

# Regulatory Analysis Form

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REVIEW DIVISION

**McGinley**

IRRC Number:

# 1981

(1) Agency

Pennsylvania Department of Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-341

(3) Short Title

Gasoline Volatility Requirements - Low RVP

(4) PA Code Cite

25 Pa. Code Chapters 121, 126,  
and 139

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Freeman, 783-1303

Secondary Contact: Barbara Sexton, 783-1303

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The final-form regulation will eliminate the use of federal reformulated gasoline (RFG) as a compliant fuel in the Pittsburgh-Beaver Valley Area during the ozone season.

The final-form regulation will also make a technical language correction relating to sampling procedures which has no impact on the regulated community.

Finally, the final-form regulation also modifies the onsite recordkeeping requirements for retail gasoline facilities.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

This action is being taken under the authority of Section 5 of the Air Pollution Control Act (35 P.S. §4005).

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Commonwealth was required to implement control strategies by December 31, 1997 to demonstrate that the Pittsburgh-Beaver Valley Area will achieve the National Ambient Air Quality Standard (NAAQS) (61 *Fed. Reg.* 28061, 28064). This final rulemaking will delete one of the strategies previously submitted.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Pittsburgh-Beaver Valley Area non-attainment area continues to exceed the health-based standard for ground-level ozone. This final regulation would replace the current provisions which allow for the sale of either RFG or low Reid vapor pressure (RVP) gasoline and help move the area toward attainment of the health-based standard for ozone, which is in the best interest of the public. This regulatory change is in response to public concern that RFG is not a suitable alternative for the Pittsburgh-Beaver Valley nonattainment area.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

When ground-level ozone is present in concentrations in excess of the federal health-based standard, public health is adversely affected. The federal Environmental Protection Agency has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly, and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activity that involves physical exertion. Though such symptoms are often temporary, repeated exposure could result in permanent lung damage.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Approximately 2.8 to 3.0 million people in the seven counties affected by this proposed regulation will benefit from the sale of cleaner-burning fuel. Low RVP gasoline has been proven to reduce emissions of volatile organic compounds (VOC), compounds that are instrumental in the formation of ground-level ozone.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

There will be no increased cost to produce compliant gasoline because low RVP is one of the fuels already required in the area and is in widespread use during the ozone season.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All refiners, importers, distributors, resellers, carriers, wholesale purchaser-consumers, and retailers of gasoline will be required to comply with this regulation. There are approximately 1250 retail outlets in the seven-county area.

(16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Southwestern Pennsylvania Ozone Stakeholder Working Group was the primary impetus for the development of the original regulation. All of the group's meetings were open to the public. The Air Quality Technical Advisory Committee (AQTAC) has reviewed and approved of the regulation. In addition, the proposed revision was also discussed with the Small Business Compliance Assistance Advisory Committee.

(17) Provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There will be no increased cost to the regulated community to produce compliant fuel. Low RVP costs more to make than conventional gasoline, but it is one of the fuels already required in the area. Low RVP gasoline on average costs two (2) cents per gallon less than the RFG gasoline option which this regulation eliminates.

## Regulatory Analysis Form

(18) Provide a specific estimate of the cost and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There will be no cost impact on local governments.

(19) Provide a specific estimate of the cost and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

There will be no cost impact on state government.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
<b>Total Cost</b>		0	0	0	0	0
<b>REVENUE LOSSES:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Because low RVP gasoline is one of the fuels currently required in the area, there will be no increased cost for its use.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Air Quality	21,000,000	26,000,000	29,000,000	27,000,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and cost.

The fuel regulation is a component of the Southwestern PA Ozone Stakeholder Working Group's proposed strategy to attain and maintain the health-based standard for ground-level ozone. An area that fails to attain the standard runs the risk of sanctions which could include the loss of all federal highway funds.

In addition, the health risks associated with nonregulation, described in (12), will be reduced, thereby lowering health-care and related costs in the affected area.

(22) Describe the nonregulatory alternative considered and the cost associated with those alternatives. Provide the reasons for their dismissal.

