

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[PA074-4094a; FRL-6501-2]

**Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Oxygenated Gasoline Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on a revision to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revision makes the oxygenated gasoline program a contingency measure for the five-county Philadelphia area, which means that the oxygenated gasoline program would only be required to be implemented in the five-county Philadelphia area if there is a violation of the carbon monoxide (CO) national ambient air quality standard (NAAQS). The revision also makes technical amendments to the oxygenated gasoline regulation. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on February 15, 2000 without further notice, unless EPA receives adverse written comment by January 18, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, US Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, US Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kelly L. Bunker, (215) 814-2177, or by e-mail at bunker.kelly@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

Motor vehicles are significant contributors of carbon monoxide (CO) emissions. An important control measure to reduce these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Clean Air Act, 42 U.S.C. 7401 *et seq.* (the Act), requires that states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more, based on data for the two year period of 1988 and 1989 or any two year period after 1989, submit revisions to their State Implementation Plan (SIP) which establish oxygenated gasoline programs. Each state's oxygenated gasoline programs must require gasoline in the specified control areas to contain not less than 2.7% oxygen by weight, except that states may adopt an averaging program employing marketable oxygen credits. Where an averaging program is adopted, gasoline containing oxygen above 2.7% by weight may offset the sale of gasoline with a oxygen content below 2.7% by weight.

The minimum 2.7% standard shall apply during that portion of the year in which the areas are prone to high ambient concentrations of CO. The Act requires that the oxygenated gasoline program apply to all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.<sup>1</sup>

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992, EPA announced the availability of oxygenated gasoline credit program

<sup>1</sup> See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under Section 211 (m) of the Clean Air Act as Amended—Notice of Availability," 57 FR 47853 (October 20, 1992).

guidelines in the **Federal Register**.<sup>2</sup>

Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight. EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.<sup>3</sup>

**II. Background**

The Philadelphia-Camden County CO nonattainment area had a design value above 11.6 ppm based on 1988 and 1989 data and consequently was subject to the requirement to adopt an oxygenated gasoline program under section 211(m) of the Act. The oxygenated gasoline program was required to be implemented in the Pennsylvania portion of the Philadelphia CMSA. The Pennsylvania portion of the Philadelphia CMSA includes the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia.

On November 12, 1992 the Commonwealth of Pennsylvania officially submitted to EPA a revision to the Pennsylvania SIP for an oxygenated gasoline program in the Pennsylvania portion of the Philadelphia CMSA. Pennsylvania's oxygenated gasoline regulations, 25 PA Code Chapters 121 and 126, required the implementation of an averaging program employing marketable oxygen credits. EPA approved these revisions to the SIP on July 21, 1994 (59 FR 37162).

On August 19, 1995, Pennsylvania adopted two major modifications to their oxygenated gasoline regulations. The first modification allows for the discontinuance of the oxygenated gasoline program in a control area if EPA approves a redesignation request for the control area which does not require the implementation of an oxygenated gasoline program. The Pennsylvania oxygenated gasoline regulation also states that if an area is redesignated to attainment and then violates the CO standard that the program must be reinstated in

<sup>2</sup> See note 1, above. EPA was issued guidelines for credit programs under section 211(m)(5) of the Act.

<sup>3</sup> See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended—Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found at 40 CFR 80.35.

accordance with the provisions of the maintenance plan. The second modification to Pennsylvania's oxygenated gasoline regulation was to switch from an averaging program to a per-gallon program. This modification was necessary because it became apparent that none of the facilities participating in this program used the averaging provisions of the regulation, and it is not anticipated that anyone will do so in the future. Therefore, the attest engagement and certain reporting requirements which were needed for implementation of an averaging program were no longer necessary and were removed from the regulation.

On September 8, 1995 the Commonwealth of Pennsylvania submitted to EPA a redesignation request and maintenance plan for the Philadelphia portion of the Philadelphia-Camden County CO nonattainment area. In its demonstration of maintenance, the Commonwealth showed that oxygenated gasoline in the Pennsylvania portion of the Philadelphia CMSA was not necessary for continued maintenance of the CO national ambient air quality standards (NAAQS). The oxygenated gasoline program was relegated to a contingency measure in the maintenance plan. If the redesignated area violates the CO standard then the oxygenated gasoline program would be reinstated at the beginning of the next oxygenated gasoline control period. EPA approved the redesignation request and maintenance plan on January 30, 1996 (61 FR 2926).

On September 13, 1995, the Commonwealth of Pennsylvania submitted the August 19, 1995 oxygenated gasoline regulation modifications as a formal revision to its State Implementation Plan (SIP). The submittal consisted of copies of the proposed and final oxygenated gasoline regulations, 25 Pennsylvania (PA) Code Chapters 121 and 126, copies of the *Pennsylvania Bulletin's* notice of proposed and final rulemaking, comment and response documents and proof that public notice and hearing was given on the proposed regulation. The SIP revision consists of revisions to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, the additions of section 126.101 General, section 126.102 Sampling and testing, section 126.103 Recordkeeping and reporting and section 126.104 Labeling requirements to 25 PA Code Chapter 126 and the removal of section 126.1 Oxygenate content of gasoline from 25 PA Code Chapter 126. These regulatory revisions were adopted by the Commonwealth on April 18, 1995

and became effective on August 19, 1995. The September 13, 1995 SIP submittal is the subject of this action. EPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) which is available from the Region III office listed in the **ADDRESSES** section of this document.

