in the range of approximately 0.7 tons per day (including 0.4 tons per day in the Cincinnati area and 0.3 tons per day in the Dayton area), in a time period compatible with the State's commitment to attain the 8-hour NAAQS as expeditiously as possible. Ohio's evaluation also showed that VOC reductions in the range of 4.3 tons per day (including 2.6 tons per day from the Cincinnati area and 1.7 tons per day in the Dayton area) could be achieved through the adoption of industrial solvent cleaning (degreasing) regulations. In addition, the implementation of statewide rules requiring the use of newly designed spill proof portable fuel containers would achieve a modest reduction of about 0.4 tons per day across the Cincinnati/Dayton area by 2008.

The State's analysis identified that adoption of all measures determined to be reasonable and practicable would at most result in approximately 5.2 tons per day of emission reductions by 2008. Thus, even with implementation of all reasonable and practicable non-fuel control measures, additional VOC reductions are necessary.

Ohio's 7.8 psi RVP fuel requirement, which includes a 1 psi exemption for ethanol blended fuels, is calculated to achieve approximately 4.6 tpd of VOC reductions in Cincinnati and 4.2 tpd of VOC reductions in Dayton beginning the summer of 2008. EPA believes these emission reductions are necessary to achieve the ozone NAAQS in both areas. EPA is basing today's action on the information available to us at this time, which indicates that adequate reasonable and practicable non-fuel measures that would achieve these needed emission reductions, and protect Ohio's air quality in a timely manner are not available to the State. Hence, EPA

finds that the 7.8 psi RVP fuel program is necessary for attainment of the applicable ozone NAAQS, and is proposing to approve it as a revision to the Ohio SIP.

#### *E. What Are the Relevant Energy Policy Act Requirements?*

The Energy Policy Act of 2005 (EPAct) amends the CAA by requiring EPA, in consultation with the Department of Energy (DOE), to determine the total number of fuels approved into all SIPs under section 211(c)(4)(C), as of September 1, 2004, and to publish a list that identifies these fuels, the States and Petroleum Administration for Defense Districts (PADD) in which they are used. CAA section 211(c)(4)(C)(v)(II). It also places three additional restrictions on EPA's authority to waive preemption by approving a State fuel program into the SIP.

##### *These restrictions are as follows:*

- First, EPA may not approve a State fuel program into the SIP if it would cause an increase in the total number of fuel types approved into SIPs as of September 1, 2004.

- Second, in cases where EPA approval of a fuel would increase the total number of fuel 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 fuel types as of September 1, 2004, we are required to make a finding after consultation with 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.

- Third, with the exception of 7.0 psi RVP, EPA may not approve a state fuel into a SIP unless that fuel type is already approved in at least one SIP in the applicable PADD. CAA Section 211(c)(4)(C)(v)(I), (IV) and (V).

On December 28, 2006, EPA published the final notice containing the final interpretation, which was a fuel type interpretation, of the EPAct provisions (See 71 FR 78192). We also determined and published a list of the total number of fuels approved into all SIPs, under section 211(c)(4)(C) as of September 1, 2004.

#### *F. How Has the State Met the Relevant Energy Policy Act Requirements?*

Any approval of a 7.8 psi RVP program would be subject to the EPAct restrictions, described earlier above. More specifically, any approval of a 7.8 psi RVP program must not cause an increase in the total number of fuel types approved into all SIPs as of

September 1, 2004. Under our final interpretation, Ohio's 7.8 psi RVP requirement for the Cincinnati and Dayton areas is not a "new fuel type." EPA's approval of Ohio's 7.8 psi RVP will not increase the total number of fuels approved into all SIPs, as of September 1, 2004, because 7.8 psi RVP is on the list of fuels types. Further, because the total number of fuels approved into all SIPs at this time is not below the number of fuels on the final list of fuels, which we published on December 28, 2006 (71 FR 78192), we do not believe that we need to make a finding on the effect of a 7.8 psi RVP fuel requirement in Cincinnati and Dayton on fuel supply and distribution in either Cincinnati/Dayton or the contiguous areas. We note, however, that Ohio has delayed the effectiveness of the 7.8 psi RVP fuel requirements until twelve months following the EPA approval of its request for a fuel waiver in order to ensure that there is sufficient compliance time for the regulated community. Finally, because the 7.8 psi RVP fuel type is already approved in at least one SIP (Indiana (61 FR 4895, (February 9, 1996)) in the PADD where Ohio is located, EPA has determined that the Agency is not restricted from approving the 7.8 psi fuel program into the Ohio SIP.

