

**PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CHS. 121 and 126]
Gasoline Volatility Requirements**

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 126 (relating to general provisions; and motor vehicle and fuels programs) to read as set forth in Annex A. The proposed rulemaking will repeal Chapter 126, Subchapter C (relating to gasoline volatility requirements). The proposed rulemaking will also delete terms and definitions from § 121.1 (relating to definitions) that only support Chapter 126, Subchapter C.

This proposed rulemaking is given under Board order at its meeting of _____.

A. Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Kirit Dalal, Chief, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3436; or Kristen Furlan, Assistant Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation;" then "Environmental Quality Board").

C. Statutory Authority

The proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth; section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Federal Clean Air Act (CAA); and section 4(18.3) of the APCA (35 P.S. § 4004(18.3)), which requires the Department to "within 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)."

D. *Background and Purpose*

The proposed rulemaking will repeal Chapter 126, Subchapter C as codified in §§ 126.301—126.303 (relating to compliant fuel requirements; recordkeeping and reporting; and compliance and test methods) to remove 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. The Pittsburgh-Beaver Valley Area includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. Gasoline vapors include volatile organic compound (VOC) emissions. VOCs are a precursor to the formation of ground-level ozone air pollution and fine particulate matter (PM_{2.5}), both hazards to public health and welfare. Gasoline formulated with an RVP of 7.8 psi has lower VOC emissions than gasoline formulated at higher RVP levels. The Chapter 126, Subchapter C requirements were approved by the EPA as a revision to the Commonwealth's State Implementation Plan (SIP) at 63 FR 31116 on June 8, 1998, as a control measure to 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 Commonwealth's General Assembly passed the act of May 14, 2014 (P.L. 674, No. 50) (Act 50), which amended the APCA to require the Department to “within 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).” The clause was effective May 14, 2014. According to the Senate Co-Sponsorship Memorandum for Senate Bill 1037, dated June 5, 2013¹, the legislation was proposed 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.

The Commonwealth is required to ensure that the repeal of Chapter 126, Subchapter C complies with the Non-Interference Clause, Clean Air Act (CAA) Section 110(l) (42 U.S.C.A. § 7410(l)). The Non-Interference Clause requires that the EPA Administrator not approve 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 intends to demonstrate non-interference to the EPA through using “commensurate emission reductions,” as mandated by Act 50 of 2014 for the repeal of the low RVP regulation.

This proposed rulemaking addresses the legislative mandate to promulgate regulations to repeal the provisions of Chapter 126, Subchapter C. After the repeal, the persons, groups and entities, including small businesses, currently subject to the regulation will then become subject to the

¹ Senate Co-Sponsorship Memoranda – Repeal of Summer RVP Gas. Pennsylvania State Senate. <http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20130&cosponId=12920>. Accessed August 1, 2016.

Federal rules. The applicable Federal regulations state that gasoline RVP may not exceed 9.0 psi for Pennsylvania year-round (40 C.F.R. § 80.27(a)(2)), unless a SIP revision with a lower RVP requirement is approved by EPA for a specific area. The Federal regulations also provide a 1.0 psi RVP allowance for gasoline containing ethanol at 9 to 10 volume percent (vol%), applicable to Pennsylvania (40 C.F.R. § 80.27(d)(1)). After the repeal of the 7.8 RVP requirement, this will result in a maximum allowable RVP of 10.0 psi allowed for gasoline blended with ethanol, in all areas of this Commonwealth, except the Philadelphia area where a different type of gasoline is mandated.

If published as a final-form regulation in the *Pennsylvania Bulletin*, this proposed rulemaking will be submitted to the EPA for approval as a revision to the Commonwealth's SIP. The Department is proceeding with the demonstration of continued compliance with the applicable NAAQS through the use of commensurate emission reductions separately from this rulemaking action of proposing to repeal the regulations codified at §§ 126.301—126.303.

This proposed rulemaking will apply to gasoline refiners, importers, distributors, resellers, terminal owners and operators, carriers, retailers and wholesale purchaser-consumers who sell, exchange or supply gasoline in the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. These entities include owners and operators of facilities and infrastructure in the gasoline supply chain, such as bulk gasoline stations and terminals, gasoline merchant wholesalers, gasoline stations with and without convenience stores, tanker trucks and petroleum pipelines.

A review of multiple Department databases identified between 33 and 1,252 businesses that may be subject to Chapter 126, Subchapter C. Additionally, the Commonwealth's Small Business Development Center's (SBDC) Environmental Management Assistance Program (EMAP) performed a query of the Hoovers database for a list of potentially subject businesses based on North American Industry Classification System (NAICS) codes provided by the Department and provided the Department with a list of 768 businesses that are potentially subject to Chapter 126, Subchapter C. The Department also identified 1,095 potentially affected entities through American FactFinder, a web-based tool of the U.S. Census Bureau. The Department estimates that as many as 84% of the entities identified from all sources may be small businesses, based on the fact that 84% of the 768 entities identified by the SBDC EMAP qualified as small businesses.