### III. EPA's Analysis of Pennsylvania's Oxygenated Gasoline Program

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. The Commonwealth of Pennsylvania has elected to adopt a regulation requiring 2.7% oxygen content for each gallon of gasoline sold in a control area. The following sections of this document address some specific elements of the state's submittal.

#### *Applicability and Program Scope*

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Pennsylvania has established the control period as November 1 to February 29 which is consistent with the EPA guidance. Section 211(m)(2) requires that the oxygenated gasoline program apply to all gasoline sold or dispensed in the larger of the CMSA or MSA in which the nonattainment area is located. The Pennsylvania oxygenated gasoline regulations require oxygenated gasoline to be sold in areas as determined by section 211(m) of the Act.

#### *Transfer Documents*

The Commonwealth of Pennsylvania has included requirements related to transfer documentation in its regulation. These transfer document requirements will enhance the enforcement of the oxygenated gasoline regulation, by providing a paper trail for each gasoline sample taken by state enforcement personnel.

#### *Enforcement and Penalty Schedules*

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states will visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a

comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Pennsylvania regulation does not address enforcement provisions; however, enforcement provisions for the oxygenated gasoline program are found in section 9 of the Pennsylvania Air Pollution Control Act as amended on June 29, 1992. The Pennsylvania Air Pollution Control Act allows for the adoption of regulations for oxygenated gasoline. Section 9 of the Pennsylvania Air Pollution Control Act states that employees of the Department of Environmental Resources who are authorized to conduct inspections or investigations are declared to be law enforcement officers and are authorized to issue or file citations for violations of any regulation adopted under the Pennsylvania Air Pollution Control Act, and that the General Counsel is authorized to prosecute the offenses. This section provides for authority to enforce the oxygenated gasoline regulation. Section 9 also provides for penalty provisions. The provisions provided are both civil and criminal, depending on the type and severity of the violation. Pennsylvania's enforcement and penalty provisions are acceptable.

#### *Test Methods and Laboratory Review*

EPA's sampling procedures are detailed in Appendix D of 40 CFR part 80. EPA has recommended that states adopt these sampling procedures. The Commonwealth of Pennsylvania has adopted EPA sampling procedures. Each state regulation must include a test method and procedures for the calculation of oxygen content in the gasoline sampled. EPA's guidance "Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended," issued on October 20, 1992, allow for the use of either the oxygenate flame ionization detector (OFID) test, preferred by EPA, or the American Society for Testing and Materials (ASTM) standards test method, Designation D 4815-89, although another method could be used if approved by EPA. This guidance document also describes the calculations to determine the oxygen content of the gasoline. The Commonwealth of Pennsylvania regulations require the use of the testing methods and calculations specified in EPA's guidance.

## Labeling

EPA was required to issue federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992, required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels. EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. The Commonwealth of Pennsylvania has adopted labeling regulations consistent with the federal regulation.

## IV. Final Action

EPA is approving the amendments to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, the additions of section 126.101 General, section 126.102 Sampling and testing, section 126.103 Recordkeeping and reporting and section 126.104 Labeling requirements to 25 PA Code Chapter 126 and the removal of section 126.1 Oxygenate content of gasoline from 25 PA Code Chapter 126.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 15, 2000 without further notice unless EPA receives adverse comment by January 18, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## V. Administrative Requirements

### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

### B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule 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, the requirements of section 6 of the Executive Order do not apply to this rule.

### C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) Is "economically significant," as defined under E.O. 12866, and (2) The environmental health or safety risk addressed by the rule has 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 final rule is not subject to E.O.

13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act,

preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act

(NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

#### I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania’s oxygenated gasoline regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference.

Dated: November 18, 1999.

A.R. Morris,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

#### Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(142) to read as follows:

#### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(142) Revisions to the Pennsylvania Regulations for an oxygenated gasoline program submitted on September 13, 1995 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 13, 1995 from the Pennsylvania Department of Environmental Protection transmitting the oxygenated gasoline regulation as a SIP revision.

(B) Revisions to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, the additions of section 126.101 General, section 126.102 Sampling and testing, section 126.103 Recordkeeping and reporting and section 126.104 Labeling requirements to 25 PA Code Chapter 126 and the removal of section 126.1 Oxygenate content of gasoline from 25 PA Code Chapter 126. These revisions became effective August 19, 1995.

(ii) Additional Material.—Remainder of September 13, 1995 submittal.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX–79–1–7439, FRL–6510–5]

### Approval and Promulgation of Implementation Plans; Texas; Repeal of Board Seal Rule and Revisions to Particulate Matter Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

**SUMMARY:** On October 28, 1999 (64 FR 57983), EPA published a direct final approval of a revision to the Texas State Implementation Plan which removed the old Texas Air Control Board Board Seal rule in the Texas Natural Resource Conservation Commission (TNRCC) Chapter 101, General Rules, and revised and recodified the TNRCC Particulate Matter regulations in TNRCC Chapter 111, Control of Air Pollution from Particulate Matter. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The EPA stated in the direct final rule that if EPA received adverse comment by November 29, 1999, EPA would publish a timely notice of withdrawal in the **Federal Register**. The EPA subsequently received an adverse comment on the direct final rule. Therefore, EPA is withdrawing the direct final approval action. The EPA will address the comment in a subsequent final action based on the parallel proposal also published on October 28, 1999 (64 FR 58006). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published October 28, 1999 is withdrawn on December 17, 1999.

**ADDRESSES:** Copies of documents relevant to this action are available for