The market-based multiple compliant fuels program is being eliminated because of implementation problems with the current regulation as it relates to RFG. Refiners and marketers are supplying low RVP gasoline during the ozone season. Consequently the proposed rulemaking will not have a significant impact on the low volatility fuel program in the Pittsburgh-Beaver Valley ozone nonattainment area.

No other program alternatives were considered during the development of this proposal.

(23) Describe alternative regulatory schemes considered and the cost associated with those schemes. Provide the reasons for their dismissal.

A program requiring either RFG or low RVP is currently in place. Because of concerns related to implementation of the RFG program, in the Pittsburgh-Beaver Valley Area, that option is eliminated.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Current federal limits on gasoline volatility for Northern Tier states do exist, but are less stringent than the volatility requirements of this final rulemaking. However, low RVP gasoline is necessary to meet federal health-based ozone standard requirements.

Effective July 23, 1998, EPA found that 7.8 psi low RVP gasoline is necessary to achieve the NAAQS in the Pittsburgh-Beaver Valley Area.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation compares favorably to other states that have volatility requirements. The neighboring states, Ohio and West Virginia, do not have fuel control programs.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

One public hearing was held in Pittsburgh on November 2, 1998 at the Southwest Regional Office. No one presented testimony. A sixty day comment period was provided. The Department received four sets of written comments.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

There will be no increased recordkeeping or reporting. The final rule modifies the onsite recordkeeping requirement for retail gasoline facilities, making them less stringent, by requiring such facilities to keep records onsite for the current ozone season only.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been developed.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon the expiration of the current ozone season on September 16, 1999. This rule will be in effect beginning with the 2000 ozone season. No licenses, permits, or other approvals are necessary.

(31) Provide the schedule for continual review of the regulation.

The regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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#1981

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

\_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD  
\_\_\_\_\_  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-341

DATE OF ADOPTION: \_\_\_\_\_

BY: James M. Seif

TITLE: JAMES M. SEIF, CHAIRMAN  
\_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

R. E. Grimaldi

7/20/99  
DATE OF APPROVAL

(Deputy General Counsel)  
~~(Chief Counsel, Independent Agency)~~  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Gasoline Volatility Requirements - Low RVP

25 Pa Code Chapters 121, 126 and 139

**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**25 Pa. Code Chapters 121, 126 and 139**  
**Gasoline Volatility Requirements**

**Order**

The Environmental Quality Board (Board) amends Chapters 121, 126 and 139 to read as set forth in Annex A. The amendments eliminate the use of federal reformulated gasoline (RFG) as a compliant fuel in the Pittsburgh-Beaver Valley area during the ozone season. The amendments also provide that compliance records shall be kept onsite for all points in the distribution network except at retail facilities. In addition, the amendments make a technical language correction relating to sampling procedures. The Board approved the final amendments at its July 20, 1999 meeting.

**A. Effective Date**

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, telephone (717) 787-1663; or R. A. Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, telephone (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This final rule is available electronically through the Department of Environmental Protection Web Site (<http://www.dep.state.pa.us>).

**C. Statutory Authority**

This action is being taken under the authority of Section 5 of the Air Pollution Control Act, 35 P.S. §4005, which grants to the EQB the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

**D. Background and Summary of the Amendments**

These amendments eliminate the use of RFG as a compliant fuel in the Pittsburgh-Beaver Valley Area during the ozone season. Because of concerns with implementation of the existing regulation as it relates to RFG, the Department is eliminating the RFG provisions. Since refiners and marketers have been supplying low Reid vapor pressure (RVP) gasoline during the ozone season, these amendments will have minimal practical consequences. While this low RVP gasoline is more stringent than the federal requirement, it is necessary because it is part of a comprehensive plan for the Pittsburgh area to attain and maintain the national health-based standard for ground level ozone. These amendments also require that compliance records be kept onsite for all points in the distribution network except at retail facilities. Finally, these amendments also correct the technical language relating to sampling procedures.

These amendments were submitted to and approved by the Air Quality Technical Advisory Committee (AQTAC) and the Small Business Assistance Program Compliance Advisory Committee.