In today's action, we are proposing approval of Ohio's 7.8 psi RVP program as consistent with the provisions of EPA Act.

#### G. Why Is EPA Taking This Action?

EPA is proposing to approve a SIP revision at the request of the OEPA. To ensure that it secures the needed approval under section 211(c)(4)(C) of the CAA, Ohio submitted this action for EPA approval to make it part of the SIP.

#### H. What Other Relevant Materials Has the State Submitted?

On May 9, 2006, OEPA submitted several VOC rules for approval into the SIP and EPA published a proposed approval of these rules on December 6, 2006 (71 FR 70699). The rules include a provision requiring the use of lower emitting solvents in cold cleaner degreasers, the use of more efficient auto refinishing painting application techniques and a rule requiring the use of lower emitting portable fuel containers all which are discussed in this notice. In addition, EPA recently received a redesignation request from OEPA for the Dayton 8-hour ozone nonattainment area. EPA is currently reviewing the submittal and the implication of any of these additional materials on the approval of the fuel waiver request.

### III. Proposed Action

EPA is proposing to approve a SIP revision submitted by the State of Ohio on February 14, 2006 and October 6, 2006, establishing a 7.8 psi RVP fuel requirement for gasoline distributed in the Cincinnati and Dayton 8-hour ozone nonattainment areas which include Montgomery, Miami, Greene, Clark, Hamilton, Butler, Warren and Clermont counties. EPA is proposing to approve Ohio's fuel requirements into the SIP because EPA has found that the requirements are necessary for the Cincinnati and Dayton areas to achieve the NAAQS for ozone.

### IV. Statutory and Executive Order Reviews

#### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

#### *Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *Regulatory Flexibility Act*

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Unfunded Mandates Reform Act*

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

#### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does 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 (64 FR 43255,

August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes approval of a state rule implementing a Federal Standard.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant regulatory action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

#### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program

submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 22, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7-5809 Filed 3-28-07; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 63

[EPA-HQ-OAR-2006-0859; FRL-8293-4]

RIN 2060-AN85

#### Risk and Technology Review, Phase II, Group 2

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** This ANPRM asks for public comment on hazardous air pollutant emissions and other model input data that EPA intends to use to assess residual risk from selected industrial major source categories, as required by the Clean Air Act. Specifically, the data are comprised of hazardous air pollutant emission estimates and emission release parameters for 22 industrial source categories subject to 12 national emission standards for hazardous air pollutants for hazardous air pollutants with compliance dates of 2002 and earlier. The source of this information is the February 2006 version of the 2002 National Emissions Inventory, updated with some facility-specific data collected by EPA. We are seeking comment on the emissions and source data found at the Risk and Technology Review Web site and we are providing the opportunity for the public to submit technical corrections and updates. Following review of comments received, we will update the data, as appropriate, and assess risk for these source categories. We will use these risk estimates and our evaluation of the availability, cost, and feasibility of emissions reduction options to determine the ample margin of safety for residual risk and to fulfill our obligations to conduct a technology review. We currently anticipate using

the results of these risk estimates along with review of control technology as the basis for our decisions on whether to propose additional standards to address residual risk for each source category. There will be opportunity for oral and written comment on any additional standards when we publish our Notice of Proposed Rulemaking (NPRM). We anticipate proposing the results of this risk and technology review for these 22 source categories by fall 2007.

**DATES:** Comments must be received on or before May 29, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0859 by one of the following methods:

- <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epamail.epa.gov](mailto:a-and-r-docket@epamail.epa.gov).

- *Fax:* (202) 566-1741.

- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), Docket ID No. EPA-HQ-OAR-2006-0859, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* In person or by Courier, deliver comments to: Air and Radiation Docket (6102T), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are accepted only 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-2006-0859. 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 [www.regulations.gov](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. 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, i.e., 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 Air and Radiation Docket, EPA West, Room 3334, 1301 Constitution Avenue, 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.

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to <http://www.regulations.gov> are not affected by the flooding and will remain the same.

**FOR FURTHER INFORMATION CONTACT:** For general information about this ANPRM, contact Ms. Paula Hirtz, Office and Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541-2618; *fax number:* (919) 541-0246; and *e-mail address:* [hirtz.paula@epa.gov](mailto:hirtz.paula@epa.gov).