Based on the available data, if this proposed rulemaking is published as a final-form rulemaking in the *Pennsylvania Bulletin*, refineries may save 0.5 cpg, retailers and wholesale purchaser-consumers may save between 1.4 cpg and 3.2 cpg, and consumers may save between 1.6 cpg and 9.2 cpg. Actual cost savings for retailers, wholesale purchaser-consumers and consumers are directly dependent on how much gasoline is purchased from an entity subject to Chapter 126, Subchapter C during the applicable time period. The Department estimates that total gasoline consumption in the Pittsburgh-Beaver Valley Area for the summer months (June-September) of 2013 was approximately 16,667,316 gallons. Estimated cost savings resulting from this proposed rulemaking range from \$83,337 (0.5 cpg for refineries) to \$1,533,393 (9.2 cpg for consumers) annually during the summer months.

The Air Quality Technical Advisory Committee (AQTAC) and the Small Business Compliance Advisory Committee (SBCAC) were briefed on the proposed rulemaking on December 10, 2015, and February 17, 2016, respectively. AQTAC voted 15-5-0 and SBCAC voted unanimously to concur with the Department's recommendation to move the proposed rulemaking forward to the Board for consideration. The five AQTAC members who were opposed expressed concern about the loss of emission reduction benefits as a result of the repeal, how the emission reduction benefits were calculated, and the process used by the Department to demonstrate continued compliance with the Federal NAAQS through the use of commensurate emission reductions. The proposed rulemaking was presented to the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on March 2, 2016. On the recommendation of the Policy and Regulatory Oversight Committee, on March 15, 2016, the CAC concurred with the Department's recommendation to forward the proposed rulemaking to the Board. The AQTAC, SBCAC and CAC meetings are advertised and open to the public.

E. Summary of Regulatory Requirements

§ 121.1. Definitions.

This section contains definitions relating to air quality regulations. The proposed rulemaking will delete the following terms: "compliant fuel," "importer" and "low RVP gasoline."

§ 126.301. Compliant fuel requirement.

This section describes when and where low RVP gasoline is required and details the restrictions on selling, exchanging, supplying, blending, mixing, storing and transferring compliant and noncompliant fuel during the applicable period. The proposed rulemaking will repeal § 126.301.

§ 126.302. Recordkeeping and reporting.

This section describes the recordkeeping and reporting requirements of the subchapter, including when records are required, who must maintain the records and what must be included in the records. The proposed rulemaking will repeal § 126.302.

§ 126.303. Compliance and test methods.

This section identifies the approved methodology for sampling and testing gasoline to determine RVP. The proposed rulemaking will repeal § 126.303.

F. Benefits, Costs and Compliance

Benefits

The benefits of the proposed rulemaking are expected to outweigh the costs and short-term environmental effects of the proposed rulemaking.

Repealing the requirements for low RVP gasoline in the Pittsburgh-Beaver Valley Area will likely result in slightly increased emissions of VOCs into the atmosphere for the next few years. The VOC emission reduction benefits from requiring low RVP gasoline in the Pittsburgh-Beaver Valley Area steadily decline in future years, decreasing from VOC emission reductions of 1.636 tons per day in 2017 to VOC emission reductions of 1.329 tons per day by 2030. The nitrogen oxide (NO_x) emission reduction co-benefits of low RVP gasoline decline from 0.354 tons per day in 2017 to 0.007 tons per day in 2030. The Commonwealth will need to offset these small increases in VOC emissions with VOC emission reductions achieved from other control measures.

One potential benefit of the proposed rulemaking would be the elimination of the costs relating to blending gasoline with an RVP of 7.8 psi or less to be exchanged, supplied or sold in the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. These cost savings may be passed down through the gasoline supply chain, potentially lowering costs for consumers. Another potential benefit may be a reduction in the recordkeeping and reporting obligations experienced by the regulated community to comply with the requirements of Chapter 126, Subchapter C.

Owners and operators of facilities and infrastructure in the gasoline supply chain, including refineries, bulk gasoline stations and terminals, gasoline merchant wholesalers, gasoline stations with and without convenience stores, tanker trucks and petroleum pipelines may benefit from the proposed rulemaking both financially and through reduced recordkeeping and reporting obligations. As stated above, the Department identified between 33 and 1,252 businesses in the Pittsburgh-Beaver Valley Area that may be subject to Chapter 126, Subchapter C. Some industry sectors will be impacted more than others. The Department's analysis of potentially affected entities used U.S. Census Bureau data based on the NAICS codes for the subject industry sectors; most of the NAICS codes analyzed also include other industry sectors not related to the production, transportation or sale of gasoline, which may result in the Department's estimated number of affected facilities being higher than the actual number of affected facilities.