**E. Summary of Comments**

There were four commentators to the proposed rulemaking.

One commentator supports the move to require all gasoline sold in the Pittsburgh area to comply with the RVP standard of 7.8 pounds per square inch (psi).

The Board appreciates the support for this rule change.

All of the commentators believe that requiring facilities to keep records onsite for a period of two (2) years imposes additional and unnecessary recordkeeping on the regulated community. The commentators request that the regulation be changed to allow records for retail facilities to be stored elsewhere and that the records could be provided when requested within a short lead time. Another commentator proposes that the regulation be amended to require that records be

kept onsite only during the current ozone season and that records be retained after that at a designated location for the remainder of the two (2) year retention period.

While the Board understands that there may be space limitations at some facilities, the requirement to maintain records onsite at points in the distribution chain is essential for enforcement of the program. A lapse in time between an inspection and the receipt of pertinent records would seriously hinder the effectiveness of the program, especially when a violation of the volatility standard is discovered. Therefore, to retain the ability to conduct effective inspections, the Board will not make the suggested change. The Board does not agree that the onsite recordkeeping requirement places unnecessary burdens on every point in the distribution network; however, the Board does believe that the requirement to keep records onsite for a period of two (2) years could place unnecessary burdens on retail facilities that have limited space onsite. Therefore, the rule will be amended to require retail stations to keep the records onsite only during the current compliance period (June 1<sup>st</sup> through September 15<sup>th</sup>) and move them to a designated centralized location for the remainder of the two (2) year retention period.

One commentator believes it is unnecessary to require terminals to be held to a compliance date of May 1<sup>st</sup> for low RVP fuel. The commentator recommends the terminal compliance date be changed to May 15<sup>th</sup> which will provide adequate time to ensure that all retail stations are turned over to 7.8 psi RVP by June 1<sup>st</sup>. The program start and end dates are not proposed to be changed because the Board believes that May 1<sup>st</sup> is the appropriate starting date.

When the proposed clean fuels program for the Pittsburgh area was originally published on May 3, 1997, the Board received eight (8) separate comments detailing the importance of setting the compliance dates to be consistent with the dates in the federal summertime volatility program (May 1<sup>st</sup> start date at the terminal level, June 1<sup>st</sup> start date at the retail stations, and September 15<sup>th</sup> as the end date). The Board agreed with the need for consistency with the federal volatility program and the rule was revised accordingly. The Board does not believe it appropriate to change any of these dates in light of the number of comments received in response to the May 3, 1997 proposal. Furthermore, it is likely that members of the public and the regulated community did not comment again on this issue because the program start and end dates were not proposed to be changed.

One commentator states that the requirement to have gasoline with an RVP of 7.8 psi at the terminal level by May 1<sup>st</sup> contradicts the federal requirement to have 9.0 psi RVP gasoline at terminals by the same date. The commentator believes that Pennsylvania has not demonstrated in its State Implementation Plan the need for an RVP level in May that is more stringent than the federal standard in order to achieve the National Ambient Air Quality Standard (NAAQS) for ozone.

In addition, the commentator believes that unusual supply disruptions may occur if Pennsylvania's program dates are not in line with the federal program.

The program start and end dates were not proposed to be changed because the Board believes that the proposed dates are the appropriate dates. Under Section 211(c)(4)(A) of the federal Clean Air Act, states are preempted from prescribing a control regarding a fuel characteristic that is not identical to the federal requirement. However, under Section 211(c)(4)(C), the U.S. Environmental Protection Agency is authorized to grant a state a waiver of this preemption if the state control is necessary to achieve the NAAQS.

Pennsylvania requested the necessary waiver, and on June 8, 1998, EPA published a direct final rule in the *Federal Register* proposing to grant Pennsylvania that waiver under the Clean Air Act. No negative comments were received, and a waiver was granted to Pennsylvania effective on July 23, 1998. This waiver allows the use of fuel with a RVP standard more stringent than the federal requirement in the Pittsburgh ozone nonattainment area. This same EPA action finalized approval of the Pennsylvania low RVP program distribution schedule that requires terminals to be fully converted to 7.8 psi RVP fuel by May 1<sup>st</sup> and retail and wholesale purchaser-consumer facilities to be converted to 7.8 psi RVP fuel by June 1<sup>st</sup>. Consequently, this approved SIP revision is now federal law. Since this SIP revision was approved by EPA, it is not subject to review at the state level as the commentator suggests.

