



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[EPA-HQ-OAR-2017-0146; FRL-9966-61-OAR]**

**Relaxation of the Federal Reid Vapor Pressure (RVP) Gasoline Volatility Standard for Shelby County (Memphis), Tennessee**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a request from Tennessee for EPA to relax the federal Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for Shelby County, Tennessee (Memphis or Area). Specifically, EPA is proposing to amend the regulations to allow the RVP standard for Shelby County to change from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline. EPA has preliminarily determined that this change to the federal RVP regulation is consistent with the applicable provisions of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** unless a public hearing is requested by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2017-0146, to the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information disclosure of which is restricted by statute. If you need to include CBI as part of your comment, please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

For additional submission methods, the full EPA public comment policy, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Office of Transportation and Air Quality, Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343-9256; fax number: (202) 343-2804; e-mail address: [dickinson.david@epa.gov](mailto:dickinson.david@epa.gov). You may also contact Rudolph Kapichak, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, 48105; telephone number: (734) 214-4574; fax number: (734) 214-4052; e-mail address: [kapichak.rudolph@epa.gov](mailto:kapichak.rudolph@epa.gov).

**SUPPLEMENTARY INFORMATION:**

The contents of this preamble are listed in the following outline:

- I. General Information
- II. Public Participation
- III. Background and Proposal
- IV. Statutory and Executive Order Reviews
- V. Legal Authority

**I. General Information**

- A. *Does this action apply to me?*

Entities potentially affected by this proposed rule are fuel producers and distributors involved in the supplying of gasoline to Shelby County, TN.

Examples of Potentially Regulated Entities	NAICS <sup>1</sup> Codes
Petroleum refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which EPA is aware that potentially could be affected by this proposed rule. Other types of entities not listed on the table could also be affected. To determine whether your organization could be affected by this proposed rule, you should carefully examine the regulations in 40 CFR 80.27. If you have questions regarding the applicability of this action to a particular entity, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*B. What is the Agency’s authority for taking this action?*

The statutory authority for this action is granted to EPA by sections 211(h) and 301(a) of the CAA, as amended; 42 U.S.C. 7545(h) and 7601(a).

**II. Public Participation**

EPA will not hold a public hearing on this matter unless a request is received by the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this

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<sup>1</sup> North American Industry Classification System.

preamble by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

### **III. Background and Proposal**

#### *A. Summary of the Proposal*

EPA is proposing to approve a request from Tennessee to change the summertime federal RVP standard for Shelby County from 7.8 psi to 9.0 psi by amending EPA's regulations at 40 CFR 80.27(a)(2). In a separate rulemaking, noted below, EPA has already approved a CAA section 110(l) non-interference demonstration which concludes that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold from June 1 to September 15 of each year in Shelby County would not interfere with the maintenance of the ozone national ambient air quality standards (NAAQS) and the maintenance of the other NAAQS, or with any other applicable CAA requirement. When Tennessee previously requested that Shelby County be redesignated to attainment for the 2008 ozone standard, Tennessee took a conservative approach for the maintenance plan demonstration by modeling 9.0 psi for the RVP requirements as opposed to 7.8 psi. Tennessee did not, at that time, request the relaxation of the federal RVP requirements for Shelby County. More recently, Tennessee requested a relaxation of the federal RVP requirements. This has necessitated a demonstration that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold from June 1 to September 15 of each year in Shelby County would not interfere with maintenance of any NAAQS, including the 2008 and 2015 ozone NAAQS, or any other applicable CAA requirement, under CAA section 110(l). Therefore, by a subsequent rulemaking, EPA approved Tennessee's non-interference

demonstration for its already approved maintenance plan for the 2008 ozone NAAQS.<sup>2</sup>

The preamble for this rulemaking is organized as follows: Section III.B. provides the history of the federal gasoline volatility regulation. Section III.C. describes the policy regarding relaxation of gasoline volatility standards in ozone nonattainment areas that are redesignated as attainment areas. Section III.D. provides information specific to Tennessee's request for Shelby County.

*B. History of the Gasoline Volatility Requirement*

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function, thereby aggravating asthma and other respiratory conditions, increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under CAA section 211(c), EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in that final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which

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<sup>2</sup> EPA approved the redesignation request and maintenance plan for the portion of Tennessee that is within the Memphis, Tennessee-Mississippi-Arkansas (Memphis, TN-MS-AR) 2008 ozone nonattainment area on June 23, 2016 (81 FR 40816). EPA approved Tennessee's non-interference demonstration on July 7, 2017 (82 FR 31462).

was designed to reduce the volatility of gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS).