The population of the Pittsburgh-Beaver Valley Area was approximately 2,353,045 in 2015. It is likely that most of the population uses gasoline for operating gasoline-powered vehicles and off-road equipment. Gasoline consumers in the Pittsburgh-Beaver Valley Area, consumers in the adjacent counties who purchase gasoline in the Pittsburgh-Beaver Valley Area and consumers traveling through the Pittsburgh-Beaver Valley Area may benefit economically if cost savings are passed through to the retail establishments and the ultimate consumers.

Compliance costs

The proposed rulemaking is expected to result in cost savings or no financial impact for most affected entities. Businesses involved in the sale of gasoline, including gas stations, bulk terminals and wholesalers, will likely see an 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 special fuel are passed down the supply chain from the refinery and terminal to the gas station. The ultimate consumer may or may not see a cost savings at the pump. On the other

hand, businesses involved in gasoline transport and storage will be unlikely to see much impact, if any, as the type of gasoline being transported does not directly affect the business operation.

Refineries may save up to 0.5 cpg, the cost to refine the gasoline fuel from 8.7 psi RVP to 7.8 psi RVP. The baseline gasoline used in a study of refinery costs conducted in 2008 by Pechan and Associates for the Department was 8.7 psi RVP gasoline. The use of a baseline of 8.7 psi RVP gasoline in the Pechan study was based on the use of 8.7 psi RVP gasoline by the Department as a modeling input to model mobile source emissions for the purposes of Pennsylvania air quality inventory development and SIP revisions at the time of the study. The baseline fuel used in the analysis performed by a consultant for this rulemaking to determine the emission reduction benefits of Subchapter C was 10.0 psi RVP gasoline, based on consultation with EPA. The costs to blend in ethanol for an average 10% ethanol content are not affected by this proposed rulemaking. The Department obtained data from the Oil Price Information Service (OPIS), which provides average weekly gasoline prices at the terminal (rack) for the Pittsburgh metro area and for this Commonwealth as a whole. Weekly data was obtained from OPIS for most weeks between mid-June 2006 and October 2011. Based on the available data, retailers and wholesale purchaser-consumers may save between 1.4 cpg and 3.2 cpg as a result of this proposed rulemaking. The Department also obtained OPIS data for average retail gasoline prices for the Pittsburgh metro area and for this Commonwealth as a whole. The data includes weekly average retail gasoline prices for April 2003 through December 2010, and monthly average retail gasoline prices for January 2011 through December 2015. Based on the 5 most recent years of available data, consumers may save between 1.6 cpg and 9.2 cpg as a result of this rulemaking. Actual cost savings for retailers, wholesale purchaser-consumers and consumers are directly dependent on how much gasoline is purchased from an entity subject to Chapter 126, Subchapter C during the applicable time period.

Recordkeeping requirements for all affected entities may be reduced or simplified since the businesses will not be required to document the transfer of gasoline with an RVP of 7.8 psi. This may or may not lead to cost savings, as the records kept are likely to continue to be kept for business purposes by terminals and retailers.

The Board anticipates that implementation of the proposed rulemaking provisions will have minimal financial impact on the owners and operators of affected facilities.

Compliance assistance plan

The Department does not anticipate that compliance assistance will be required, as this proposed rulemaking eliminates requirements, including recordkeeping and reporting requirements. The Department will respond to questions that affected facilities may have about transitioning from 7.8 psi RVP gasoline to 9.0 or 10.0 psi RVP gasoline through the Department's ongoing compliance assistance program.

In addition, the Department will rescind policy document, #273-4000-008, "Policy for Sampling and Determination of Compliance with Low RVP Gasoline Requirements in the Pittsburgh-Beaver Valley Ozone Non-attainment Area," as it will no longer be needed.

Paperwork requirements

The owner or operator of a facility subject to the existing regulation is required to maintain records sufficient to demonstrate compliance with the applicable requirements. The proposed rulemaking eliminates the recordkeeping and reporting requirements for owners and operators of affected facilities.

G. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

Although a slight increase in VOC and NO_x emissions is expected with the repeal of the low RVP gasoline requirements, the emission increases are expected to be offset by emission reductions from other control measures. The ozone air quality in the Pittsburgh-Beaver Valley Area has consistently improved since the first Ozone NAAQS was implemented and is expected to continue to do so as a result of current permanent and enforceable control measures and regulations. In order to demonstrate compliance with Act 50 and with the Non-Interference Clause of CAA Section 110(l), the Commonwealth plans to identify equivalent emission reductions to offset the emission reductions that would be lost in future years after Chapter 126, Subchapter C is repealed and removed from the SIP.

H. Sunset Review

This provision is not applicable because the regulation will no longer exist.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on DATE, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. Public Comments

Interested persons are invited to submit written comments, suggestions, support, or objections regarding the proposed rulemaking to the Board. Comments, suggestions, support, or objections must be received by the Board by DATE. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by DATE. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing the eComment system at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held at ___ p.m. on the following dates:

_____ (blank) _____

_____ (blank) _____

_____ (blank) _____

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to five minutes for each witness. Witnesses are requested to submit three written copies of their oral

testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

PATRICK MCDONNELL,
Acting Chairperson