The comment that unusual supply disruptions may occur if the suggested change is not made is unwarranted. Low RVP fuel was required in the Pittsburgh ozone nonattainment area at the terminal level beginning on May 1, 1998 and at retail stations by June 1, 1998 and no unusual supply or price disruptions were reported. The program ran smoothly by all accounts and the compliance rate was extremely high.

#### **F. Summary of the Regulatory Revisions**

The Board deletes the definition for the term "Federal Reformulated Gasoline or RFG" and eliminates RFG from the term "compliant fuel." The Board also eliminates references to RFG in Sections 126.301-126.303. In addition, the Board clarifies the record retention requirements in Section 126.302 (relating to recordkeeping reporting) that records shall be kept onsite for all points in the distribution network except at retail facilities. Retail facilities are required to retain compliance records onsite for the current ozone season only. Finally, the Board corrects technical language in Section 139.4(18) (relating to references).

## **G. Benefits, Costs and Compliance**

Executive Order 1996-1 requires a cost/benefit analysis of the amendments.

### ***Compliance Costs***

There are no increased costs to the regulated community as a result of this amendment. Since low RVP gasoline is already required in the area, there will be no additional cost to the public or to local or state governments. Low RVP gasoline on average is 2¢ per gallon less than RFG gasoline. In addition, the vast majority of stations already use low RVP gasoline in place of RFG gasoline.

### ***Compliance Assistance Plan***

The Board plans to educate and assist the public and regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

### ***Paperwork Requirements***

There are no additional recordkeeping and reporting costs for an entity that sells or transfers gasoline intended for use in the seven (7) county Pittsburgh-Beaver Valley Area during the ozone season.

## **H. Sunset Review**

These final form regulations will be reviewed in accordance with the Sunset Review schedule published by the Board to determine whether the regulations effectively fulfill the goals for which they were intended.

## **I. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §745.5(a)), the Department submitted a copy of the proposed rulemaking on September 8, 1998, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with Section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing this final-form regulation, the Department has considered the comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

This final-form regulation was (deemed) approved by the House Environmental Resources and Energy Committee on \_\_\_\_\_ (blank) \_\_\_\_\_ and was (deemed) approved by the Senate Environmental Resources and Energy Committee on \_\_\_\_\_ (blank) \_\_\_\_\_. The Commission met on \_\_\_\_\_ (blank) \_\_\_\_\_ and (deemed) approved the regulation in accordance with Section 5.1(e) of the Act.

#### **J. Findings of the Board**

The Board finds that:

(1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder in 1 *Pa. Code* §§7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These final form regulations do not enlarge the purpose of the proposal published at 28 *Pa. B.* 4792 (September 26, 1998).

(4) These final form regulations are necessary and appropriate for administration and enforcement of authorizing acts defined in Section C of this Preamble and are reasonably necessary to achieve and maintain the NAAQS for ozone.

#### **K. Order of the Board**

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 25 *Pa. Code* Chapters 121, 126, and 139 are amended by amending Section 121.1, 126.301-303, 139.4 and by adding Section 126.301(d) to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

(b) The Chairman of the Board shall submit this Order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.



The Chairman of the Board shall submit this Order and Annex A to  
ARRC and the Senate and House Environmental Resources and Energy Committee  
as required by the Regulatory Review Act.

(d) The Chairman of the Board shall certify this Order and Annex A  
and deposit them with the Legislative Reference Bureau as required by law.