The 1990 CAA Amendments established new CAA section 211(h) to address fuel volatility. CAA section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. CAA section 211(h) also prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with CAA section 211(h). The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, effective January 13, 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, EPA will rely on states to initiate changes to their respective volatility programs. EPA's policy for approving such changes is described below in Section III.C.

*C. Relaxation of Gasoline Volatility Standards in Ozone Nonattainment Areas That Are Redesignated to Attainment*

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

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

*D. Tennessee's Request to Relax the Federal Gasoline RVP Requirement for Shelby County*

On April 12, 2017, Tennessee, through the Tennessee Department of Environment and Conservation (TDEC or State), submitted a request to relax the federal gasoline RVP requirement in Shelby County. The State also submitted a CAA section 110(l) non-interference demonstration for approval by EPA. The non-interference demonstration shows that the relaxation would not interfere with maintenance of the 2008 ozone NAAQS or any other applicable CAA requirement including the 2015 ozone NAAQS. Tennessee did not request relaxation of the federal RVP standard from 7.8 psi to 9.0 psi when TDEC originally submitted the CAA section 175A maintenance plan for the 2008 ozone NAAQS that was approved on June 23, 2016 (81 FR 40816).

On July 7, 2017, EPA approved Tennessee's April 12, 2017 request for approval of the CAA section 110(l) non-interference demonstration. In that rulemaking, EPA included an evaluation of Tennessee's CAA section 110(l) non-interference demonstration for Shelby County.<sup>3</sup>

In this action, EPA is proposing to approve Tennessee's request to relax the summertime ozone season gasoline RVP standard for Shelby County from 7.8 psi to 9.0 psi. Specifically, EPA is proposing to amend the applicable gasoline RVP standard to allow the gasoline RVP requirements at 40 CFR 80.27(a)(2) for Shelby County to change from 7.8 psi to 9.0 psi. This proposal is based on EPA's separate approval of Tennessee's April 12, 2017 request for a non-interference demonstration approval and EPA's June 23, 2016 approval of the redesignation request and maintenance plan for the 2008 ozone NAAQS as described above.

#### **IV. Statutory and Executive Order Reviews**

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<sup>3</sup> 82 FR 31462 (July 7, 2017).

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

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

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

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. *Paperwork Reduction Act*

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

D. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in Tennessee, and gasoline distributors and retail stations in Tennessee. This action, if finalized, would relax the federal RVP standard for gasoline sold in Shelby County, Tennessee during the summertime ozone season (June 1 to September 15 of each year) to allow the RVP for gasoline sold in this county to rise from 7.8 psi to 9.0 psi. This rule does not impose any

requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA section 211(h) Volatility Control program. Therefore, this action would have no net regulatory burden for all directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

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

*F. Executive Order 13132: Federalism*

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

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

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-

202 of the Executive Order. EPA has no reason to believe that this action may disproportionately affect children since Tennessee has provided evidence that a relaxation of the gasoline RVP will not interfere with its attainment of the ozone NAAQS for Shelby County, or any other applicable CAA requirement. By separate action, EPA has approved Tennessee's non-interference demonstration regarding its maintenance plan for the 2008 ozone NAAQS, and that Tennessee's relaxation of the gasoline RVP standard in Shelby County to 9.0 RVP will not interfere with any other NAAQS or CAA requirement.

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

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

*J. National Technology Transfer Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the applicable ozone NAAQS which establish the level of protection provided to human health or the environment. This rule would relax the applicable volatility standard of gasoline during the summer, possibly resulting in slightly higher mobile source emissions. However, Tennessee has demonstrated in its non-interference demonstration that this action will not interfere with maintenance of the ozone NAAQS in Shelby County for the 2008 ozone NAAQS, or with any other applicable

requirement of the CAA. Therefore, disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result. The results of this evaluation are contained in EPA's proposed and final rules for Tennessee's non-interference demonstration. A copy of Tennessee's April 12, 2017 letter requesting that EPA relax the gasoline RVP standard, including the technical analysis demonstrating that the less stringent gasoline RVP would not interfere with continued maintenance of the 2008 ozone NAAQS in Shelby County, or with any other applicable CAA requirement, has been placed in the public docket for this action.

#### **V. Legal Authority**

The statutory authority for this action is granted to EPA by sections 211(h) and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7545(h) and 7601(a).

#### List of Subjects in 40 CFR Part 80

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

Dated: August 11, 2017.

E. Scott Pruitt,  
Administrator.

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