

Executive Summary

Final-form Amendments to 25 Pa. Code Chapters 121 and 126 Gasoline Volatility Requirements

Purpose of the Final-form Rulemaking

The Department of Environmental Protection (Department, DEP) recommends final-form amendments to Chapters 121 and 126 (relating to general provisions; and motor vehicle and fuels programs) for consideration by the Environmental Quality Board (Board). This final-form rulemaking amends Chapter 126, Subchapter C (relating to gasoline volatility requirements) codified in §§ 126.301—126.303 (relating to compliant fuel requirements; recordkeeping and reporting; and compliance and test methods) by adding language to § 126.301 that, when promulgated, will make §§ 126.301—126.303 no longer applicable to the Pittsburgh-Beaver Valley Area upon the effective date of approval by the U.S. Environmental Protection Agency (EPA) of the removal, suspension, or replacement of Chapter 126, Subchapter C as a Federally enforceable control measure in the Commonwealth's State Implementation Plan (SIP). The proposed rulemaking recommended rescinding Chapter 126, Subchapter C; however, rescission alone would not remove the ability to enforce these requirements under Federal law through the Commonwealth's EPA-approved SIP. The final-form rulemaking is designed to ensure that Chapter 126, Subchapter C will not be applicable under Commonwealth or Federal law when the EPA approves the necessary Non-Interference Demonstration SIP revision to the Commonwealth's approved SIP.

The Chapter 126, Subchapter C requirements for gasoline with a Reid vapor pressure (RVP) of 7.8 pounds per square inch (psi) or less (low RVP gasoline) to be sold or transferred into or within the Pittsburgh-Beaver Valley Area, between May 1 and September 15 of each year for refiners, importers, distributors, resellers, terminal owners and operators and carriers and between June 1 and September 15 of each year for retailers and wholesale purchaser-consumers, were promulgated at 27 Pa.B. 5601 on November 1, 1997. These requirements were approved by the EPA at 63 FR 31116 on June 8, 1998, as a revision to the Commonwealth's State Implementation Plan (SIP) codified in the Code of Federal Regulations (CFR) at 40 CFR 52.2020—52.2063 (Subpart NN – Pennsylvania), effective July 23, 1998, as a Federally-enforceable control measure to help attain and maintain the 1-hour Ozone National Ambient Air Quality Standards (NAAQS) in the Pittsburgh-Beaver Valley Area to protect the public health and welfare. The Pittsburgh-Beaver Valley Area includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties.

The Pennsylvania General Assembly amended the Pennsylvania Air Pollution Control Act in the act of May 14, 2014 (P.L. 674, No. 50) (Act 50) to add section 4(18.3), which requires the Department to “[W]ithin sixty (60) days of the effective date of this clause, initiate the process of amending the State implementation plan. Upon approval of a revision which demonstrates continued compliance with Federal national ambient air quality standards through utilization of commensurate emission reductions by the Environmental Protection Agency, the board shall promulgate regulations to repeal the provisions of 25 Pa. Code Ch. 126, Subch. C (relating to gasoline volatility requirements).” Section 4(18.3) was effective May 14, 2014.

Although the VOC emission reduction benefits from requiring low RVP gasoline in the Pittsburgh-Beaver Valley Area steadily decline in future years, decreasing from 1.63 tons per day in 2017 to 1.33 tons per day by 2030, the Commonwealth is required to ensure that the removal of Chapter 126, Subchapter C from the SIP complies with section 110(l) of the Clean Air Act (CAA) (42 U.S.C.A. § 7410(l)) (Non-Interference Clause). The Non-Interference Clause prohibits the EPA Administrator from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment of a NAAQS or reasonable further progress in attaining a NAAQS, or any other applicable requirement of the CAA. The Department is separately preparing for submittal to the EPA a Non-Interference Demonstration SIP revision that will show continued compliance with the applicable NAAQS and protection of the public health and welfare through the use of commensurate emission reductions to offset the slight increases in emissions of VOC and oxides of nitrogen that will likely result in the near term from removing Chapter 126, Subchapter C as a Federally-enforceable control measure from the SIP. This Non-Interference Demonstration SIP revision will include a request for the EPA to remove §§ 126.301—126.303 from the Commonwealth's Federally-approved SIP. Approval of the Non-Interference Demonstration SIP submittal by the EPA will also make Chapter 126, Subchapter C no longer applicable as a regulation in the *Pennsylvania Code*.

The proposed rulemaking was designed to address the Legislative mandate to the Board to promulgate regulations to rescind Chapter 126, Subchapter C. This final-form rulemaking approach of amending Chapter 126, Subchapter C rather than rescinding Chapter 126, Subchapter C as proposed is designed to ensure that EPA approval of the Non-Interference Demonstration SIP revision will occur prior to (or coincident with) Chapter 126, Subchapter C becoming no longer effective as a regulation in the *Pennsylvania Code*. Upon promulgation of the final-form rulemaking and EPA approval of the Department's Non-Interference Demonstration SIP revision, Chapter 126, Subchapter C will no longer be applicable for the Pittsburgh-Beaver Valley Area. The Department will publish a notice in the Pennsylvania Bulletin to inform the public immediately following SIP approval. After publication of the Pennsylvania Bulletin notice, the Department plans to remove Chapter 126, Subchapter C from the *Pennsylvania Code* through a separate rulemaking to repeal it.