BY:

James M. Seif  
Chairman  
Environmental Quality Board

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Subpart C. PROTECTION OF NATURAL RESOURCES  
ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in Section 3 of the act (35 P.S. §4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Compliant fuel - Low RVP gasoline [or RFG].*

\* \* \* \* \*

*[RFG—Federal Reformulated Gasoline - Gasoline that meets the requirements for RFG as specified in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).]*

\* \* \* \* \*

## CHAPTER 126. STANDARDS FOR MOTOR FUELS

### SUBCHAPTER C. GASOLINE VOLATILITY REQUIREMENTS

Sec.

- 126.301. Compliant fuel requirement.
- 126.302. Recordkeeping and reporting.
- 126.303. Compliance and test methods.

#### § 126.301. Compliant Fuel Requirement.

(a) This subchapter applies to gasoline which is sold or transferred into or within the Pittsburgh-Beaver Valley Area during the period May 1 through September 15, 1998, and continuing every year thereafter.

(b) A refiner, importer, distributor, reseller, terminal owner and operator or carrier, may not:

(1) Sell, exchange or supply gasoline that is not a compliant fuel during the period described in subsection (a).

(2) Blend, mix, store or transport or allow blending, mixing, storing or transporting of compliant fuel with noncompliant fuel during the period described in subsection (a).

(c) A retailer or wholesale purchaser-consumer may not sell, exchange or supply gasoline that is not a compliant fuel during the period June 1 through September 15, 1998, and continuing every year thereafter.

[(d) If RFG is required by operation of Federal law to be sold in the Pittsburgh-Beaver Valley, this subchapter no longer applies after the date that RFG is required to be sold.]

#### § 126.302. Recordkeeping and reporting.

(a) Beginning with the terminal owner or operator who sells or transfers gasoline intended for use in the Pittsburgh-Beaver Valley Area during the period described in §126.301(a) (relating to compliant fuel requirements), each time the physical custody of or title to a shipment of gasoline changes hands, other than when gasoline is sold or transferred for use in motor vehicles at a retail outlet or

wholesale purchaser-consumer's facility, the transferor shall provide to the transferee a copy of the record described in this subsection. This record shall legibly and conspicuously contain, at a minimum, the following information:

- (1) The date of the sale or transfer.
- (2) The name and address of the transferor.
- (3) The name and address of the transferee.
- (4) The location of the gasoline at the time of transfer.
- (5) The volume of gasoline which is being sold or transferred.

(6) A statement or grade code certifying that the gasoline has an RVP of 7.8 pounds per square inch or less per gallon [or certified as RFG. If the gasoline is certified as RFG, each invoice, loading statement, bill of lading, delivery ticket, and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact.].

(b) A person who transports, stores or sells compliant fuel that is intended for use in the Pittsburgh-Beaver Valley Area during the period described in §126.301(a), shall segregate the compliant fuel from noncompliant fuel and the documentation described in subsection (a) shall accompany the compliant fuel at all times.

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information listed in subsection (a). These records shall be retained for at least 2 years from the date of the sale or transfer of compliant fuel, **AND SHALL BE KEPT ONSITE AT EACH POINT IN THE DISTRIBUTION NETWORK**.

**(d) THE RECORDS CONTAINING THE COMPLIANCE INFORMATION IN SUBSECTION (a) FOR THE PERIOD DESCRIBED IN SUBSECTION (c) SHALL BE KEPT ONSITE AT EACH POINT IN THE DISTRIBUTION NETWORK EXCEPT FOR RETAIL OUTLETS. RETAIL OUTLETS SHALL RETAIN THESE RECORDS FOR THE PERIOD DESCRIBED IN SUBSECTION (c) AND ONLY THOSE RECORDS FOR THE CURRENT PERIOD DESCRIBED UNDER SECTION 301(c) SHALL BE KEPT ONSITE. AT THE END OF EACH PERIOD DESCRIBED UNDER SECTION 301(c) THESE RECORDS MAY BE TRANSFERRED TO AN ALTERNATE LOCATION FOR THE REMAINDER OF THE PERIOD DESCRIBED UNDER SUBSECTION (c) AND BE MADE AVAILABLE TO THE DEPARTMENT UPON REQUEST.**

§ 126.303. Compliance and test methods.

[(a)] Compliance with the 7.8 pounds per square inch RVP standard shall be determined by use of the sampling and testing methods specified in this section. Sampling or testing of gasoline required by this chapter shall be accomplished as follows:

(1) Sampling of gasoline for the purpose of determining compliance with this subchapter shall be conducted in accordance with 40 CFR Part 80, Appendix D (relating to sampling procedures for fuel volatility).

(2) Testing of gasoline for purposes of determining compliance with this rule shall be conducted in accordance with 40 CFR Part 80, Appendix E (relating to test for determining Reid Vapor Pressure (RVP) of gasoline and gasoline-oxygenate blend).

[(b)] RFG shall be certified and tested in accordance with the requirements listed in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).]

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

GENERAL

§ 139.4. References.

The references referred to in this subchapter are as follows:

\* \* \* \* \*

(18) "Sampling procedures for fuel volatility," 40 CFR Part 80, Appendix D (relating to [reformulated gasoline] SAMPLING PROCEDURES FOR FUEL VOLATILITY).

**Gasoline Volatility Requirements  
Comment and Response Document**

**April 9, 1999  
Bureau of Air Quality**

**Comment/Response on Pittsburgh Fuels Rule as Revised,  
Proposed September 26, 1998  
Public Comment Period Closed December 2, 1998**

**List of Commentators**

**Requested Final Rulemaking**

1. Eugene M. Barr  
Executive Director  
Associated Petroleum Industries of Pennsylvania (APIP)  
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2. Robert J. Schaefer  
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3. F. M. Anderson  
Exxon Co. U.S.A.  
P.O. Box 2180  
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Houston, TX 77252-2180
  
4. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission (IRRC)  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Numbers in parentheses after each comment refer to the commentator as listed above.

**Comment 1:**

APIP supports the move to require all gasoline sold in the Pittsburgh area to comply with a Reid vapor pressure (RVP) standard of 7.8 pounds per square inch (psi). (*Commentator 1*)

**Response:**

The Department appreciates the support of the petroleum industry for this rule change.

**Comment 2:**

The commentators believe that requiring facilities to keep records on-site for a period of two years (as proposed in Section 126.302(c)) would impose additional and unnecessary recordkeeping costs on the regulated industry. Commentators 1, 2, and 3 request that Section 126.302(c) be changed to allow records for retail facilities to be stored elsewhere (e.g., a district office). These records could be provided when requested with a short lead-time. Commentator 3 suggests a 24-hour lead-time.

Commentator 4 proposes that the regulation be amended to require that records be kept on-site only during the current ozone season, and that records be retained after that at a designated centralized location for the remainder of the two-year retention period. (*Commentators 1, 2, 3, and 4*)

**Response:**

While the Department understands that there may be space limitations at some facilities, the requirement to maintain records on-site at all points in the distribution chain is essential for enforcement of the program. When an inspector is conducting an assessment of compliance at any facility subject to this rule, all information necessary to make that evaluation must be available at the time of the inspection. A lapse in time between an inspection and the receipt of pertinent records would seriously hinder the effectiveness of the program, especially when a violation of the volatility standard is discovered.

In addition, conducting unannounced inspections of regulated facilities is essential to the integrity of the program. Providing facilities with advance notice of an inspection would clearly undermine this capability. Therefore, to retain the ability to conduct effective inspections, the Department has not made the suggested change of Commentators 1, 2, and 3 to Section 126.302(c).

However, the Department agrees with Commentator 4 that the requirement to keep records on-site for a period of two years, as proposed in Section 126.302(c), could place unnecessary burdens on retail facilities that have limited space. The Department does not agree, however, that the on-site recordkeeping requirement places unnecessary burdens on every point in the distribution network. The Department, therefore, amends Section 126.302 to allow retail stations only to keep the required records on-site during the current compliance period (June 1 through September 15 each year) and move them to a designated centralized location for the remainder of the two-year retention period. All other entities in the distribution network shall keep the records on-site for the specified two-year period.