The coordination of this current final-form rulemaking and the Non-Interference Demonstration SIP submittal will ensure that affected entities will not be at risk of enforcement proceedings at either the Federal or the Commonwealth level upon the effective date of EPA approval of the Non-Interference Demonstration and will achieve the objectives of Act 50.

Summary of the Final-form Rulemaking

This final-form rulemaking retains §§ 126.301–126.303 and adds subsection (d) to § 126.301, which reads as follows: “This subchapter will no longer be applicable to the Pittsburgh-Beaver Valley Area upon the effective date of approval by the EPA of the removal, suspension or replacement of this subchapter as a part of the Commonwealth’s SIP.”

The four terms and definitions proposed for deletion from § 121.1 (relating to definitions) are retained in this final-form rulemaking, since the final-form rulemaking does not rescind §§ 126.301—126.303.

Affected Parties

This final-form rulemaking applies to gasoline refiners, importers, distributors, resellers, terminal owners and operators, carriers, retailers, and wholesale purchaser-consumers that operate in or deliver gasoline to the Pittsburgh-Beaver Valley Area. These entities include owners and operators of facilities and infrastructure in the gasoline supply chain, such as bulk gasoline stations and terminals, other gasoline wholesaler facilities, gasoline stations with and without convenience stores, tanker trucks, and petroleum pipelines. The Department evaluated several data sources to determine the number and types of affected entities. Based on this research, the Department estimates that there are between 33 and 1,252 entities affected by this final-form rulemaking.

A review of the Senate Co-Sponsorship Memorandum for Senate Bill 1037, dated June 5, 2013, indicates that the legislation approved as Act 50 was designed to address the price differential between low RVP gasoline and conventional gasoline in the Pittsburgh-Beaver Valley Area, cited by the legislative sponsors as being as much as a 10-to-15 cents per gallon (cpg) price difference between the two fuels.

When §§ 126.301—126.303 are no longer applicable as a result of the EPA approving the Non-Interference Demonstration SIP revision, certain parties will be affected. Businesses involved in the sale of gasoline, including gas stations, bulk terminals, and wholesalers, may see some economic benefit from the elimination of the requirement to obtain and sell gasoline with an RVP of 7.8 psi or less if the cost savings of blending the specialty fuel are passed down the chain from the refinery and terminal to the retail gas station. Cost savings at refineries may be as much as 0.5 cents per gallon (cpg). Cost savings for retailers and wholesale purchaser-consumers may be as much as 1.4 – 3.2 cpg. Additionally, cost savings for state and local government and for public consumers may be as much as 1.6 – 9.2 cpg. However, end-users may or may not see a cost savings at the retail pump. Businesses involved in gasoline transport and storage may see some cost reductions, due to the increased efficiency resulting from not having to segregate the 7.8 psi RVP gasoline. Recordkeeping requirements for all affected entities may be reduced or simplified, since the businesses will no longer be required to document the transfer of gasoline with an RVP of 7.8 psi.

Advisory Groups

The Air Quality Technical Advisory Committee (AQTAC) was briefed on this final-form rulemaking on June 15, 2017. Twelve of the 15 members of AQTAC present voted to concur with DEP's recommendation to move this final-form rulemaking forward to the Board for consideration. Two AQTAC members opposed moving this final-form rulemaking forward, but did not provide concerns or comments at the meeting. The remaining member abstained. When AQTAC reviewed the proposed rulemaking at its December 10, 2015, meeting, five AQTAC members did not concur in moving the proposed rulemaking forward to the Board based on concerns over the loss of emission reduction benefits as a result of the repeal, the calculation of emission reduction benefits, and the process that would be used by the Department to demonstrate continued compliance with Federal NAAQS through the use of commensurate emission reductions. These items are either addressed in this final-form rulemaking or will be

addressed in the Non-Interference Demonstration SIP revision. The estimates of lost emission reduction benefits have also been reviewed and revised where appropriate.

The Small Business Compliance Advisory Committee (SBCAC) was briefed on this final-form rulemaking on July 26, 2017. The members of the SBCAC voted unanimously to concur with DEP's recommendation to move this final-form rulemaking forward to the Board for consideration.

This final-form rulemaking was discussed with the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on June 27, 2017. On the recommendation of that Committee, the members of the CAC concurred on September 19, 2017, with DEP's recommendation to forward this final-form rulemaking to the Board.

The AQTAC, SBCAC, and CAC meetings are advertised and open to the public.

Public Comments and Board Hearings

The proposed rulemaking was approved by the EQB at its meeting of October 18, 2016, and published in the *Pennsylvania Bulletin* on February 25, 2017, with a 66-day public comment period (47 Pa.B. 1157). Three public hearings were held on March 28, 29, and 30, 2017, in Pittsburgh, Norristown, and Harrisburg, respectively. The public comment period closed on May 1, 2017. Written comments were received from members of the public, the regulated industry, members of the Pennsylvania House of Representatives, and the Independent Regulatory Review Commission (IRRC). Most members of the public, as well as the Representatives, expressed support for the proposed rulemaking. One commentator expressed concerns and asked for information about the commensurate emission reductions that would be used to demonstrate continued compliance with the NAAQS. IRRC expressed concerns about the Board's plan for implementing Act 50 and consistency of this plan with Act 50. The comments and concerns have all been addressed and there are no unresolved issues.