**Comment 3:**

APIP believes it is unnecessary to require terminals to be held to a compliance date of May 1 for low RVP fuel. This early date results in additional cost without real benefit. APIP recommends the terminal compliance date be changed to May 15. This will provide more than adequate time to ensure all retail stations are "turned over" to 7.8 psi RVP rule by June 1. (*Commentator 1*)

**Response:**

The program start and end dates were not proposed to be changed because the Board believes that the proposed dates are appropriate.

When a proposed clean fuels program for the Pittsburgh area was originally published on May 3, 1997, the program was set to begin on May 1 at the terminal level and June 1 at the retail level, and run through September 30. The Department received eight separate comments (including from Commentator 1) detailing the importance of setting the compliance dates so as to be consistent with the dates in the federal summertime volatility program – May 1 start date at the terminal level, June 1 start date at retail stations; running through September 15. The Department agreed with the need for consistency with the federal volatility program, and the rule was revised accordingly. The Department does not believe it is appropriate to change the terminal compliance date to May 15 in light of the number of comments received in response to the May 3, 1997 proposal urging consistency with dates of the federal program; furthermore, it is likely that members of the public and the regulated community did not comment again on this issue since the program start and end dates were not proposed to be changed.

In addition, the May 1 terminal compliance date does have real benefit because it ensures that all gasoline outlets have sufficient lead-time to dispense compliant fuel.

**Comment 4:**

Although no changes to the start and end dates in Section 126.301 were proposed, Exxon believes that there is a possibility the May 1 compliance date for terminals may be changed to May 31. Exxon would not support such a change. State fuel rules in Maryland, New Jersey, and Allegheny County in Pennsylvania all require terminals to be in compliance by May 1. The only date change Exxon would support for terminal compliance would be May 15. (*Commentator 3*)

**Response:**

The program start and end dates were not proposed to be changed because the Department believes that the proposed dates are appropriate. As stated in the response to Comment 3, the Department has not changed the compliance date for terminals. It remains May 1.

**Comment 5:**

The requirement to have gasoline with an RVP of 7.8 psi at the terminal level by May 1 contradicts the federal requirement (detailed in 55 *Fed. Reg.* 23658) to have 9.0 psi RVP gasoline at terminals by the same date. The federal summertime fuel volatility rule states that the entire country is to receive 9.0 psi RVP gasoline during May. Pennsylvania has not demonstrated in its State Implementation Plan the need for an RVP level in May that is more stringent than the federal standard in order to achieve the national ambient air quality standard for ozone. Unusual supply disruptions may occur if Pennsylvania's program dates are not brought in line with the federal program. Amoco recommends that Pennsylvania change its rule so that terminals are required to have 9.0 psi gasoline on May 1 as required by federal law, as opposed to the 7.8 psi requirement that is proposed. This change will not affect the requirement to have gasoline meeting the 7.8 psi specification at retail stations by June 1. (*Commentator 2*)

**Response:**

The program start and end dates were not proposed to be changed because the Board believes that the proposed dates are appropriate.

Under Section 211(c)(4)(A) of the Clean Air Act, states are preempted from prescribing a control regarding a fuel characteristic that is not identical to the federal requirement. However, under Section 211(c)(4)(C), the Environment Protection Agency is authorized to grant a state a waiver of this preemption if the state control is necessary to achieve a National Ambient Air Quality Standard (NAAQS).

On December 3, 1997, the Commonwealth submitted to EPA a formal revision to its state implementation plan (SIP) for ozone. This SIP contained a clean fuels program for the Pittsburgh ozone nonattainment area that was published as a final rule in the *Pennsylvania Bulletin* on November 1, 1997. On April 17, 1998, the Commonwealth sent a letter to EPA outlining proposed revisions to the December 3, 1997 SIP submission by deleting the provisions related to the use of reformulated gasoline. The April 1998 SIP revision imposes a RVP limit of 7.8 psi on all gasoline marketed in the Pittsburgh ozone nonattainment area and applies to the sale of gasoline between May 1 and September 15 at the terminal level and between June 1 and September 15 at the retail level.

On June 8, 1998 EPA published a direct final rule in the *Federal Register* proposing to grant Pennsylvania the necessary waiver under the Clean Air Act. No negative comments were received, and a Section 211(c)(4)(C) waiver was granted to Pennsylvania effective on July 23, 1998. This waiver allows the use of a fuel with an RVP standard more stringent than the federal requirement in the Pittsburgh ozone nonattainment area. EPA granted this waiver because, "Pennsylvania has submitted to EPA data and analysis to support a finding under Section 211(c)(4)(C) that its low RVP requirement is necessary for the Pittsburgh nonattainment area to achieve the ozone NAAQS."

This same EPA action finalized approval of the Pennsylvania low RVP program distribution schedule that requires terminals to be fully converted to 7.8 RVP fuel by May 1 and retail and wholesale-purchaser consumer facilities to be fully converted to 7.8 RVP fuel by June 1. The direct final rule states "because the state has satisfied all the program description elements, EPA has determined the Commonwealth's low RVP program for the Pittsburgh area meets all applicable federal requirements for approval as a SIP revision." Consequently, this approved SIP revision is now a federal law. Since this SIP revision was approved by EPA, it is not subject to review at the state level as the commentator suggests.

It is not necessary to justify the need for a more stringent requirement on a month-by-month basis, as the commentator suggests. Rather, the need for a particular program is justified from the perspective of an entire ozone season.

The comment that unusual supply disruptions may occur if this suggested change is not made is unwarranted. Low RVP fuel was required in the Pittsburgh ozone nonattainment area at the terminal level beginning on May 1, 1998 and at retail stations by June 1, 1998 and no unusual supply or price disruptions were reported. The program ran smoothly by all accounts, and the compliance rate was extremely high. Altering the requirement for terminal compliance may force EPA to reconsider both the waiver and the program approvals which could place the entire program, and the entire attainment plan for the Pittsburgh nonattainment area in jeopardy. The lack of incident or reported difficulty achieving compliance with the requirement to have gasoline with a vapor pressure of 7.8 psi at terminals by May 1 indicates that there is no justification for taking that risk.

If, as a result of the more stringent volatility requirement in May, gasoline with an RVP of 7.8 psi reaches retail stations prior to June 1, then more protection from exceedances of the health-based ozone standard will be afforded to the citizens of southwestern Pennsylvania. As this is a positive environmental and health benefit, the Department will not revise the terminal compliance requirement as suggested.



Pennsylvania Department of Environmental Protection

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August 3, 1999

The Secretary

717-787-2814

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harrisstown II  
Harrisburg, PA 17101

RE: Final Rulemaking – Gasoline Volatility Requirements – Low RVP (#7-341)

Dear Bob:

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a copy of a final-form regulation for review by the Commission. This rulemaking was approved by the Environmental Quality Board (EQB) for final rulemaking on July 20, 1999.

The Commonwealth is required to implement control strategies to demonstrate that the seven-county Pittsburgh-Beaver Valley Area will achieve the national ambient air quality standards (NAAQS) for ozone. The current regulation allows for the use of either low volatility gasoline or federal reformulated gasoline (RFG) during the ozone season of May 1 through September 15 of each year. This rulemaking eliminates the dual compliance fuel option and specifies that all gasoline must meet the vapor pressure standard of 7.8 pounds per square inch (psi). The amendment also modifies the on-site recordkeeping requirements of retail gasoline facilities and makes a technical language correction relating to sampling procedures. If approved, this rulemaking will be effective starting with the 2000 ozone season.

The proposed rulemaking was published September 26, 1998, with a 60-day public comment period and one public hearing in Pittsburgh. Four commentators submitted written comments; no testimony was presented at the hearing. The Air Quality Technical Advisory Committee (AQTAC) supported a draft of the final rulemaking at its March 25, 1999, meeting.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this final-form regulation. Section 5.1(e) of the Act provides that the Commission shall, within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,

James M. Seif  
Secretary

Enclosure



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

02/11/1999

99 AUG -3 AM 10: 26

I.D. NUMBER: 7-341  
SUBJECT: Gasoline Volatility Requirements - Low RVP  
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
8/3/99		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8-3-99		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/3/99		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

July 20, 1999